
STATUTORY INSTRUMENTS

2007 No. 2157

The Money Laundering Regulations 2007 (revoked)

PART 5

ENFORCEMENT

Modifications etc. (not altering text)

- C1** Pt. 5 modified (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2013 \(S.I. 2013/1881\)](#), art. 1(2)(6), **Sch. para. 32(4)**

Powers of designated authorities

Interpretation

36. In this Part—

“designated authority” means—

- (a) the Authority; [^{F1}and]
- (b) the Commissioners; ^{F2}...
- (c) ^{F2} ...
- (d) ^{F3} ...

“officer”, except in regulations 40(3), 41 and 47 means—

- (a) an officer of the Authority, including a member of the Authority's staff or an agent of the Authority;
- (b) an officer of Revenue and Customs; [^{F4}or]
- (c) ^{F5} ...
- (d) a relevant officer; ^{F6} ...
- (e) ^{F6} ...

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

“relevant officer” means—

- (a) in Great Britain, an officer of a local weights and measures authority;
- (b) in Northern Ireland, an officer of DETI acting pursuant to arrangements made with the [^{F7}Authority] for the purposes of these Regulations.

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Textual Amendments

- F1** Word in reg. 36 inserted (26.7.2013 for specified purposes) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2013 \(S.I. 2013/1881\)](#), art. 1(2)(6), **Sch. para. 31(9)(a)(i)**
- F2** Word in reg. 36 omitted (26.7.2013 for specified purposes) by virtue of [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2013 \(S.I. 2013/1881\)](#), art. 1(2)(6), **Sch. para. 31(9)(a)(ii)**
- F3** Words in reg. 36 omitted (31.3.2012) by virtue of [The Money Laundering \(Amendment No.2\) Regulations 2011 \(S.I. 2011/2833\)](#), regs. 1, **2(b)(ii)**
- F4** Word in reg. 36 inserted (26.7.2013 for specified purposes) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2013 \(S.I. 2013/1881\)](#), art. 1(2)(6), **Sch. para. 31(9)(b)(i)**
- F5** Words in reg. 36 omitted (26.7.2013 for specified purposes) by virtue of [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2013 \(S.I. 2013/1881\)](#), art. 1(2)(6), **Sch. para. 31(9)(b)(ii)**
- F6** Words in reg. 36 omitted (31.3.2012) by virtue of [The Money Laundering \(Amendment No.2\) Regulations 2011 \(S.I. 2011/2833\)](#), regs. 1, **2(c)(ii)**
- F7** Word in reg. 36 substituted (26.7.2013 for specified purposes) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2013 \(S.I. 2013/1881\)](#), art. 1(2)(6), **Sch. para. 31(9)(c)**

Power to require information from, and attendance of, relevant and connected persons

37.—(1) An officer may, by notice to a relevant person or to a person connected with a relevant person, require the relevant person 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.

[^{F8}(2) For the purposes of paragraph (1)—

- (a) “relevant person” includes a person whom a designated authority believes, or has reasonable grounds to suspect, is or has at any time been a relevant person; and
- (b) a person is connected with a relevant person if the person is, or has at any time been, in relation to the relevant person, a person listed in Schedule 4 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 designated authority for whom 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 he 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 him 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 ^{M1} (false statements without oath);
- (b) section 44(2) of the Criminal Law (Consolidation)(Scotland) Act 1995 ^{M2} (false statements and declarations); or
- (c) Article 10 of the Perjury (Northern Ireland) Order 1979 ^{M3} (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 legal proceedings generally; 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^[F9—]
 - ^[F9(i)] between a professional legal adviser and his client; or
 - ^[F9(ii)] made in connection with or in contemplation of legal proceedings and for the purposes of those proceedings]

Textual Amendments

F8 Reg. 37(2) substituted (1.10.2012) by [The Money Laundering \(Amendment\) Regulations 2012 \(S.I. 2012/2298\)](#), regs. 1, **13**

F9 Words in reg. 37(11) inserted (15.12.2007) by [The Money Laundering \(Amendment\) Regulations 2007 \(S.I. 2007/3299\)](#), regs. 1, **2(b)**

Marginal Citations

M1 1911 c. 6.

M2 1995 c. 39.

M3 S.I. 1979/1714 (N.I. 19).

Entry, inspection without a warrant etc.

