

The scope of the money laundering regulations

24 December 2021

The activities in scope of AML requirements are set by the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (as amended) (“the regulations”). These activities can be used by criminals to help them launder the proceeds of crime and hide their illegal wealth from the authorities. You have a responsibility to act as an effective gatekeeper to these services by complying with the regulations.

If work is in scope, it is because it carries a particular risk of facilitating money laundering. As a result [you need to comply with all the requirements of the regulations](https://higher-rights.sra.org.uk/solicitors/resources/money-laundering/what-does-my-firm-need-do/) [https://higher-rights.sra.org.uk/solicitors/resources/money-laundering/what-does-my-firm-need-do/] when conducting that work. This includes taking specific actions in relation to matters such as customer due diligence, but also requires you to have a firm-wide risk assessment, and certain policies, controls and procedures in place, and to appoint relevant nominated officers, among other things.

It also means that before carrying out any work that is in scope, you need to obtain approval of certain significant role holders - your beneficial owners, officers and managers - from us.

Some firms that carry out work that is both in and out of scope apply the requirements to all matters to avoid breaching the regulations inadvertently if a matter crosses over from being out of scope to in scope.

This guidance explains how the regulations might intersect with the work you do, and therefore what activities you might carry out fall under the scope of the money laundering regulations. They also advise what you might need to do if you are captured.

Triggers that bring work into the scope of AML

There are many triggers for activity being brought into scope, as set out in Regulations 10-14. This list of activities is broad and applies beyond legal services, including to financial institutions and estate agents.

You can only be drawn into scope when providing services in the course of business. In-house legal services do not trigger AML requirements.

In our role as a legal services supervisor, we supervise firms we authorise when acting in three key capacities under the regulations

- Independent legal professionals (as defined by regulation 12(1))
- Trust or company service providers (TCSP) (regulation 12(2))
- Tax advisers (regulation 11(d))

If you are in scope in any of these capacities, you will need to notify us and apply for approval of your beneficial owners, officers and managers using the FA10 form in mySRA. If you are a TCSP, your firm will need to be registered with HMRC. We will do this for you after you have notified us that you intend to supply these services using FA10 in mySRA.

If you carry out other activities in scope of the regulations, those activities might be supervised by a different supervisor as specified in the regulations.

Definitions of the work carried out

Independent legal professional

Definition

12. (1) In these regulations, 'independent legal professional' means a firm or sole practitioner who by way of business provides legal or notarial services to other persons, when participating in financial or real property transactions concerning:
- a. the buying and selling of real property or business entities
 - b. the managing of client money, securities or other assets
 - c. the opening or management of bank, savings or securities accounts
 - d. the organisation of contributions necessary for the creation, operation or management of companies
 - e. the creation, operation or management of trusts, companies, foundations or similar structures

And, for this purpose, a person participates in a transaction by assisting in the planning or execution of the transaction or otherwise acting for or on behalf of a client in the transaction.

Interpretation

This is the most common activity that firms we supervise provide. It is effectively a description of transactional legal work, so any matter with a transaction will likely fall into scope via this definition. It is also the most complicated definition, so we have tried to explain the requirements below.

For this to apply, the scenario needs to meet several tests:



1. The service needs to be provided by way of business to other persons
2. The services provided must be legal or notarial
3. The matter must involve a financial transaction or a real property (ie land or buildings) transaction – note that a property transaction does not need for there to be a transfer of funds, only of ownership or rights
4. You need to be assisting in the planning or execution of the transaction or otherwise acting for or on behalf of a client in the transaction
5. The matter must also involve any one of the following:
 - a. Property conveyancing (residential or commercial) or the purchase of companies, limited liability partnerships, partnerships or other kinds of business entity
 - b. Managing client money, securities or other assets – we would regard “managing” to include arranging or making transactions on behalf of a client, but it would not include just holding on to assets on behalf of the client.
 - c. Opening or management of bank, savings or security accounts – again management implies activity beyond simply holding the assets
 - d. Preparing or managing funds or other contributions which are intended to be used by companies for their foundation, operation or management
 - e. Creating, operating or managing trusts, companies or similar structures.

