
STATUTORY INSTRUMENTS

2017 No. 692

The Money Laundering, Terrorist Financing and Transfer
of Funds (Information on the Payer) Regulations 2017

PART 8

Information and Investigation

Interpretation

65.—(1) In this Part—

“premises” means any building or other structure, including a moveable structure, other than premises used only as a dwelling;

“tribunal” means the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal;

(2) Unless otherwise defined in this Part—

“officer” means—

- (a) an officer of the FCA, including a member of the FCA’s staff or an agent of the FCA;
- (b) an officer of Revenue and Customs; or
- (c) an employee or agent of a professional body listed in Schedule 1 who is authorised by the body to act on behalf of the body for the purposes of this Part;
- (d) a relevant officer;

“relevant officer” means—

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

(3) For the purposes of this Part, a person is connected to a relevant person or a payment service provider (“a connected person”) if that person is a person listed in Schedule 5 in relation to the relevant person or payment service provider.

Power to require information

66.—(1) A supervisory authority may, by notice in writing to a person (“P”) who is (or was at any time) a relevant person, a payment service provider or a connected person, require P to—

- (a) provide specified information, or information of a specified description;
- (b) produce specified documents, or documents of a specified description; or
- (c) attend before an officer of the supervisory authority (or of a supervisory authority which is acting on behalf of that authority) at a time and place specified in the notice and answer questions.

- (2) The information or documents must be provided or produced—
- (a) before the end of such reasonable period as may be specified; and
 - (b) at such place as may be specified.
- (3) An officer who has authorisation in writing from a supervisory authority to do so may require P without unreasonable delay to—
- (a) provide the officer with specified information or information of a specified description; or
 - (b) produce to the officer specified documents or documents of a specified description.
- (4) The powers in this regulation may only be exercised by a supervisory authority, or by an officer authorised under paragraph (3) to act on behalf of the supervisory authority, in relation to information or documents which are reasonably required by the supervisory authority in connection with the exercise by the authority of any of its supervisory functions.
- (5) Where a supervisory authority or an officer requires information to be provided or documents to be produced under paragraph (1) or (3), the notice must set out the reasons why the information is required to be provided or the documents produced, unless the supervisory authority or (as the case may be) the officer is not permitted to disclose this information.
- (6) The supervisory authority may require—
- (a) information contained in a computer or other storage device, or recorded in any other way otherwise than in legible form to be produced to it in legible form or in a form from which the information can readily be produced in visible and legible form; and
 - (b) any information provided under this regulation to be provided in such form as it may reasonably require.
- (7) The production of a document does not affect any lien which a person has on the document.
- (8) If a supervisory authority has power under this regulation to require a person to produce a document but it appears that the document is in the possession of a third person, that power may be exercised by the supervisory authority in relation to the third person.

Requests in support of other authorities

67.—(1) On receiving a request to which paragraph (2) applies from a foreign authority, the supervisory authority may exercise the power conferred by regulation 66, and for these purposes, regulation 66 has effect as if it also referred to information and documents reasonably required by the supervisory authority to meet such a request.

(2) This paragraph applies if the request is made by the foreign authority in connection with the exercise by that authority of—

- (a) functions provided for in the fourth money laundering directive;
- (b) functions provided for in the funds transfer regulation; or
- (c) functions provided for in the law of a third country equivalent to those provided for in the fourth money laundering directive or the funds transfer regulation.

(3) In deciding whether or not to exercise its powers under regulation 66 in response to a request, the supervisory authority may take into account in particular—

- (a) whether, in the territory of the foreign authority concerned, corresponding assistance would be given to the supervisory authority;
- (b) whether the case concerns the breach of a law, or other requirement, which has no close parallel in the United Kingdom or involves the assertion of a jurisdiction not recognised by the United Kingdom;
- (c) the seriousness of the case and its importance to persons in the United Kingdom.

(4) The supervisory authority may decide not to exercise its powers under regulation 66 unless the foreign authority undertakes—

- (a) to make such contribution towards the cost of doing so as the supervisory authority considers appropriate; and
- (b) to comply with such conditions in relation to the information and documents as the supervisory authority considers appropriate.

(5) Paragraphs (3) and (4) do not apply if the supervisory authority considers that the exercise of its powers is necessary to comply with an EU obligation.

(6) “Foreign authority” means an authority in a territory which is not part of the United Kingdom which exercises functions referred to in paragraph (2).