38.—(1) Where an officer has reasonable cause to believe that any premises are being used by a relevant person in connection with his business or professional activities, he may on producing evidence of his authority at any reasonable time—

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- (a) enter the premises;
- (b) inspect the premises;
- (c) observe the carrying on of business or professional activities by the relevant person;
- (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) in the case of a money service business or a high value dealer, 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 relevant person 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 37(11) applies to this paragraph as it applies to regulation 37(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 designated authority for whom 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

39.—(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 37(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 37(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 38; and
- (b) that there is on the premises specified in the warrant recorded information or cash which could be inspected under regulation 38(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 relevant person; 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 [F10 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 ^{M4} (interpretation);
 - (c) in relation to Northern Ireland, a lay magistrate.
- (9) In the application of this regulation to Scotland, the references in paragraphs [F11(1), (5) and (7)] to information on oath are to be read as references to evidence on oath.

Textual Amendments

- F10** Words in reg. 39(7) inserted (15.12.2007) by [The Money Laundering \(Amendment\) Regulations 2007 \(S.I. 2007/3299\)](#), regs. 1, **2(c)(i)**
- F11** Words in reg. 39(9) substituted (15.12.2007) by [The Money Laundering \(Amendment\) Regulations 2007 \(S.I. 2007/3299\)](#), regs. 1, **2(c)(ii)**

Marginal Citations

- M4** 1995 c. 46.

Failure to comply with information requirement

- 40.**—(1) If, on an application made by—
- (a) a designated authority; or
 - (b) a local weights and measures authority or DETI pursuant to arrangements made with the [F12 Authority]—
 - (i) by or on behalf of the authority; or
 - (ii) by DETI,

it appears to the court that a person (the “information defaulter”) has failed to do something that he was required to do under regulation 37(1), the court may make an order under this regulation.

- (2) An order under this regulation may require the information defaulter—

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- (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 [^{F13}court].

Textual Amendments

- F12** Word in reg. 40(1)(b) substituted (26.7.2013 for specified purposes) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2013 \(S.I. 2013/1881\)](#), art. 1(2)(6), [Sch. para. 31\(10\)](#)
- F13** Word in reg. 40(4)(b) inserted (15.12.2007) by [The Money Laundering \(Amendment\) Regulations 2007 \(S.I. 2007/3299\)](#), regs. 1, [2\(d\)](#)

Powers of relevant officers

41.—(1) A relevant officer may only exercise powers under regulations 37 to 39 pursuant to arrangements made with the [^{F14}Authority]—

- (a) by or on behalf of the local weights and measures authority of which he is an officer (“his authority”); or
- (b) by DETI.

(2) Anything done or omitted to be done by, or in relation to, a relevant officer in the exercise or purported exercise of a power in this Part shall be treated for all purposes as having been done or omitted to be done by, or in relation to, an officer of the [^{F14}Authority].

(3) Paragraph (2) does not apply for the purposes of any criminal proceedings brought against the relevant officer, his authority, DETI or the [^{F14}Authority], in respect of anything done or omitted to be done by the officer.

(4) A relevant officer shall not disclose to any person other than the [^{F14}Authority] and his authority or, as the case may be, DETI information obtained by him in the exercise of such powers unless—

- (a) he has the approval of the [^{F14}Authority] to do so; or
- (b) he is under a duty to make the disclosure.

Textual Amendments

- F14** Word in reg. 41 substituted (26.7.2013 for specified purposes) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2013 \(S.I. 2013/1881\)](#), art. 1(2)(6), [Sch. para. 31\(11\)](#)

Civil penalties, review and appeals

Power to impose civil penalties

42.—(1) A designated authority may impose a penalty of such amount as it considers appropriate on a ^{F15}... person [^{F16}(except an auction platform)] who fails to comply with any requirement in regulation 7(1), (2) or (3), 8(1) or (3), 9(2), 10(1), 11(1), 14(1), 15(1) or (2), 16(1), (2), (3) or (4), 19(1), (4), (5) or (6), 20(1), (4) or (5), 21, 26, 27(4) or 33 ^{F17}....

[^{F18}(1A) A designated authority may impose a penalty of such amount as it considers appropriate on an auction platform which fails to comply with—

- (a) the customer due diligence requirements of Article 19 or 20(6) of the emission allowance auctioning regulation;
- (b) the monitoring and record keeping requirements of Article 54 of the emission allowance auctioning regulation; or
- (c) regulation 20(1), (4) or (5) or 21 of these Regulations;]

^{F19}...

