

2001 No. 3641

FINANCIAL SERVICES

The Money Laundering Regulations 2001

Made - - - - - 9th November 2001

Laid before Parliament 9th November 2001

Coming into force in accordance with regulation 1(2)

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The Treasury, being a government department designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to measures relating to preventing the use of the financial system for the purpose of money laundering, in exercise of the powers conferred by that section and by section 56 of the Finance Act 1973(c) hereby make the following Regulations:

PART I

GENERAL

Citation and commencement

- 1.—(1) These Regulations may be cited as the Money Laundering Regulations 2001.
- (2) These Regulations come into force—
 - (a) for the purposes of regulation 3(3) to (5), on 15th July 2002;
 - (b) for all other purposes, on 12th November 2001.

Interpretation

2. In these Regulations—
 - “applicant” means an applicant for registration as a money service operator under regulation 5;
 - “the appropriate judicial authority” means—
 - (a) in England and Wales, a magistrates’ court,
 - (b) in Scotland, the sheriff,
 - (c) in Northern Ireland, a court of summary jurisdiction;
 - “the Commissioners” means the Commissioners of Customs and Excise;
 - “justice” means a justice of the peace or, in relation to Scotland, a justice within the meaning of section 307 of the Criminal Procedure (Scotland) Act 1995(d);
 - “money laundering offence” means an offence under the 1993 Regulations;
 - “money laundering reporting officer” means the appropriate person within the meaning of regulation 14 of the 1993 Regulations;
 - “money service business” means the business of engaging in any of the activities referred to in regulation 4(1)(ga) of the 1993 Regulations(e) (so far as not excluded by regulation 4(2) of those Regulations);
 - “money service operator” means a person who carries on money service business other than a person who carries on relevant financial business falling within any of subparagraphs (a) to (g) or (i) of regulation 4(1) of the 1993 Regulations;

(a) S.I. 1992/1711.

(b) 1972 c. 68.

(c) 1973 c. 51.

(d) 1995 c. 46.

(e) Regulation 4(1)(ga) is inserted by regulation 3(2) of these Regulations.

“officer” has the meaning given by section 1(1) of the Customs and Excise Management Act 1979(a);

“officer in overall charge of the investigation” means the person whose name and address are endorsed on the order concerned as being the officer so in charge;

“operator” means a money service operator;

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

“registered number” has the meaning given by regulation 4(3);

“the 1993 Regulations” means the Money Laundering Regulations 1993(b);

“the review procedure” means the procedure under regulation 16;

“tribunal” means a VAT and duties tribunal.

Application of the 1993 Regulations to bureaux de change etc

- 3.—(1) The 1993 Regulations are amended as follows.
- (2) In paragraph (1) of regulation 4 (relevant financial business)—
- (a) after sub-paragraph (g) insert—
- “(ga) the activity of—
- (i) operating a bureau de change;
- (ii) transmitting money, or any representation of monetary value, by any means; or
- (iii) cashing cheques which are made payable to customers;”;
- (b) in sub-paragraph (h) for “(g)” substitute “(ga)”.
- (3) In paragraph (1) of regulation 10 (identification procedures; exemptions)—
- (a) omit sub-paragraphs (a) and (b) and insert—
- “(a) where there are reasonable grounds for believing that the applicant for business—
- (i) is a person who is bound by the provisions of regulation 5(1) above, or
- (ii) is otherwise a person who is covered by the Money Laundering Directive,
- other than a person who is engaged in any of the activities mentioned in regulation 4(1)(ga) above;”;
- (b) in sub-paragraph (c)(i) omit “or (b)”.
- (4) In paragraph (1) of regulation 11 (identification procedures; supplementary provisions) after “the purposes of these Regulations,” insert “and subject to paragraph (1A) below,”.
- (5) After paragraph (1) of regulation 11 insert—
- “(1A) Where the applicant is a person who is engaged in any of the activities mentioned in regulation 4(1)(ga) above, satisfactory evidence of identity shall also include the applicant’s registered number within the meaning given by regulation 4(3) of the Money Laundering Regulations 2001.”.

PART II

REGISTRATION

Register of money service operators

- 4.—(1) The Commissioners must maintain a register of money service operators.
- (2) The Commissioners may keep the register in any form they think fit.
- (3) The Commissioners must allocate to every registered money service operator a number, which is to be known as his registered number.

