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STATUTORY INSTRUMENTS

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**2009 No. 209**

**The Payment Services Regulations 2009**

**PART 1**

**INTRODUCTORY PROVISIONS**

**Citation and commencement**

- 1.—(1) These Regulations may be cited as the Payment Services Regulations 2009.
- (2) These Regulations come into force—
- (a) on 2nd March 2009 for the purposes of regulations 25, 80, 92 to 94, 95 in respect of paragraphs 5 and 10 of Schedule 5, 119 and 126 in respect of paragraphs 1 and 6(g) of Schedule 6;
  - (b) on 1st May 2009 for the purposes of—
    - (i) enabling applications for authorisation as a payment institution and the variation of an authorisation to be made under regulation 5 and the Authority to determine such applications in accordance with regulations 6 to 9;
    - (ii) enabling applications for registration as a small payment institution and the variation of a registration to be made under regulation 12 and the Authority to determine such applications in accordance with regulation 13 and regulations 7 to 9 (as applied by regulation 14);
    - (iii) enabling applications for an agent to be included on the register under regulation 29 and the Authority to determine such applications in accordance with that regulation;
    - (iv) enabling the Authority to give directions as to the manner in which an application under regulation 5(1) or (2), 12(1) or (2) or 29(3) is to be made and enabling the Authority to require the applicant to provide further information in accordance with regulation 5(4), 12(4) or 29(3)(a)(iv), as the case may be;
    - (v) enabling the Authority to cancel an authorisation or registration or vary an authorisation or registration on its own initiative in accordance with regulation 10 or 11 (as applied, in the case of a registration, by regulation 14);
    - (vi) requiring a person who has made an application under regulation 5(1) or (2) or 12(1) or (2) to provide information to the Authority in accordance with regulation 16 and enabling the Authority to give directions under that regulation;
    - (vii) enabling a person to make a reference to the Tribunal under regulation 9(9), 10(4), 11(5), 24(4) or 29(11);
    - (viii) enabling an applicant for authorisation as a payment institution to give the Authority a notice of intention under regulation 23(1) and the Authority to give directions as to the manner in which such a notice is to be given and to inform the host state competent authority in accordance with regulation 23(2);
    - (ix) enabling the Authority to decide whether to register an EEA branch, or to cancel such a registration, under regulation 24(1);

- (x) enabling the Authority to give directions under regulation 82 to a person whose application under regulation 5(1) or 12(1) has been granted before 1st November 2009 in respect of—
    - (aa) its provision as from that date of payment services; and
    - (bb) its compliance as from that date with requirements imposed by or under Parts 2 to 6 of these Regulations;
  - (xi) enabling the Authority to give directions under paragraph 7, 11, 12 or 16(3) of Schedule 3 to a person whose application under regulation 5(1) has been granted before 1st November 2009;
  - (xii) requiring a person whose application under regulation 5(1), 12(1) or 29(3) has been granted before 1st November 2009 to provide information to the Authority in accordance with regulation 32 and enabling the Authority to give directions under that regulation;
  - (xiii) regulations 95 in respect of paragraphs 2 and 7 to 9 of Schedule 5, 114 to 118, and 121, 124 and 125; and
- (c) for all other purposes on 1st November 2009.

## Interpretation

### 2.—(1) In these Regulations —

“the 2000 Act” means the Financial Services and Markets Act 2000<sup>(1)</sup>;

“agent” means a person who acts on behalf of an authorised payment institution or a small payment institution in the provision of payment services;

“authorised payment institution” means—

- (a) a person included by the Authority in the register as an authorised payment institution pursuant to regulation 4(1)(a); or
- (b) a person deemed to have been granted authorisation by the Authority by virtue of regulation 121;

“the Authority” means the Financial Services Authority;

“the banking consolidation directive” means Directive [2006/48/EC](#) of the European Parliament and of the Council of 14th June 2006 relating to the taking up and pursuit of the business of credit institutions<sup>(2)</sup>;

“branch” means a place of business of an authorised payment institution, a small payment institution, or an EEA authorised payment institution, other than its head office, which forms a legally dependent part of the institution and which carries out directly all or some of the transactions inherent in its business; and, for the purposes of these Regulations, all places of business set up in the same EEA State other than the United Kingdom by an authorised payment institution are to be regarded as a single branch;

“business day” means any day on which the relevant payment service provider is open for business as required for the execution of a payment transaction;

“charity” means a body whose annual income is less than £1 million and is—

- (c) in England and Wales, a charity as defined by section 1(1) of the Charities Act 2006<sup>(3)</sup>;

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<sup>(1)</sup> 2000 c.8.

<sup>(2)</sup> OJ No L 177, 30.6.2006, p.1.

<sup>(3)</sup> 2006 c.50.