If you meet the criteria of regulation 12(1)(e) you will also likely need to have regard to the section on Trust or Company Service Providers as this definition overlaps with regulation 12(2).

Trust or company services provider

Definition

12(2) In these regulations, trust or company service provider means a firm or sole practitioner who, by way of business, provides any of the following services to other persons, when that firm or practitioner is providing such services:

- a. forming companies or other legal persons
- b. acting, or arranging for another person to act:
 - i. as a director or secretary of a company
 - ii. as a partner of a partnership
 - iii. in a similar capacity in relation to other legal persons
- c. providing a registered office, business address, correspondence or administrative address or other related services for a company, partnership or any other legal person or legal arrangement
- d. acting, or arranging for another person to act, as:

- i. a trustee of an express trust or similar legal arrangement
- ii. a nominee shareholder for a person other than a company whose securities are listed on a regulated market

Interpretation

While this definition is quite clear, often firms risk drifting into scope of this area by doing another area of work that is out of scope. For example, a firm could be providing advice about an employment law matter which might be out of scope. Then, as a part of that matter, they might establish a trust for the client, bringing the firm into scope.

It is very important to understand that you cannot undertake any of the work in scope of regulation 12(2) before telling us via an FA10 or FA10b in mySRA. If you are providing TCSP services, you must be included on the official register held by HMRC before you can legally provide these services. We will arrange the addition of your firm to the official register of TCSPs on your behalf once you have notified us that you are providing these services.

You should review [our guidance on this \[https://higher-rights.sra.org.uk/solicitors/resources/money-laundering/trust-company-service-provider-guidance/\]](https://higher-rights.sra.org.uk/solicitors/resources/money-laundering/trust-company-service-provider-guidance/) area of work for more information.

Tax advisers

Definition

11. In these regulations, 'tax adviser' means a firm or sole practitioner who by way of business provides material aid, or assistance or advice, in connection with the tax affairs of other persons, whether provided directly or through a third party, when providing such services.

Interpretation

This definition is extremely broad, and whenever there is a tax consequence in a matter, there is a risk you might be drawn into scope as a tax adviser. You should monitor the work done on a matter to make sure you either steer clear of work in scope of the definition of tax adviser, or that if you do provide these services, your firm is complying with the regulations.

We have published [guidance on this area of work \[https://higher-rights.sra.org.uk/globalassets/documents/solicitors/tax-adviser-guidance.pdf?version=4aade61\]](https://higher-rights.sra.org.uk/globalassets/documents/solicitors/tax-adviser-guidance.pdf?version=4aade61) and what you might need to consider when deciding whether you are in scope or not.

Legal areas of work - in and out of scope

The areas of work in the regulations are standalone definitions and do not align with other definitions of legal services. They do not for example refer to reserved activities under the Legal Services Act 2007.

You will need to decide for yourself whether a matter is in scope of the regulations or not.

You should be aware that there is no de minimis for small transactions or limited amounts of work. If something you do is in scope, the regulations apply in full.

It is also important to note that there is no definitive list of activities that are not in scope. While a type of legal work (eg litigation) might be considered out of scope, a particular matter could be drawn into scope if for example you were to set up a trust for the client as part of the matter.

Below are the areas of legal work that will generally be in scope of the regulations. Please note this list is not exhaustive and only reflects the likelihood that work of these types will be in scope. You will need to take a case-by-case approach when deciding whether a matter is in scope. If you are unclear, you should seek independent legal advice.

- Conveyancing
- Commercial and corporate work
- Transactional work - including commodities, and business entities
- Trust and company work
- Tax work (other than litigation involving Her Majesty's Revenue and Customs or the simple paying of Stamp Duty and Land Tax)
- Probate matters where you are managing the assets of the estate under instruction from the executors or as the executor or creating a trust as a part of the surrounding arrangements