
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.

Civil penalties, review and appeals

Power to impose civil penalties

11.—(1) A supervisory authority may impose a penalty of such amount as it considers appropriate on a payment service provider in respect of any transfer of funds to which the payments regulation applies—

- (a) in the case of the payment service provider of the payer, if he fails to comply with any requirement in—

(4) 1995 c. 46.

- (i) Article 5(1) read with Article 6(1) (information accompanying transfers of funds within the EEA);
 - (ii) Article 5(2) read with Article 5(3) or (4) (whichever is relevant) (verification of information);
 - (iii) Article 5(5) (record keeping);
 - (iv) Article 6(2) (information to be provided following request);
 - (v) Article 7(1) read with Article 7(2) (information accompanying transfers of funds from the EEA to outside the EEA);
- (b) in the case of the payment service provider of the payee, if he fails to comply with any requirement in Article 8 (detection of missing information), 9(1) (transfers of funds with missing or incomplete information), 9(2) sub-paragraph 2 (reporting) or 11 (record keeping);
- (c) in the case of the intermediary payment service provider, if he fails to comply with any requirement in Article 12 (keeping information on the payer with the transfer) or 13(3), (4) or (5) (use of a payment system with technical limitations);

and, for this purpose, “appropriate” means effective, proportionate and dissuasive.

(2) The supervisory 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 any requirement of the payments regulation, the supervisory authority must consider whether the person 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 payment service provider.

(5) Where the Commissioners decide to impose a penalty under this regulation, they must give the payment service provider 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 12; and
- (d) the right to appeal under regulation 13(1)(b).

(6) Where the Authority proposes to impose a penalty under this regulation, it must give the payment service provider 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 must then decide, within a reasonable period, whether to impose a penalty under this regulation and it must give the payment service provider 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 13(1)(a).

(8) A penalty imposed under this regulation is payable to the supervisory authority which imposes it.

Review procedure

12.—(1) Any payment service provider who is the subject of a decision by the Commissioners to impose a penalty under regulation 11 may by notice to the Commissioners require them to review that decision.

(2) 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 payment service provider requiring the review.

(3) 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.

(4) Where the Commissioners do not, within 45 days beginning with the date on which the review was required by a payment service provider, 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

13.—(1) A payment service provider may appeal from a decision by—

- (a) the Authority under regulation 11(7); and
- (b) the Commissioners on a review under regulation 12.

(2) An appeal from a decision by—

- (a) the Authority is to the Financial Services and Markets Tribunal⁽⁵⁾; and
- (b) the Commissioners is to a VAT and duties tribunal⁽⁶⁾.

(3) The provisions of Part 9 of the 2000 Act (hearings and appeals), subject to the modifications set out in paragraph 1 of Schedule 2, 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.

(4) The provisions of Part 5 of the Value Added Tax Act 1994⁽⁷⁾ (appeals), subject to the modifications set out in paragraph 2 of Schedule 2, 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.

(5) 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.

⁽⁵⁾ Established under section 132 of the 2000 Act.

⁽⁶⁾ Established under section 82 of and Schedule 12 to the Value Added Tax Act 1994 (c.23).

⁽⁷⁾ 1994 c. 23.

Criminal offences

Offences

14.—(1) A payment service provider is guilty of an offence in respect of any transfer of funds to which the payments regulation applies—

- (a) in the case of the payment service provider of the payer, if he fails to comply with any requirement in—
 - (i) Article 5(1) read with Article 6(1) (information accompanying transfers of funds within the EEA);
 - (ii) Article 5(2) read with Article 5(3) or (4) (whichever is relevant) (verification of information);
 - (iii) Article 5(5) (record keeping);
 - (iv) Article 6(2) (information to be provided following request);
 - (v) Article 7(1) read with Article 7(2) (information accompanying transfers of funds from the EEA to outside the EEA);
- (b) in the case of the payment service provider of the payee, if he fails to comply with any requirement in Article 8 (detection of missing information), 9(1) or the third paragraph of Article 9 (transfers of funds with missing or incomplete information) or Article 11 (record keeping);
- (c) in the case of the intermediary payment service provider, if he fails to comply with any requirement in Article 12 (keeping information on the payer with the transfer) or 13(3), (4) or (5) (use of a payment system with technical limitations).

(2) A payment service provider who is guilty of an offence under paragraph (1) is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both.

(3) In deciding whether a person has committed an offence under paragraph (1), the court must consider whether the person 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) 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.

(6) Where a person is convicted of an offence under this regulation, he shall not also be liable to a penalty under regulation 11.

Prosecution of offences

15.—(1) Proceedings for an offence under regulation 14 may be instituted by—

- (a) the Director of Revenue and Customs Prosecutions or by order of the Commissioners;
- (b) the Director of Public Prosecutions; or
- (c) the Director of Public Prosecutions for Northern Ireland.

(2) Proceedings for an offence under regulation 14 may be instituted only against a payment service provider or, where the payment service provider is a body corporate, a partnership or an unincorporated association, against any person who is liable to be proceeded against under regulation 16.

(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 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 14 has been committed by any person; or
- (b) whether 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⁽⁸⁾.

(5) Paragraphs (1) and (3) do not extend to Scotland and, in its application to the Commissioners acting in Scotland, paragraph (4)(b) shall be read as referring to the Commissioners determining whether to refer the matter to the Crown Office and Procurator Fiscal Service with a view to the Procurator Fiscal determining whether a person should be prosecuted for such an offence.

Offences by bodies corporate etc.

16.—(1) If an offence under regulation 14 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 14 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 14 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,

the 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).

⁽⁸⁾ 1979 c. 2. See the definition in section 1 of “assigned matter” substituted by the Commissioners for Revenue and Customs Act 2005 (c. 11).

(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⁽⁹⁾ (procedure on charge of offence against corporation) and Schedule 3 to the Magistrates' Courts Act 1980⁽¹⁰⁾ (corporations) apply as they do in relation to a body corporate;

(b) section 70 of the Criminal Procedure (Scotland) Act 1995⁽¹¹⁾ (proceedings against bodies corporate) applies as it does in relation to a body corporate;

(c) section 18 of the Criminal Justice (Northern Ireland) Act 1945⁽¹²⁾ (procedure on charge) and Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981⁽¹³⁾ (corporations) apply as they do in relation to a body corporate.

(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.

⁽⁹⁾ 1925 c. 86.

⁽¹⁰⁾ 1980 c. 43.

⁽¹¹⁾ 1995 c. 46.

⁽¹²⁾ 1945 c. 15 (N.I.).

⁽¹³⁾ S.I. 1981/1675 (N.I. 26).