
STATUTORY INSTRUMENTS

2007 No. 3298

**The Transfer of Funds (Information
on the Payer) Regulations 2007**

PART 3

ENFORCEMENT

Powers of supervisory authorities

Interpretation

6. In this Part—

“officer”, except in regulations 10(3) and 16, means—

- (a) an officer of the Authority, including a member of the Authority’s staff or an agent of the Authority; or
- (b) an officer of Revenue and Customs;

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

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

7.—(1) An officer may, by notice to a payment service provider or to a person connected with a payment service provider, require the payment service provider 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 payment service provider if he is, or has at any time been, in relation to the payment service provider, a person listed in Schedule 1 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 supervisory authority for which 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 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 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 that person 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 proceedings in the Court of Session; 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—
 - (i) between a professional legal adviser and his client; or
 - (ii) made in connection with or in contemplation of legal proceedings and for the purposes of those proceedings.

Entry, inspection without a warrant etc.

8.—(1) Where an officer has reasonable cause to believe that any premises are being used by a payment service provider in connection with the payment service provider's 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 payment service provider;

⁽¹⁾ 1911 c. 6.

⁽²⁾ 1995 c. 39.

⁽³⁾ S.I. 1979/1714 (N.I. 19).

- (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) 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 payment service provider 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 7(11) applies to this paragraph as it applies to regulation 7(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 supervisory authority for which 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

9.—(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 7(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 7(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 8; and
- (b) that there is on the premises specified in the warrant recorded information or cash which could be inspected under regulation 8(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 payment service provider; 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 on oath 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), (5) and (7) to information on oath are to be read as references to evidence on oath.

Failure to comply with information requirement

10.—(1) If, on an application made by a supervisory authority it appears to the court that a person (the “information defaulter”) has failed to do something that he was required to do under regulation 7(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, 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 court.

(4) 1995 c. 46.