Requests to other authorities

68.—(1) This regulation applies if—

- (a) documents or information which are reasonably required by a supervisory authority in connection with the exercise by the authority of any of the functions given to it under these Regulations are not (as far as the supervisory authority is aware) available in the United Kingdom; and
- (b) the supervisory authority has reason to believe that such documents or information may be held by a person who is within the jurisdiction of a foreign authority.

(2) A supervisory authority may request the assistance of the foreign authority in obtaining specified information or documents which satisfy the conditions in paragraph (1).

(3) The information or documents provided to the supervisory authority pursuant to a request under paragraph (2) must only be used—

- (a) for the purpose for which it was provided; or
- (b) for the purposes of proceedings arising as a result of contravention of a relevant requirement in these Regulations, or proceedings arising out of such proceedings.

(4) Paragraph (3) does not apply if the foreign authority by which the information or documents were provided consents to its use.

(5) In this regulation, “foreign authority” has the meaning given in regulation 67(6).

Entry, inspection of premises without a warrant etc

69.—(1) Paragraph (2) applies where a duly authorised officer of (or acting on behalf of) a supervisory authority in relation to a relevant person or a payment service provider (“P”) has reasonable grounds to believe that—

- (a) any premises are being used by P in connection with P’s business or professional activities; and
- (b) P may have contravened the requirements of—
 - (i) the fourth money laundering directive,
 - (ii) the funds transfer regulation, or
 - (iii) these Regulations.

(2) The officer may, on producing evidence of the officer’s authority, at any reasonable time—

- (a) enter the premises;
- (b) inspect the premises;
- (c) observe the carrying on of business or professional activities by P;

- (d) inspect any documents or other information found on the premises;
 - (e) require any person on the premises to provide an explanation of any document or to state where documents or information might be found;
 - (f) inspect any cash found on the premises.
- (3) The officer may take copies of, or make extracts from, any documents found as a result of the exercise of the power in paragraph (2).
- (4) In this regulation, “duly authorised officer” means—
- (a) an officer of the FCA, authorised in writing to exercise the powers under this regulation on behalf of the FCA or another supervisory authority, by a Head of Department working within the enforcement function of the FCA; or
 - (b) an officer of Revenue and Customs authorised in writing to exercise the powers under this regulation on behalf of the Commissioners, or another supervisory authority, by an officer of Revenue and Customs of at least the grade of senior officer.

Entry of premises under warrant

70.—(1) A justice may issue a warrant under this regulation if satisfied on information given on oath (or in Scotland by evidence on oath) by a duly authorised officer acting on behalf of a supervisory authority that—

- (a) there are reasonable grounds for believing that the first, second, or third set of conditions is satisfied; or
 - (b) there are reasonable grounds for suspecting that the fourth set of conditions is satisfied.
- (2) The application for the warrant must—
- (a) identify the premises to which the application relates and state that the premises is not used only as a dwelling;
 - (b) state that the officer has reasonable grounds to suspect a warrant is necessary in connection with the exercise of the supervisory functions of the supervisory authority for which the officer is acting and the warrant is sought for the purpose of those functions;
 - (c) state that the officer executing the warrant—
 - (i) will give to any person on the premises, when entering the premises, evidence of identification and authority to act on behalf of the supervisory authority, and
 - (ii) will give to that person, no later than on entering the premises, a notice identifying and explaining the powers exercisable under this regulation, and
 - (d) state that the warrant is sought in relation to material specified in the application, or that there are reasonable grounds for suspecting that there is material falling within regulation 66 on the premises.
- (3) The first set of conditions is—
- (a) that a person on whom a requirement has been imposed under regulation 66 has failed (wholly or in part) to comply with it, and
 - (b) that on the premises specified in the warrant—
 - (i) there are documents which have been required, or
 - (ii) there is information which has been required.
- (4) The second set of conditions is—
- (a) that the premises specified in the warrant are premises of—
 - (i) the relevant person or the payment service provider (“P”),

