



# About Barristers' Obligations under the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010, as amended

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## About this document

This guidance is provided as part of the LSRA's overall role as competent authority.

It is intended to provide general information for barristers and to support and assist barristers in complying with their obligations. However **it is the responsibility of each individual practising barrister to comply with the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010, as amended (Act).**

Where obligations under the Act arise relating to a business risk assessment, a designated person is required to have regard to any guidance on risk issued by the LSRA.

*\* The information provided here is intended as guidance only, is not exhaustive and does not purport to provide legal advice or a legal interpretation of the Act. Barristers are encouraged to familiarise themselves with the Act and to satisfy themselves that they are in compliance with the Act.*

***This guidance is up-to-date as of 29.11.2021. This is a live document and is subject to change.***

## What are the obligations of barristers under the Act?

The obligations and responsibilities of a “designated person” are set out in Part 4 of the Act, entitled “Provisions relating to finance services industry, professional service providers and others”.

The category of “designated person” in the Act is much wider than “relevant independent legal professional” and includes, for example, credit institutions, financial institutions, auditors, external accountants, casinos and virtual asset service providers. (The complete list of designated persons is set out in section 25(1) of the Act.)

The obligations and responsibilities that are applicable to barristers are set out in Chapters 1A, 3, 4, 5 and 6 of Part 4 of the Act. An overview of the obligations and responsibilities that arise in each of Chapters 1A, 3, 4, 5 and 6 is provided below.

Various offences are created under Part 4 of the Act in relation to these obligations and responsibilities. In relation to these, section 107A of the Act provides –

*“It shall be a defence in proceedings for an offence under this Part for the person charged with the offence to prove that the person took all reasonable steps to avoid the commission of the offence”.*

## Chapter 1A – Risk assessment by designated persons

The Act uses a risk-based approach which is set out in Chapter 1A entitled “Risk assessment by designated persons.” The obligations and responsibilities of each “designated person” are based on a risk assessment carried out by that designated person.

Section 30A(1) of the Act provides as follows:

*“A designated person shall carry out an assessment (in this Act referred to as a “business risk assessment”) to identify and assess the risks of money laundering and terrorist financing involved in carrying on the designated person’s business activities taking into account at least the following risk factors:*

- (a) the type of customer that the designated person has;*
- (b) the products and services that the designated person provides;*
- (c) the countries or geographical areas in which the designated person operates;*
- (d) the type of transactions that the designated person carries out;*
- (e) the delivery channels that the designated person uses;*
- (f) other prescribed additional risk factors.”*

Under section 30A(2) of the Act, the business risk assessment must also take into account any information from the national risk assessment for Ireland which is relevant to the designated person (see [Other resources](#) information on our website) together with any guidelines on risk issued by the competent authority for the designated person.

Barristers are encouraged to have regard to Chapter 1A of the Act which includes additional obligations, for example:

- to document the business risk assessment (section 30A(3));
- to make records of a business risk assessment available, on request, to the LSRA (section 30A(6)).

Section 30B(1) of the Act requires a designated person to identify and assess the risk of money laundering and terrorist financing for the purpose of determining the level of customer due diligence to be applied. In so doing, the designated person shall have regard to a number of factors including, for example:

- the relevant business risk assessment which was carried out under section 30A(1);
- a number of specified factors suggesting potentially lower or higher risk.

#### **Offences:**

*\*A number of offences are created in Part 4 of the Act. The following is a non-exhaustive list of the offences which relate to the specific guidance and information provided in this section.*

It is an offence for a designated person to fail to comply with section 30A (section 30A(8)).

It is an offence for a designated person to fail to document a determination in accordance with a direction under section 30B(2) (section 30B(5)).

## **Chapter 3 – Customer Due Diligence**

The obligations of designated persons to conduct “Customer Due Diligence” are set out in Chapter 3, entitled “Customer Due Diligence”.

*\*The following guidance and information is provided to illustrate some of the obligations that arise in relation to customer due diligence. The following is not exhaustive. The provisions of Chapter 3, Part 4 are complex and barristers are encouraged to familiarise themselves with all the provisions of Chapter 3.*

A definition of “customer” is at section 24(1) of the Act which provides, in part -

*“customer” – ...*

*( b) in relation to a relevant independent legal professional, includes, in the case of the provision of services by a barrister, a person who is a client of a solicitor seeking advice from the barrister for or on behalf of the client and does not, in that case, include the solicitor, ...”*

The LSRA notes the wording “*includes...a person who is a client of a solicitor seeking advice from the barrister...*” in the definition of “customer” above [Emphasis added]. For barristers who receive instructions directly from clients, for example through the Bar of Ireland’s Direct Professional Access Scheme, these clients are also “customers”.

