
STATUTORY INSTRUMENTS

2007 No. 2157

The Money Laundering Regulations 2007

PART 5

ENFORCEMENT

Powers of designated authorities

Interpretation

36. In this Part—

“designated authority” means—

- (a) the Authority;
- (b) the Commissioners;
- (c) the OFT; and
- (d) in relation to credit unions in Northern Ireland, DETI;

“officer”, except in regulations 40(3), 41 and 47 means—

- (a) an officer of the Authority, including a member of the Authority’s staff or an agent of the Authority;
- (b) an officer of Revenue and Customs;
- (c) an officer of the OFT;
- (d) a relevant officer; or
- (e) an officer of DETI acting for the purposes of its functions under these Regulations in relation to credit unions in Northern Ireland;

“recorded information” includes information recorded in any form and any document of any nature;

“relevant officer” means—

- (a) in Great Britain, an officer of a local weights and measures authority;
- (b) in Northern Ireland, an officer of DETI acting pursuant to arrangements made with the OFT for the purposes of these Regulations.

Power to require information from, and attendance of, relevant and connected persons

37.—(1) An officer may, by notice to a relevant person or to a person connected with a relevant person, require the relevant person or the connected person, as the case may be—

- (a) to provide such information as may be specified in the notice;
- (b) to produce such recorded information as may be so specified; or
- (c) to attend before an officer at a time and place specified in the notice and answer questions.

(2) For the purposes of paragraph (1), a person is connected with a relevant person if he is, or has at any time been, in relation to the relevant person, a person listed in Schedule 4 to these Regulations.

(3) An officer may exercise powers under this regulation only if the information sought to be obtained as a result is reasonably required in connection with the exercise by the designated authority for whom he acts of its functions under these Regulations.

(4) Where an officer requires information to be provided or produced pursuant to paragraph (1) (a) or (b)—

- (a) the notice must set out the reasons why the officer requires the information to be provided or produced; and
- (b) such information must be provided or produced—
 - (i) before the end of such reasonable period as may be specified in the notice; and
 - (ii) at such place as may be so specified.

(5) In relation to information recorded otherwise than in legible form, the power to require production of it includes a power to require the production of a copy of it in legible form or in a form from which it can readily be produced in visible and legible form.

(6) The production of a document does not affect any lien which a person has on the document.

(7) A person may not be required under this regulation to provide or produce information or to answer questions which he would be entitled to refuse to provide, produce or answer on grounds of legal professional privilege in proceedings in the High Court, except that a lawyer may be required to provide the name and address of his client.

(8) Subject to paragraphs (9) and (10), a statement made by a person in compliance with a requirement imposed on him under paragraph (1)(c) is admissible in evidence in any proceedings, so long as it also complies with any requirements governing the admissibility of evidence in the circumstances in question.

(9) In criminal proceedings in which a person is charged with an offence to which this paragraph applies—

- (a) no evidence relating to the statement may be adduced; and
- (b) no question relating to it may be asked,

by or on behalf of the prosecution unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

(10) Paragraph (9) applies to any offence other than one under—

- (a) section 5 of the Perjury Act 1911⁽¹⁾ (false statements without oath);
- (b) section 44(2) of the Criminal Law (Consolidation)(Scotland) Act 1995⁽²⁾ (false statements and declarations); or
- (c) Article 10 of the Perjury (Northern Ireland) Order 1979⁽³⁾ (false unsworn statements).

(11) In the application of this regulation to Scotland, the reference in paragraph (7) to—

- (a) proceedings in the High Court is to be read as a reference to legal proceedings generally; and
- (b) an entitlement on grounds of legal professional privilege is to be read as a reference to an entitlement on the grounds of confidentiality of communications.

(1) 1911 c. 6.

(2) 1995 c. 39.

(3) S.I. 1979/1714 (N.I. 19).

Entry, inspection without a warrant etc.

38.—(1) Where an officer has reasonable cause to believe that any premises are being used by a relevant person in connection with his business or professional activities, he may on producing evidence of his authority at any reasonable time—

- (a) enter the premises;
- (b) inspect the premises;
- (c) observe the carrying on of business or professional activities by the relevant person;
- (d) inspect any recorded information found on the premises;
- (e) require any person on the premises to provide an explanation of any recorded information or to state where it may be found;
- (f) in the case of a money service business or a high value dealer, inspect any cash found on the premises.

