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STATUTORY INSTRUMENTS

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**2017 No. 692**

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

**PART 11**

**Miscellaneous Provisions**

**Recovery of charges and penalties through the court**

**101.** Any charge or penalty imposed on a relevant person or on a payment service provider by the FCA or the Commissioners under these Regulations is a debt due from that person to the FCA or the Commissioners respectively, and is recoverable accordingly.

**Costs of supervision**

**102.—**(1) The FCA and the Commissioners may impose charges on—

- (a) applicants for approval under Chapter 3 of Part 2;
- (b) applicants for registration under Chapter 2 of Part 6;
- (c) relevant persons supervised by them;
- (d) payment service providers supervised by them;
- (e) professional bodies listed in Schedule 1, for which they undertake enforcement action in relation to relevant persons supervised by those professional bodies.

(2) Charges levied under paragraph (1) must not exceed such amount as the FCA or the Commissioners (as the case may be) consider will enable them to meet any expenses reasonably incurred by them in carrying out their functions under these Regulations or for any incidental purpose (including any expenses reasonably incurred by them in undertaking enforcement action on behalf of a self-regulatory organisation).

(3) Without prejudice to the generality of paragraph (2), a charge may be levied in respect of each of the premises at which the relevant person, the provider or a person connected with the relevant person or the provider carries on (or proposes to carry on) business or professional activities.

(4) The FCA must in respect of each of its financial years pay to the Treasury any amounts received by the FCA during the year by way of penalties imposed under Part 9.

(5) The Treasury may give directions to the FCA as to how the FCA is to comply with the duty under paragraph (4).

(6) The directions may in particular—

- (a) specify the time when any payment is required to be made to the Treasury; and
- (b) require the FCA to provide the Treasury at specified times with information relating to penalties that the FCA has imposed under Part 9.

(7) The Treasury must pay into the Consolidated Fund any sums received by them under this regulation.

(8) In paragraph (2), “expenses” includes expenses incurred by a local weights and measures authority or the Department for the Economy pursuant to arrangements made for the purposes of these Regulations with the FCA or with the Commissioners—

- (a) by or on behalf of the authority; or
- (b) by the Department for the Economy.

### **Obligations on public authorities**

**103.**—(1) The following bodies and persons must, if they know or suspect or have reasonable grounds for knowing or suspecting that a person is or has engaged in money laundering or terrorist financing, as soon as practicable, inform the NCA—

- (a) the Auditor General for Scotland;
- (b) the Auditor General for Wales;
- (c) the Bank of England;
- (d) the Comptroller and Auditor General;
- (e) the Comptroller and Auditor General for Northern Ireland;
- (f) the FCA;
- (g) the Gambling Commission;
- (h) the Official Solicitor to the Supreme Court;
- (i) the Pensions Regulator;
- (j) the PRA;
- (k) the Public Trustee;
- (l) the Secretary of State, in the exercise of his or her functions under enactments relating to companies and insolvency;
- (m) the Treasury, in the exercise of their functions under FSMA;
- (n) the Treasury Solicitor;
- (o) a designated professional body for the purposes of Part 20 of FSMA (provision of financial services by members of the professions);
- (p) a person or inspector appointed under section 65 (investigations on behalf of FCA) or 66 (inspections and special meetings) of the Friendly Societies Act 1992<sup>(1)</sup>;
- (q) an inspector appointed under section 106 of the Co-operative and Community Benefit Societies Act 2014<sup>(2)</sup> (appointment of inspectors) or section 18 of the Credit Unions Act 1979<sup>(3)</sup> (power to appoint inspector);
- (r) an inspector appointed under section 431 (investigation of a company on its own application), 432 (other company investigations), 442 (power to investigate company ownership) or 446D (appointment of replacement inspectors) of the Companies Act 1985<sup>(4)</sup>;

(1) 1992 c.40. Section 65 was amended by S.I. 1994/1984; 2001/2617 and 2013/496. Section 66 was amended by S.I. 2009/1941 and 2013/496.

