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STATUTORY INSTRUMENTS

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**2007 No. 3298**

**The Transfer of Funds (Information  
on the Payer) Regulations 2007**

**PART 3**

**ENFORCEMENT**

*Civil penalties, review and appeals*

**Power to impose civil penalties**

**11.**—(1) A supervisory authority may impose a penalty of such amount as it considers appropriate on a payment service provider in respect of any transfer of funds to which the payments regulation applies—

- (a) in the case of the payment service provider of the payer, if he fails to comply with any requirement in—
  - (i) Article 5(1) read with Article 6(1) (information accompanying transfers of funds within the EEA);
  - (ii) Article 5(2) read with Article 5(3) or (4) (whichever is relevant) (verification of information);
  - (iii) Article 5(5) (record keeping);
  - (iv) Article 6(2) (information to be provided following request);
  - (v) Article 7(1) read with Article 7(2) (information accompanying transfers of funds from the EEA to outside the EEA);
- (b) in the case of the payment service provider of the payee, if he fails to comply with any requirement in Article 8 (detection of missing information), 9(1) (transfers of funds with missing or incomplete information), 9(2) sub-paragraph 2 (reporting) or 11 (record keeping);
- (c) in the case of the intermediary payment service provider, if he fails to comply with any requirement in Article 12 (keeping information on the payer with the transfer) or 13(3), (4) or (5) (use of a payment system with technical limitations);

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

(2) The supervisory authority must not impose a penalty on a person under paragraph (1) 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 any requirement of the payments regulation, the supervisory 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 paragraph (3), an “appropriate body” means any body which regulates or is representative of any trade, profession, business or employment carried on by the payment service provider.
- (5) Where the Commissioners decide to impose a penalty under this regulation, they must give the payment service provider 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 12; and
  - (d) the right to appeal under regulation 13(1)(b).
- (6) Where the Authority proposes to impose a penalty under this regulation, it must give the payment service provider notice of—
- (a) its proposal to impose the penalty and the proposed amount;
  - (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 must then decide, within a reasonable period, whether to impose a penalty under this regulation and it must give the payment service provider 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 13(1)(a).
- (8) A penalty imposed under this regulation is payable to the supervisory authority which imposes it.

### **Review procedure**

**12.—**(1) Any payment service provider who is the subject of a decision by the Commissioners to impose a penalty under regulation 11 may by notice to the Commissioners require them to review that decision.

(2) The Commissioners need not review any decision unless the notice requiring the review is given within 45 days beginning with the date on which they first gave notice of the decision to the payment service provider requiring the review.

(3) 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.

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

## Appeals

13.—(1) A payment service provider may appeal from a decision by—

- (a) the Authority under regulation 11(7); and
- (b) the Commissioners on a review under regulation 12.

(2) An appeal from a decision by—

- (a) the Authority is to the Financial Services and Markets Tribunal<sup>(1)</sup>; and
- (b) the Commissioners is to a VAT and duties tribunal<sup>(2)</sup>.

(3) The provisions of Part 9 of the 2000 Act (hearings and appeals), subject to the modifications set out in paragraph 1 of Schedule 2, apply in respect of appeals to the Financial Services and Markets Tribunal made under this regulation as they apply in respect of references made to that Tribunal under that Act.

(4) The provisions of Part 5 of the Value Added Tax Act 1994<sup>(3)</sup> (appeals), subject to the modifications set out in paragraph 2 of Schedule 2, apply in respect of appeals to a VAT and duties tribunal made under this regulation as they apply in respect of appeals made to such a tribunal under section 83 (appeals) of that Act.

(5) A VAT and duties 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 they think proper; and
- (b) substitute their own decision for any decision quashed on appeal.

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<sup>(1)</sup> Established under section 132 of the 2000 Act.

<sup>(2)</sup> Established under section 82 of and Schedule 12 to the Value Added Tax Act 1994 (c.23).

<sup>(3)</sup> 1994 c. 23.