[^{F20}(1B) A designated authority may impose a penalty of such amount as it considers appropriate on a person who fails to comply with any requirement of a notice given under regulation 37(1).]

[^{F20}(1C) In paragraphs (1), (1A) and (1B), “appropriate” means effective, proportionate and dissuasive.]

(2) The designated authority must not impose a penalty on a person under paragraph (1)[^{F21}, (1A) or (1B)] 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 a requirement of these Regulations, the designated authority must consider whether he 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 [^{F22}person].

[^{F23}(4A) Where the Authority proposes to impose a penalty under this regulation on a PRA-
authorised person or on a person who has a qualifying relationship with a PRA-
authorised person, it must consult the PRA.]

(5) Where the Commissioners decide to impose a penalty under this regulation, they 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 regulation [^{F24}43A]; and
- (d) the right to appeal under regulation [^{F25}43].

(6) Where the Authority^{F26}... or DETI proposes to impose a penalty under this regulation, it must give the person notice of—

- (a) its proposal to impose the penalty and the proposed amount;

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- (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^{F26}... or DETI, as the case may be, must then decide, within a reasonable period, whether to impose a penalty under this regulation and it must give the person 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 44(1)(b).
- (8) A penalty imposed under this regulation is payable to the designated authority which imposes it.

Textual Amendments

- F15** Word in reg. 42(1) omitted (1.10.2012) by virtue of [The Money Laundering \(Amendment\) Regulations 2012 \(S.I. 2012/2298\)](#), regs. 1, **14(a)(i)**
- F16** Words in reg. 42(1) inserted (12.12.2011) by [The Recognised Auction Platforms Regulations 2011 \(S.I. 2011/2699\)](#), regs. 1(2)(a), **11(7)(a)**
- F17** Words in reg. 42(1) omitted (1.10.2012) by virtue of [The Money Laundering \(Amendment\) Regulations 2012 \(S.I. 2012/2298\)](#), regs. 1, **14(a)(ii)**
- F18** Reg. 42(1A) inserted (12.12.2011) by [The Recognised Auction Platforms Regulations 2011 \(S.I. 2011/2699\)](#), regs. 1(2)(a), **11(7)(b)**
- F19** Words in reg. 42(1A) omitted (1.10.2012) by virtue of [The Money Laundering \(Amendment\) Regulations 2012 \(S.I. 2012/2298\)](#), regs. 1, **14(b)**
- F20** Reg. 42(1B)(1C) inserted (1.10.2012) by [The Money Laundering \(Amendment\) Regulations 2012 \(S.I. 2012/2298\)](#), regs. 1, **14(c)**
- F21** Words in reg. 42(2) substituted (1.10.2012) by [The Money Laundering \(Amendment\) Regulations 2012 \(S.I. 2012/2298\)](#), regs. 1, **14(d)**
- F22** Word in reg. 42(4) substituted (15.12.2007) by [The Money Laundering \(Amendment\) Regulations 2007 \(S.I. 2007/3299\)](#), regs. 1, **2(e)**
- F23** Reg. 42(4A) inserted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), **Sch. 2 para. 129(e)**
- F24** Word in reg. 42(5)(c) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 2 para. 171(2)**
- F25** Word in reg. 42(5)(d) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 2 para. 171(3)**
- F26** Words in reg. 42(6)(7) omitted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by virtue of [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2013 \(S.I. 2013/1881\)](#), art. 1(2)(6), **Sch. para. 31(12)**

[^{F27} Appeals against decisions of the Commissioners]

43.—(1) This regulation applies to decisions of the Commissioners made under—

[^{F28}(za) regulation 28, to the effect that a person is not a fit and proper person;]

- (a) regulation 29, to refuse to register an applicant;
- (b) regulation 30, to cancel the registration of a registered person; and
- (c) regulation 42, to impose a penalty.

(2) Any person who is the subject of a decision to which this regulation applies may [^{F29} appeal to the tribunal in accordance with regulation 43F].

[^{F30}(3) The provisions of Part 5 of the Value Added Tax Act 1994 (appeals), subject to the modifications set out in paragraph 1 of Schedule 5 to these Regulations, apply in respect of appeals to a tribunal made under this regulation as they apply in respect of appeals made to the tribunal under section 83 (appeals) of that Act.]

[^{F30}(4) A 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 it thinks proper, and
- (b) substitute its own decision for any decision quashed on appeal.]

[^{F30}(5) The modifications in Schedule 5 have effect for the purposes of appeals made under this regulation.]

