Overview of the Money Laundering Regulations 2019

CONTEXT

On 20 December 2019 the UK Government introduced the Fifth Money Laundering Directive into UK law as an amendment to the existing Money Laundering Terrorist Financing and Transfer of Funds Regulations 2017.

THE CHANGES

The scope of regulated businesses in the property agency sector is expanded to include the letting agency sector for high value transactions with a monthly rent of 10,000 euros (or equivalent amount) or more.

ELIGIBILITY

The extent and application of the Regulations apply to all letting agents working in the United Kingdom.

TIMETABLE

The Regulations came into force on 10 January 2020. The amended rules do not relate to the UK’s withdrawal from the European Union.

LETTING AGENCY

Letting agent means a firm or sole practitioner who, or whose employees, carry out letting agency work. Letting agency work is:

1. Things done in response to instructions received from a prospective landlord or tenant looking to rent a property or part of a property.
2. For a tenancy agreement of at least one calendar month or more, where the monthly rent is 10,000 euros (or equivalent amount) or more.
FACT SHEET

Applies to UK

JANUARY 2020

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MORE INFO

HMRC AML Registration: www.gov.uk/anti-money-laundering-registration

Registration

Letting agents in the UK who meet the definition of letting agency activity and the rent threshold must register with Her Majesty’s Revenue & Customs (HMRC) and follow the anti-money laundering regulations.

Under the Regulations HMRC may keep the register in any form they think fit and publish or make available to public inspection all or part of a register it maintains.

REGISTER WITH HMRC

It is a criminal offence to trade as a letting agency or an estate agency business within the regulated sector without being registered with HMRC for money laundering supervision.

NB: Employees of letting or estate agents who carry out relevant work are not individually supervised by HMRC. Employers are responsible for registering and complying with the Regulations.

Letting agency businesses must ensure they have applied to HMRC for supervision before 10 January 2021 for approval under the new rules.

APPLICATION

HMRC can specify the information required and how letting agents must apply. This is likely to include:

- the applicant’s full name and (where different) the name of the business
- where the applicant is an individual, the applicant’s date of birth and residential address
- the nature of the business
- the address of the head office of the business with its company number.
- the full name of the Nominated Officer/Money Laundering Reporting Officer (MLRO)
- a written risk assessment and how the business meets the requirements of the Money Laundering Regulations.

NB: At any time after receiving an application and before making a decision, HMRC may require the applicant to provide (within 21 days from the date of the request) further information to help determine the application.

If there is a change to the material information provided by the letting agent to HMRC or an inaccuracy, letting agents must provide details of the change or correction within 30 days of the occurrence or an alternative date agreed with HMRC.
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Policies and Procedures

Letting agents must take appropriate steps to identify and assess the risks of money laundering and terrorist financing to which its business could face.

WHAT YOU NEED TO DO

1. Written Risk Assessment
   Establish and maintain an up to date written risk assessment that is appropriate to the size of the letting agency, using guidance from HMRC, which considers risk factors relating to:
   
   1. **Customers:** who are they and where are they based?
   2. **Geography:** certain letting agency branches may face more risk or risks from international customers
   3. **Products or services:** what does the letting agency business do?
   4. **Transactions:** any business out of the ordinary
   5. **Delivery channels:** working over phone or face to face

   NB: Letting agents must provide the written risk assessment it has prepared to HMRC on request.

2. Written policy on how to manage the risk
   Letting agents must establish, maintain and review written policies, controls and procedures to mitigate and manage effectively the risks of money laundering and terrorist financing identified in any risk assessment.

   Letting agents must maintain a record in writing of:
   
   • its policies, controls and procedures to deal with money laundering
   • any changes to those policies, controls and procedures
   • the steps taken to communicate those policies, controls and procedures (or any changes to them) to staff within the letting agency business

   NB: The policies, controls and procedures adopted must be approved by senior management at the letting agency and regularly reviewed.

