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STATUTORY INSTRUMENTS

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**2007 No. 2157**

**The Money Laundering Regulations 2007**

**PART 5**

**ENFORCEMENT**

*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<sup>(1)</sup>;
- (b) the Authority is to the Financial Services and Markets Tribunal<sup>(2)</sup>;
- (c) the OFT is to the Consumer Credit Appeals Tribunal<sup>(3)</sup>; and
- (d) DETI is to the High Court.

<sup>(1)</sup> Established under section 82 of and Schedule 12 to the Value Added Tax Act 1994 (c.23).

<sup>(2)</sup> Established under section 132 of the 2000 Act.

<sup>(3)</sup> Established under section 40A of the Consumer Credit Act 1974 (c.39).

(3) The provisions of Part 5 of the Value Added Tax Act 1994<sup>(4)</sup> (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<sup>(5)</sup> 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<sup>(6)</sup> (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.

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(4) 1994 c. 23.

(5) 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.

(6) 2006 c. 14.