

1<sup>st</sup> Draft: 11th October 2001

## STATUTORY INSTRUMENTS

2001 No.

### FINANCIAL SERVICES

#### The Money Laundering Regulations 2001

<i>Made</i> .....	2001
<i>Laid before Parliament</i> .....	2001
<i>Coming into force in accordance with regulation 1(2)</i>	2001

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The Treasury, being a government department designated<sup>a</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>b</sup> 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<sup>c</sup> 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(4) and (5), on 15 June 2002;

(b) for all remaining purposes, on 1<sup>st</sup> November 2001.

#### **Interpretation**

2. In these Regulations -

“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  
Commission  
ers” means  
the  
Commission  
ers of  
Customs and  
Excise;

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<sup>a</sup>

S.I. 1992/1711.

<sup>b</sup>

1972 c. 68.

<sup>c</sup>

1973 c. 51.

“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<sup>d</sup>;

“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<sup>a</sup>;

“money service operator” means a person who carries on a money service business other than a person who carries on a relevant financial business falling within regulation 4(1)(a) to (g) of the 1993 Regulations;

“officer” has the meaning given by section 1(1) of the Customs and Excise Management Act 1979<sup>b</sup>;

“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 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<sup>c</sup>;

“relevant financial business” has the meaning given by regulation 4 of the 1993 Regulations;

“the review procedure” means the procedure under regulation 17;

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<sup>d</sup> 1995 c. 46.

<sup>a</sup> Regulation 4(1)(ga) was inserted by regulation 3(3) of these Regulations.

<sup>b</sup> 1979 c. 2.

<sup>c</sup> S.I. 1993/1933.

“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 2 (interpretation) after the definition of “one-off transaction” insert

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““registered number” has the meaning given by regulation 4(3) of the Money Laundering Regulations 2001;”.

(3) 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 or advancing loans against cheques;”;

(b) in sub-paragraph (h) for “(g)” substitute “(ga)”.

(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, then -

(a) regulation 10(1)(a) above shall not apply; and

(b) satisfactory evidence of identity shall also include the applicant’s registered number.”.

## **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 its registered number.

**Requirement to be registered**

5.-(1) A person who, on or after 1<sup>st</sup> May 2002, proposes to act as a money service operator must first be registered by the Commissioners.

(2) An application to be so registered must be made in such manner as the Commissioners may direct.

(3) The application must state details of any proposals regarding the following matters, that is to say

-

(a) the name of the operator and (if different) any name under which the operator will carry on business;

(b) the nature of the operator's business;

(c) the address of each place at which the operator will carry on business;

(d) any agency or franchise agreement which relates to the carrying on of the business and the names and addresses of all relevant principals, agents, franchisors or franchisees;

(e) the name and address of any director, manager, secretary, partner or other person to be concerned in the management or control of the operator's business;

(f) the name of the relevant money laundering reporting officer (if any);

(g) the name and address of any other relevant financial business with which the operator is to have dealings;

(h) whether any of the persons mentioned in sub-paragraph (e) has been convicted of money laundering (within the meaning of regulation 2(3) of the 1993 Regulations) or of an offence under the 1993 Regulations.

(4) The application must also contain or be accompanied by such other information as the Commissioners may reasonably require for the purpose of determining it.

(5) At any time after receiving an application for registration and before determining it, the Commissioners may require the proposed operator to furnish them with such further information as they reasonably consider necessary to enable them to determine the application.

(6) 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.

**Requirement to apply for registration before 1<sup>st</sup> May 2002**

**6.-(1)** This regulation applies to a person acting as a money service operator at any time before 1<sup>st</sup> May 2002.

(2) Such a money service operator must, before that day, apply to the Commissioners for registration by them.

(3) An application must be made in such manner as the Commissioners may direct.

(4) The application must state details of the following matters, that is to say -

(a) the name of the operator and (if different) any name under which the operator carries on business, and the operator's VAT registration number;

(b) the nature of the operator's business;

(c) the address of each place at which the operator carries on business;

(d) any agency or franchise agreement which relates to the carrying on of the business and the names and addresses of all relevant principals, agents, franchisors or franchisees;

(e) the name and address of any director, manager, secretary, partner or other person concerned in the management or control of the operator's business;

(f) the name of the relevant money laundering reporting officer (if any);

(g) the name and address of any other relevant financial business with which the operator has dealings;

(h) whether any of the persons mentioned in sub-paragraph (e) has been convicted of money laundering (within the meaning of regulation 2(3) of the 1993 Regulations) or of an offence under the 1993 Regulations.

(5) The application must also contain or be accompanied by such other information as the Commissioners may reasonably require for the purpose of determining it.

(6) At any time after receiving an application for registration and before determining it, the Commissioners may require the operator to furnish them with such further information as they reasonably consider necessary to enable them to determine the application.

(7) 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.

### **Supplementary information**

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

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(a) there is a change affecting any matter contained in that information; or

(b) it becomes apparent that the information contains an inaccuracy;

the operator or, as the case may be, the proposed 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 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**

8.-(1) The Commissioners may refuse to register an operator or, as the case may be, a proposed operator if, and only if -

(a) any requirement of -

(i) paragraphs (2) to (6) of regulation 5 (requirement to be registered);

(ii) paragraphs (3) to (7) of regulation 6 (requirement to apply for registration before 1<sup>st</sup> May 2002);

(iii) regulation 7 (supplementary information); or

(iv) regulation 10 (fees):

has not been complied with; or

(b) it appears to them that any information supplied pursuant to regulation 5, 6 or 7 is false or misleading in a material particular.