(2) An officer may take copies of, or make extracts from, any recorded information found under paragraph (1).

(3) Paragraphs (1)(d) and (e) and (2) do not apply to recorded information which the relevant person would be entitled to refuse to disclose on grounds of legal professional privilege in proceedings in the High Court, except that a lawyer may be required to provide the name and address of his client and, for this purpose, regulation 37(11) applies to this paragraph as it applies to regulation 37(7).

(4) An officer may exercise powers under this regulation only if the information sought to be obtained as a result is reasonably required in connection with the exercise by the designated authority for whom he acts of its functions under these Regulations.

(5) In this regulation, “premises” means any premises other than premises used only as a dwelling.

Entry to premises under warrant

39.—(1) A justice may issue a warrant under this paragraph if satisfied on information on oath given by an officer that there are reasonable grounds for believing that the first, second or third set of conditions is satisfied.

(2) The first set of conditions is—

- (a) that there is on the premises specified in the warrant recorded information in relation to which a requirement could be imposed under regulation 37(1)(b); and
- (b) that if such a requirement were to be imposed—
 - (i) it would not be complied with; or
 - (ii) the recorded information to which it relates would be removed, tampered with or destroyed.

(3) The second set of conditions is—

- (a) that a person on whom a requirement has been imposed under regulation 37(1)(b) has failed (wholly or in part) to comply with it; and
- (b) that there is on the premises specified in the warrant recorded information which has been required to be produced.

(4) The third set of conditions is—

- (a) that an officer has been obstructed in the exercise of a power under regulation 38; and
- (b) that there is on the premises specified in the warrant recorded information or cash which could be inspected under regulation 38(1)(d) or (f).

- (5) A justice may issue a warrant under this paragraph if satisfied on information on oath given by an officer that there are reasonable grounds for suspecting that—
- (a) an offence under these Regulations has been, is being or is about to be committed by a relevant person; and
 - (b) there is on the premises specified in the warrant recorded information relevant to whether that offence has been, or is being or is about to be committed.
- (6) A warrant issued under this regulation shall authorise an officer—
- (a) to enter the premises specified in the warrant;
 - (b) to search the premises and take possession of any recorded information or anything appearing to be recorded information specified in the warrant or to take, in relation to any such recorded information, any other steps which may appear to be necessary for preserving it or preventing interference with it;
 - (c) to take copies of, or extracts from, any recorded information specified in the warrant;
 - (d) to require any person on the premises to provide an explanation of any recorded information appearing to be of the kind specified in the warrant or to state where it may be found;
 - (e) to use such force as may reasonably be necessary.
- (7) Where a warrant is issued by a justice under paragraph (1) or (5) on the basis of information given by an officer of the Authority, for “an officer” in paragraph (6) substitute “a constable”.
- (8) In paragraphs (1), (5) and (7), “justice” means—
- (a) in relation to England and Wales, a justice of the peace;
 - (b) in relation to Scotland, a justice within the meaning of section 307 of the Criminal Procedure (Scotland) Act 1995(4) (interpretation);
 - (c) in relation to Northern Ireland, a lay magistrate.
- (9) In the application of this regulation to Scotland, the references in paragraphs (1) and (5) to information on oath are to be read as references to evidence on oath.

Failure to comply with information requirement

- 40.**—(1) If, on an application made by—
- (a) a designated authority; or
 - (b) a local weights and measures authority or DETI pursuant to arrangements made with the OFT—
 - (i) by or on behalf of the authority; or
 - (ii) by DETI,

it appears to the court that a person (the “information defaulter”) has failed to do something that he was required to do under regulation 37(1), the court may make an order under this regulation.

- (2) An order under this regulation may require the information defaulter—
- (a) to do the thing that he failed to do within such period as may be specified in the order;
 - (b) otherwise to take such steps to remedy the consequences of the failure as may be so specified.
- (3) If the information defaulter is a body corporate, a partnership or an unincorporated body of persons which is not a partnership, the order may require any officer of the body corporate,

(4) 1995 c. 46.

partnership or body, who is (wholly or partly) responsible for the failure to meet such costs of the application as are specified in the order.

