
STATUTORY INSTRUMENTS

2007 No. 3298

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

PART 3

ENFORCEMENT

Criminal offences

Offences

14.—(1) A payment service provider is guilty of an offence 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) or the third paragraph of Article 9 (transfers of funds with missing or incomplete information) or Article 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).

(2) A payment service provider who is guilty of an offence under paragraph (1) is 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.

(3) In deciding whether a person has committed an offence under paragraph (1), the court 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 alleged offender.

(5) 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.

(6) Where a person is convicted of an offence under this regulation, he shall not also be liable to a penalty under regulation 11.

Prosecution of offences

15.—(1) Proceedings for an offence under regulation 14 may be instituted by—

- (a) the Director of Revenue and Customs Prosecutions or by order of the Commissioners;
- (b) the Director of Public Prosecutions; or
- (c) the Director of Public Prosecutions for Northern Ireland.

(2) Proceedings for an offence under regulation 14 may be instituted only against a payment service provider or, where the payment service provider is a body corporate, a partnership or an unincorporated association, against any person who is liable to be proceeded against under regulation 16.

(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.

(4) 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 14 has been committed by any person; or
- (b) whether 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⁽¹⁾.

(5) Paragraphs (1) and (3) do not extend to Scotland and, in its application to the Commissioners acting in Scotland, paragraph (4)(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.

Offences by bodies corporate etc.

16.—(1) If an offence under regulation 14 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 14 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,

(1) 1979 c. 2. See the definition in section 1 of “assigned matter” substituted by the Commissioners for Revenue and Customs Act 2005 (c. 11).

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 14 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,

the 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⁽²⁾ (procedure on charge of offence against corporation) and Schedule 3 to the Magistrates' Courts Act 1980⁽³⁾ (corporations) apply as they do in relation to a body corporate;

(b) section 70 of the Criminal Procedure (Scotland) Act 1995⁽⁴⁾ (proceedings against bodies corporate) applies as it does in relation to a body corporate;

(c) section 18 of the Criminal Justice (Northern Ireland) Act 1945⁽⁵⁾ (procedure on charge) and Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981⁽⁶⁾ (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.

(2) 1925 c. 86.

(3) 1980 c. 43.

(4) 1995 c. 46.

(5) 1945 c. 15 (N.I.).

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