Section 24(1) of the Act provides a definition of “*business relationship*” which means –

*“in relation to a designated person and a customer of the person, means a business, professional or commercial relationship between the person and the customer that the person expects to be ongoing”.*

### **When must due diligence be carried out?**

Section 33(1) of the Act lists the circumstances in which a designated person must carry out customer due diligence. In summary, these include:

- prior to establishing a business relationship with a client;
- prior to carrying out an occasional transaction with, for or on behalf of the customer or assisting the customer to carry out an occasional transaction;
- prior to carrying out any service for the customers, if, having regard to the circumstances, the person has reasonable grounds to suspect that the customer is involved in, or the service, transaction or product sought by the customer is for the purpose of, money laundering or terrorist financing;
- prior to carrying out any service for the customer if the person has reasonable grounds to doubt the veracity or adequacy of documents previously obtained;
- at any time, including where the relevant circumstances of a customer have changed.

For details of all the circumstances in which a barrister, as a designated person, must carry out customer due diligence, see section 33(1) of the Act.

### **What must a designated person do?**

For details of all the steps which must be taken by a barrister, as a designated person, in conducting customer due diligence, barristers should have regard to the Act.

Examples of some of the obligations set out at section 33 are that the barrister:

- identify the customer and verify the customer’s identity on the basis of documents that the barrister has reasonable grounds to believe can be relied upon to confirm the identity of the customer. These documents can include documents from a State or government source;
- identify any beneficial owner connected with the customer or service concerned and take measures reasonably warranted by the risk of money laundering or terrorist financing to verify that identity.

Section 35 deals with special measures applying to business relationships and includes, at section 35(1), that a barrister must obtain information reasonably warranted by the risk of money laundering or terrorist financing on the purpose and intended nature of the business relationship with the client prior to the establishment of that relationship. A barrister must monitor any business relationship that it has with a customer to the extent reasonably warranted by the risk of money laundering or terrorist financing (section 35(3)).

### **When can a barrister apply simplified due diligence measures?**

A barrister, as a designated person, may be able to apply simplified customer due diligence measures if there is a lower risk of money laundering or terrorist financing.

Section 34A(1) provides that a designated person may take the measures specified in section 33(2) and section 35 *“in such manner, to such extent and at such times as is reasonably warranted by the lower risk of money laundering or terrorist financing in relation to a business relationship or transaction where the designated person -*

- (a) identifies in the relevant business risk assessment, an area of lower risk into which the relationship or transaction falls, and*
- (b) considers that the relationship or transaction presents a lower degree of risk.”*

Section 34A(2) sets out the matters to which a designated person should have regard in identifying an area of lower risk which include:

- any relevant information from the national risk assessment;
- any guidance on risk which has issued from the competent authority;
- the presence of any factor specified in Schedule 3 (which sets out a non-exhaustive list of factors that may indicate a lower risk) and
- any additional prescribed factor suggesting potentially lower risk.

Under section 34(3), a designated person who applies simplified due diligence measures must keep a record of the reasons for its determination and the evidence on which it was based and must carry out sufficient monitoring of the transactions and business relationships to be able to detect unusual or suspicious transactions.

### **When must a barrister apply enhanced customer due diligence?**

For a certain high risk category of client, namely a “politically exposed person”, a barrister, as a designated person, must carry out enhanced customer due diligence.

*(\*There are other provisions of the Act which relate to other circumstances where enhanced customer due diligence applies and which relate to cases of heightened risk. This section only addresses the position in relation to politically exposed persons. For complete details, barristers are encouraged to have regard to Chapter 3 of Part 4 of the Act.)*

A “politically exposed person” is defined in section 37(10) of the Act to mean –

*“an individual who is, or has at any time in the preceding 12 months been, entrusted with a prominent public function, including any of the following individuals (but not including any middle ranking or more junior official):*

- (a) a specified official;*
- (b) a member of the administrative, management or supervisory body of a state-owned enterprise;*
- (c) any individual performing a prescribed function”.*

The Act contains a definition of “specified official”, “close associate” of a politically exposed person and “immediate family member” of politically exposed person. The definition of “special official” includes, for example, a head of state, head of government, government minister or deputy or assistant government minister, a member of parliament, member of the governing body of a political party and a member of the supreme court, constitutional court or other high level judicial body whose decisions, other than in exceptional circumstances, are not subject to further appeal.

