



Banking Act 2009

2009 CHAPTER 1

PART 5

INTER-BANK PAYMENT SYSTEMS

Introduction

181 Overview

This Part enables the Bank of England to oversee certain systems for payments between financial institutions.

Commencement Information

II S. 181 in force at 4.8.2009 by S.I. 2009/2038, art. 2, Sch. para. 1

182 Interpretation: “inter-bank payment system”

- (1) In this Part “inter-bank payment system” means arrangements designed to facilitate or control the transfer of money between financial institutions who participate in the arrangements.
- (2) The fact that persons other than financial institutions can participate does not prevent arrangements from being an inter-bank payment system.
- (3) In subsection (1) “financial institutions” means—
 - (a) banks, and
 - (b) building societies.
- (4) In subsection (1) “money” includes credit.
- (5) A system is an inter-bank payment system for the purposes of this Part whether or not it operates wholly or partly in relation to persons or places outside the United Kingdom.

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Changes to legislation: Banking Act 2009, Part 5 is up to date with all changes known to be in force on or before 21 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

Commencement Information

I2 S. 182 in force at 4.8.2009 by S.I. 2009/2038, art. 2, Sch. para. 2

183 Interpretation: other expressions

In this Part—

- (a) a reference to the “operator” of an inter-bank payment system is a reference to any person with responsibility under the system for managing or operating it,
- (b) a reference to the operation of a system includes a reference to its management,
- (c) “the UK financial system” has the meaning given to “the financial system” by section 3(2) of the Financial Services and Markets Act 2000 (market confidence),
- (d) a reference to the Bank of England's role as a monetary authority is to be construed in accordance with section 244(2)(c), and
- (e) “the FSA” means the Financial Services Authority.

Commencement Information

I3 S. 183 in force at 4.8.2009 by S.I. 2009/2038, art. 2, Sch. para. 2

Recognised systems

184 Recognition order

- (1) The Treasury may by order (“recognition order”) specify an inter-bank payment system as a recognised system for the purposes of this Part.
- (2) A recognition order must specify in as much detail as is reasonably practicable the arrangements which constitute the inter-bank payment system.
- (3) The Treasury may not specify an inter-bank system operated solely by the Bank of England.

Commencement Information

I4 S. 184 in force at 4.8.2009 by S.I. 2009/2038, art. 2, Sch. para. 3

185 Recognition criteria

- (1) The Treasury may make a recognition order in respect of an inter-bank payment system only if satisfied that any deficiencies in the design of the system, or any disruption of its operation, would be likely—
 - (a) to threaten the stability of, or confidence in, the UK financial system, or
 - (b) to have serious consequences for business or other interests throughout the United Kingdom.
- (2) In considering whether to specify a system the Treasury must have regard to—

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- (a) the number and value of the transactions that the system presently processes or is likely to process in the future,
- (b) the nature of the transactions that the system processes,
- (c) whether those transactions or their equivalent could be handled by other systems,
- (d) the relationship between the system and other systems, and
- (e) whether the system is used by the Bank of England in the course of its role as a monetary authority.

Commencement Information

I5 S. 185 in force at 4.8.2009 by S.I. 2009/2038, art. 2, Sch. para. 3

186 Procedure

- (1) Before making a recognition order in respect of a payment system the Treasury must—
 - (a) consult the Bank of England,
 - (b) notify the operator of the system, and
 - (c) consider any representations made.
- (2) The Treasury must also consult the FSA before making a recognition order in respect of a payment system the operator of which—
 - (a) is, or has applied to become, a recognised investment exchange within the meaning of section 285 of the Financial Services and Markets Act 2000,
 - (b) is, or has applied to become, a recognised clearing house within the meaning of that section, or
 - (c) has, or has applied for, permission under Part 4 of that Act (regulated activities).
- (3) In considering whether to make a recognition order in respect of a payment system the Treasury may rely on information provided by the Bank of England or the FSA.