   The policies, controls and procedures adopted by the letting agency business must include:
   
   • Risk management practices.
   • Internal controls.
   • Customer Due Diligence (see Fact Sheet 4).
   • Reliance and record keeping.
   • Internal communication of policies, controls and procedures.
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3. Internal controls

Letting agents must appoint a senior manager as Nominated Officer/ Money Laundering Reporting Officer (MLRO) responsible for the letting agent’s compliance with these Regulations.

NB: The letting agency must, within 14 days of the appointment, inform HMRC of the individual’s identity and/or any change in position.

Letting agents must also screen all employees before an appointment is made and throughout the duration of employment to ensure effectiveness in carrying out relevant functions with good conduct and integrity.

An independent audit function must also be established with the responsibility to examine, evaluate, recommend changes and monitor the adequacy and effectiveness of the letting agency’s policies and procedures.

4. Training

A letting agency must ensure employees are aware of the law and provide regular training opportunities in how to recognise and deal with transactions which may be related to money laundering and terrorist financing.

NB: Letting agencies should maintain a record in writing of the measures taken to train staff and make them aware of the rules.

Training must be provided to any employee who can contribute to the identification, mitigation, prevention or detection of money laundering and terrorist financing affecting the letting agency business.

Propertymark runs three AML training courses to help members comply.

- **Anti-Money Laundering (An Introduction), 30 mins**  
  This foundation level course is designed to raise awareness of money laundering activities and minimise the risk of criminal activities.

- **Anti-Money Laundering, 4 hours**  
  Learn how to comply with Money Laundering Regulations and the Proceeds of Crime Act.

- **Advanced Anti-Money Laundering, 4 hours**  
  Gain the knowledge to competently undertake the duties of the Money Laundering Reporting Officer.

To book a course visit: arla.co.uk/training-qualifications/anti-money-laundering
Customer Due Diligence (CDD)

Propertymark believe it is best practice for all letting agents, regardless of whether they fall under the definition of regulated businesses with HMRC for AML supervision, to carry out CDD on all their customers.

NB: All property agents should be aware that committing an offence under the Proceeds of Crime Act 2002 applies to everyone and criminalise any involvement in the proceeds of any crime if the person knows or suspects that the property is criminal property.

WHAT YOU NEED TO DO

Customer Due Diligence (CDD)

Letting agency businesses must apply CDD measures in relation to both the tenant and landlord for any tenancy agreement with a monthly rent of EUR 10,000 (or equivalent amount) or more.

Letting agents must carry out CDD before the establishment of a business relationship, and later if they suspect money laundering or terrorist financing or doubt the adequacy of information previously obtained for the purposes of identification or verification.

NB: This means carrying out CDD with a tenant or a guarantor at the point in which the tenants offer is accepted and before either the tenancy agreement is signed or money (including the Holding or Tenancy Deposit) is accepted.

Letting agents must be able to:

- identify the customer
- verify the customer’s identity
- assess and obtain information on the nature of the business relationship or transaction
- access details of any resulting beneficial owners

Where the customer is a company letting agents must obtain and verify:

- The name of the business
- The company number or registration number
- The address of the registered office.

NB: For private or unlisted companies, letting agents must take steps to verify the full names of the board of directors as well as the constitution and law that the company is subject to.

Continued...
Where someone says they are acting on behalf of a customer, the letting agent must be able to independently verify the identity of that individual and clarify that they are authorised to act on the customer’s behalf.

**Reliance**

Under the rules, letting agents can use an outsourcing service to apply CDD provided that the letting agent remains liable for failure to comply with these Regulations.

**NB:** An outsourcing service means a person who performs a process or service that would otherwise be carried out by the letting agent. They must not be an employee of the letting agent.

Electronic identification processes are permitted where these are independent of the person whose identity is being verified, secure from fraud or misuse and capable of providing an appropriate level of assurance that the person being checked is who they say they are.

As a unique member benefit for NAEA Propertymark members they can access Propertymark Passport to verify customer identities and support compliance with the Money Laundering Regulations. ARLA Propertymark members looking to use the app should contact the Membership Team to discuss joining NAEA Propertymark.