(a) 1979 c. 2.

(b) S.I. 1993/1933.

Requirement to be registered

5.—(1) A person who, on or after 1st June 2002, acts as a money service operator must be registered by the Commissioners.

(2) Paragraph (1) does not apply to a person who, immediately before 1st June 2002, is acting as a money service operator, provided he has before that date made an application to be registered which has not been determined.

(3) A person to whom this regulation applies must—

- (a) make an application to be registered in such manner as the Commissioners may direct; and
- (b) furnish the following information to the Commissioners, that is to say—
 - (i) the applicant's name and (if different) the name of the business;
 - (ii) the applicant's VAT registration number or, if he is not registered for VAT, any other reference number issued to him by the Commissioners;
 - (iii) the nature of the business;
 - (iv) the address of each of the premises at which the applicant carries on (or proposes to carry on) business;
 - (v) any agency or franchise agreement relating to the business, and the names and addresses of all relevant principals, agents, franchisors or franchisees;
 - (vi) the name of the relevant money laundering reporting officer (if any); and
 - (vii) whether any person concerned (or proposed to be concerned) in the management, control or operation of the business has been convicted of a money laundering offence or of money laundering within the meaning of regulation 2(3) of the 1993 Regulations.

(4) At any time after receiving an application to be registered and before determining it, the Commissioners may require the applicant to furnish them, within 21 days beginning with the date of being requested to do so, with such further information as they reasonably consider necessary to enable them to determine the application.

(5) Any information to be furnished to the Commissioners under this regulation must be in such form or verified in such manner as they may specify.

(6) In this regulation, "the business" means money service business which the applicant carries on or proposes to carry on.

Supplementary information

6.—(1) If any at time after supplying the Commissioners with any information under regulation 5—

- (a) there is a change affecting any matter contained in that information; or
- (b) it becomes apparent that the information contains an inaccuracy;

the applicant or, as the case may be, the operator must supply the Commissioners with details of the change or, as the case may be, a correction of the inaccuracy (hereafter "supplementary information") within 30 days beginning with the date of the occurrence of the change or, as the case may be, the discovery of the inaccuracy.

(2) The supplementary information must be supplied in such manner as the Commissioners may direct.

(3) The obligation in paragraph (1) applies also to changes affecting any matter contained in any supplementary information supplied pursuant to this regulation.

Determination of application to register

7.—(1) The Commissioners may refuse to register an applicant if, and only if—

- (a) any requirement of—
 - (i) paragraphs (3) to (5) of regulation 5 (requirement to be registered);
 - (ii) regulation 6 (supplementary information); or
 - (iii) regulation 9 (fees);

has not been complied with; or

- (b) it appears to them that any information supplied pursuant to regulation 5 or 6 is false or misleading in a material particular.

(2) The Commissioners must, by the end of the period of 45 days beginning with the date on which they receive the application or, where applicable, the date on which they receive any further information required under regulation 5(4), give notice in writing to the applicant of—

- (a) his registered number; or
- (b) the following matters, that is to say—
 - (i) their decision not to register the applicant;
 - (ii) the reasons for their decision;
 - (iii) the review procedure; and
 - (iv) the right to appeal to a tribunal.

Cancellation of registration

8.—(1) The Commissioners may cancel the registration of an operator if, at any time after registration, it appears to them that they would have had grounds to refuse registration under paragraph (1) of regulation 7 (determination of application to register).

(2) Where the Commissioners decide to cancel the registration of an operator, they must forthwith inform him, in writing, of—

- (a) their decision and the date from which the cancellation takes effect;
- (b) the reasons for their decision;
- (c) the review procedure; and
- (d) the right to appeal to a tribunal.

Fees

9.—(1) The Commissioners may charge a fee—

- (a) to an applicant; and
- (b) to an operator annually on the anniversary of his registration by them under these Regulations.

(2) The Commissioners may charge under paragraph (1) such fees as they consider will enable them to meet any expenses incurred by them in carrying out any of their functions under these Regulations or for any incidental purpose.

(3) Without prejudice to the generality of paragraph (2), a fee may be charged in respect of each of the premises at which the operator or, as the case may be, the applicant carries on (or proposes to carry on) money service business.