Commencement Information

I6 S. 186 in force at 4.8.2009 by S.I. 2009/2038, art. 2, Sch. para. 3

187 De-recognition

- (1) The Treasury may revoke a recognition order.
- (2) The Treasury must revoke a recognition order if not satisfied that the criteria in section 185 are met in respect of the recognised inter-bank payment system.
- (3) Before revoking a recognition order the Treasury must—
 - (a) consult the Bank of England,
 - (b) notify the operator of the recognised inter-bank payment system, and
 - (c) consider any representations made.
- (4) The Treasury must also consult the FSA before revoking a recognition order in respect of a payment system the operator of which—

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- (a) is, or has applied to become, a recognised investment exchange within the meaning of section 285 of the Financial Services and Markets Act 2000,
 - (b) is, or has applied to become, a recognised clearing house within the meaning of that section, or
 - (c) has, or has applied for, permission under Part 4 of that Act (regulated activities).
- (5) The Treasury must consider any request by the operator of a recognised inter-bank payment system for the revocation of its recognition order.

Commencement Information

I7 [S. 187](#) in force at 4.8.2009 by [S.I. 2009/2038](#), art. 2, [Sch. para. 3](#)

VALID FROM 12/11/2009

Regulation

VALID FROM 31/12/2009

188 Principles

- (1) The Bank of England may publish principles to which operators of recognised inter-bank payment systems are to have regard in operating the systems.
- (2) Before publishing principles the Bank must obtain the approval of the Treasury.

189 Codes of practice

The Bank of England may publish codes of practice about the operation of recognised inter-bank payment systems.

VALID FROM 31/12/2009

190 System rules

- (1) The Bank of England may require the operator of a recognised inter-bank payment system—
 - (a) to establish rules for the operation of the system;
 - (b) to change the rules in a specified way or so as to achieve a specified purpose;
 - (c) to notify the Bank of any proposed change to the rules;
 - (d) not to change the rules without the approval of the Bank.
- (2) A requirement under subsection (1)(c) or (d) may be general or specific.

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191 Directions

- (1) The Bank of England may give directions to the operator of a recognised inter-bank payment system.
- (2) A direction may—
 - (a) require or prohibit the taking of specified action in the operation of the system;
 - (b) set standards to be met in the operation of the system.
- (3) Before giving a direction the Bank must notify the Treasury.
- (4) The Treasury may by order confer immunity from liability in damages in respect of action or inaction in accordance with a direction.
- (5) An immunity does not extend to action or inaction—
 - (a) in bad faith, or
 - (b) in contravention of section 6(1) of the Human Rights Act 1998.
- (6) An order—
 - (a) shall be made by statutory instrument, and
 - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

192 Role of FSA

- (1) In exercising powers under this Part the Bank of England shall have regard to any action that the FSA has taken or could take.
- (2) Before taking action under this Part in respect of a recognised inter-bank payment system the operator of which satisfies section 186(2), the Bank of England must consult the FSA.
- (3) If the FSA gives the Bank of England notice that the FSA is considering taking action in respect of the operator of a recognised inter-bank payment system who satisfies section 186(2), the Bank may not take action under this Part in respect of the operator unless—
 - (a) the FSA consents, or
 - (b) the notice is withdrawn.

VALID FROM 12/11/2009

Enforcement

VALID FROM 31/12/2009

193 Inspection

- (1) The Bank of England may appoint one or more persons to inspect the operation of a recognised inter-bank payment system.

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- (2) The operator of a recognised inter-bank payment system must—
- (a) grant an inspector access, on request and at any reasonable time, to premises on or from which any part of the system is operated, and
 - (b) otherwise co-operate with an inspector.

VALID FROM 31/12/2009

194 Inspection: warrant

- (1) A justice of the peace may on the application of an inspector issue a warrant entitling an inspector or a constable to enter premises if—
 - (a) any part of the management or operation of a recognised inter-bank payment system is conducted on the premises (whether by an operator of the system or by someone providing services used by an operator), and
 - (b) any of the following conditions is satisfied.
- (2) Condition 1 is that—
 - (a) a requirement under section 204 in connection with the payment system has not been complied with, and
 - (b) there is reason to believe that information relevant to the requirement is on the premises.
- (3) Condition 2 is that there is reason to suspect that if a requirement under section 204 were imposed in connection with the payment system in respect of information on the premises—
 - (a) the requirement would not be complied with, and
 - (b) the information would be destroyed or otherwise tampered with.
- (4) Condition 3 is that an inspector—
 - (a) gave reasonable notice of a wish to enter the premises, and
 - (b) was refused entry.
- (5) Condition 4 is that a person occupying or managing the premises has failed to co-operate with an inspector.
- (6) A warrant—
 - (a) permits an inspector or a constable to enter the premises,
 - (b) permits an inspector or a constable to search the premises and copy or take possession of information or documents, and
 - (c) permits a constable to use reasonable force.
- (7) Sections 15(5) to (8) and 16 of the Police and Criminal Evidence Act 1984 (warrants: procedure) apply to warrants under this section.
- (8) In the application of this section to Scotland—
 - (a) the reference to a justice of the peace includes a reference to a sheriff, and
 - (b) ignore subsection (7).
- (9) In the application of this section to Northern Ireland—
 - (a) the reference to a justice of the peace is a reference to a lay magistrate, and