**Record Keeping**

Letting agency businesses must keep copies of CDD and supporting records and ensure the information is up to date.

Documents and information should be kept for five years beginning on the date when the transaction is complete, or the business relationship has come to an end.

**NB:** A letting agent is not required to keep records of documentation for more than 10 years.

As soon as either the five year or 10-year period has come to an end letting agents must delete any personal data for the purpose of the Regulations unless they are needed for legal proceedings.
Ongoing monitoring
Letting agents must carry out ongoing monitoring of a business relationship including:

- Scrutiny of transactions undertaken throughout the course of the relationship to ensure that the transactions are consistent with the letting agent’s knowledge of the customer and the customer’s business risk profile.
- Undertake reviews of existing records and keep information obtained for the purpose of applying CDD measures up to date.

Cease transactions
If a letting agent is unable to apply CDD measures, they:

- Must not carry out any transaction through a bank account with or on behalf of the customer.
- Must not establish a business relationship or carry out a transaction.
- Must terminate any existing business relationship with the customer.
- Must consider whether they need to make a disclosure under the Terrorism Act 2000 or Proceeds of Crime Act 2002.
Beneficial Owners

Letting agents must also apply Customer Due Diligence (CDD) to understand the ownership and control structure of their customers as well as verify the identity of senior managing officials when the beneficial owner cannot be identified.

NB: Beneficial owners are individuals who ultimately own or control the customer or on whose behalf a transaction takes place, e.g. any co-owners of a property who are not the letting agents’ customer regardless of the share held.

Where the customer is beneficially owned the letting agent must:

- identify the beneficial owner
- verify the beneficial owner’s identity
- understand the ownership and control structure

NB: If the letting agent has taken all reasonable steps to verify the beneficial owner of a company and is unable to do so or is not satisfied that the individual identified is the beneficial owner, they can treat the senior person in that company responsible for managing it as its beneficial owner.

Letting agency businesses must keep copies of CDD and records in writing of all actions taken to identify beneficial owners.

NB: Where property agents find discrepancies between information on beneficial ownership registers and the CDD they have carried they must report these discrepancies to Companies House.

The ongoing monitoring of a business relationship and requirement to cease transactions as outlined in fact sheet 4: Customer Due Diligence (CDD) also apply to beneficial owners.
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MORE INFO

High-risk third country identified by the EU: ec.europa.eu/commission/presscorner/detail/en/IP_19_781

Enhanced Due Diligence (EDD)

Enhanced Due Diligence applies in situations that are high risk in addition to the Customer Due Diligence requirements.

Letting agents must apply enhanced customer due diligence when:

- The letting agent’s risk assessment has identified that there is a high risk of money laundering
- The transaction is complex or unusually large, there is an unusual pattern of transactions or the transaction has no apparent economic or legal purpose
- The customer has provided false or stolen ID documents and the letting agent wants to continue to deal with that customer
- An individual is a Politically Exposed Person (PEP), or a family member or known close associate of a PEP, see fact sheet 7
- Any business relationship or transaction with a landlord or tenant from a high risk third country

NB: A high-risk third country means a country which has been identified by the European Union and UK Government as having a high risk of money laundering and terrorist financing.

Where the transaction is complex or unusually large EDD must include:

- Examination of the background and purpose of the transaction and;
- Increasing the degree and nature of monitoring of the business relationship to determine whether the transaction is suspicious.

Where there is a business relationship or transaction with a landlord or tenant from a high risk third country EDD must include obtaining additional information on:

- the customer and customer’s beneficial owner
- the intended nature of the business relationship
- the source of funds (origin of the funding of the transaction with supporting evidence) and wealth of the customer and of the customer’s beneficial owner
- the reasons for the transaction
- conducting enhanced monitoring of the business relationship by increasing the number of controls applied and selecting patterns of transactions that need further examination

NB: Letting agents must obtain the approval of senior management for establishing or continuing any business relationship or transaction with a landlord or tenant from a high risk third country.