A barrister, as a designated person, must take steps to determine whether or not a customer or a beneficial owner connected with the customer or service concerned, or a beneficiary of a life assurance policy or other investment-related policy, or a beneficial owner of the beneficiary, is a politically exposed person or an immediate family member or a close associate of a politically exposed person.

These steps must be taken prior to establishing a business relationship with the customer, prior to carrying out an occasional transaction with, for or on behalf of the customer or assisting the customer to carry out an occasional transaction and prior to the pay out of the life assurance policy or at the time of the assignment, in whole or in part, of the policy.

Section 37(4) provides the measures which must be taken by a designated person who “*knows or has reasonable grounds to believe that a customer is, or has become, a politically exposed person or an immediate family member or close associate of a politically exposed person*”.

Examples of these steps are:

- (a) ensure that approval is obtained from senior management in order to establish or continue the business relationship with the customer;
- (b) determine the source of wealth and of funds for certain transactions;
- (c) in addition to the monitoring required under section 35(3), apply enhanced monitoring of the business relationship.

While self-employed barristers will not be in a position to comply with the first example provided above - of seeking senior management approval (which relates to section 37(4)(a) of

the Act) - they remain subject to the other requirements. Employed barristers should be in a position to comply with all requirements set out in section 37(4) of the Act.

Section 39 relates to enhanced due diligence in cases of heightened risk.

Barristers are encouraged to have regard to the Act for details of all the obligations that arise.

**What must a barrister, as designated person, do if the documents or information required by sections 33(2) or 35(2) or 37(8) are not provided?**

**In accordance with section 33(8) of the Act**, where a barrister is unable to apply the customer due diligence measures as required under section 33(2) of the Act, due to the failure on the part of the customer to provide the barrister with the documents or information required under section 33, that barrister:

- must not provide the service or carry out the transaction sought by the customer for so long as the failure remains unrectified, and
- must discontinue the business relationship (if any) with the customer.

**In accordance with section 35(2) of the Act**, where a barrister is unable to obtain information under section 35(1), as a result of any failure on the part of the customer, the barrister shall not provide the service sought by the customer for so long as the failure continues.

Nothing in section 33(8) or section 35(2) shall prevent a “relevant independent legal professional” ascertaining the legal position of a person, or performing the task of defending or representing a person in, or in relation to, civil or criminal proceedings, including providing advice on instituting or avoiding such proceedings (section 33(8A)).

**In accordance with section 37(8) of the Act**, where a barrister, as a designated person, is unable to apply the measures specified in section 37(1), (3), (4) or (6), due to the failure on the part of the customer to provide the barrister with the documents or information, that barrister:

- must discontinue the business relationship (if any) with the customer for so long as the failure continues, and
- must not provide the service or carry out the transaction sought by the customer for so long as the failure continues.

**Can a barrister rely on a third party (for example, an instructing solicitor) to carry out customer due diligence?**

Section 40(3) of the Act provides that, subject to subsections (4) and (5), a designated person may rely on a “relevant third party” to carry out the customer due diligence required under section 33 or 35(1).

Section 40(1) provides that “relevant third party” includes “(a) a person, carrying on business as a designated person in the State ... (v) who is a relevant legal professional...”

A barrister could seek to rely on his or her instructing solicitor to carry out the required due diligence however this is subject to subsections (4) and (5) which include, for example, that:

- in order to rely on a relevant third party, there must be an agreement in place between the designated person and the relevant third party that the designated person may place such reliance on the due diligence conducted by the relevant third party (section 40(4)(a) of the Act);
- a designated person who relies on a relevant third party to apply a measure under section 33 or 35(1) remains liable, under section 33 or 35(1), for any failure to apply the measure (section 40(5) of the Act).

Barristers should therefore be aware that ultimately it appears responsibility for compliance with customer due diligence rests with them.

### **Offences**

*\*A number of offences are created in Part 4 of the Act. The following is a non-exhaustive list of the offences which relate to the specific guidance and information provided in this section.*

It is an offence for a barrister, as a designated person, to fail to comply with:

- section 33 of the Act (section 33(9));
- section 35 of the Act (section 35(4));
- section 37 of the Act (section 37(9));
- section 39 of the Act (section 39(4)).

