

Guidance for Money Service Businesses on complying with Directions issued under the Counter Terrorism Act 2008 Schedule 7 (CT Act 2008 Sch. 7)

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This guidance is being sent to Money Service Businesses (MSBs) with a copy of the first direction issued under the Counter Terrorism Act 2008 Schedule 7 which affects them and will shortly be included in [Public Notice MLR8: Preventing money laundering and terrorist financing](#).

Who is this guidance for?

This guidance is for MSBs supervised by HM Revenue & Customs (HMRC).

Purpose of this guidance

The purpose of this guidance is to provide MSBs that are supervised by HMRC with comprehensive guidance on complying with directions issued by HM Treasury (HMT) under the Counter Terrorism Act 2008 Schedule 7

The guidance:

- Outlines the legislation in the Counter Terrorism Act 2008 Schedule 7
- Explains the requirements of the Counter Terrorism Act 2008 Schedule 7 in relation to MSBs and how these should be applied in practice
- Explains the link between these requirements and those under the Money Laundering Regulations (MLR) 2007

The Counter Terrorism Act 2008 Schedule 7

Schedule 7 of this Act:

- addresses the risks from money laundering, terrorist financing and the proliferation of nuclear, radiological, biological or chemical weapons
- gives new powers to HMT to issue directions to firms in the financial sector including MSBs
- requires MSBs to comply with directions issued by HMT
- appoints HMRC as an enforcement authority and gives new powers to HMRC to supervise MSBs to ensure their compliance with the requirements imposed by any direction

What is a direction?

A direction will contain specific legal requirements imposed by HMT on businesses in the financial sector in relation to their transactions or business with:

- a person carrying on business in a country
- the government of a country
- a person resident or incorporated in a country

The requirements may be imposed on particular businesses in the financial sector, a category of businesses, or all businesses in the financial sector.

When can HM Treasury issue a direction under the Counter Terrorism Act Schedule 7?

HMT may give a direction if one or more of the following conditions is met in relation to a country outside the European Economic Area (EAA.)?

The Financial Action Task Force (FATF) has advised that measures should be taken in relation to the country because of the risk of terrorist financing or money laundering activities being carried on

- in the country
- by the government of the country
- by persons resident or incorporated in the country

HMT reasonably believes that there is a risk of terrorist financing or money laundering activities being carried on:

- in the country
- by the government of the country
- by persons resident or incorporated in the country

and that this poses a significant risk to the national interests of the UK

HMT reasonably believes that:

- the development or production of nuclear, radiological, biological or chemical weapons in the country
- or the doing in the country of anything that facilitates the development or production of any such weapons

poses a significant risk to the national interests of the UK.

What is The Financial Action Task Force (FATF)?

FATF is an inter-governmental body which develops international standards to combat money laundering and terrorist financing. It also produces lists of countries that do not have sufficient legal and regulatory standards to combat money laundering and terrorist financing.

How will HM Treasury issue a direction?

HMT may issue a direction to a particular firm following a ministerial decision. In such cases it will communicate directly with the firm.

When a direction is issued to more than one firm, HMT will lay an order before parliament.

How often will directions be issued?

Directions can only be issued to counter significant threats from high risk jurisdictions and so will not be used frequently.

How long will a direction last?

A direction will last for one year. However, it may be withdrawn before this time.

Will HM Treasury take account of the impact on businesses when they issue a direction?

HMT has a duty to consider the proportionality of any direction, which includes the likely impact upon businesses.

When HMT gives a direction they will consider the administrative burdens it will impose on affected businesses and if possible will give businesses time to prepare.

Does HM Treasury have similar powers under the Money Laundering Regulations 2007 (MLR 2007)?

Under Regulation 18 of the MLR 2007 HMT can direct any relevant person

- not to enter into a business relationship
- not to carry out an occasional transaction
- not to proceed any further with a business relationship or occasional transaction

with a person who is situated or incorporated in a non-EEA state to which the FATF has decided to apply counter-measures.

The powers to issue directions under the CT Act 2008 are broader, reflecting the range of counter measure options identified by the FATF. Under the CT Act 2008 HMT can issue directions where the FATF has only **advised** measures be taken and can only direct businesses operating in the financial sector. Under the MLR 2007 HMT can direct any relevant person, but only where the FATF has **decided** to apply counter measures.

What does this mean for MSBs?

HMT could issue directions to all MSBs, or to some types of MSBs or to a particular business. This means that you must be ready to deal with these directions by training your staff and including how to deal with them in your anti money laundering systems.

Will cheque cashers or bureaux de change be affected?