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arla.co.uk
Depending on the situation, enhanced due diligence may also include:

- seeking additional independent reliable sources to verify information
- taking additional steps to understand better the background ownership and financial situation of the customer
- taking steps to be satisfied that the transaction is consistent with the purpose and intended nature of the business relationship
- increase monitoring of the business relationship including greater scrutiny of transactions

When assessing risk factors letting agents may consider whether:

- the business relationship is conducted in unusual circumstances
- the customer is a business that is cash intensive
- the corporate structure of the customer is unusual or excessively complex given the nature of the company’s business

Letting agents should also assess transaction or delivery channel risks including:

- if private banking is being used
- the situation involves no face-to-face contact without certain safeguards such as use of electronic signatures
- the payments will be received from unknown or un-associated third party

Assessing geographical risks such as countries subject to sanctions and embargoes; or providing funding or support for terrorism.
Politically Exposed Persons (PEP)

Letting agents must have in place appropriate risk-management systems and procedures to determine and manage the enhanced risks arising from whether a customer or the beneficial owner of the customer is a PEP or a family member or a known close associate of a PEP.

NB: A PEP includes directors and members of a board of an international organisation, management of a state-owned enterprise, ambassadors, boards of central banks, members of supreme courts, politicians, member of the governing body of a political party or Ministers and Heads of State.

A family member of a PEP includes a spouse or civil partner, children and stepchildren or parents of the PEP.

A close associate is an individual who has joint beneficial ownership, close business relations, or sole beneficial ownership of a business set up for the benefit of a PEP.

In order to determine risk, letting agents must consider the level of risk to their business, the level of risk associated with that customer and what extra CDD measures need to be applied.

Where a PEP no longer has a prominent public function, letting agents must continue to apply risk management for a period of at least 12 months after the date on which the person stopped having their public function or as long as appropriate to manage the risk. However, these requirements do not apply to a family member or any known close associate of that PEP.
Reporting suspicious activity with the National Crime Agency (NCA)

**SUSPICIOUS ACTIVITY REPORT (SAR)**

This is the name given to a report to the National Crime Agency (NCA) under the Proceeds of Crime Act 2002 or the Terrorism Act 2000. The Money Laundering Regulations support the objectives of these two pieces of legislation.

The report identifies individuals and business who the letting agent or letting agency know, suspect or have reasonable grounds to know or suspect, may be involved in laundering money or financing terrorism.

**WHAT DOES THIS MEAN?**

A SAR alerts law enforcement to potential instances of money laundering or terrorist financing. They provide information and intelligence from the private sector that would otherwise not be visible to law enforcement.

**WHAT DO YOU NEED TO DO?**

Once a letting agent has suspicion or knowledge; or reasonable ground to suspect that money laundering is taking place by their customer; or a transaction or relationship their client is concerned with, they should notify the MLRO immediately through a written internal report.

NB: There is no set template for an internal report and each letting agency businesses will need to develop their own procedure for internal reporting.

The Nominated Officer/MLRO should conduct their own investigations into the information provided. This will include verification of the CDD already provided as well as any further internal enquiries that will assist the decision-making process and whether to refer the matter to the NCA.

NB: The Nominated Officer/MLRO must avoid telling other parties, which would represent tipping off, which is a criminal offence.
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arla.co.uk/members/legal-advice

MORE INFO

National Crime Agency:
nationalcrimeagency.gov.uk

For urgent queries regarding current DAML requests, email:
DAML@nca.gov.uk

For general questions about financial crime email:
UKFIUSARs@nca.gov.uk

For assistance with submitting SARs or SAR Online enquiries, contact the NCA UK Financial Intelligence Unit (UKFIU) on: 020 7238 8282. You will need your SAR reference number.

SUBMITTING A SAR

Once the appropriate level of suspicion or knowledge has been formed that the letting agency is concerned with a money laundering issue, the letting agency must complete a SAR and send to the NCA.

NB: The NCA is unable to give advice on whether an individual or organisation should submit a SAR. For further information, letting agents should contact HMRC or seek independent legal advice.