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- (b) the reference to sections 15(5) to (8) and 16 of the Police and Criminal Evidence Act 1984 is a reference to the equivalent provisions of the Police and Criminal Evidence (Northern Ireland) Order 1989.

VALID FROM 31/12/2009

195 Independent report

- (1) The Bank of England may require the operator of a recognised inter-bank payment system to appoint an expert to report on the operation of the system.
- (2) The Bank may impose a requirement only if it thinks—
- (a) the operator is not taking sufficient account of principles published by the Bank under section 188,
 - (b) the operator is failing to comply with a code of practice under section 189, or
 - (c) the report is likely for any other reason to assist the Bank in the performance of its functions under this Part.
- (3) The Bank may impose requirements about—
- (a) the nature of the expert to be appointed;
 - (b) the content of the report;
 - (c) treatment of the report (including disclosure and publication);
 - (d) timing.

VALID FROM 31/12/2009

196 Compliance failure

In this Part “compliance failure” means a failure by the operator of a recognised inter-bank payment system to—

- (a) comply with a code of practice under section 189,
- (b) comply with a requirement under section 190,
- (c) comply with a direction under section 191, or
- (d) ensure compliance with a requirement under section 195.

VALID FROM 31/12/2009

197 Publication

- (1) The Bank of England may publish details of a compliance failure by the operator of a recognised inter-bank payment system.
- (2) The Bank may publish details of a sanction imposed under sections 198 to 200.

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VALID FROM 31/12/2009

198 Penalty

- (1) The Bank of England may require the operator of a recognised inter-bank payment system to pay a penalty in respect of a compliance failure.
- (2) A penalty—
 - (a) must be paid to the Bank of England, and
 - (b) may be enforced by the Bank as a debt.
- (3) The Bank must prepare a statement of the principles which it will apply in determining—
 - (a) whether to impose a penalty, and
 - (b) the amount of a penalty.
- (4) The Bank must—
 - (a) publish the statement on its internet website,
 - (b) send a copy to the Treasury,
 - (c) review the statement from time to time and revise it if necessary (and paragraphs (a) and (b) apply to a revision), and
 - (d) in applying the statement to a compliance failure, apply the version in force when the failure occurred.

VALID FROM 31/12/2009

199 Closure

- (1) This section applies if the Bank of England thinks that a compliance failure—
 - (a) threatens the stability of, or confidence in, the UK financial system, or
 - (b) has serious consequences for business or other interests throughout the United Kingdom.
- (2) The Bank may give the operator of the inter-bank payment system concerned an order to stop operating the system (a “closure order”)—
 - (a) for a specified period,
 - (b) until further notice, or
 - (c) permanently.
- (3) A closure order may apply to—
 - (a) all activities of the payment system, or
 - (b) specified activities.
- (4) An operator who fails to comply with a closure order commits an offence.
- (5) A person guilty of an offence is liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum, or
 - (b) on conviction on indictment, to a fine.

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200 Management disqualification

- (1) The Bank of England may by order prohibit a specified person from being an operator of a recognised inter-bank payment system—
 - (a) for a specified period,
 - (b) until further notice, or
 - (c) permanently.
- (2) The Bank may by order prohibit a specified person from holding an office or position involving responsibility for taking decisions about the management of a recognised inter-bank payment system—
 - (a) for a specified period,
 - (b) until further notice, or
 - (c) permanently.
- (3) A person who breaches a prohibition under subsection (1) or (2) commits an offence.
- (4) A person guilty of an offence is liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum, or
 - (b) on conviction on indictment, to a fine.