PART III

POWERS OF THE COMMISSIONERS

Entry, inspection etc

10.—(1) Where an officer has reasonable cause to believe that any premises are used in connection with money service business, he may at any reasonable time enter and inspect the premises and inspect any recorded information or currency found on the premises.

(2) A money service operator must—

- (a) furnish to an officer, within such time and in such form as the officer may reasonably require, such information relating to the operator's business as the officer may reasonably specify; and
- (b) upon demand made by the officer, produce or cause to be produced for inspection by the officer at such place, and at such time, as the officer may reasonably require, any recorded information relating to the operator's business.

Order for access to recorded information

11.—(1) Where, on an application by an officer, a justice is satisfied that there are reasonable grounds for believing—

- (a) that a money laundering offence is being, has been or is about to be committed by a money service operator; and
- (b) that any recorded information which may be required as evidence for the purpose of any proceedings in respect of such an offence is in the possession of any person;

he may make an order under this regulation.

(2) An order under this regulation is an order that the person who appears to the justice to be in possession of the recorded information to which the application relates must—

- (a) give an officer access to it;
- (b) permit an officer to take copies of, or make extracts from, any information produced; and
- (c) permit an officer to remove and take away any of it which he reasonably considers necessary;

not later than the end of the period of 7 days beginning with the date of the order or the end of such longer period as the order may specify.

(3) Where the recorded information consists of information stored in any electronic form, an order under this regulation has effect as an order to produce the information in a form in which it is visible and legible, or from which it can readily be produced in a visible and legible form, and, if the officer wishes to remove it, in a form in which it can be removed.

Procedure where recorded information is removed

12.—(1) An officer who removes any recorded information in the exercise of a power conferred by regulation 11 must, if so requested by a person showing himself—

- (a) to be the occupier of premises from which it was removed; or
- (b) to have had custody or control of it immediately before the removal;

provide that person with a record of what he removed.

(2) The officer must provide the record within a reasonable time from the making of the request for it.

(3) Subject to paragraph (7), if a request for permission to be granted access to anything which—

- (a) has been removed by an officer; and
- (b) is retained by the Commissioners for the purposes of investigating an offence;

is made to the officer in overall charge of the investigation by a person who had custody or control of the thing immediately before it was so removed or by someone acting on behalf of such a person, that officer must allow the person who made the request access to it under the supervision of an officer.

(4) Subject to paragraph (7), if a request for a photograph or copy of any such thing is made to the officer in overall charge of the investigation by a person who had custody or control of the thing immediately before it was so removed, or by someone acting on behalf of such a person, that officer must—

- (a) allow the person who made the request access to it under the supervision of an officer for the purpose of photographing it or copying it; or
- (b) photograph or copy it, or cause it to be photographed or copied.

(5) Where anything is photographed or copied under sub-paragraph (4)(b), the photograph or copy must be supplied to the person who made the request.

(6) The photograph or copy must be supplied within a reasonable time from the making of the request.

(7) There is no duty under this regulation to grant access to, or supply a photograph or a copy of, anything if the officer in overall charge of the investigation for the purposes of which it was removed has reasonable grounds for believing that to do so would prejudice—

- (a) that investigation;

- (b) the investigation of an offence other than the offence for the purposes of the investigation of which the document was removed; or
- (c) any criminal proceedings which may be brought as a result of—
 - (i) the investigation of which he is in charge; or
 - (ii) any such investigation as is mentioned in sub-paragraph (b).

Failure to comply with requirements under regulation 12

13.—(1) Where, on an application made as mentioned in paragraph (2), the appropriate judicial authority is satisfied that a person has failed to comply with a requirement imposed by regulation 12, the authority may order that person to comply with the requirement within such time and in such manner as may be specified in the order.

- (2) An application under paragraph (1) may only be made—
 - (a) in the case of a failure to comply with any of the requirements imposed by regulation 12(1) and (2), by the occupier of the premises from which the thing in question was removed or by the person who had custody or control of it immediately before it was so removed; and
 - (b) in any other case, by the person who had such custody or control.