## **Chapter 4 – Reporting of suspicious transactions and of transactions involving certain places**

The obligations of designated persons to report suspicious transactions are set out in Chapter 4, entitled “Reporting of suspicious transactions and of transactions involving certain places”.

Section 42 of the Act sets out the requirement for designated persons to report suspicious transactions (a Suspicious Transaction Report or STR). A reference to a designated person in Chapter 4 includes a reference to any person acting, or purporting to act, on behalf of the designated person, including any agent, employee, partner, director or other officer of, or any person engaged under a contract for services with, the designated person (section 41 of the Act).



Section 42(1) provides as follows:

*“A designated person who knows, suspects or has reasonable grounds to suspect, on the basis of information obtained in the course of carrying on business as a designated person, that another person has been or is engaged in an offence of money laundering or terrorist financing shall report to FIU Ireland and the Revenue Commissioners that knowledge or suspicion or those reasonable grounds”.*

FIU Ireland is the Financial Intelligence Unit of the Garda National Economic Crime Bureau. For contact details please see <https://www.garda.ie/en/about-us/organised-serious-crime/garda-national-economic-crime-bureau/>

For further information in relation to the Revenue Commissioners and STR reporting please see: <https://www.revenue.ie/en/online-services/services/register-for-an-online-service/submit-suspicious-transaction-reports.aspx>

### **When should a Suspicious Transaction Report be made?**

Section 42(2) provides that a report should be made as soon as practicable after acquiring that knowledge or forming that suspicion, or acquiring those reasonable grounds to suspect, that the other person has been or is engaged in money laundering or terrorist financing.

Section 42(3) provides—

*“For the purposes of subsections (1) and (2), a designated person is taken not to have reasonable grounds to know or suspect that another person commits an offence on the basis of having received information until the person has scrutinised the information in the course of reasonable business practice (including automated banking transactions).”*

Section 42(4) provides -

*“For the purposes of subsections (1) and (2), a designated person may have reasonable grounds to suspect that another person has been or is engaged in an offence of money laundering or terrorist financing if the designated person is unable to apply any measures specified in section 33(2) or (4), 35(1) or 37(1),(3),(4) or (6), in relation to a customer, as a result of any failure on the part of the customer to provide the designated person with documents or information.”*

For general information on the measures specified in sections 33(2), 35(1) or 37(1), (3), (4) or (6) please see [Chapter 3 - Customer Due Diligence](#) above.

Section 40(5) clarifies that nothing in subsection (4) limits the circumstances in which a designated person may have reasonable grounds to suspect that another person has committed an offence of money laundering or terrorist financing.

### **What information must be disclosed in the Suspicious Transaction Report?**

Section 42(6) of the Act sets out the information that must be disclosed in the report by the designated person which includes:

- the information on which the designated person's knowledge, suspicion or reasonable grounds are based;
- the identity and whereabouts of the person who is suspected of being engaged in an offence of money laundering or terrorist financing.

A further obligation in respect of co-operation with An Garda Síochána and with the Revenue Commissioners is placed on barristers, as designated persons, under section 42(6A) of the Act, which provides that a designated person –

*“who is required to make a report under this section shall respond to any request for additional information by FIU Ireland or the Revenue Commissioners as soon as practicable after receiving the request and shall take all reasonable steps to provide any information specified in the request.”*

### **Where a Suspicious Transaction Report is made, is a barrister required to proceed with the suspicious transaction or service connected with the report?**

Section 42(7) of the Act provides that a designated person who is required to make a report under this section shall not proceed with any suspicious transaction or service connected with the report, or with a transaction or service the subject of the report, prior to the sending of the report to the Garda Síochána and the Revenue Commissioners unless:

- it is not practicable to delay or stop the transaction or service from proceeding, or
- the designated person is of the reasonable opinion that failure to proceed with the transaction or service may result in the other person suspecting that a report may be (or may have been) made or that an investigation may be commenced or may be in the course of being conducted.

Where a person has been directed or ordered not to proceed with the service or transaction and a direction or order is in force, section 42(7) does not authorise a designated person to proceed with a service or transaction (section 42(8)).

### **Are there any exceptions to the requirement to report suspicious transactions?**

Yes, there is an exception at section 46 of the Act. This is of particular relevance to barristers. Section 46(1) of the Act provides –

*“(1) Nothing in this Chapter requires the disclosure of information that is subject to legal privilege.”*

The question of whether or not legal privilege arises will depend on the circumstances of each case.