- (4) In this regulation, “court” means—
- (a) in England and Wales and Northern Ireland, the High Court or the county court;
 - (b) in Scotland, the Court of Session or the sheriff.

Powers of relevant officers

41.—(1) A relevant officer may only exercise powers under regulations 37 to 39 pursuant to arrangements made with the OFT—

- (a) by or on behalf of the local weights and measures authority of which he is an officer (“his authority”); or
- (b) by DETI.

(2) Anything done or omitted to be done by, or in relation to, a relevant officer in the exercise or purported exercise of a power in this Part shall be treated for all purposes as having been done or omitted to be done by, or in relation to, an officer of the OFT.

(3) Paragraph (2) does not apply for the purposes of any criminal proceedings brought against the relevant officer, his authority, DETI or the OFT, in respect of anything done or omitted to be done by the officer.

(4) A relevant officer shall not disclose to any person other than the OFT and his authority or, as the case may be, DETI information obtained by him in the exercise of such powers unless—

- (a) he has the approval of the OFT to do so; or
- (b) he is under a duty to make the disclosure.

Civil penalties, review and appeals

Power to impose civil penalties

42.—(1) A designated authority may impose a penalty of such amount as it considers appropriate on a relevant person who fails to comply with any requirement in regulation 7(1), (2) or (3), 8(1) or (3), 9(2), 10(1), 11(1), 14(1), 15(1) or (2), 16(1), (2), (3) or (4), 19(1), (4), (5) or (6), 20(1), (4) or (5), 21, 26, 27(4) or 33 or a direction made under regulation 18 and, for this purpose, “appropriate” means effective, proportionate and dissuasive.

(2) The designated authority must not impose a penalty on a person under paragraph (1) where there are reasonable grounds for it to be satisfied that the person took all reasonable steps and exercised all due diligence to ensure that the requirement would be complied with.

(3) In deciding whether a person has failed to comply with a requirement of these Regulations, the designated authority must consider whether he followed any relevant guidance which was at the time—

- (a) issued by a supervisory authority or any other appropriate body;
- (b) approved by the Treasury; and
- (c) published in a manner approved by the Treasury as suitable in their opinion to bring the guidance to the attention of persons likely to be affected by it.

(4) In paragraph (3), an “appropriate body” means any body which regulates or is representative of any trade, profession, business or employment carried on by the alleged offender.

(5) Where the Commissioners decide to impose a penalty under this regulation, they must give the person notice of—

- (a) their decision to impose the penalty and its amount;
 - (b) the reasons for imposing the penalty;
 - (c) the right to a review under regulation 43; and
 - (d) the right to appeal under regulation 44(1)(a).
- (6) Where the Authority, the OFT or DETI proposes to impose a penalty under this regulation, it must give the person notice of—
- (a) its proposal to impose the penalty and the proposed amount;
 - (b) the reasons for imposing the penalty; and
 - (c) the right to make representations to it within a specified period (which may not be less than 28 days).
- (7) The Authority, the OFT or DETI, as the case may be, must then decide, within a reasonable period, whether to impose a penalty under this regulation and it must give the person notice of—
- (a) its decision not to impose a penalty; or
 - (b) the following matters—
 - (i) its decision to impose a penalty and the amount;
 - (ii) the reasons for its decision; and
 - (iii) the right to appeal under regulation 44(1)(b).
- (8) A penalty imposed under this regulation is payable to the designated authority which imposes it.

Review procedure

- 43.**—(1) This regulation applies to decisions of the Commissioners made under—
- (a) regulation 29, to refuse to register an applicant;
 - (b) regulation 30, to cancel the registration of a registered person; and
 - (c) regulation 42, to impose a penalty.
- (2) Any person who is the subject of a decision to which this regulation applies may by notice to the Commissioners require them to review that decision.
- (3) The Commissioners need not review any decision unless the notice requiring the review is given within 45 days beginning with the date on which they first gave notice of the decision to the person requiring the review.
- (4) Where the Commissioners are required under this regulation to review any decision they must either—
- (a) confirm the decision; or
 - (b) withdraw or vary the decision and take such further steps (if any) in consequence of the withdrawal or variation as they consider appropriate.
- (5) Where the Commissioners do not, within 45 days beginning with the date on which the review was required by a person, give notice to that person of their determination of the review, they are to be taken for the purposes of these Regulations to have confirmed the decision.