Cheque cashers and bureaux de change are MSBs and therefore fall within the scope of the Counter Terrorism Act. Directions may specify some or all types of MSB, but as the purpose of any direction will be to prevent the flow of money to and from the countries affected it is unlikely that cheque cashers or bureaux de change will be affected. Despite this they should always include how to deal with any directions in their anti money laundering policies and processes and sign up to the email alert system.

What will a direction say?

Directions can impose a range of requirements on a business in relation to their transactions or business with the targeted country or institution:

- enhanced due diligence
- enhanced ongoing monitoring
- systematic reporting
- limiting or ceasing business

The requirements to carry out enhanced customer due diligence and ongoing monitoring are in line with similar requirements under the MLR 2007. The requirements for systematic reporting and limiting or ceasing business are new.

What will I have to do?

Specific guidance will be issued with each direction and you will need to read the conditions imposed very carefully to find out what you need to do.

You will have to identify the customers or transactions that are affected and may need to carry out more detailed checks on them.

You may need to do one or more of the following:

- Carry out enhanced customer due diligence (see MLR 8 para. 7.12). You would normally do this in high risk situations such as when the customer is a politically exposed person.
- Carry out ongoing monitoring of customers in a business relationship (see MLR 8 Part 9). This is the kind of monitoring you would normally do in high risk situations.
- Report all transactions with these people and organisations. You may need to do this weekly.
- Cease or limit business with certain people and organisations.

If I have to impose additional requirements will I 'tip off' my customers?

There is no tipping off offence under the Counter Terrorism Act. The tipping off offences under the Proceeds of Crime Act and Terrorism Act will not apply when businesses identify affected transactions and carry out any of the four requirements.

Will there be any threshold for applying enhanced customer due diligence for affected transactions?

There will be no threshold for requiring enhanced customer due diligence unless this is specified in the direction.

What if I have to cease business with certain people or organisations?

Within the time set out in the direction you must not do business with the people or organisations specified. HMT may grant a licence to exempt certain transactions or types of transaction from the requirements of the direction. Either your customers or you can apply for a licence. HMT will provide further information on how to apply for licences when they issue a direction.

What will happen to the money if I have to stop a transaction?

Preferably, the money should be refused before a transaction can be started. HMT will issue specific guidance with each direction on what to do with transactions that are underway.

How will I carry out systematic reporting?

HMT will explain in each direction what information should be provided about transactions and business including where and when the documents and information should be sent.

Should I continue to submit Suspicious Activity Reports (SARs) in relation to these transactions and business?

Yes, you should continue to submit SARs where necessary alongside systematic reporting.

How will I know that a direction has been issued?

All MSBs should sign up to [HM Treasury's email alert system](#) to receive copies of any directions

HMT will put an announcement on their web site and issue a press statement when they issue a direction and HMRC will put an announcement on their [Money Laundering Regulations web site](#) and may contact affected businesses by a mail shot where this is possible.

Will branches of my business based outside the UK be affected?

Yes the direction will apply to all branches of your business within the EEA but not to any subsidiaries legally incorporated in another jurisdiction.

Will the directions list the individuals within a business that I should not deal with?

No, where you are required to limit or cease business with another business or organisation the directions will identify the organisation or business only. Although individuals will not be named in order to comply with the requirements of the direction, you should not deal with any representative of the business or organisation.

What are the sanctions for non-compliance?

There are civil and criminal sanctions for failure to comply with the Counter Terrorism Act 2008 Schedule 7. These include unlimited fines and imprisonment for up to two years.

How will HMRC supervise compliance with the Counter Terrorism Act 2008?

We will integrate monitoring compliance with the Counter Terrorism Act into our existing risk based approach to compliance with the MLR 2007 and Transfer of Funds Regulations 2007.

How will this affect my risk assessment of customers and products under the MLR 2007?

Customers that are carrying out transactions or business with countries where the FATF has highlighted deficiencies in systems to prevent money laundering and terrorist financing, will be high risk. Where the MLRs require customer due diligence measures to be applied they should be subject to enhanced due diligence and enhanced monitoring even if HMT has not issued any formal direction.

Appendix 1**What countries are included in the European Economic Area EEA?**

Austria, Belgium, Bulgaria, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.

Iceland, Liechtenstein and Norway are EEA member states, but they are not members of the European Union (EU). Gibraltar is within the EEA.

What countries are not included in the EEA?

Any country that is not listed above including Switzerland which is not a member of the EU or the EEA. The Channel Islands and the Isle of Man are not part of the UK, EU or the EEA.