SARs can be submitted by a letting agency business or private individuals where they have suspicion or knowledge of money laundering or terrorist financing.

Online reporting
The simplest way to submit a SAR is with the secure SAR Online system. SAR Online is free and provides an instant acknowledgement and reference number and reports can be made 24/7.

Manual reporting
When submitting a SAR manually, there are several forms to download from the NCA website, including SAR guidance notes and what to include. To register for SAR Online, go to nationalcrimeagency.gov.uk and click on ‘Reporting SARs’ in the top right-hand corner on desktop and tablet.

DEFENCE AGAINST MONEY LAUNDERING (DAML)

If a letting agent wishes to start a business relationship or enter a transaction with the customer who the agent has made a SAR about, then the agent must ask permission from the NCA to progress the transaction.

NB: If permission is granted, this will constitute a defence (DAML) to a money laundering or terrorist financing offence.

The NCA has seven working days to respond to the request. It is an offence for a Nominated Officer/MLRO to allow a transaction to proceed before receiving a granted notice from the NCA.

NB: If the letting agency does not receive a refusal notification then it is a business decision as to whether to continue with the transaction.

If the request for a DAML is refused, the NCA will notify the letting agency. Letting agents must not proceed with the transaction for up to a further 31 calendar days so that law enforcement can investigate.

NB: A DAML does not provide any form of ‘clearance’, ‘permission’ or ‘authority’ to undertake the specified activity, it solely provides a defence to a principal money laundering offence should the letting agent decide to carry out the transaction.
Enforcement

If a person or business fails to comply with the Money Laundering Regulations, they may face civil penalties or criminal prosecution. This could result in unlimited fines and/or a prison term of up to two years.

CIVIL PENALTIES

Fines and statements
When HMRC is satisfied that a letting agent has broken the rules they can impose an unlimited fine and publish a public statement censuring the individual.

If HMRC also deem that another person who at the time was an officer at the letting agency and was in contravention of any rules whilst working at the letting agency, HMRC may impose a penalty on that person.

NB: In deciding whether an individual has broken the rules, HMRC must consider any relevant guidance which at the time was issued by the supervisory authority and approved by the Treasury.

Suspension and removal of authorisation
HMRC may decide to act against a letting agency who has failed to:

- implement effective risk-based procedures
- retain records
- comply with the rules

HMRC may decide to cancel or suspend permission for letting agents to continue to operate in the regulated sector for any period up to a maximum of 12 months.

HMRC may also use the following powers, or a combination of them, to encourage compliance and respond to non-compliance:

- inspect business premises
- issue a penalty
- refuse or remove fit and proper status from an individual
- refuse or remove an approval from an individual
- refuse, suspend or cancel a business’s registration
- issue a notice to request information or attendance at a meeting
- issue a public statement naming and censuring a business or person
- prohibit an individual from holding a managerial role
- seek a court order to enter a premise or to restrain a person from committing a breach

Continued...
### CRIMINAL PROSECUTION

If letting agents do not comply with the Money Laundering Regulations, they could be committing offences under the Proceeds of Crime Act 2002 or Terrorism Act 2000.

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<tr>
<th>Offence</th>
<th>Punishment</th>
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<tr>
<td>Concealing the proceeds of criminal conduct</td>
<td>Six months imprisonment and/or a fine not exceeding £5,000 or...</td>
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<tr>
<td>Assisting another to retain the benefits of criminal conduct</td>
<td>On prosecution, 14 years imprisonment or a fine or both</td>
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<tr>
<td>Acquisition use and possession of the proceeds of crime</td>
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<tr>
<td>Failure to disclose knowledge or suspicion of money laundering</td>
<td>Upon conviction this offence carries a maximum five-year custodial sentence and / or an unlimited fine</td>
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<tr>
<td>Tipping Off</td>
<td>Summary conviction for a term not exceeding three months, or a fine not exceeding £5,000</td>
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<tr>
<td></td>
<td>Conviction of prosecution to imprisonment for a term not exceeding two years or to a fine or both</td>
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