(2) The Commissioners must, by the end of the period of 45 days beginning with the day on which they receive the application, give notice in writing to the operator or, as the case may be, the proposed operator of -

(a) its registered number; or

(b) the following matters, that is to say -

(i) their decision not to register the operator or, as the case may be, the proposed operator;

(ii) the reasons for their decision;

(iii) the review procedure; and

(iv) the right to appeal to a tribunal.

### **Cancellation of registration**

**9.**-(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 8 (determination of application to register).

(2) Where the Commissioners cancel the registration of an operator, they must forthwith inform the operator, in writing, of -

(a) their decision;

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

### **Fees**

**10.**-(1) The Commissioners may charge a fee to an operator or, as the case may be, a proposed operator.

(2) A fee is payable

- (a) when an application for registration is made under regulation 5 or 6; and
  
- (b) annually on the anniversary of the registration by the Commissioners of the operator.

(3) Fees chargeable by the Commissioners under this regulation must not exceed an amount which reasonably represents the amount of costs incurred or likely to be incurred by the Commissioners -

- (a) in determining whether registration should be granted and maintained; and
  
- (b) in satisfying themselves that the operator is complying with any obligations to which the operator is subject by virtue of these Regulations or the 1993 Regulations.

## **PART III**

### **POWERS OF THE COMMISSIONERS**

#### **Power of entry and inspection**

**11.** Where an officer has reasonable cause to believe that any premises are used in connection with a 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.

#### **Order for access to recorded information**

**12.**-(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; 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**

**13.-**(1) An officer who removes any recorded information in the exercise of a power conferred by regulation 12 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 13**

**14.**-(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 13, 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 13(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<sup>a</sup> apply as if any reference in those provisions to any enactment included a reference to this regulation.

### **Entry, arrest etc**

**15.**-(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 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 things;

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<sup>a</sup> 1954 c. 33 (N.I.).

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) by more than such number of officers as may be specified in the warrant;

(b) outside such times of day as may be so specified; or

(c) 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.

## PART IV

### PENALTIES, REVIEW AND APPEALS

#### **Power to impose penalties**

**16.**-(1) The Commissioners may impose on a person a penalty of such amount as they consider appropriate, not exceeding £5,000, in any of the following circumstances, that is to say -

(a) where a person to whom regulation 5 applies fails to comply with any requirement in that regulation;

(b) where a person to whom regulation 6 applies fails to comply with any requirement in that regulation;

(c) where a person to whom regulation 5 or 6 applies fails to comply with -

(i) any requirement in regulation 7 (supplementary information) or 10 (fees); or

(ii) the terms of an order made under regulation 12 (order for access to recorded information).

(2) The Commissioners may 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 (or, as the case may be, the terms of the order) 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**

**17.-**(1) This regulation applies to the following decisions of the Commissioners -

(a) a decision under regulation 8 to refuse to register a money service operator;

(b) a decision under regulation 9 to cancel the registration of a money service operator;

(c) a decision under regulation 16 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 day 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 day 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 VAT Act 1994**

**18.** In section 83 (appeals) of the VAT Act 1994<sup>a</sup> after paragraph (m) insert -

“(n) a decision of the Commissioners on a review under regulation 17 of the Money Laundering Regulations 2001;”.

#### **Further provisions relating to appeals**

**19.** On an appeal from any decision by the Commissioners on a review under regulation 17, 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.

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<sup>a</sup> 1994 c. 23.

## PART V

### MISCELLANEOUS

#### **Prosecution of money laundering offences by the Commissioners**

**20.**-(1) Proceedings for a money laundering offence may be instituted by order of the Commissioners.

(2) Such proceedings may only be instituted against a money service operator.

(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; 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 the Customs and Excise Management Act 1979<sup>a</sup>.

(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 penalties through the court**

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<sup>a</sup> 1979 c. 2.

**21.** Where any penalty is imposed by virtue of these Regulations -

(a) if the person from whom it is recoverable resides in England and Wales and the county court so orders, it is recoverable by execution issued from the county court or otherwise as if it were payable under an order of the court; and

(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.

[Date]

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.

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 become a money service operator after 1<sup>st</sup> May 2001 first to be registered with the Commissioners and lists the information which must be supplied to the Commissioners by such people. Regulation 6 applies to money service operators who are already operating when these Regulations come into force or who begin to operate within six months of the Regulations coming into force. Such persons must apply for registration before 1<sup>st</sup> May 2002 and supply the Commissioners with certain information. Regulation 7 requires supplementary information to be supplied where information previously supplied to the Commissioners becomes outdated. Regulation 8 lists the grounds on which registration may be refused by the Commissioners, including where the information is incomplete, false or misleading. Regulation 9 lists the circumstances in which registration may be cancelled by the Commissioners. Regulation 10 allows the Commissioners to charge fees.

Regulations 11 to 15 state the powers of the Commissioners in relation to money service operators, 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, the Commissioners may seek a court order requiring a person to allow them access to certain information. Regulation 15 allows the Commissioners to enter premises with a warrant, to search persons and to take away documents.

Regulation 16 allows the Commissioners to impose a civil penalty in certain circumstances. Regulation 17 provides a mechanism for a formal review by the Commissioners of their decisions. Regulations 18 and 19 provide for appeals against the Commissioners’ decisions to be heard by a VAT tribunal. Regulation 20 allows the Commissioners to prosecute offences under the 1993 Regulations. Regulation 21 allows penalties to be recovered by execution issued from the county court or, in Scotland, a sheriff’s court.