(d) in Scotland, a charity as defined by section 106 of the Charities and Trustee Investment (Scotland) Act 2005<sup>(4)</sup>;

(e) in Northern Ireland, a charity as defined by section 1(1) of the Charities Act (Northern Ireland) 2008<sup>(5)</sup> or, until that section comes into force, a body which is recognised as a charity for tax purposes by Her Majesty’s Revenue and Customs;

“the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs;

“consumer” means an individual who, in contracts for payment services to which these Regulations apply, is acting for purposes other than a trade, business or profession;

“credit institution” has the meaning given in Article 4(1)(a) of the banking consolidation directive;

“direct debit” means a payment service for debiting the payer’s payment account where a payment transaction is initiated by the payee on the basis of consent given by the payer to the payee, to the payee’s payment service provider or to the payer’s own payment service provider;

“durable medium” means any instrument which enables the payment service user to store information addressed personally to them in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored;

“the EEA” means the European Economic Area;

“EEA agent” means an agent through which an authorised payment institution, in the exercise of its passport rights, provides payment services in an EEA State other than the United Kingdom;

“EEA authorised payment institution” means a person authorised in an EEA State other than the United Kingdom to provide payment services in accordance with the payment services directive;

“EEA branch” means a branch established by an authorised payment institution, in the exercise of its passport rights, to carry out payment services in an EEA State other than the United Kingdom;

“the electronic money directive” means Directive [2000/46/EC](#) of the European Parliament and of the Council of 18th September 2000 on the taking up, pursuit and prudential supervision of the business of electronic money institutions<sup>(6)</sup>;

“electronic money institution” has the meaning given in Article 1(3)(a) of the electronic money directive;

“framework contract” means a contract for payment services which governs the future execution of individual and successive payment transactions and which may contain the obligation and conditions for setting up a payment account;

“funds” means banknotes and coins, scriptural money, and electronic money as defined in Article 1(3)(b) of the electronic money directive;

“group” means a group of undertakings which consists of a parent undertaking, its subsidiary undertakings and the entities in which the parent undertaking or its subsidiary undertakings have a holding, as well as undertakings linked to each other by a relationship referred to in Article 12(1) of the Seventh Council Directive [83/349/EEC](#) of 13th June 1983 based on Article 54(3)(g) of the Treaty on consolidated accounts<sup>(7)</sup>;

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(4) [2005 asp 10](#).

(5) [2008 c 12 \(N.I.\)](#).

(6) [OJ No L 275, 27.10.2000, p.39](#).

(7) [OJ No L 193, 18.7.1983, p. 1](#).

“home state competent authority” means the competent authority designated in accordance with Article 20 of the payment services directive as being responsible for the authorisation and prudential supervision of an EEA authorised payment institution which is exercising (or intends to exercise) its passport rights in the United Kingdom;

“host state competent authority” means the competent authority designated in accordance with Article 20 of the payment services directive in an EEA State in which an authorised payment institution exercises (or intends to exercise) its passport rights;

“means of distance communication” means any means which, without the simultaneous physical presence of the payment service provider and the payment service user, may be used for the conclusion of a contract for payment services between those parties;

“micro-enterprise” means an enterprise which, at the time at which the contract for payment services is entered into, is an enterprise as defined in Article 1 and Article 2(1) and (3) of the Annex to Recommendation 2003/361/EC<sup>(8)</sup>;

“the money laundering directive” means Directive 2005/60/EC of the European Parliament and of the Council of 26th October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing<sup>(9)</sup>;

“money remittance” means a service for the transmission of money (or any representation of monetary value), without any payment accounts being created in the name of the payer or the payee, where—

- (a) funds are received from a payer for the sole purpose of transferring a corresponding amount to a payee or to another payment service provider acting on behalf of the payee; or
- (b) funds are received on behalf of, and made available to, the payee;

“notice” means a notice in writing;

“the OFT” means the Office of Fair Trading;

“parent undertaking” has the same meaning as in the Companies Acts (see section 1162 of, and Schedule 7 to, the Companies Act 2006<sup>(10)</sup>);

“passport right” (except for the purposes of regulation 26(1)) means the entitlement of a person to establish a branch or provide services in an EEA State other than that in which they are authorised to provide payment services—

- (a) in accordance with the Treaty establishing the European Community as applied in the EEA; and
- (b) subject to the conditions of the payment services directive;

“payee” means a person who is the intended recipient of funds which have been the subject of a payment transaction;

“payer” means—

- (a) a person who holds a payment account and initiates, or consents to the initiation of, a payment order from that payment account; or
- (b) where there is no payment account, a person who gives a payment order;

“payment account” means an account held in the name of one or more payment service users which is used for the execution of payment transactions;

“payment instrument” means any—

- (a) personalised device; or

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<sup>(8)</sup> OJ No L 124, 20.5.2003, p.36.

<sup>(9)</sup> OJ No L 309, 25.11.2005, p.15.

<sup>(10)</sup> 2006 c.46.