Appeals

- 44.**—(1) A person may appeal from a decision by—
- (a) the Commissioners on a review under regulation 43; and
 - (b) the Authority, the OFT or DETI under regulation 34 or 42.

- (2) An appeal from a decision by—
- (a) the Commissioners is to a VAT and duties tribunal⁽⁵⁾;
 - (b) the Authority is to the Financial Services and Markets Tribunal⁽⁶⁾;
 - (c) the OFT is to the Consumer Credit Appeals Tribunal⁽⁷⁾; and
 - (d) DETI is to the High Court.
- (3) The provisions of Part 5 of the Value Added Tax Act 1994⁽⁸⁾ (appeals), subject to the modifications set out in paragraph 1 of Schedule 5, apply in respect of appeals to a VAT and duties tribunal made under this regulation as they apply in respect of appeals made to such a tribunal under section 83 (appeals) of that Act.
- (4) The provisions of Part 9 of the 2000 Act (hearings and appeals), subject to the modifications set out in paragraph 2 of Schedule 5, apply in respect of appeals to the Financial Services and Markets Tribunal made under this regulation as they apply in respect of references made to that Tribunal under that Act.
- (5) Sections 40A (the Consumer Credit Appeals Tribunal), 41 (appeals to the Secretary of State under Part 3) and 41A (appeals from the Consumer Credit Appeals Tribunal) of the Consumer Credit Act 1974⁽⁹⁾ apply in respect of appeals to the Consumer Credit Appeal Tribunal made under this regulation as they apply in respect of appeals made to that Tribunal under section 41 of that Act.
- (6) A VAT and duties tribunal hearing an appeal under paragraph (2) has the power to—
- (a) quash or vary any decision of the supervisory authority, including the power to reduce any penalty to such amount (including nil) as they think proper; and
 - (b) substitute their own decision for any decision quashed on appeal.
- (7) Notwithstanding paragraph (2)(c), until the coming into force of section 55 of the Consumer Credit Act 2006⁽¹⁰⁾ (the Consumer Credit Appeals Tribunal), an appeal from a decision by the OFT is to the Financial Services and Markets Tribunal and, for these purposes, the coming into force of that section shall not affect—
- (a) the hearing and determination by the Financial Service and Markets Tribunal of an appeal commenced before the coming into force of that section (“the original appeal”); or
 - (b) any appeal against the decision of the Financial Services and Markets Tribunal with respect to the original appeal.
- (8) The modifications in Schedule 5 have effect for the purposes of appeals made under this regulation.

Criminal offences

Offences

45.—(1) A person who fails to comply with any requirement in regulation 7(1), (2) or (3), 8(1) or (3), 9(2), 10(1), 11(1)(a), (b) or (c), 14(1), 15(1) or (2), 16(1), (2), (3) or (4), 19(1), (4), (5) or (6), 20(1), (4) or (5), 21, 26, 27(4) or 33, or a direction made under regulation 18, is guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;

(5) Established under section 82 of and Schedule 12 to the Value Added Tax Act 1994 (c.23).

(6) Established under section 132 of the 2000 Act.

(7) Established under section 40A of the Consumer Credit Act 1974 (c.39).

(8) 1994 c. 23.

(9) Sections 40A and 41A were inserted by respectively sections 55 and 57 of the Consumer Credit Act 2006 and section 41 was amended by section 56 of that Act.

(10) 2006 c. 14.

(b) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both.

(2) In deciding whether a person has committed an offence under paragraph (1), the court must consider whether he followed any relevant guidance which was at the time—

- (a) issued by a supervisory authority or any other appropriate body;
- (b) approved by the Treasury; and
- (c) published in a manner approved by the Treasury as suitable in their opinion to bring the guidance to the attention of persons likely to be affected by it.

(3) In paragraph (2), an “appropriate body” means any body which regulates or is representative of any trade, profession, business or employment carried on by the alleged offender.

(4) A person is not guilty of an offence under this regulation if he took all reasonable steps and exercised all due diligence to avoid committing the offence.

