

Status: Point in time view as at 01/04/2009.

Changes to legislation: There are currently no known outstanding effects for the Counter-Terrorism Act 2008, Part 6. (See end of Document for details)

SCHEDULES

SCHEDULE 7

TERRORIST FINANCING AND MONEY LAUNDERING

PART 6

ENFORCEMENT: CIVIL PENALTIES

Power to impose civil penalties

- 25 (1) An enforcement authority may impose a penalty of such amount as it considers appropriate on a person who fails to comply with a requirement imposed—
- (a) by a direction under this Schedule, or
 - (b) by a condition of a licence under paragraph 17.

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

- (2) No such penalty is to be imposed if the authority is 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 to impose a penalty for failure to comply with a requirement, an enforcement 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 sub-paragraph (3) “appropriate body” means a body which regulates or is representative of any trade, profession, business or employment carried on by the person.
- (5) A person on whom a penalty is imposed under this paragraph is not liable to be proceeded against for an offence under paragraph 30 in respect of the same failure.

Imposition of penalty by HMRC: procedure ^{F1}...

Textual Amendments

- F1** Words in Sch. 7 Pt. 6 cross-heading omitted (1.4.2009) by virtue of [Revenue and Customs Appeals Order 2009 \(S.I. 2009/777\)](#), art. 1, [Sch. para. 2\(2\)](#)

- 26 (1) This paragraph applies where HMRC decide to impose a penalty under paragraph 25 on a person.

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- (2) HMRC 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 [^{F2}paragraph 26A], and
 - (d) the right to appeal under [^{F3}this paragraph].
- [^{F4}(3) The person may appeal to the tribunal against the decision in accordance with paragraph 26F.
- (4) On the appeal the tribunal may—
- (a) set aside the decision appealed against, and
 - (b) impose any penalty that could have been imposed by HMRC or remit the matter to HMRC.
- (5) In this paragraph, and in paragraphs 26A to 26F, “tribunal” means the First-tier Tribunal or, where so provided by or determined under Tribunal Procedure Rules, the Upper Tribunal.
- (6) Section 85 of the Value Added Tax Act 1994 (settling appeals by agreement) shall apply to appeals under this paragraph as if the reference to section 83 of that Act included a reference to this paragraph.]

Textual Amendments

- F2** Words in Sch. 7 para. 26(2)(c) substituted (1.4.2009) by [Revenue and Customs Appeals Order 2009 \(S.I. 2009/777\)](#), art. 1, [Sch. para. 2\(3\)\(a\)](#)
- F3** Words in Sch. 7 para. 26(2)(d) substituted (1.4.2009) by [Revenue and Customs Appeals Order 2009 \(S.I. 2009/777\)](#), art. 1, [Sch. para. 2\(3\)\(b\)](#)
- F4** Sch. 7 para. 26(3)-(6) substituted (1.4.2009) by [Revenue and Customs Appeals Order 2009 \(S.I. 2009/777\)](#), art. 1, [Sch. para. 2\(4\)](#)

[^{F5}Offer of review

Textual Amendments

- F5** Sch. 7 paras. 26A-26F and cross-headings inserted (1.4.2009) by [Revenue and Customs Appeals Order 2009 \(S.I. 2009/777\)](#), art. 1, [Sch. para. 3](#)

- 26A (1) HMRC must offer a person (P) a review of a decision that has been notified to P if an appeal lies under paragraph 26 in respect of the decision.
- (2) The offer of the review must be made by notice given to P at the same time as the decision is notified to P.
- (3) This paragraph does not apply to the notification of the conclusions of a review.

Review by HMRC

- 26B (1) HMRC must review a decision if—
- (a) they have offered a review of the decision under paragraph 26A, and

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- (b) P notifies HMRC accepting the offer within 30 days from the date of the document containing the notification of the offer.
- (2) But P may not notify acceptance of the offer if P has already appealed to the tribunal under paragraph 26F.
- (3) HMRC shall not review a decision if P has appealed to the tribunal under paragraph 26F in respect of the decision.