[^{F30}(6) For the purposes of appeals under this regulation, the meaning of “tribunal” is as defined in section 82 of the Value Added Tax Act 1994.]

Textual Amendments

- F27** Reg. 43 heading substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 2 para. 172(2)** (with Sch. 3 paras. 2-4)
- F28** Reg. 43(1)(za) inserted (1.10.2012) by [The Money Laundering \(Amendment\) Regulations 2012 \(S.I. 2012/2298\)](#), regs. 1, **15**
- F29** Words in reg. 43(2) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 2 para. 172(3)** (with Sch. 3 paras. 2-4)
- F30** Reg. 43(3)-(6) substituted for (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 2 para. 172(4)** (with Sch. 3 paras. 2-4)

[^{F31}Offer of review

43A.—(1) The Commissioners must offer a person (P) a review of a decision that has been notified to P if an appeal lies under regulation 43 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 regulation does not apply to the notification of the conclusions of a review.]

Textual Amendments

- F31** Regs. 43A-43F inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 2 para. 173** (with Sch. 3 paras. 2-4)

[^{F31}Review by the Commissioners

43B.—(1) The Commissioners must review a decision if—

- (a) they have offered a review of the decision under regulation 43A, and
- (b) P notifies the Commissioners 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 regulation 43F.

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(3) The Commissioners shall not review a decision if P has appealed to the tribunal under regulation 43F in respect of the decision.]

Textual Amendments

F31 Regs. 43A-43F inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 2 para. 173** (with Sch. 3 paras. 2-4)

[^{F31}Extensions of time

43C.—(1) If under regulation 43A, the Commissioners have offered P a review of a decision, the Commissioners 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 regulation “relevant period” means—

- (a) the period of 30 days referred to in regulation 43B(1)(b), or
- (b) if notice has been given under paragraph (1) that period as extended (or as most recently extended) in accordance with paragraph (2).]

Textual Amendments

F31 Regs. 43A-43F inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 2 para. 173** (with Sch. 3 paras. 2-4)

[^{F31}Review out of time

43D.—(1) This regulation applies if—

- (a) the Commissioners have offered a review of a decision under regulation 43A, and
- (b) P does not accept the offer within the time allowed under regulation 43B(1)(b) or 43C(2).

(2) The Commissioners must review the decision under regulation 43B if—

- (a) after the time allowed, P notifies the Commissioners in writing requesting a review out of time,
- (b) the Commissioners are satisfied that P had a reasonable excuse for not accepting the offer or requiring review within the time allowed, and
- (c) the Commissioners are satisfied that P made the request without unreasonable delay after the excuse had ceased to apply.

(3) The Commissioners shall not review a decision if P has appealed to the tribunal under regulation 43F in respect of the decision.]

Textual Amendments

F31 Regs. 43A-43F inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 2 para. 173** (with Sch. 3 paras. 2-4)

[^{F31}**Nature of review etc**

43E.—(1) This regulation applies if the Commissioners are required to undertake a review under regulation 43B or 43D.

(2) The nature and extent of the review are to be such as appear appropriate to the Commissioners in the circumstances.

(3) For the purpose of paragraph (2), the Commissioners must, in particular, have regard to steps taken before the beginning of the review—

- (a) by the Commissioners in reaching the decision, and
- (b) by any person in seeking to resolve disagreement about the decision.

(4) The review must take account of any representations made by P at a stage which gives the Commissioners 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) The Commissioners 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 the Commissioners and P may agree.

(7) In paragraph (6) “relevant date” means—

- (a) the date the Commissioners received P’s notification accepting the offer of a review (in a case falling within regulation 43A), or
- (b) the date on which the Commissioners decided to undertake the review (in a case falling within regulation 43D).

(8) Where the Commissioners are required to undertake a review but do not give notice of the conclusions within the time period specified in paragraph (6), the review is to be treated as having concluded that the decision is upheld.

(9) If paragraph (8) applies, the Commissioners must notify P of the conclusion which the review is treated as having reached.]

Textual Amendments

F31 Regs. 43A-43F inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 2 para. 173** (with Sch. 3 paras. 2-4)

[^{F31}**Bringing of appeals against decisions of the Commissioners**

43F.—(1) An appeal under regulation 43 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 regulation 43C).

(2) But that is subject to paragraphs (3) to (5).

