
STATUTORY INSTRUMENTS

2016 No. 1195

**The Donations to Charity (Gift Aid
Declarations) Regulations 2016**

PART 3

PENALTIES

Penalties for failure to comply with Regulations

- 12.**—(1) A donor intermediary is liable to a penalty of £50 in respect of each failure to—
- (a) maintain a record of an authorisation, in accordance with regulation 7(1) and (2),
 - (b) maintain a record of the date on which the explanation of the effect of section 424 of ITA 2007 was given, in accordance with regulation 7(3) and (4),
 - (c) maintain a record of a notice of cancellation, in accordance with regulation 7(5) and (6),
 - (d) send an annual statement or details as to how to access an annual statement, in accordance with regulation 8(1), and
 - (e) maintain a record of an annual statement, in accordance with regulation 8(3) and (4).
- (2) But in relation to a tax year a donor intermediary's liability for penalties under paragraph (1) attributable to that tax year is subject to a limit of £3,000.
- (3) For the purposes of paragraph (2) a failure referred to—
- (a) in paragraph (1)(a) is attributable to the tax year in which the authorisation was obtained,
 - (b) in paragraph (1)(b) is attributable to the tax year in which the explanation of the effect of section 424 of ITA 2007 was given,
 - (c) in paragraph (1)(c) is attributable to the tax year in which the notice of cancellation was given, and
 - (d) in paragraph (1)(d) or (e) is attributable to the tax year in respect of which the annual statement was required to be sent.
- (4) A donor intermediary who fails to comply with a notice under regulation 7(7) to produce a record for inspection is liable to a penalty of £300.
- (5) If the failure mentioned in paragraph (4) continues after the date on which a penalty is imposed under that paragraph in respect of the failure, the donor intermediary is liable to a further penalty or penalties not exceeding £60 for each subsequent day on which the failure continues.

Assessment of penalties

- 13.**—(1) If a donor intermediary becomes liable to a penalty under regulation 12, an officer of Revenue and Customs may assess the penalty.
- (2) If an officer does so, the officer must notify the donor intermediary.

(3) An assessment of a penalty under regulation 12(1) must be made within the period of 12 months beginning with the date on which the failure first came to the attention of an officer of Revenue and Customs.

(4) An assessment of a penalty under regulation 12(4) or (5) must be made within the period of 12 months beginning with the date on which donor intermediary became liable to the penalty.

Suspension of penalties

14.—(1) HMRC may suspend a penalty under regulation 12(1) or (4) by notice in writing to the donor intermediary liable to the penalty.

(2) A notice must specify—

- (a) that the penalty is to be suspended,
- (b) a period of suspension not exceeding two years, and
- (c) conditions of suspension to be complied with by the donor intermediary.

(3) HMRC may suspend a penalty only if compliance with a condition of suspension would help the donor intermediary to avoid becoming liable to further penalties under these Regulations.

(4) A condition of suspension may specify—

- (a) action to be taken, and
- (b) a period within which it must be taken.

(5) On the expiry of the period of suspension—

- (a) if the donor intermediary satisfies HMRC that the conditions of suspension have been complied with, the suspended penalty is cancelled, and
- (b) otherwise, the suspended penalty becomes payable.

(6) If, during the period of suspension of a penalty under paragraph (1), the donor intermediary becomes liable for another penalty under these Regulations, the suspended penalty becomes payable.

Right to appeal in respect of penalties

15.—(1) A donor intermediary may appeal against a decision of HMRC that a penalty is payable under these Regulations.

(2) A donor intermediary may appeal against a decision of HMRC as to the amount of a penalty payable under these Regulations.

(3) A donor intermediary may appeal against a decision of HMRC not to suspend a penalty payable under these Regulations.

(4) A donor intermediary may appeal against a decision of HMRC setting conditions of suspension of a penalty under these Regulations.

Procedure on appeal in respect of penalties

16.—(1) Notice of an appeal under regulation 15 must be given—

- (a) in writing,
- (b) to HMRC, and
- (c) before the end of 30 days beginning with the date on which the notification was given—
 - (i) under regulation 13 in the case of an appeal under regulation 15(1) to (3), or
 - (ii) under regulation 14 in the case of an appeal under regulation 15(4).

(2) It must state the grounds of appeal.

(3) On an appeal under regulation 15(1) that is notified to the tribunal, the tribunal may confirm or cancel the assessment.

(4) On an appeal under regulation 15(2) that is notified to the tribunal, the tribunal may—

- (a) confirm the assessment, or
- (b) substitute another assessment that the officer of Revenue and Customs had power to make.

(5) On an appeal under regulation 15(3) that is notified to the tribunal—

- (a) the tribunal may order HMRC to suspend the penalty only if it thinks that HMRC's decision not to suspend was flawed, and
- (b) if the tribunal orders HMRC to suspend the penalty—
 - (i) the donor intermediary may appeal against a provision of the notice of suspension, and
 - (ii) the tribunal may order HMRC to amend the notice.

(6) On an appeal under regulation 15(4) that is notified to the tribunal, the tribunal may—

- (a) affirm the conditions of suspension, or
- (b) vary the conditions of suspension, but only if the tribunal thinks that HMRC's decision in respect of the conditions was flawed.

(7) In paragraphs (5) and (6) “flawed” means flawed when considered in the light of the principles applicable in proceedings for judicial review.

Enforcement of penalties

17.—(1) A penalty under these Regulations must be paid before the end of the period of 30 days beginning with the date mentioned in paragraph (2).

(2) That date is—

- (a) the date on which the notification under regulation 13 is given in respect of the penalty, or
- (b) if a penalty is suspended under regulation 14, the date on which the suspended penalty becomes payable, or
- (c) if a notice of appeal under regulation 16 is given, the date on which the appeal is finally determined in favour of HMRC or withdrawn.

(3) A penalty under these Regulations may be enforced as if it were income tax charged in an assessment and due and payable.