(b) personalised set of procedures agreed between the payment service user and the payment service provider,

used by the payment service user in order to initiate a payment order;

“payment order” means any instruction by—

(a) a payer; or

(b) a payee,

to their respective payment service provider requesting the execution of a payment transaction;

“payment services” means any of the activities specified in Part 1 of Schedule 1 when carried out as a regular occupation or business activity, other than any of the activities specified in Part 2 of that Schedule;

“payment services directive” means Directive [2007/64/EC](#) of the European Parliament and of the Council of 13th November 2007 on payment services in the internal market<sup>(11)</sup>;

“payment service provider” means any of the following persons when they carry out payment services—

(a) authorised payment institutions;

(b) small payment institutions;

(c) EEA authorised payment institutions;

(d) credit institutions;

(e) electronic money institutions;

(f) the Post Office Limited;

(g) the Bank of England, the European Central Bank and the national central banks of EEA States other than the United Kingdom, other than when acting in their capacity as a monetary authority or carrying out other functions of a public nature; and

(h) government departments and local authorities, other than when carrying out functions of a public nature;

“payment service user” means a person when making use of a payment service in the capacity of either payer or payee, or both;

“payment system” means a funds transfer system with formal and standardised arrangements and common rules for the processing, clearing and settlement of payment transactions;

“payment transaction” means an act, initiated by the payer or payee, of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the payer and payee;

“qualifying holding” has the meaning given in article 4(11) of the banking consolidation directive;

“reference exchange rate” means the exchange rate which is used as the basis to calculate any currency exchange and which is made available by the payment service provider or comes from a publicly available source;

“reference interest rate” means the interest rate which is used as the basis for calculating any interest to be applied and which comes from a publicly available source which can be verified by both parties to a contract for payment services;

“the register” means the register maintained by the Authority under regulation 4;

“regulated agreement” has the meaning given by section 189(1) of the Consumer Credit Act 1974<sup>(12)</sup> (definitions);

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(11) OJ No L 319, 5.12.2007, p.1.

(12) 1974 c.39.

“single payment service contract” means a contract for a single payment transaction not covered by a framework contract;

“small payment institution” means a person included by the Authority in the register pursuant to regulation 4(1)(b);

“subsidiary undertaking” has the same meaning as in the Companies Acts (see section 1162 of, and Schedule 7 to, the Companies Act 2006);

“the Tribunal” means the Financial Services and Markets Tribunal<sup>(13)</sup>;

“unique identifier” means a combination of letters, numbers or symbols specified to the payment service user by the payment service provider and to be provided by the payment service user in relation to a payment transaction in order to identify unambiguously one or both of—

- (a) the other payment service user who is a party to the payment transaction;
- (b) the other payment service user’s payment account;

“value date” means a reference time used by a payment service provider for the calculation of interest on the funds debited from or credited to a payment account.

(2) In these Regulations references to amounts in euro include references to equivalent amounts in another currency.

(3) Unless otherwise defined, expressions used in these Regulations which are also used in the payment services directive have the same meaning as in that directive.

(4) Expressions used in these Regulations and in a modification to a provision in primary or secondary legislation applied by these Regulations have the same meaning as in these Regulations.

### **Exemption for certain bodies**

**3.—**(1) Subject to paragraph (2) and regulation 4(1)(d), these Regulations do not apply to the following persons—

- (a) credit unions;
- (b) municipal banks; and
- (c) the National Savings Bank.

(2) Where municipal banks provide or propose to provide payment services they must give notice to the Authority.

(3) In this regulation—

“credit union” means a credit union within the meaning of—

- (a) the Credit Unions Act 1979<sup>(14)</sup>;
- (b) the Credit Unions (Northern Ireland) Order 1985<sup>(15)</sup>;

“municipal bank” means a company which, immediately before 1st December 2001, fell within the definition in section 103 of the Banking Act 1987<sup>(16)</sup>.

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<sup>(13)</sup> Established under section 132 of the 2000 Act.

<sup>(14)</sup> 1979 c.34.

<sup>(15)</sup> S.I. 1985/1205 (N.I. 12).

<sup>(16)</sup> 1987 c.22; repealed by S.I. 2001/3649, article 3(1)(d).

## PART 2

### REGISTRATION

#### *The register*

#### **The register of certain payment service providers**

4.—(1) The Authority must maintain a register of—

- (a) authorised payment institutions and their EEA branches;
- (b) small payment institutions;
- (c) agents of authorised payment institutions and small payment institutions required to be registered under regulation 29; and
- (d) the persons specified in regulation 3(1) where they provide payment services.

(2) The Authority may include on the register any of the persons mentioned in paragraphs (c) to (h) of the definition of a payment service provider in regulation 2(1) where such persons provide payment services.

(3) Where a person mentioned in paragraph (f), (g) or (h) of the definition of a payment service provider in regulation 2(1)—

- (a) is not included on the register; and
- (b) provides, or proposes to provide, payment services,

the person must give notice to the Authority.

(4) The Authority may—

- (a) keep the register in any form it thinks fit;
- (b) include on it such information as the Authority considers appropriate, provided that the register identifies the payment services for which an institution is authorised or registered under this Part; and
- (c) exploit commercially the information contained in the register, or any part of that information.

(5) The Authority must—

- (a) publish the register online and make it available for public inspection;
- (b) update the register on a regular basis; and
- (c) provide a certified copy of the register, or any part of it, to any person who asks for it—
  - (i) on payment of the fee (if any) fixed by the Authority; and
  - (ii) in a form (either written or electronic) in which it is legible to the person asking for it.

#### *Authorisation as a payment institution*

#### **Application for authorisation as a payment institution or variation of an existing authorisation**

5.—(1) An application for authorisation as a payment institution must contain or be accompanied by the information specified in Schedule 2.