(3) In England and Wales and Northern Ireland, an application for an order under this regulation is to be made by complaint; and sections 21 and 42(2) of the Interpretation Act (Northern Ireland) 1954(a) apply as if any reference in those provisions to any enactment included a reference to this registration.

Entry, search etc

14.—(1) Where a justice is satisfied on information on oath that there is reasonable ground for suspecting that a money laundering offence is being, has been or is about to be committed by a money service operator on any premises or that evidence of the commission of such an offence is to be found there, he may issue a warrant in writing authorising any officer to enter those premises, if necessary by force, at any time within one month from the time of the issue of the warrant and search them.

- (2) A person who enters the premises under the authority of the warrant may—
 - (a) take with him such other persons as appear to him to be necessary;
 - (b) seize and remove any documents or other things whatsoever found on the premises which he has reasonable cause to believe may be required as evidence for the purpose of proceedings in respect of a money laundering offence; and
 - (c) search or cause to be searched any person found on the premises whom he has reasonable cause to believe to be in possession of any such documents or other such things;

but no woman or girl may be searched except by a woman.

- (3) The powers conferred by a warrant under this regulation may not be exercised—
 - (a) outside such times of day as may be specified in the warrant; or
 - (b) if the warrant so provides, otherwise than in the presence of a constable in uniform.

(4) An officer seeking to exercise the powers conferred by a warrant under this regulation or, if there is more than one such officer, that one of them who is in charge of the search must provide a copy of the warrant endorsed with his name as follows—

- (a) if the occupier of the premises concerned is present at the time the search is to begin, the copy must be supplied to the occupier;
- (b) if at that time the occupier is not present but a person who appears to the officer to be in charge of the premises is present, the copy must be supplied to that person;
- (c) if neither sub-paragraph (a) nor (b) applies, the copy must be left in a prominent place on the premises.

(a) 1954 c. 33 (N.I.).

PART IV

PENALTIES, REVIEW AND APPEALS

Power to impose penalties

15.—(1) The Commissioners may impose a penalty of such amount as they consider appropriate, not exceeding £5,000, on a person to whom regulation 5 (requirement to be registered) applies, where that person fails to comply with any requirement in regulation 5, 6 (supplementary information), 9 (fees) or 10 (entry, inspection etc).

(2) The Commissioners must not impose a penalty on a person where there are reasonable grounds for them to be satisfied that the person took all reasonable steps for securing that the requirement would be complied with.

(3) Where the Commissioners decide to impose a penalty under this regulation, they must forthwith inform the person, in writing, of—

- (a) their decision to impose the penalty and its amount;
- (b) their reasons for imposing the penalty;
- (c) the review procedure; and
- (d) the right to appeal to a tribunal.

(4) Where a person is liable to a penalty under this regulation, the Commissioners may reduce the penalty to such amount (including nil) as they think proper.

Review procedure

16.—(1) This regulation applies to the following decisions of the Commissioners, that is to say—

- (a) a decision under regulation 7 to refuse to register an applicant;
- (b) a decision under regulation 8 to cancel the registration of an operator;
- (c) a decision under regulation 15 to impose a penalty.

(2) Any person who is the subject of a decision as mentioned in paragraph (1) may by notice in writing to the Commissioners require them to review that decision.

(3) The Commissioners need not review any decision unless the notice requiring the review is given before the end of the period of 45 days beginning with the date on which written notification of the decision was first given to the person requiring the review.

(4) A person may give a notice under this regulation to require a decision to be reviewed for a second or subsequent time only if—

- (a) the grounds on which he requires the further review are that the Commissioners did not, on any previous review, have the opportunity to consider certain facts or other matters; and
- (b) he does not, on the further review, require the Commissioners to consider any facts or matters which were considered on a previous review except in so far as they are relevant to any issue to which the facts or matters not previously considered relate.

(5) 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.

(6) Where the Commissioners do not, within 45 days beginning with the date on which the review was required by a person, give notice to that person of their determination of the review, they are to be assumed for the purposes of these Regulations to have confirmed the decision.

Amendment to the Value Added Tax Act 1994

17. In section 83 (appeals) of the Value Added Tax Act 1994(a) after paragraph (z) insert—
“(zz) a decision of the Commissioners on a review under regulation 16 of the Money Laundering Regulations 2001;”.

