

Status: Point in time view as at 27/11/2008.

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 **U.K.**

TERRORIST FINANCING AND MONEY LAUNDERING

PART 6 **U.K.**

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—
- by a direction under this Schedule, or
 - by a condition of a licence under paragraph 17.

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

- 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.
- 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—
 - issued by a supervisory authority or any other appropriate body,
 - approved by the Treasury, and
 - 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.
- 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.
- 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 and reviews

- 26 (1) This paragraph applies where HMRC decide to impose a penalty under paragraph 25 on a person.
- HMRC must give the person notice of—
 - their decision to impose the penalty and its amount,
 - the reasons for imposing the penalty,
 - the right to a review under this paragraph, and

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- (d) the right to appeal under paragraph 28.
- (3) The person may by notice to HMRC require them to review their decision.
- (4) A notice requiring a review may not be given after the end of the period of 45 days beginning with the day on which HMRC first gave the person notice under sub-paragraph (2).
- (5) On a review under this paragraph, HMRC 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.
- (6) Where HMRC do not, within the period of 45 days beginning with the day the notice under sub-paragraph (3) was given, give notice to the person of their determination of the review, they are to be taken to have confirmed their decision.

Imposition of penalty by other enforcement authority: procedure

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- (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

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- (1) A person may appeal to the tribunal against—
 - (a) a decision of HMRC on a review under paragraph 26;
 - (b) 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.
 - (4) An appeal against a decision of HMRC may not be made after the end of the period of 30 days beginning with—
 - (a) the date of the document notifying the person of the decision, or

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- (b) if paragraph 26(6) (deemed confirmation of decision) applies, the day after the end of the period mentioned there.
- (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.
- (6) The Treasury may by order provide that, until a time specified in the order, appeals under sub-paragraph (1) are to be made—
 - (a) in the case of a decision of HMRC, to a VAT and duties tribunal;
 - (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 (a), (b) or (c) of that sub-paragraph.
- (8) Such an order is subject to negative resolution procedure.

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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