(2) An application for the variation of an authorisation as a payment institution must—

- (a) contain a statement of the proposed variation;

- (b) contain a statement of the payment services which the applicant proposes to carry on if the authorisation is varied; and
  - (c) contain, or be accompanied by, such other information as the Authority may reasonably require.
- (3) An application under paragraph (1) or (2) must be made in such manner as the Authority may direct.
- (4) At any time after receiving an application and before determining it, the Authority may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application.
- (5) Different directions may be given, and different requirements imposed, in relation to different applications or categories of application.

### **Conditions for authorisation as a payment institution**

6.—(1) The Authority may refuse to grant all or part of an application for authorisation as a payment institution only if any of the conditions set out in paragraphs (2) to (8) is not met.

(2) The application must comply with the requirements of, and any requirements imposed under, regulation 5.

(3) The applicant must immediately before the time of authorisation hold the amount of initial capital required in accordance with Part 1 of Schedule 3.

(4) The applicant must be a body corporate constituted under the law of a part of the United Kingdom having—

- (a) its head office, and
- (b) if it has a registered office, that office,

in the United Kingdom.

(5) The applicant must satisfy the Authority that, taking into account the need to ensure the sound and prudent conduct of the affairs of the institution, it has—

- (a) robust governance arrangements for its payment service business, including a clear organisational structure with well-defined, transparent and consistent lines of responsibility;
- (b) effective procedures to identify, manage, monitor and report any risks to which it might be exposed;
- (c) adequate internal control mechanisms, including sound administrative, risk management and accounting procedures,

which are comprehensive and proportionate to the nature, scale and complexity of the payment services to be provided by the institution.

(6) The applicant must satisfy the Authority that—

- (a) any persons having a qualifying holding in it are fit and proper persons having regard to the need to ensure the sound and prudent conduct of the affairs of an authorised payment institution;
- (b) the directors and persons responsible for the management of the institution and, where relevant, the persons responsible for the management of payment services, are of good repute and possess appropriate knowledge and experience to provide payment services;
- (c) it has a business plan (including, for the first three years, a forecast budget calculation) under which appropriate and proportionate systems, resources and procedures will be employed by the institution to operate soundly; and

- (d) it has taken adequate measures for the purpose of safeguarding payment service users' funds in accordance with regulation 19.
- (7) The applicant must comply with a requirement of the Money Laundering Regulations 2007(17) to be included in a register maintained under those Regulations where such a requirement applies to the applicant.
- (8) If the applicant has close links with another person ("CL") the applicant must satisfy the Authority—
  - (a) that those links are not likely to prevent the Authority's effective supervision of the applicant; and
  - (b) if it appears to the Authority that CL is subject to the laws, regulations or administrative provisions of a territory which is not an EEA State ("the foreign provisions"), that neither the foreign provisions, nor any deficiency in their enforcement, would prevent the Authority's effective supervision of the applicant.
- (9) For the purposes of paragraph (8), an applicant has close links with CL if—
  - (a) CL is a parent undertaking of the applicant;
  - (b) CL is a subsidiary undertaking of the applicant;
  - (c) CL is a parent undertaking of a subsidiary undertaking of the applicant;
  - (d) CL is a subsidiary undertaking of a parent undertaking of the applicant;
  - (e) CL owns or controls 20% or more of the voting rights or capital of the applicant; or
  - (f) the applicant owns or controls 20% or more of the voting rights or capital of CL.

### **Imposition of requirements**

7.—(1) The Authority may include in an authorisation such requirements as it considers appropriate.

- (2) A requirement may, in particular, be imposed so as to require the person concerned to—
  - (a) take a specified action;
  - (b) refrain from taking a specified action.
- (3) A requirement may be imposed by reference to the person's relationship with its group or other members of its group.
- (4) Where—
  - (a) an applicant for authorisation as a payment institution intends to carry on business activities other than the provision of payment services; and
  - (b) the Authority considers that the carrying on of such other business activities will impair, or is likely to impair—
    - (i) the financial soundness of the applicant, or
    - (ii) the Authority's effective supervision of the applicant,

the Authority may require the applicant to establish a separate body corporate to carry on the payment service business.

(5) A requirement expires at the end of such period as the Authority may specify in the authorisation.

(6) Paragraph (5) does not affect the Authority's powers under regulation 8 or 11.

### **Variation etc at request of authorised payment institution**

8. The Authority may, on the application of an authorised payment institution, vary that person's authorisation by—

- (a) adding a payment service to those for which it has granted authorisation;
- (b) removing a payment service from those for which it has granted authorisation;
- (c) imposing a requirement such as may, under regulation 7, be included in an authorisation;
- (d) cancelling a requirement included in the authorisation or previously imposed under paragraph (c); or
- (e) varying such a requirement,

provided that the conditions set out in regulation 6(4) to (8) and, if applicable, the requirement in regulation 18(1) to maintain own funds, will continue to be met.

### **Determination of application for authorisation or variation of authorisation**

9.—(1) The Authority must determine an application for authorisation or the variation of an authorisation before the end of the period of three months beginning with the date on which it received the completed application.

(2) The Authority may determine an incomplete application if it considers it appropriate to do so, and it must in any event determine any such application within 12 months beginning with the date on which it received the application.

(3) The applicant may withdraw its application, by giving the Authority notice, at any time before the Authority determines it.