(3) In a case where the Commissioners are required to undertake a review under regulation 43B—

- (a) an appeal may not be made until the conclusion date, and

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- (b) any appeal is to be made within the period of 30 days beginning with the conclusion date.
- (4) In a case where the Commissioners are requested to undertake a review in accordance with regulation 43D—
 - (a) an appeal may not be made—
 - (i) unless the Commissioners have decided whether or not to undertake a review, and
 - (ii) if the Commissioners 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 the Commissioners decide to undertake a review), or
 - (ii) the date on which the Commissioners decide not to undertake a review.
- (5) In a case where regulation 43E(8) applies, an appeal may be made at any time from the end of the period specified in regulation 43E(6) to the date 30 days after the conclusion date.
- (6) An appeal may be made after the end of the period specified in paragraph (1), (3)(b), (4)(b) or (5) if the tribunal gives permission to do so.
- (7) In this regulation “conclusion date” means the date of the document notifying the conclusions of the review.]

Textual Amendments

F31 Regs. 43A-43F inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 2 para. 173** (with Sch. 3 paras. 2-4)

Appeals

- 44.**—(1) A person may appeal from a decision by—
 - ^{F32}(a)
 - (b) the Authority^{F33} ... or DETI under regulation 34 or 42.
- (2) An appeal from a decision by—
 - ^{F34}(a)
 - (b) the Authority is to the [^{F35}Upper Tribunal];
 - ^{F36}(c)
 - (d) DETI is to the High Court.
- ^{F37}(3)
- (4) The provisions of Part 9 of the 2000 Act (hearings and appeals), subject to the modifications set out in paragraph 2 of Schedule 5, apply in respect of appeals to the [^{F38}Upper Tribunal] made under this regulation as they apply in respect of references made to that Tribunal under that Act.
- ^{F39}(5)
- ^{F40}(6)
- ^{F41}(7)
- (8) The modifications in Schedule 5 have effect for the purposes of appeals made under this regulation.

Textual Amendments

- F32** Reg. 44(1)(a) omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 2 para. 174(2)** (with Sch. 3 paras. 2-4)
- F33** Words in reg. 44(1)(b) omitted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by virtue of [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2013 \(S.I. 2013/1881\)](#), art. 1(2)(6), **Sch. para. 31(13)(a)**
- F34** Reg. 44(2)(a) omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 2 para. 174(2)** (with Sch. 3 paras. 2-4)
- F35** Words in reg. 44(2)(b) substituted (6.4.2010) by [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), art. 1(2)(f), **Sch. 3 para. 141**
- F36** Reg. 44(2)(c) omitted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by virtue of [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2013 \(S.I. 2013/1881\)](#), art. 1(2)(6), **Sch. para. 31(13)(b)**
- F37** Reg. 44(3) omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 2 para. 174(3)** (with Sch. 3 paras. 2-4)
- F38** Words in reg. 44(4) substituted (6.4.2010) by [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), art. 1(2)(f), **Sch. 3 para. 141**
- F39** Reg. 44(5) omitted (1.9.2009) by virtue of [The Transfer of Functions of the Consumer Credit Appeals Tribunal Order 2009 \(S.I. 2009/1835\)](#), art. 1, **Sch. 2 para. 1(b)** (with Sch. 4)
- F40** Reg. 44(6) omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 2 para. 174(4)** (with Sch. 3 paras. 2-4)
- F41** Reg. 44(7) omitted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by virtue of [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2013 \(S.I. 2013/1881\)](#), art. 1(2)(6), **Sch. para. 31(13)(c)**

*Criminal offences***Offences**

45.—(1) A person [^{F42}(except an auction platform)] who fails to comply with any requirement in regulation 7(1), (2) or (3), 8(1) or (3), 9(2), 10(1), 11(1)(a), (b) or (c), 14(1), 15(1) or (2), 16(1), (2), (3) or (4), 19(1), (4), (5) or (6), 20(1), (4) or (5), 21, 26, 27(4) or 33^{F43} ... is guilty of an offence and 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.

[^{F44}(1A) An auction platform which fails to comply with the customer due diligence requirements of Article 19 or 20(6) of the emission allowance auctioning regulation, the monitoring and record keeping requirements of Article 54 of that regulation, or regulation 20(1), (4) or (5) or 21 of these Regulations, is guilty of an offence and 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.]

(2) In deciding whether a person has committed an offence under paragraph (1) [^{F45}or (1A)], the court must consider whether he 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

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(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.

