STATUTORY INSTRUMENTS

2007 No. 1509

CUSTOMS

The Control of Cash (Penalties) Regulations 2007

Made - - - -	*22nd May 2007*
Laid before Parliament	*23rd May 2007*
Coming into force - -	*15th June 2007*

The Treasury make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 (**a**), being designated for the purposes of that subsection in relation to measures relating to preventing the use of the financial system for the purpose of money laundering (**b**) and measures relating to the movement of capital and to payments between Member States and between Member States and countries which are not Member States (**c**):

Citation and commencement

1. These Regulations may be cited as the Control of Cash (Penalties) Regulations 2007 and come into force on 15th June 2007.

Interpretation

2. In these Regulations -

"Community Regulation" means European Parliament and Council Regulation (EC) No 1889/2005 on controls of cash entering or leaving the Community (**d**)

"The Commissioners" means the Commissioners for Her Majesty's Revenue and Customs.

Power to impose penalties

3.—(1) The Commissioners may impose a penalty of such amount as they consider appropriate, not exceeding £5000, on a person failing to comply with article 3 of the Community Regulation (obligation to declare cash of a value of 10,000 euros or more).

(2) 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.

(**a**) 1972 c.68.
(**b**) S.I 1992 /1711.
(**c**) S.I.. 1994/757.
(**d**) O.J. L309 p.9, 25.11.2005.

(3) 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

4.—(1) Any person who is the subject of a decision to impose a penalty under regulation 3 may by notice in writing 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 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.

(3) 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 insofar as they are relevant to any issue to which the facts or matters not previously considered relate.

(4) 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.

(5) 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.

Appeals to a VAT and duties tribunal

5. An appeal lies to a VAT and duties tribunal with respect to a decision of the Commissioners on a review under regulation 4.

6. On an appeal under regulation 5, the tribunal has 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 it thinks proper; and

(b) substitute its own decision for any decision quashed on appeal.

7. An appeal shall not be entertained unless —

(a) the amount which the Commissioners have imposed by way of a penalty under regulation 2 has been paid to them; or

(b) on being satisfied that the appellant would otherwise suffer hardship the Commissioners agree or the tribunal decides that the appeal should be entertained notwithstanding that the amount has not been paid.

Retention of cash detained

8. Where the Commissioners have imposed a penalty under regulation 3 they may deduct from any cash detained pursuant to article 4(2) of the Community Regulation the amount of the penalty, and upon expiry of the period for appealing, or where an appeal has been made upon determination of the appeal, the amount payable shall be forfeit to them.

Dave Watts
Frank Roy

22nd May 2007 — Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which come into force on 15th June 2007, are made under section 2(2) of the European Communities Act 1972 (c.68) to give effect to Community Regulation 1889/2005. This introduces a harmonised control and information procedure for large-scale movements of cash in or out of the Community and empowers the national authorities to take appropriate administrative actions, including an obligation to impose penalties. These Regulations provide for penalties for failing to declare movements of cash as required under article 3 of the Community Regulation, and an appeal mechanism. Cash is defined in the Community Regulation as including not only currency (banknotes and coins that are in circulation as a medium of exchange), but also "bearer negotiable instruments including monetary instruments in bearer form such as travellers cheques, negotiable instruments (including cheques, promissory notes and money orders) that are either in bearer form, endorsed without restriction, made out to a fictitious payee, or otherwise in such form that title thereto passes upon delivery, and incomplete instruments (including cheques, promissory notes and money orders) signed, but with the payee's name omitted".

Regulation 3 gives effect to the obligation to create a system of penalties. Regulation 4 enables a person subject to a penalty to require a review of the decision to impose that penalty. Regulations 5, 6 and 7 create a right of appeal from the review decision to a tribunal, the powers of the tribunal in respect of the appeal, and a requirement that save in the case of hardship the penalty be paid as a condition of appealing. Article 4 of the Community Regulation creates a power to detain cash where there has been a breach of article 3, and regulation 8 enables the Commissioners to retain the amount of a proposed penalty from any money detained until determination of an appeal.

A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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