- (ii) a member of the same group as P; or
 - (iii) a third person referred to in regulation 66(8);
 - (b) that there are on the premises documents or information in relation to which a requirement could be imposed under regulation 66, and
 - (c) that if such a requirement were to be imposed—
 - (i) it would not be complied with, or
 - (ii) the documents or information to which it related would be removed, tampered with or destroyed.
- (5) The third set of conditions is—
 - (a) that an officer has been obstructed in the exercise of the power under regulation 69; and
 - (b) that there is on the premises specified in the warrant documents, information or cash which could be inspected under regulation 69(2)(d) or (f).
- (6) The fourth set of conditions is—
 - (a) that an offence under these Regulations has been, is being or is about to be committed by P; and
 - (b) there is on the premises specified in the warrant information or documents relevant to whether the offence has been, is being or is about to be committed.
- (7) A warrant under this regulation authorises the executing officer—
 - (a) to enter the premises specified in the warrant;
 - (b) to search the premises and take possession of any documents or information appearing to be documents or information of a kind in respect of which the warrant was issued (“the relevant kind”) or to take, in relation to any such documents or information, any other steps which may appear to be necessary for preserving them or preventing interference with them;
 - (c) to inspect any cash found on the premises;
 - (d) to take copies of, or extracts from, any documents or information appearing to be of the relevant kind;
 - (e) to require any person on the premises to provide an explanation of any document or information appearing to be of the relevant kind or to state where it may be found; and
 - (f) to use such force as may be reasonably necessary.
- (8) Where information of the relevant kind is contained in a computer or other storage device, or is recorded in any other way otherwise than in legible form, the warrant authorises the executing officer to take possession of that information in a form in which it can be taken away and in which it is legible.
- (9) A warrant under this regulation—
 - (a) may be exercised by any executing officer;
 - (b) may authorise persons to accompany any executing officer who is executing it;
 - (c) may be issued subject to conditions.
- (10) The powers in paragraph (7) may be exercised by a person authorised by the warrant to accompany an executing officer; but that person may exercise those powers only in the company of, and under the supervision of, an executing officer.

(11) In England and Wales, sections 15(5) to (8) and 16(3) to (12) of the Police and Criminal Evidence Act 1984(1) (execution of warrants and safeguards) apply to warrants issued under this regulation.

(12) In Northern Ireland, Articles 17(5) to (8) and 18(3) to (12) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (execution of warrants and safeguards)(2) apply to warrants issued under this regulation.

(13) In this regulation—

“duly authorised officer” means—

- (a) where a warrant is issued on the basis of information given on behalf of the FCA or another supervisory authority, an officer of the FCA authorised in writing to exercise the powers under this regulation by a Head of Department working within the enforcement function of the FCA,
- (b) where a warrant is issued on the basis of information given on behalf of the Commissioners or another supervisory authority, an officer of Revenue and Customs authorised in writing to exercise the powers under this regulation by an officer of Revenue and Customs of at least the grade of senior officer;

“executing officer” means—

- (a) where a warrant is issued on the basis of information given on behalf of the FCA, or of a supervisory authority for which the FCA is acting, a constable,
- (b) where a warrant is issued on the basis of information given on behalf of the Commissioners, or of a supervisory authority for which the Commissioners are acting, an officer of Revenue and Customs;

“justice” means—

- (a) in England and Wales, a justice of the peace;
- (b) in Northern Ireland, a lay magistrate; or
- (c) in Scotland, a sheriff or summary sheriff.

Retention of documents taken under regulation 66 or 70

71.—(1) Any material possession of which is taken in accordance with a requirement under regulation 66 or under a warrant issued under regulation 70 (“seized material”) may be retained for so long as it is necessary to retain it (rather than copies of it) in connection with the exercise of the functions of the supervisory authority under these Regulations for the purposes of which any requirement was imposed or the warrant was issued.

(2) If a duly authorised officer (within the meaning of regulation 70(13)) has reasonable grounds for suspecting that—

- (a) the seized material may need to be produced for the purposes of legal proceedings; and
- (b) it might otherwise be unavailable for those purposes,

it may be retained until the proceedings are concluded.

(3) A person claiming to be the owner of any seized material may apply to the Crown Court or (in Scotland) the sheriff or the summary sheriff for an order for the delivery of the material to the person appearing to the court, the sheriff or the summary sheriff to be the owner.

(1) 1984 c.60. Sections 15(5) to (8) and 16(3) to (12) have been amended by sections 113 and 114 of the Serious Organised Crime and Police Act 2005 (c.15), and S.I. 2005/3496. Section 16 has also been amended by paragraph 281 of Schedule 8 to the Courts Act 2003 (c.39).

(2) S.I. 1989/1341 (N.I. 12). Articles 17 and 18 have been amended by S.I. 2007/288 (N.I.).

(4) If on an application under paragraph (3), the court or (in Scotland) the sheriff or the summary sheriff cannot ascertain who is the owner of the seized material the court, the sheriff or the summary sheriff may make such order as the court, the sheriff or the summary sheriff thinks fit.