(4) The Authority may grant authorisation to carry out the payment services to which the application relates or such of them as may be specified in the grant of the authorisation.

(5) If the Authority decides to grant an application for authorisation, or for the variation of an authorisation, it must give the applicant notice of its decision specifying—

- (a) the payment services for which authorisation has been granted; or
- (b) the variation granted,

described in such manner as the Authority considers appropriate.

(6) The notice must state the date on which the authorisation or variation takes effect.

(7) If the Authority proposes to refuse an application or to impose a requirement it must give the applicant a warning notice.

(8) The Authority must, having considered any representations made in response to the warning notice—

- (a) if it decides to refuse the application or to impose a requirement, give the applicant a decision notice; or
- (b) if it grants the application without imposing a requirement, give the applicant notice of its decision, stating the date on which the authorisation or variation takes effect.

(9) If the Authority decides to refuse the application or to impose a requirement the applicant may refer the matter to the Tribunal.

(10) If the Authority decides to authorise the applicant, or vary its authorisation, it must update the register as soon as practicable.

### **Cancellation of authorisation**

**10.**—(1) The Authority may cancel a person’s authorisation and remove the person from the register where—

- (a) the person does not provide payment services within 12 months beginning with the date on which the authorisation took effect;
- (b) the person requests, or consents to, the cancellation of the authorisation;
- (c) the person ceases to engage in business activity for more than six months;
- (d) the person has obtained authorisation through false statements or any other irregular means;
- (e) the person no longer meets, or is unlikely to continue to meet, any of the conditions set out in regulation 6(4) to (8) or, if applicable, the requirement in regulation 18(1) to maintain own funds;
- (f) the person has provided payment services other than in accordance with the authorisation granted to it;
- (g) the person would constitute a threat to the stability of a payment system by continuing its payment services business;
- (h) the cancellation is desirable in order to protect the interests of consumers; or
- (i) the person’s provision of payment services is otherwise unlawful.

(2) Where the Authority proposes to cancel a person’s authorisation, other than at the person’s request, it must give the person a warning notice.

(3) The Authority must, having considered any representations made in response to the warning notice—

- (a) if it decides to cancel the authorisation, give the person a decision notice; or
- (b) if it decides not to cancel the authorisation, give the person notice of its decision.

(4) If the Authority decides to cancel the authorisation, other than at the person’s request, the person may refer the matter to the Tribunal.

(5) Where the period for a reference to the Tribunal has expired without a reference being made, the Authority must as soon as practicable update the register accordingly.

### **Variation of authorisation on Authority’s own initiative**

**11.**—(1) The Authority may vary a person’s authorisation in any of the ways mentioned in regulation 8 if it appears to the Authority that—

- (a) the person no longer meets, or is unlikely to continue to meet, any of the conditions set out in regulation 6(4) to (8) or, if applicable, the requirement in regulation 18(1) to maintain own funds;
- (b) the person has provided a particular payment service or payment services other than in accordance with the authorisation granted to it;
- (c) the person would constitute a threat to the stability of a payment system by continuing to provide a particular payment service or payment services;
- (d) the variation is desirable in order to protect the interests of consumers; or
- (e) the person’s provision of a particular payment service or payment services is otherwise unlawful.

(2) A variation under this regulation takes effect—

- (a) immediately, if the notice given under paragraph (6) states that that is the case;

- (b) on such date as may be specified in the notice; or
- (c) if no date is specified in the notice, when the matter to which the notice relates is no longer open to review.

(3) A variation may be expressed to take effect immediately or on a specified date only if the Authority, having regard to the ground on which it is exercising the power under paragraph (1), reasonably considers that it is necessary for the variation to take effect immediately or, as the case may be, on that date.

(4) The Authority must as soon as practicable after the variation takes effect update the register accordingly.

(5) A person who is aggrieved by the variation of their authorisation under this regulation may refer the matter to the Tribunal.

(6) Where the Authority proposes to vary a person's authorisation under this regulation, it must give the person notice.

(7) The notice must—

- (a) give details of the variation;
- (b) state the Authority's reasons for the variation and for its determination as to when the variation takes effect;
- (c) inform the person that they may make representations to the Authority within such period as may be specified in the notice (whether or not the person has referred the matter to the Tribunal);
- (d) inform the person of the date on which the variation takes effect; and
- (e) inform the person of their right to refer the matter to the Tribunal and the procedure for such a reference.

(8) The Authority may extend the period allowed under the notice for making representations.

(9) If, having considered any representations made by the person, the Authority decides—

- (a) to vary the authorisation in the way proposed, or
- (b) if the authorisation has been varied, not to rescind the variation,

it must give the person notice.

(10) If, having considered any representations made by the person, the Authority decides—

- (a) not to vary the authorisation in the way proposed,
- (b) to vary the authorisation in a different way, or
- (c) to rescind a variation which has taken effect,

it must give the person notice.

(11) A notice given under paragraph (9) must inform the person of their right to refer the matter to the Tribunal and the procedure for such a reference.

(12) A notice under paragraph (10)(b) must comply with paragraph (7).

(13) For the purposes of paragraph (2)(c), paragraphs (a) to (d) of section 391(8) of the 2000 Act (publication) apply to determine whether a matter is open to review.

