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## STATUTORY INSTRUMENTS

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### 2007 No. 1509

### CUSTOMS

#### The Control of Cash (Penalties) Regulations 2007

<i>Made</i>	- - - -	<i>22nd May 2007</i>
<i>Laid before Parliament</i>		<i>23rd May 2007</i>
<i>Coming into force</i>	- -	<i>15th June 2007</i>

The Treasury make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 <sup>M1</sup>, being designated for the purposes of that subsection in relation to measures relating to preventing the use of the financial system for the purpose of money laundering <sup>M2</sup> and measures relating to the movement of capital and to payments between Member States and between Member States and countries which are not Member States <sup>M3</sup>:

#### Citation and commencement

##### Marginal Citations

- M1** [1972 c.68.](#)  
**M2** [S.I 1992 /1711.](#)  
**M3** [S.I.. 1994/757.](#)

**1.** These Regulations may be cited as the Control of Cash (Penalties) Regulations 2007 and come into force on 15th June 2007.

#### Interpretation

**2.** In these Regulations -

“Community Regulation” means European Parliament and Council Regulation [\(EC\) No 1889/2005](#) on controls of cash entering or leaving the Community <sup>M4</sup>

“The Commissioners” means the Commissioners for Her Majesty's Revenue and Customs.

[<sup>F1</sup>“tribunal” means the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal.]

#### Textual Amendments

- F1** Words in [reg. 2](#) inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), [Sch. 2 para. 161](#)

#### Marginal Citations

- M4** O.J. L309 p.9, 25.11.2005.

### Power to impose penalties

**3.—**(1) The Commissioners may impose a penalty of such amount as they consider appropriate, not exceeding £5000, on a person failing to comply with article 3 of the Community Regulation (obligation to declare cash of a value of 10,000 euros or more).

[<sup>F2</sup>(2) Where the Commissioners decide to impose a penalty under this regulation, they must forthwith—

- (a) inform the person in writing of their decision to impose the penalty and its amount, of their reasons for imposing the penalty and of the right to appeal to the tribunal; and at the same time
- (b) offer the person a review under regulation 4A.]

(3) Where a person is liable to a penalty under this regulation, the Commissioners may reduce the penalty to such amount (including nil) as they think proper.

#### Textual Amendments

- F2** [Reg. 3\(2\)](#) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), [Sch. 2 para. 162\(2\)](#)

### [<sup>F3</sup> Appeals]

**4.—**(1) Any person who is the subject of a decision to impose a penalty under regulation 3 may [<sup>F4</sup>make an appeal to the tribunal in respect of] that decision.

<sup>F5</sup>(2) .....

<sup>F5</sup>(3) .....

<sup>F5</sup>(4) .....

<sup>F5</sup>(5) .....

#### Textual Amendments

- F3** Reg. 4 heading substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), [Sch. 2 para. 163\(2\)](#) (with Sch. 3 paras. 2-4)
- F4** Words in [reg. 4\(1\)](#) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), [Sch. 2 para. 163\(3\)](#) (with Sch. 3 paras. 2-4)
- F5** [Reg. 4\(2\)-\(5\)](#) omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), [Sch. 2 para. 163\(4\)](#) (with Sch. 3 paras. 2-4)

#### [<sup>F6</sup>Offer of review

**4A.**—(1) The Commissioners must offer a person (P) a review of a decision that has been notified to P if an appeal lies under regulation 4 in respect of the decision.

(2) The offer of the review must be made by notice given to P at the same time as the decision is notified to P.

(3) This regulation does not apply to the notification of the conclusions of a review.]

#### Textual Amendments

**F6** Regs. 4A-4F inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 2 para. 164** (with Sch. 3 paras. 2-4)

#### [<sup>F6</sup>Review by the Commissioners

**4B.**—(1) The Commissioners must review a decision if—

- (a) they have offered a review of the decision under regulation 4A, and
- (b) P notifies the Commissioners accepting the offer within 30 days from the date of the document containing the notification of the offer.

(2) But P may not notify acceptance of the offer if P has already appealed to the tribunal under regulation 4F.

(3) The Commissioners shall not review a decision if P has appealed to the tribunal under regulation 4F in respect of the decision.]