### **Offences**

Except as provided for in section 46 of the Act (which provides there is no requirement to disclose information that is subject to legal privilege) it is an offence for a person to fail to comply with section 42.

## **Chapter 5 – Tipping off by designated person**

Chapter 5 is entitled “Tipping off by designated person”. Section 49 of the Act provides that a designated person who knows or suspects that -

- a report of a suspicious transaction(s) has been or is required to be made;
- that an investigation is being contemplated or is being carried out into whether an offence of money laundering or terrorist financing has been committed –

must not make any disclosure that is likely to prejudice an investigation that may be conducted following the making of the report.

In relation to section 49, a reference to a designated person includes a reference to any person acting, or purporting to act, on behalf of the designated person, including any agent, employee, partner, director or other office of, or any person engaged under a contract for services with, the designated person.

To use the wording of the chapter heading, a designated person cannot “*tip off*” a client or potential client that he or she has or will make a report of suspicious transactions to An Garda Síochána and to the Revenue Commissioners, or that an investigation is being considered or taking place as to whether the offences of money laundering or terrorist financing have been committed.

Barristers must be careful to ensure that where they cease to act for a client they do not inadvertently “*tip off*” that client within the meaning of section 49. Of relevance to this, please note the general information provided in relation to section 42(7) of the Act at [Chapter 4 – Reporting of suspicious transactions and of transactions involving certain places](#) above.

## Offences

It is an offence for a person to fail to comply with section 49. The Act provides, in Chapter 4, for various defences (sections 50 – 53 of the Act).

## **Chapter 6 – Internal policies and procedures, training and record keeping**

The obligations of designated persons to adopt internal policies, controls and procedures in relation to their business to prevent and detect the commission of money laundering and terrorist financing are set out in Chapter 6, entitled “Internal policies and procedures, training and record keeping”.

*\*The information provided here is not exhaustive. Barristers are encouraged to have regard to Chapter 6, Part 4 of the Act for all the obligations that arise.*

The requirements in respect of internal policies, controls and procedures are set out in section 54 of the Act. A designated person is required to adopt internal policies, controls and procedures in relation to the designated person’s business to prevent and detect the commission of money laundering and terrorist financing.

By way of examples, these policies, controls and procedures must include policies, controls and procedures dealing with:

- the identification, assessment, mitigation and management of risk factors relating to money laundering or terrorist financing;
- customer due diligence measures;
- monitoring transactions and business relationships.

Section 54(5) provides –

*“In preparing internal policies, controls and procedures under this section, the designated person shall have regard to any guidelines on preparing, implementing and reviewing such policies and procedures that are issued by the competent authority for that designated person.”*

### **Do these requirements apply to self-employed barristers?**

While it may be considered that the adoption of such internal policies and procedures are only applicable to organisations, and therefore only applicable to employed barristers, section 54(12) of the Act provides that “Subsections (6), (6A), (7), (8) and (9) do not apply to a designated person who is an individual and carries on business alone as a designated person”. It is clear from the terms of section 54(12) that this chapter also applies to individual designated persons and therefore also applies, albeit in a modified form, to barristers who are self-employed. In

summary, barristers should ensure that they have procedures in place to ensure that they can comply with their obligations set out in this Chapter.

**Is a barrister required to keep records evidencing the procedures applied and information obtained in relation to each customer?**

Yes, section 55 of the Act sets out the requirements for designated persons to keep records of the consumer due diligence carried out by them under Chapter 4. Section 55(1) provides in part as follows -

*“A designated person shall keep records evidencing the procedures applied, and information obtained, by the designated person under Chapter 3 in relation to –*

*(a) each customer...”*

Section 55(3) provides that a designated person “shall keep records evidencing the history of services and transactions carried out in relation to each customer of the designated person”.

**Is a designated person required to keep these records for a particular period of time?**

Yes, the Act provides for retention periods at section 55(4) which are subject to subsections (4A), (4B) and (4C). Other provisions of the Act are relevant, for example section 55(7B) and 55(9).

Barristers are encouraged to have regard to the Act for full details in relation to retention of records.

**Offences**

*\*A number of offences are created in Part 4 of the Act. The following is a non-exhaustive list of the offences which relate to the specific guidance and information provided in this section.*

It is an offence for a designated person to fail to comply with section 54 of the Act (section 54(15)).

It is an offence for a designated person to fail to comply with section 55 of the Act (section 55(12)).

***\*Up-to-date as of 29.11.2021. This is a live document and is subject to change.***