*Registration as a small payment institution*

**Application for registration as a small payment institution or variation of an existing registration**

**12.**—(1) An application for registration as a small payment institution must contain, or be accompanied by, such information as the Authority may reasonably require.

(2) An application for the variation of a registration as a small payment institution must—

- (a) contain a statement of the proposed variation;
- (b) contain a statement of the payment services which the applicant proposes to carry on if the registration is varied; and
- (c) contain, or be accompanied by, such other information as the Authority may reasonably require.

(3) An application under paragraph (1) or (2) must be made in such manner as the Authority may direct.

(4) At any time after receiving an application and before determining it, the Authority may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application.

(5) Different directions may be given, and different requirements imposed, in relation to different applications or categories of application.

**Conditions for registration as a small payment institution**

**13.**—(1) The Authority may refuse to register an applicant as a small payment institution only if any of the conditions set out in paragraphs (2) to (6) is not met.

(2) The application must comply with the requirements of, and any requirements imposed under, regulation 12.

(3) The monthly average over the period of 12 months preceding the application of the total amount of payment transactions executed by the applicant, including any of its agents in the United Kingdom, must not exceed 3 million euros.

(4) None of the individuals responsible for the management or operation of the business has been convicted of—

- (a) an offence under Part 7 of the Proceeds of Crime Act 2002<sup>(18)</sup> (money laundering) or under the Money Laundering Regulations 2007;
- (b) an offence under section 15 (fund-raising), 16 (use and possession), 17 (funding arrangements), 18 (money laundering) or 63 (terrorist finance: jurisdiction) of the Terrorism Act 2000<sup>(19)</sup>;
- (c) an offence under the 2000 Act;
- (d) an offence under article 7, 8 or 10 of the Terrorism (United Nations Measures) Order 2006<sup>(20)</sup> or article 7, 8 or 10 of the Al-Qaida and Taliban (United Nations Measures) Order 2006<sup>(21)</sup>;
- (e) an offence under these Regulations; or
- (f) any other financial crimes.

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<sup>(18)</sup> 2002 c.29.

<sup>(19)</sup> 2000 c.11.

<sup>(20)</sup> S.I.2006/2657.

<sup>(21)</sup> S.I.2006/2952.

(5) The applicant’s head office, registered office or place of residence, as the case may be, must be in the United Kingdom.

(6) The applicant must comply with a requirement of the Money Laundering Regulations 2007 to be included in a register maintained under those Regulations where such a requirement applies to the applicant.

(7) For the purposes of paragraph (3), where the applicant has yet to commence the provision of payment services, or has been providing payment services for less than 12 months, the monthly average may be based on the projected total amount of payment transactions over a 12 month period.

(8) In paragraph (4) “financial crime” includes any offence involving fraud or dishonesty and, for this purpose, “offence” includes any act or omission which would be an offence if it had taken place in the United Kingdom.

### **Supplementary provisions**

**14.** Regulations 7 to 11 apply to registration as a small payment institution as they apply to authorisation as a payment institution with the following modifications—

- (a) references to authorisation are to be treated as references to registration;
- (b) omit regulation 7(4);
- (c) in regulation 8 for “an authorised payment institution” substitute “small payment institution” and for “provided that” to the end substitute—  
“provided that the conditions set out in regulation 13(4) to (6) will continue to be met and that the monthly average over any period of 12 months of the total amount of payment transactions executed by the institution, including any of its agents in the United Kingdom, continues not to exceed 3 million euro (“the financial limit”).”;
- (d) in regulation 10 for paragraph (1)(e) substitute—  
“(e) the person no longer meets, or is unlikely to continue to meet, any of the conditions set out in regulation 13(4) to (6) or the financial limit referred to in regulation 8;” and
- (e) in regulation 11 for paragraph (1)(a) substitute—  
“(a) the person no longer meets, or is unlikely to continue to meet, any of the conditions set out in regulation 13(4) to (6) or the financial limit referred to in regulation 8;”.

### **Application for authorisation as a payment institution where the financial limit is exceeded**

**15.** Where the financial limit referred to in regulation 8 (as applied by regulation 14(c)) is exceeded, the institution concerned must, within 30 days of becoming aware of the change in circumstances, apply for authorisation as a payment institution under regulation 5 if it intends to continue providing payment services in the United Kingdom.

### *Common provisions*

#### **Duty to notify changes**

**16.—(1)** If at any time after an applicant has provided the Authority with any information under regulation 5(1), (2), or (4), or 12(1), (2) or (4) and before the Authority has determined the application—

- (a) there is, or is likely to be, a material change affecting any matter contained in that information; or

- (b) it becomes apparent to the applicant that the information is incomplete or contains a material inaccuracy,

the applicant must provide the Authority with details of the change, the complete information or a correction of the inaccuracy (as the case may be) without undue delay, or, in the case of a material change which has not yet taken place, the applicant must provide details of the likely change as soon as the applicant is aware of such change.

(2) The obligation in paragraph (1) also applies to material changes or significant inaccuracies affecting any matter contained in any supplementary information provided pursuant to that paragraph.

(3) Any information to be provided to the Authority under this regulation must be in such form or verified in such manner as it may direct.