#### Textual Amendments

**F6** Regs. 4A-4F inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 2 para. 164** (with Sch. 3 paras. 2-4)

#### [<sup>F6</sup>Extensions of time

**4C.**—(1) If under regulation 4A, the Commissioners have offered P a review of a decision, the Commissioners may within the relevant period notify P that the relevant period is extended.

(2) If notice is given the relevant period is extended to the end of 30 days from—

- (a) the date of the notice, or
- (b) any other date set out in the notice or a further notice.

(3) In this regulation “relevant period” means—

- (a) the period of 30 days referred to in regulation 4B(1)(b), or
- (b) if notice has been given under paragraph (1) that period as extended (or as most recently extended) in accordance with paragraph (2).]

#### Textual Amendments

**F6** Regs. 4A-4F inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 2 para. 164** (with Sch. 3 paras. 2-4)

#### [<sup>F6</sup>Review out of time

**4D.**—(1) This regulation applies if—

- (a) the Commissioners have offered a review of a decision under regulation 4A, and
- (b) P does not accept the offer within the time allowed under regulation 4B(1)(b) or 4C(2).

(2) The Commissioners must review the decision under regulation 4C if—

- (a) after the time allowed, P notifies the Commissioners in writing requesting a review out of time,
- (b) the Commissioners are satisfied that P had a reasonable excuse for not accepting the offer or requiring review within the time allowed, and
- (c) the Commissioners are satisfied that P made the request without unreasonable delay after the excuse had ceased to apply.

(3) The Commissioners shall not review a decision if P has appealed to the tribunal under regulation 4F in respect of the decision.]

#### Textual Amendments

**F6** Regs. 4A-4F inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 2 para. 164** (with Sch. 3 paras. 2-4)

#### [<sup>F6</sup>Nature of review etc

**4E.**—(1) This regulation applies if the Commissioners are required to undertake a review under regulation 4B or 4D.

(2) The nature and extent of the review are to be such as appear appropriate to the Commissioners in the circumstances.

(3) For the purpose of paragraph (2), the Commissioners must, in particular, have regard to steps taken before the beginning of the review—

- (a) by the Commissioners in reaching the decision, and
- (b) by any person in seeking to resolve disagreement about the decision.

(4) The review must take account of any representations made by P at a stage which gives the Commissioners a reasonable opportunity to consider them.

(5) The review may conclude that the decision is to be—

- (a) upheld,
- (b) varied, or
- (c) cancelled.

(6) The Commissioners must give P notice of the conclusions of the review and their reasoning within—

- (a) a period of 45 days beginning with the relevant date, or
- (b) such other period as the Commissioners and P may agree.

(7) In paragraph (6) “relevant date” means—

- (a) the date the Commissioners received P’s notification accepting the offer of a review (in a case falling within regulation 4A), or
- (b) the date on which the Commissioners decided to undertake the review (in a case falling within regulation 4D).

(8) Where the Commissioners are required to undertake a review but do not give notice of the conclusions within the time period specified in paragraph (6), the review is to be treated as having concluded that the decision is upheld.

(9) If paragraph (8) applies, the Commissioners must notify P of the conclusion which the review is treated as having reached.]

#### Textual Amendments

**F6** Regs. 4A-4F inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 2 para. 164** (with Sch. 3 paras. 2-4)

#### [<sup>F6</sup>Bringing of appeals

**4F.**—(1) An appeal under regulation 4 is to be made to the tribunal before—

- (a) the end of the period of 30 days beginning with the date of the document notifying the decision to which the appeal relates, or
- (b) if later, the end of the relevant period (within the meaning of regulation 4C).

(2) But that is subject to paragraphs (3) to (5).

(3) In a case where the Commissioners are required to undertake a review under regulation 4B—

- (a) an appeal may not be made until the conclusion date, and
- (b) any appeal is to be made within the period of 30 days beginning with the conclusion date.

[<sup>F7</sup>(4) In a case where the Commissioners are requested to undertake a review in accordance with regulation 4D—

- (a) an appeal may not be made—
  - (i) unless the Commissioners have notified P as to whether or not a review will be undertaken, and
  - (ii) if the Commissioners have notified P that a review will be undertaken, until the conclusion date;
- (b) any appeal where sub-paragraph (a)(ii) applies is to be made within the period of 30 days beginning with the conclusion date;
- (c) if the Commissioners have notified P that a review will not be undertaken, an appeal may be made only if the tribunal gives permission to do so.]