(3) In paragraph (2), an “appropriate body” means any body which regulates or is representative of any trade, profession, business or employment carried on by the alleged offender.

(4) 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.

(5) Where a person is convicted of an offence under this regulation, he shall not also be liable to a penalty under regulation 42.

Textual Amendments

- F42 Words in reg. 45(1) inserted (12.12.2011) by [The Recognised Auction Platforms Regulations 2011 \(S.I. 2011/2699\)](#), regs. 1(2)(a), **11(8)(a)**
- F43 Words in reg. 45(1) omitted (1.10.2012) by virtue of [The Money Laundering \(Amendment\) Regulations 2012 \(S.I. 2012/2298\)](#), regs. 1, **16**
- F44 Reg. 45(1A) inserted (12.12.2011) by [The Recognised Auction Platforms Regulations 2011 \(S.I. 2011/2699\)](#), regs. 1(2)(a), **11(8)(b)**
- F45 Words in reg. 45(2) inserted (12.12.2011) by [The Recognised Auction Platforms Regulations 2011 \(S.I. 2011/2699\)](#), regs. 1(2)(a), **11(8)(c)**

Prosecution of offences

46.—(1) Proceedings for an offence under regulation 45 may be instituted by—

- (a) ^{F46}... order of the Commissioners;
- ^{F47}(b)
- (c) a local weights and measures authority;
- (d) DETI;
- (e) the Director of Public Prosecutions; or
- (f) the Director of Public Prosecutions for Northern Ireland.

(2) Proceedings for an offence under regulation 45 may be instituted only against a relevant person or, where such a person is a body corporate, a partnership or an unincorporated association, against any person who is liable to be proceeded against under regulation 47.

(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.

^{F48}(4)

^{F48}(5)

(6) A local weights and measures authority must, whenever the [^{F49}Authority] requires, report in such form and with such particulars as the [^{F49}Authority] requires on the exercise of its functions under these Regulations.

(7) 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 45 has been committed by any person; or
- (b) whether such 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 ^{M5}.

(8) Paragraphs (1) and (3) to (6) do not extend to Scotland.

[^{F50}(9) In its application to the Commissioners acting in Scotland, paragraph (7)(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.]

Textual Amendments

- F46** Words in [reg. 46\(1\)\(a\)](#) omitted (27.3.2014) by virtue of [The Public Bodies \(Merger of the Director of Public Prosecutions and the Director of Revenue and Customs Prosecutions\) Order 2014](#) (S.I. 2014/834), art. 1(1), [Sch. 3 para. 21](#)
- F47** [Reg. 46\(1\)\(b\)](#) omitted (26.7.2013 for specified purposes) by virtue of [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2013](#) (S.I. 2013/1881), art. 1(2)(6), [Sch. para. 31\(14\)\(a\)](#)
- F48** [Reg. 46\(4\)\(5\)](#) omitted (26.7.2013 for specified purposes) by virtue of [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2013](#) (S.I. 2013/1881), art. 1(2)(6), [Sch. para. 31\(14\)\(b\)](#)
- F49** Word in [reg. 46\(6\)](#) substituted (26.7.2013 for specified purposes) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2013](#) (S.I. 2013/1881), art. 1(2)(6), [Sch. para. 31\(14\)\(c\)](#)
- F50** [Reg. 46\(9\)](#) inserted (15.12.2007) by [The Money Laundering \(Amendment\) Regulations 2007](#) (S.I. 2007/3299), regs. 1, [2\(f\)](#)

Marginal Citations

- M5** [1979 c. 2](#). There are amendments to section 1 not relevant to these Regulations.

Offences by bodies corporate etc.

47.—(1) If an offence under regulation 45 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 45 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 45 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,

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that 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).

(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 ^{M6} (procedure on charge of offence against corporation) and Schedule 3 to the Magistrates' Courts Act 1980 ^{M7} (corporations) apply as they do in relation to a body corporate;

(b) section 70 (proceedings against bodies corporate) of the Criminal Procedure (Scotland) Act 1995 ^{M8} applies as it does in relation to a body corporate;

(c) section 18 of the Criminal Justice (Northern Ireland) Act 1945 ^{M9} (procedure on charge) and Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981 ^{M10} (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.

Marginal Citations

M6 1925 c. 86.

M7 1980 c. 43.

M8 1995 c. 46.

M9 1945 c. 15 (N.I.).

M10 S.I. 1981/1675 (N.I. 26).

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