Extensions of time

- 26C
- (1) If under paragraph 26A, HMRC have offered P a review of a decision, HMRC may within the relevant period notify P that the relevant period is extended.
 - (2) If notice is given the relevant period is extended to the end of 30 days from—
 - (a) the date of the notice, or
 - (b) any other date set out in the notice or a further notice.
 - (3) In this paragraph “relevant period” means—
 - (a) the period of 30 days referred to in paragraph 26B(1)(b), or
 - (b) if notice has been given under sub-paragraph (1) that period as extended (or as most recently extended) in accordance with sub-paragraph (2).

Review out of time

- 26D
- (1) This paragraph applies if—
 - (a) HMRC have offered a review of a decision under paragraph 26A, and
 - (b) P does not accept the offer within the time allowed under paragraph 26B(1)(b) or 26C(2).
 - (2) HMRC must review the decision under paragraph 26B if—
 - (a) after the time allowed, P notifies HMRC in writing requesting a review out of time,
 - (b) HMRC are satisfied that P had a reasonable excuse for not accepting the offer or requiring review within the time allowed, and
 - (c) HMRC are satisfied that P made the request without unreasonable delay after the excuse had ceased to apply.
 - (3) HMRC shall not review a decision if P has appealed to the tribunal under paragraph 26F in respect of the decision.

Nature of review etc

- 26E
- (1) This paragraph applies if HMRC are required to undertake a review under paragraph 26B or 26D.
 - (2) The nature and extent of the review are to be such as appear appropriate to HMRC in the circumstances.
 - (3) For the purpose of sub-paragraph (2), HMRC must, in particular, have regard to steps taken before the beginning of the review—
 - (a) by HMRC in reaching the decision, and
 - (b) by any person in seeking to resolve disagreement about the decision.

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- (4) The review must take account of any representations made by P at a stage which gives HMRC a reasonable opportunity to consider them.
- (5) The review may conclude that the decision is to be—
 - (a) upheld,
 - (b) varied, or
 - (c) cancelled.
- (6) HMRC must give P notice of the conclusions of the review and their reasoning within—
 - (a) a period of 45 days beginning with the relevant date, or
 - (b) such other period as HMRC and P may agree.
- (7) In sub-paragraph (6) “relevant date” means—
 - (a) the date HMRC received P’s notification accepting the offer of a review (in a case falling within paragraph 26A), or
 - (b) the date on which HMRC decided to undertake the review (in a case falling within paragraph 26D).
- (8) Where HMRC are required to undertake a review but do not give notice of the conclusions within the time period specified in sub-paragraph (6), the review is to be treated as having concluded that the decision is upheld.
- (9) If sub-paragraph (8) applies, HMRC must notify P of the conclusion which the review is treated as having reached.

Bringing of appeals against decisions of HMRC

- 26F (1) An appeal under paragraph 26 is to be made to the tribunal before—
- (a) the end of the period of 30 days beginning with the date of the document notifying the decision to which the appeal relates, or
 - (b) if later, the end of the relevant period (within the meaning of paragraph 26C).
- (2) But that is subject to sub-paragraphs (3) to (5).
- (3) In a case where HMRC are required to undertake a review under paragraph 26B—
- (a) an appeal may not be made until the conclusion date, and
 - (b) any appeal is to be made within the period of 30 days beginning with the conclusion date.
- (4) In a case where HMRC are requested to undertake a review in accordance with paragraph 26D—
- (a) an appeal may not be made—
 - (i) unless HMRC have decided whether or not to undertake a review, and
 - (ii) if HMRC decide to undertake a review, until the conclusion date; and
 - (b) any appeal is to be made within the period of 30 days beginning with—
 - (i) the conclusion date (if HMRC decide to undertake a review), or
 - (ii) the date on which HMRC decide not to undertake a review.