(2) 2014 c.14.

(3) 1979 c.34. Section 18 was amended by paragraph 9 of Schedule 4 to the Co-operative and Community Benefit Society Act (c.14) and by S.I. 2001/2617; 2002/1501 and 2013/496.

(4) 1985 c.6. Section 431 was amended by section 1035(2) of the Companies Act 2006 (c.46) and S.I. 2003/1116, section 432 was amended by sections 55 and 213 of the Companies Act 1989 (c.40), section 1035(3) of the Companies Act 2006, section 442 was amended by sections 62 and 213(2) of the Companies Act 1989 and by paragraph 1 of Schedule 16 to the Companies Act 2006 and section 446D was inserted by section 1036 of the Companies Act 2006.

- (s) a person or inspector appointed under section 55 (investigations on behalf of FCA) or 56 (inspections and special meetings) of the Building Societies Act 1986(5);
- (t) a person appointed under section 167 (appointment of persons to carry out investigations), 168(3) or (5) (appointment of persons to carry out investigations in particular cases), 169(1)(b) (investigations to support overseas regulator) or 284 (power to investigate affairs of a scheme) of FSMA(6), or under regulations made under section 262(2)(k) (open-ended investment companies) of that Act(7), to conduct an investigation; and
- (u) a person authorised to require the production of documents under section 447 (Secretary of State's power to require production of documents) of the Companies Act 1985(8), or section 84 of the Companies Act 1989(9) (exercise of powers by officer).

(2) A disclosure made under paragraph (1) is not to be taken to breach any restriction, however imposed, on the disclosure of information.

(3) Where a disclosure under paragraph (1) is made in good faith, no civil liability arises in respect of the disclosure on the part of the person by whom, or on whose behalf, it is made.

### Suspicious activity disclosures

**104.**—(1) The NCA must make arrangements to provide appropriate feedback on the suspicious activity disclosures it has received at least once a year.

(2) The feedback referred to in paragraph (1) may be provided by the NCA jointly with another person, or by another person on behalf of the NCA.

(3) The feedback referred to in paragraph (1) may be provided in any form the NCA thinks fit.

(4) In this regulation, a “suspicious activity disclosure” is a disclosure made to the NCA under—

- (a) Part 3 of the Terrorism Act 2000 (terrorist property)(10);
- (b) Part 7 of the Proceeds of Crime Act 2002 (money laundering)(11).

### Disclosure by the Commissioners

**105.**—(1) The Commissioners may disclose to the FCA information held in connection with their functions under these Regulations if the disclosure is made for the purpose of enabling or assisting the FCA to discharge any of its functions under the Payment Services Regulations 2009(12) or the Electronic Money Regulations 2011(13).

(2) Information disclosed to the FCA under paragraph (1) may not be disclosed by the FCA or any person who receives the information directly or indirectly from the FCA except—

- (a) to, or in accordance with authority given by, the Commissioners;
- (b) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings;

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(5) 1986 c.53. Section 55 was amended by paragraph 21 of Schedule 7 to the Building Societies Act 1987 (c.37) and by S.I. 2013/496, and section 56 was amended by paragraph 22 of Schedule 7 to the Building Societies Act 1997 and by S.I. 2013/496.

(6) Section 167 was amended by paragraph 7 of Schedule 12 to the Financial Services Act 2012 (c.21), and by S.I. 2005/575 and 2007/126, section 168(5) and been amended by paragraph 8 of Schedule 12 to the Financial Services Act 2012, section 284 was amended by paragraph 17 of Schedule 18 to the Financial Services Act 2012.

(7) Section 262(2)(k) was amended by paragraph 9 of Schedule 18 to the Financial Services Act 2012.

(8) 1985 c.6. Section 447 was amended by section 21 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c.27), and by section 1038 of the Companies Act 2006.