201 Warning

- (1) Before imposing a sanction on the operator of an inter-bank payment system or on another person the Bank of England must—
 - (a) give the operator or other person a notice (a “warning notice”),
 - (b) give the operator or other person at least 21 days to make representations,
 - (c) consider any representations made, and
 - (d) as soon as is reasonably practicable, give the operator or other person a notice stating whether or not the Bank intends to impose the sanction.
- (2) In subsection (1) “imposing a sanction” means—
 - (a) publishing details under section 197(1),
 - (b) requiring the payment of a penalty under section 198,
 - (c) giving a closure order under section 199, or
 - (d) making an order under section 200.
- (3) Despite subsection (1), if satisfied that it is necessary the Bank may without notice—
 - (a) give a closure order under section 199, or
 - (b) make an order under section 200.

VALID FROM 31/12/2009

202 Appeal

- (1) Where the Bank of England notifies a person under section 201(1)(d) that the Bank intends to impose a sanction, the person may appeal to the Financial Services and Markets Tribunal.

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- (2) Where the Bank of England imposes a sanction on a person without notice in reliance on section 201(3), the person may appeal to the Financial Services and Markets Tribunal.
- (3) Part 9 of the Financial Services and Markets Act 2000 applies to appeals under this section; and for that purpose—
 - (a) a reference to the FSA is to be taken as a reference to the Bank of England,
 - (b) for section 133(9) of that Act substitute the proposition that a sanction may not be imposed while an appeal could be brought or is pending.
 - (c) Part 9 is to be read with any other necessary modifications.

Miscellaneous

VALID FROM 12/11/2009

203 Fees

- (1) The Bank of England may require operators of recognised inter-bank payment systems to pay fees.
- (2) A requirement under subsection (1) must relate to a scale of fees approved by the Treasury by regulations.
- (3) Regulations under subsection (2)—
 - (a) shall be made by statutory instrument, and
 - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) A requirement under subsection (1) may be enforced by the Bank as a debt.

204 Information

- (1) The Bank of England may by notice in writing require a person to provide information—
 - (a) which the Bank thinks will help the Treasury in determining whether to make a recognition order, or
 - (b) which the Bank otherwise requires in connection with its functions under this Part.
- (2) In particular, a notice may require the operator of a recognised inter-bank payment system to notify the Bank if events of a specified kind occur.
- (3) A notice may require information to be provided—
 - (a) in a specified form or manner;
 - (b) at a specified time;
 - (c) in respect of a specified period.
- (4) The Bank may disclose information obtained by virtue of this section to—
 - (a) the Treasury;

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- (b) the FSA;
 - (c) an authority in a country or territory outside the United Kingdom which exercises functions similar to those of the Treasury, the Bank of England or the FSA in relation to inter-bank payment systems;
 - (d) the European Central Bank;
 - (e) the Bank for International Settlements.
- (5) Subsection (4)—
- (a) overrides a contractual or other requirement to keep information in confidence, and
 - (b) is without prejudice to any other power to disclose information.
- (6) The Treasury may by regulations permit the disclosure of information obtained by virtue of this section to a specified person.
- (7) The Bank may publish information obtained by virtue of this section.
- (8) The Treasury may make regulations about the manner and extent of publication under subsection (7).
- (9) Regulations under this section—
- (a) shall be made by statutory instrument, and
 - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (10) It is an offence—
- (a) to fail without reasonable excuse to comply with a requirement under this section;
 - (b) knowingly or recklessly to give false information in pursuance of this section.
- (11) A person guilty of an offence is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum, or
 - (b) on conviction on indictment, to a fine.

Commencement Information

18 S. 204(1)(a)(2)(3)(4)(a)(b)(5)(6)(8)-(11) in force at 4.8.2009 by [S.I. 2009/2038](#), art. 2, [Sch. para. 4](#)

205 Pretending to be recognised

- (1) It is an offence for the operator of a non-recognised inter-bank payment system—
- (a) to assert that the system is recognised, or
 - (b) to do anything which suggests that the system is recognised.
- (2) A person guilty of an offence is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum, or
 - (b) on conviction on indictment, to a fine.

Commencement Information

19 S. 205 in force at 4.8.2009 by [S.I. 2009/2038](#), art. 2, [Sch. para. 5](#)

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206 Saving for informal oversight

- (1) Nothing in this Part prevents the Bank of England from having dealings with the operators of payment systems to which this Part does not apply.
- (2) Nothing in this Part prevents the Bank from having dealings, other than through the provisions of this Part, with the operators of payment systems to which this Part does apply.

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