### **Authorised payment institutions and small payment institutions acting without permission**

17. If an authorised payment institution or a small payment institution carries on a payment service in the United Kingdom, or purports to do so, other than in accordance with an authorisation or registration granted, or deemed to be granted under regulation 121, to it by the Authority under these Regulations, it is to be taken to have contravened a requirement imposed on it under these Regulations.

## **PART 3**

### **AUTHORISED PAYMENT INSTITUTIONS**

#### **Capital requirements**

18.—(1) Subject to paragraph (2), an authorised payment institution must maintain at all times own funds as defined for the purposes of Part 2 of Schedule 3 equal to or in excess of—

- (a) the amount of initial capital specified in Part 1 of Schedule 3, or
- (b) the amount of the own funds requirement calculated in accordance with paragraph 11 of Schedule 3 subject to any adjustment directed by the Authority under paragraph 12 of that Schedule,

whichever is greater.

(2) Paragraph (1) does not apply to an authorised payment institution—

- (a) which is included in the consolidated supervision of a parent credit institution pursuant to the banking consolidation directive; and
- (b) in respect of which all of the conditions specified in Article 69(1) of the banking consolidation directive are met.

#### **Safeguarding requirements**

19.—(1) For the purposes of this regulation “relevant funds” comprise the following—

- (a) sums received from, or for the benefit of, a payment service user for the execution of a payment transaction; and
- (b) sums received from a payment service provider for the execution of a payment transaction on behalf of a payment service user.

(2) Where—

- (a) only a portion of the sums referred to in paragraph (1)(a) or (b) is to be used for the execution of a payment transaction (with the remainder being used for non-payment services); and
- (b) the precise portion attributable to the execution of the payment transaction is variable or unknown in advance,

the relevant funds are such amount as may be reasonably estimated, on the basis of historical data and to the satisfaction of the Authority, to be representative of the portion attributable to the execution of the payment transaction.

(3) Where the relevant funds in respect of a payment transaction exceed £50, an authorised payment institution must safeguard such funds in accordance with either—

- (a) paragraphs (4) to (8); or
- (b) paragraphs (9) and (10).

(4) An authorised payment institution must keep relevant funds segregated from any other funds that it holds.

(5) Where the authorised payment institution continues to hold the relevant funds at the end of the business day following the day on which they were received it must—

- (a) place them in a separate account that it holds with an authorised credit institution; or
- (b) invest the relevant funds in such secure, liquid assets as the Authority may approve (“relevant assets”) and place those assets in a separate account with an authorised custodian.

(6) An account in which relevant funds or relevant assets are placed under paragraph (5) must—

- (a) be designated in such a way as to show that it is an account which is held for the purpose of safeguarding relevant funds or relevant assets in accordance with this regulation; and
- (b) be used only for holding those funds or assets.

(7) No person other than the authorised payment institution may have any interest in or right over the relevant funds or relevant assets placed in an account in accordance with paragraph (5)(a) or (b) except as provided by this regulation.

(8) The authorised payment institution must keep a record of—

- (a) any relevant funds segregated in accordance with paragraph (4);
- (b) any relevant funds placed in an account in accordance with paragraph (5)(a); and
- (c) any relevant assets placed in an account in accordance with paragraph (5)(b).

(9) The authorised payment institution must ensure that—

- (a) any relevant funds are covered by—
  - (i) an insurance policy with an authorised insurer;
  - (ii) a guarantee from an authorised insurer; or
  - (iii) a guarantee from an authorised credit institution; and
- (b) the proceeds of any such insurance policy or guarantee are payable upon an insolvency event into a separate account held by the authorised payment institution which must—
  - (i) be designated in such a way as to show that it is an account which is held for the purpose of safeguarding relevant funds in accordance with this regulation; and
  - (ii) be used only for holding such proceeds.

(10) No person other than the authorised payment institution may have any interest in or right over the proceeds placed in an account in accordance with paragraph (9)(b) except as provided by this regulation.

(11) Subject to paragraph (12), where there is an insolvency event—

- (a) the claims of payment service users are to be paid from the asset pool in priority to all other creditors; and
- (b) until all the claims of payment service users have been paid, no right of set-off or security right may be exercised in respect of the asset pool except to the extent that the right of set-off relates to fees and expenses in relation to operating an account held in accordance with paragraph (5)(a) or (b) or (9)(b).

(12) The claims referred to in paragraph (11)(a) shall not be subject to the priority of expenses of an insolvency proceeding except in respect of the costs of distributing the asset pool.

(13) Paragraphs (11) and (12) shall apply to any relevant funds which a small payment institution (or an authorised payment institution in relation to relevant funds of £50 or less) voluntarily safeguards in accordance with either paragraphs (4) to (8) or paragraphs (9) and (10).

(14) An authorised payment institution (and any small payment institution which voluntarily safeguards relevant funds) must maintain organisational arrangements sufficient to minimise the risk of the loss or diminution of relevant funds or relevant assets through fraud, misuse, negligence or poor administration.