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- (5) In a case where paragraph 26E(8) applies, an appeal may be made at any time from the end of the period specified in paragraph 26E(6) to the date 30 days after the conclusion date.
- (6) An appeal may be made after the end of the period specified in sub-paragraph (1), (3)(b), (4)(b) or (5) if the tribunal gives permission to do so.
- (7) In this paragraph “conclusion date” means the date of the document notifying the conclusions of the review.]

Imposition of penalty by other enforcement authority: procedure

- 27
- (1) This paragraph applies if the FSA, the OFT or DETINI (“the authority”) proposes to impose a penalty under paragraph 25 on a person.
 - (2) The authority must give the person notice of—
 - (a) the proposal to impose the penalty and the proposed amount,
 - (b) the reasons for imposing the penalty, and
 - (c) the right to make representations to the authority within a specified period (which may not be less than 28 days).
 - (3) The authority must then decide, within a reasonable period, whether to impose a penalty under paragraph 25 and must give the person notice—
 - (a) if it decides not to impose a penalty, of that decision;
 - (b) if it decides to impose a penalty, of the following matters—
 - (i) the decision to impose a penalty and the amount,
 - (ii) the reasons for the decision, and
 - (iii) the right to appeal under paragraph 28.

Appeal against imposition of civil penalty [F6 other than by HMRC]

Textual Amendments

F6 Words in Sch. 7 Pt. 6 cross-heading inserted (1.4.2009) by [Revenue and Customs Appeals Order 2009 \(S.I. 2009/777\)](#), art. 1, [Sch. para. 4\(2\)](#)

- 28
- (1) A person may appeal to the tribunal against ^{F7} . . . a decision of the FSA or the OFT under paragraph 27.
 - (2) A person may appeal to the High Court in Northern Ireland against a decision of DETINI under paragraph 27.
 - (3) On the appeal the tribunal or court may—
 - (a) set aside the decision appealed against, and
 - (b) impose any penalty that could have been imposed by the body whose decision is appealed or remit the matter to that body.
 - ^{F8}(4)
 - (5) In this paragraph “the tribunal” means the First-tier Tribunal or, where so provided by or determined under Tribunal Procedure Rules, the Upper Tribunal.

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- (6) The Treasury may by order provide that, until a time specified in the order, appeals under sub-paragraph (1) are to be made—
- ^{F9}(a)
- (b) in the case of a decision of the FSA, to the Financial Services and Markets Tribunal;
- (c) in the case of a decision of the OFT, to the Consumer Credit Appeals Tribunal;
- (rather than to the tribunal).
- (7) An order under sub-paragraph (6) may provide that any enactment applies (with or without modifications) in relation to an appeal to a tribunal mentioned in paragraph ^{F10}... (b) or (c) of that sub-paragraph.
- (8) Such an order is subject to negative resolution procedure.

Textual Amendments

- F7** Words in Sch. 7 para. 28(1) omitted (1.4.2009) by virtue of [Revenue and Customs Appeals Order 2009 \(S.I. 2009/777\)](#), art. 1, **Sch. para. 4(3)**
- F8** Sch. 7 para. 28(4) omitted (1.4.2009) by virtue of [Revenue and Customs Appeals Order 2009 \(S.I. 2009/777\)](#), art. 1, **Sch. para. 4(4)**
- F9** Sch. 7 para. 28(6)(a) omitted (1.4.2009) by virtue of [Revenue and Customs Appeals Order 2009 \(S.I. 2009/777\)](#), art. 1, **Sch. para. 4(5)**
- F10** Word in Sch. 7 para. 28(7) omitted (1.4.2009) by virtue of [Revenue and Customs Appeals Order 2009 \(S.I. 2009/777\)](#), art. 1, **Sch. para. 4(6)**

Payment and recovery of civil penalties

- 29 (1) A penalty imposed under paragraph 25 is payable to the enforcement authority that imposed it.
- (2) Any such penalty is a debt due to the authority and is recoverable accordingly.

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