Further provisions relating to appeals

18. On an appeal from any decision by the Commissioners, on a review under regulation 16, the tribunal have the power to—
- (a) quash or vary any decision of the Commissioners, 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.

PART V

MISCELLANEOUS

Prosecution of money laundering offences by the Commissioners

19.—(1) Proceedings for a money laundering offence may be instituted by order of the Commissioners.

(2) Such proceedings may be instituted only against an operator or, where the operator is a body corporate, a partnership or an unincorporated association, against any person who is liable to be proceeded against under regulation 6 of the 1993 Regulations (offences by bodies corporate, partnerships and unincorporated associations).

(3) Any such proceedings which are so instituted must be commenced in the name of an officer.

(4) In the case of the death, removal, discharge or absence of the officer in whose name any such proceedings were commenced, those proceedings may be continued by another officer.

(5) Where the Commissioners investigate, or propose to investigate, any matter with a view to determining—

- (a) whether there are grounds for believing that a money laundering offence has been committed by any person referred to in paragraph (2); or
- (b) whether such a person should be prosecuted for such an offence;

the matter is to be treated as an assigned matter within the meaning of the Customs and Excise Management Act 1979(b).

(6) In exercising their power to institute proceedings for a money laundering offence, the Commissioners must comply with any conditions or restrictions imposed in writing by the Treasury.

(7) Conditions or restrictions may be imposed under paragraph (6) in relation to—

- (a) proceedings generally; or
- (b) such proceedings, or categories of proceedings, as the Treasury may direct.

Recovery of fees and penalties through the court

20. Where any fee is charged, or any penalty is imposed, by virtue of these Regulations—
- (a) if the person from whom it is recoverable resides in England and Wales or Northern Ireland, it is recoverable as a civil debt; and

(a) 1994 c. 23.
(b) 1979 c. 2.

- (b) if that person resides in Scotland, it may be enforced in the same manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.

9th November 2001

John Heppell
Tony McNulty
Two of the Lords Commissioners
of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations give effect to articles 12 and 15 of the Council Directive No. 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering. They supplement the provisions of the Money Laundering Regulations 1993 (“the 1993 Regulations”).

Regulation 3 adds certain categories of money service business, including bureaux de change, to the meaning of relevant financial business in the 1993 Regulations. It also amends the 1993 Regulations so that what constitutes satisfactory evidence of identity, in relation to an applicant for business who is a money service operator, must include his registered number.

Regulation 4 requires the Commissioners of Customs and Excise (“the Commissioners”) to keep a register of money service operators. Regulation 5 requires anyone who wishes to act as a money service operator after 1st June 2002 to be registered with the Commissioners and lists the information which they must supply to the Commissioners. This requirement does not apply to money service operators who are already operating when these Regulations come into force or who begin to operate before 1st June 2002, provided that before that date they have applied for registration and the application has not been determined.

Regulation 6 requires supplementary information to be supplied where information previously supplied to the Commissioners becomes outdated. Regulation 7 lists the grounds on which registration may be refused by the Commissioners, including where information which has been supplied is incomplete, false or misleading. Regulation 8 lists the circumstances in which registration may be cancelled by the Commissioners. Regulation 9 allows the Commissioners to charge fees.

Regulations 10 to 14 state the powers of the Commissioners in relation to money service operators and others, including a power to enter and inspect premises. Where there are reasonable grounds for believing that an offence under the 1993 Regulations is being, has been or is about to be committed by a money service operator, the Commissioners may seek a court order requiring any person in possession of certain information to allow them access to it. Regulation 14 allows the Commissioners to enter premises with a warrant, to search persons and to take away documents.

Regulation 15 allows the Commissioners to impose a civil penalty in certain circumstances. Regulation 16 provides a mechanism for a formal review by the Commissioners of their decisions. Regulations 17 and 18 provide for appeals against the Commissioners’ decisions to be heard by a VAT tribunal. Regulation 19 allows the Commissioners to prosecute offences under the 1993 Regulations. Regulation 20 allows fees and penalties to be recovered as a civil debt.

2001 No. 3641

FINANCIAL SERVICES

The Money Laundering Regulations 2001

£2.50

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Printed and published in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of
Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.
E2210 12/2001 012210 19585

ISBN 0-11-039087-3



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