(5) Where a person is convicted of an offence under this regulation, he shall not also be liable to a penalty under regulation 42.

Prosecution of offences

46.—(1) Proceedings for an offence under regulation 45 may be instituted by—

- (a) the Director of Revenue and Customs Prosecutions or by order of the Commissioners;
- (b) the OFT;
- (c) a local weights and measures authority;
- (d) DETI;
- (e) the Director of Public Prosecutions; or
- (f) the Director of Public Prosecutions for Northern Ireland.

(2) Proceedings for an offence under regulation 45 may be instituted only against a relevant person or, where such a person is a body corporate, a partnership or an unincorporated association, against any person who is liable to be proceeded against under regulation 47.

(3) Where proceedings under paragraph (1) are instituted by order of the Commissioners, the proceedings must be brought in the name of an officer of Revenue and Customs.

(4) Where a local weights and measures authority in England or Wales proposes to institute proceedings for an offence under regulation 45 it must give the OFT notice of the intended proceedings, together with a summary of the facts on which the charges are to be founded.

(5) A local weights and measures authority must also notify the OFT of the outcome of the proceedings after they are finally determined.

(6) A local weights and measures authority must, whenever the OFT requires, report in such form and with such particulars as the OFT requires on the exercise of its functions under these Regulations.

(7) Where the Commissioners investigate, or propose to investigate, any matter with a view to determining—

- (a) whether there are grounds for believing that an offence under regulation 45 has been committed by any person; or
- (b) whether such a person should be prosecuted for such an offence,

that matter is to be treated as an assigned matter within the meaning of section 1(1) of the Customs and Excise Management Act 1979(11).

(11) 1979 c. 2. There are amendments to section 1 not relevant to these Regulations.

(8) Paragraphs (1) and (3) to (6) do not extend to Scotland.

Offences by bodies corporate etc.

47.—(1) If an offence under regulation 45 committed by a body corporate is shown—

- (a) to have been committed with the consent or the connivance of an officer of the body corporate; or
- (b) to be attributable to any neglect on his part,

the officer as well as the body corporate is guilty of an offence and liable to be proceeded against and punished accordingly.

(2) If an offence under regulation 45 committed by a partnership is shown—

- (a) to have been committed with the consent or the connivance of a partner; or
- (b) to be attributable to any neglect on his part,

the partner as well as the partnership is guilty of an offence and liable to be proceeded against and punished accordingly.

(3) If an offence under regulation 45 committed by an unincorporated association (other than a partnership) is shown—

- (a) to have been committed with the consent or the connivance of an officer of the association; or
- (b) to be attributable to any neglect on his part,

that officer as well as the association is guilty of an offence and liable to be proceeded against and punished accordingly.

(4) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body.

(5) Proceedings for an offence alleged to have been committed by a partnership or an unincorporated association must be brought in the name of the partnership or association (and not in that of its members).

(6) A fine imposed on the partnership or association on its conviction of an offence is to be paid out of the funds of the partnership or association.

(7) Rules of court relating to the service of documents are to have effect as if the partnership or association were a body corporate.

(8) In proceedings for an offence brought against the partnership or association—

- (a) section 33 of the Criminal Justice Act 1925(**12**) (procedure on charge of offence against corporation) and Schedule 3 to the Magistrates' Courts Act 1980(**13**) (corporations) apply as they do in relation to a body corporate;
- (b) section 70 (proceedings against bodies corporate) of the Criminal Procedure (Scotland) Act 1995(**14**) applies as it does in relation to a body corporate;
- (c) section 18 of the Criminal Justice (Northern Ireland) Act 1945(**15**) (procedure on charge) and Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981(**16**) (corporations) apply as they do in relation to a body corporate.

(12) 1925 c. 86.

(13) 1980 c. 43.

(14) 1995 c. 46.

(15) 1945 c. 15 (N.I.).

(16) S.I. 1981/1675 (N.I. 26).

(9) In this regulation—

“officer”—

- (a) in relation to a body corporate, means a director, manager, secretary, chief executive, member of the committee of management, or a person purporting to act in such a capacity; and
- (b) in relation to an unincorporated association, means any officer of the association or any member of its governing body, or a person purporting to act in such capacity; and

“partner” includes a person purporting to act as a partner.