(5) An order under paragraph (3) or (4) does not affect the right of any person to take legal proceedings against any person in possession of seized material for the recovery of the material.

Provision of information and warrants: safeguards

72.—(1) A person may not be required under regulation 66, 69 or 70 to produce excluded material, or to provide information, produce documents or answer questions which that person 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 full name and address of the lawyer’s client.

(2) The provision of information in accordance with regulation 66, 69 or 70, is not to be taken to breach any restriction, however imposed, on the disclosure of information.

(3) Where a disclosure is made in good faith in accordance with regulations 66, 69 or 70 no civil liability arises in respect of the disclosure on the part of the person making the disclosure.

(4) A warrant issued under regulation 70 does not confer the right to seize privileged material or excluded material.

(5) Privileged material is any material which the person would be entitled to refuse to produce on grounds of legal professional privilege in proceedings in the High Court.

(6) In the application of this regulation to Scotland, the references in paragraphs (1) and (5)—

- (a) to proceedings in the High Court are to be read as references to proceedings in the Court of Session; and
- (b) to an entitlement on grounds of legal professional privilege are to be read as references to an entitlement on the grounds of confidentiality of communication—
 - (i) between professional legal advisers and their clients; or
 - (ii) made in connection with or in contemplation of legal proceedings and for the purposes of those proceedings.

(7) For the purposes of this regulation, “excluded material” means personal records which a person has acquired or created in the course of any trade, business, profession or other occupation or for the purposes of any paid or unpaid office and which is held subject—

- (a) to an express or implied undertaking to hold it in confidence; or
- (b) to a restriction on disclosure or an obligation of secrecy contained in any enactment, including an enactment contained in, or made under, an Act passed after this Regulation.

Admissibility of statements

73.—(1) A statement made by a person in response to a requirement imposed under regulations 66(1)(c), 69(2)(e) or 70(7)(e) may not be used in evidence against the person in criminal proceedings.

(2) Paragraph (1) does not apply—

- (a) in the case of proceedings under Parts 2 to 4 of the Proceeds of Crime Act 2002 (confiscation proceedings)(3);

(3) 2002 c. 29.

- (b) on a prosecution for an offence under section 5 of the Perjury Act 1911 (false statements)(4);
 - (c) on a prosecution for an offence under Article 10 of the Perjury (Northern Ireland) Order 1979 (false statements)(5);
 - (d) on a prosecution for an offence under section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements and declarations)(6);
 - (e) on a prosecution for an offence under regulation 88; or
 - (f) for some other offence where, in giving evidence, the person makes a statement inconsistent with the statement mentioned in paragraph (1).
- (3) A statement may not be used by virtue of paragraph (2)(f) against a person unless—
- (a) evidence relating to it is adduced; or
 - (b) a question relating to it is asked;
- by them or on their behalf in the proceedings arising out of the prosecution.

Powers of relevant officers

74.—(1) A relevant officer (“R”) may only exercise powers under this Part pursuant to arrangements made with the FCA or with the Commissioners—

- (a) by or on behalf of the local weights and measures authority of which R is an officer (“R’s authority”); or
- (b) by the Department for the Economy.

(2) Anything done or omitted to be done by, or in relation to, R in the exercise or purported exercise of a power in this Part is to be treated for all purposes as having been done or omitted to be done by, or in relation to—

- (a) an officer of the FCA, if R is acting pursuant to arrangements made with the FCA, or
- (b) an officer of Revenue and Customs, if R is acting pursuant to arrangements made with the Commissioners.

(3) Paragraph (2) does not apply for the purpose of any criminal proceedings brought against R, R’s authority, the Department for the Economy, the FCA or the Commissioners, in respect of anything done or omitted to be done by R.

(4) R must not disclose to any person other than the FCA (if R is acting pursuant to arrangements made with the FCA), the Commissioners (if R is acting pursuant to arrangements made with the Commissioners), R’s authority or, as the case may be, the Department of the Economy, information obtained by R in the exercise of such powers unless—

- (a) R has the approval of the FCA or where appropriate the Commissioners to do so, or
- (b) R is under a duty to make the disclosure.

(4) 1911 c.6. Section 5 was amended by virtue of section 1(2) of the Criminal Justice Act 1948 (c.58).

(5) S.I. 1979/1714 (NI 19).

(6) 1995 c.39.