(9) 1989 c.40.

(10) 2000 c.11.

(11) 2002 c.29.

(12) S.I. 2009/209.

(13) S.I. 2011/99.

- (c) with a view to the institution of any other proceedings by the FCA, for the purposes of any such proceedings, or for the purposes of any reference to the Upper Tribunal under the Payment Services Regulations 2009; or
- (d) in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it.

### **General restrictions**

**106.** These Regulations do not authorise or require—

- (a) a disclosure, in contravention of any provisions of the Data Protection Act 1998<sup>(14)</sup>, of personal data which are not exempt from those provisions; or
- (b) a disclosure which is prohibited by any of Parts 1 to 3 or 5 to 7 of the Investigatory Powers Act 2016<sup>(15)</sup>.

### **Transfers between the United Kingdom and the Channel Islands and the Isle of Man**

**107.** In determining whether a person has failed to comply with any requirement in the funds transfer regulation, any transfer of funds between the United Kingdom and—

- (a) the Channel Islands; or
- (b) the Isle of Man;

is to be treated as a transfer of funds within the United Kingdom.

### **Review**

**108.**—(1) The Treasury must from time to time—

- (a) carry out a review of the regulatory provision contained in these Regulations; and
- (b) publish a report setting out the conclusions of the review.

(2) The first report must be published before 26th June 2022.

(3) Subsequent reports must be published at intervals not exceeding 5 years.

(4) Section 30(3) of the Small Business, Enterprise and Employment Act 2015 (provision for review)<sup>(16)</sup> requires that a review carried out under this regulation must, so far as is reasonable, have regard to how—

- (a) the emission allowance auctioning regulation;
- (b) the fourth money laundering directive; and
- (c) the funds transfer regulation;

are implemented in other member States.

(5) Section 30(4) of the Small Business, Enterprise and Employment Act 2015 requires that a report published under this regulation must, in particular—

- (a) set out the objectives intended to be achieved by the regulatory provision referred to in paragraph (1)(a);
- (b) assess the extent to which those objectives are achieved;
- (c) assess whether those objectives remain appropriate; and

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<sup>(14)</sup> 1998 c.29.

<sup>(15)</sup> 2016 c.25.

<sup>(16)</sup> 2015 c.26.

(d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.

(6) In this regulation, “regulatory provision” has the same meaning as in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 (see section 32 of that Act).

### **Consequential amendments**

**109.** Schedule 7 makes amendments relating to these Regulations.

### **Revocation and saving provisions**

**110.—**(1) The old money laundering regulations and the old transfer of funds regulations are revoked.

(2) The old money laundering regulations and the old transfer of funds regulations shall continue to have effect where the conduct constituting a contravention of one of those Regulations, or an offence under one of those Regulations began before the date on which these Regulations come into force.

(3) Where the old money laundering regulations or the old transfer of funds regulations continue to have effect, a penalty or an offence under the relevant Part of these Regulations is not to have effect in such circumstances.

(4) Where the conduct is found to have been committed over a period of two or more days, or at some point during a period of two or more days, it is to be taken for the purposes of paragraph (2) to have been begun on the earliest of those days.

(5) The “old money laundering regulations” means—

- (a) the Money Laundering Regulations 2007(**17**);
- (b) the Money Laundering (Amendment) Regulations 2007(**18**);
- (c) the Money Laundering (Amendment) Regulations 2011(**19**);
- (d) the Money Laundering (Amendment) Regulations 2012(**20**); and
- (e) the Money Laundering (Amendment) Regulations 2015(**21**).

(6) The “old transfer of funds regulations” means the Transfer of Funds (Information on the Payer) Regulations 2007(**22**).

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(17) S.I. 2007/2157.

(18) S.I. 2007/3299.

(19) S.I. 2011/1781.

(20) S.I. 2012/2298.

(21) S.I. 2015/11.

(22) S.I. 2007/3298.