(5) In a case where regulation 4E(8) applies, an appeal may be made at any time from the end of the period specified in regulation 4E(6) to the date 30 days after the conclusion date.

(6) An appeal may be made after the end of the period specified in paragraph (1), (3)(b), (4)(b) or (5) if the tribunal gives permission to do so.

(7) In this regulation “conclusion date” means the date of the document notifying the conclusions of the review.]

#### Textual Amendments

**F6** Regs. 4A-4F inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 2 para. 164** (with Sch. 3 paras. 2-4)

**F7** Reg. 4F(4) substituted (1.6.2014) by [The Revenue and Customs \(Amendment of Appeal Provisions for Out of Time Reviews\) Order 2014 \(S.I. 2014/1264\)](#), arts. 1(2), **10** (with art. 1(3))

### [<sup>F8</sup>Settling of appeals by agreement

5. Section 85 of the Value Added Tax Act 1994 (settling of appeals by agreement) shall have effect as if the reference to section 83 of that Act included a reference to regulation 4 above.]

#### Textual Amendments

**F8** Reg. 5 substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 2 para. 165** (with Sch. 3 paras. 2-4)

6. On an appeal under regulation [<sup>F9</sup>4], the tribunal has the power to —
- (a) quash or vary any decision of the Commissioners, including the power to reduce any penalty to such amount (including nil) as it thinks proper; and
  - (b) substitute its own decision for any decision quashed on appeal.

#### Textual Amendments

**F9** Word in [reg. 6](#) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 2 para. 166** (with Sch. 3 paras. 2-4)

- [<sup>F10</sup>7.—(1) An appeal shall not be entertained unless—
- (a) the amount which the Commissioners have imposed by way of a penalty has been paid to them; or
  - (b) (i) the Commissioners are satisfied (on the application of the appellant), or
  - (ii) the tribunal decides (the Commissioners not being so satisfied and on the application of the appellant),
- that the requirement would cause the appellant to suffer hardship.
- (2) Notwithstanding the provisions of sections 11 and 13 of the Tribunals, Courts and Enforcement Act 2007, the decision of the tribunal as to the issue of hardship is final.]

#### Textual Amendments

**F10** Reg. 7 substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 2 para. 167** (with Sch. 3 paras. 2-4)

### Retention of cash detained

8. Where the Commissioners have imposed a penalty under regulation 3 they may deduct from any cash detained pursuant to article 4(2) of the Community Regulation the amount of the penalty, and upon expiry of the period for appealing, or where an appeal has been made upon determination of the appeal, the amount payable shall be forfeit to them.

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**Changes to legislation:** *There are currently no known outstanding effects for the The Control of Cash (Penalties) Regulations 2007. (See end of Document for details)*

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*Dave Watts*  
*Frank Roy*  
Two of the Lords Commissioners of Her  
Majesty's Treasury

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations, which come into force on 15th June 2007, are made under section 2(2) of the European Communities Act 1972 (c.68) to give effect to Community Regulation 1889/2005. This introduces a harmonised control and information procedure for large-scale movements of cash in or out of the Community and empowers the national authorities to take appropriate administrative actions, including an obligation to impose penalties. These Regulations provide for penalties for failing to declare movements of cash as required under article 3 of the Community Regulation, and an appeal mechanism. Cash is defined in the Community Regulation as including not only currency (banknotes and coins that are in circulation as a medium of exchange), but also “bearer negotiable instruments including monetary instruments in bearer form such as travellers cheques, negotiable instruments (including cheques, promissory notes and money orders) that are either in bearer form, endorsed without restriction, made out to a fictitious payee, or otherwise in such form that title thereto passes upon delivery, and incomplete instruments (including cheques, promissory notes and money orders) signed, but with the payee's name omitted”.

Regulation 3 gives effect to the obligation to create a system of penalties. Regulation 4 enables a person subject to a penalty to require a review of the decision to impose that penalty. Regulations 5, 6 and 7 create a right of appeal from the review decision to a tribunal, the powers of the tribunal in respect of the appeal, and a requirement that save in the case of hardship the penalty be paid as a condition of appealing. Article 4 of the Community Regulation creates a power to detain cash where there has been a breach of article 3, and regulation 8 enables the Commissioners to retain the amount of a proposed penalty from any money detained until determination of an appeal.

A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.



**Changes to legislation:**

There are currently no known outstanding effects for the The Control of Cash (Penalties) Regulations 2007.