(15) In this regulation—

“asset pool” means—

- (a) any relevant funds segregated in accordance with paragraph (4);
- (b) any relevant funds held in an account in accordance with paragraph (5)(a);
- (c) any relevant assets held in an account in accordance with paragraph (5)(b); and
- (d) any proceeds of an insurance policy or guarantee held in an account in accordance with paragraph (9)(b);

“authorised insurer” means a person authorised for the purposes of the 2000 Act to effect and carry out a contract of general insurance as principal or otherwise authorised in accordance with Article 6 of the First Council Directive [73/239/EEC](#) of 24th July 1973 on the business of direct insurance other than life insurance<sup>(22)</sup>, other than a person in the same group as the authorised payment institution;

“authorised credit institution” means a person authorised for the purposes of the 2000 Act to accept deposits or otherwise authorised as a credit institution in accordance with Article 6 of the banking consolidation directive other than a person in the same group as the authorised payment institution;

“authorised custodian” means a person authorised for the purposes of the 2000 Act to safeguard and administer investments or authorised as an investment firm under Article 5 of Directive [2004/39/EC](#) of 12th April 2004 on markets in financial instruments<sup>(23)</sup> which holds those investments under regulatory standards at least equivalent to those set out under Article 13 of that directive;

“insolvency event” means any of the following procedures in relation to an authorised payment institution or small payment institution—

- (e) the making of a winding-up order;
- (f) the passing of a resolution for voluntary winding-up;
- (g) the entry of the institution into administration;
- (h) the appointment of a receiver or manager of the institution’s property;

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<sup>(22)</sup> OJ No L 228, 16.8.1973, p.3.

<sup>(23)</sup> OJ No L 145, 30.4.2004, p.1.

- (i) the approval of a proposed voluntary arrangement (being a composition in satisfaction of debts or a scheme of arrangement);
  - (j) the making of a bankruptcy order;
  - (k) in Scotland, the award of sequestration;
  - (l) the making of any deed of arrangement for the benefit of creditors or, in Scotland, the execution of a trust deed for creditors;
  - (m) the conclusion of any composition contract with creditors; or
  - (n) the making of an insolvency administration order or, in Scotland, sequestration, in respect of the estate of a deceased person;
- “insolvency proceeding” means—
- (o) winding-up, administration, receivership, bankruptcy or, in Scotland, sequestration;
  - (p) a voluntary arrangement, deed of arrangement or trust deed for the benefit of creditors; or
  - (q) the administration of the insolvent estate of a deceased person;
- “security right” means—
- (r) security for a debt owed by an authorised payment institution or a small payment institution and includes any charge, lien, mortgage or other security over the asset pool or any part of the asset pool; and
  - (s) any charge arising in respect of the expenses of a voluntary arrangement.

### Accounting and statutory audit

**20.**—(1) Where an authorised payment institution carries on activities other than the provision of payment services, it must provide to the Authority separate accounting information in respect of its provision of payment services.

(2) Such accounting information must be subject, where relevant, to an auditor’s report prepared by the institution’s statutory auditors or an audit firm (within the meaning of Directive [2006/43/EC](#) of the European Parliament and of the Council of 17th May 2006 on statutory audits of annual accounts and consolidated accounts (**24**)).

(3) A statutory auditor or audit firm (“the auditor”) must, in any of the circumstances referred to in paragraph (4), communicate to the Authority information on, or its opinion on, matters—

- (a) of which it has become aware in its capacity as auditor of an authorised payment institution or of a person with close links to an authorised payment institution; and
- (b) which relate to payment services provided by that institution.

(4) The circumstances are that—

- (a) the auditor reasonably believes that—
  - (i) there is or has been, or may be or may have been, a contravention of any requirement imposed on the authorised payment institution by or under these Regulations; and
  - (ii) the contravention may be of material significance to the Authority in determining whether to exercise, in relation to that institution, any functions conferred on the Authority by these Regulations;
- (b) the auditor reasonably believes that the information on, or his opinion on, those matters may be of material significance to the Authority in determining whether the institution meets or will continue to meet the conditions set out in regulation 6(4) to (8) and, if applicable, the requirement in regulation 18(1) to maintain own funds;

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(24) OJ No L 157, 9.6.2006, p.87.

- (c) the auditor reasonably believes that the institution is not, may not be or may cease to be, a going concern;
  - (d) the auditor is precluded from stating in his report that the annual accounts have been properly prepared in accordance with the Companies Act 2006;
  - (e) the auditor is precluded from stating in his report, where applicable, that the annual accounts give a true and fair view of the matters referred to in section 495 of the Companies Act 2006 (auditor's report on company's annual accounts) including as it is applied and modified by regulation 39 of the Limited Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008<sup>(25)</sup> ("the LLP Regulations"); or
  - (f) the auditor is required to state in his report in relation to the person concerned any of the facts referred to in subsection (2), (3) or (5) of section 498<sup>(26)</sup> of the Companies Act 2006 (duties of auditor) or, in the case of limited liability partnerships, subsection (2), (3) or (4) of section 498 as applied and modified by regulation 40 of the LLP Regulations.
- (5) In this regulation a person has close links with an authorised payment institution ("A") if that person is—
- (a) a parent undertaking of A;
  - (b) a subsidiary undertaking of A;
  - (c) a parent undertaking of a subsidiary undertaking of A; or
  - (d) a subsidiary undertaking of a parent undertaking of A.

## **Outsourcing**

**21.**—(1) An authorised payment institution must notify the Authority of its intention to enter into a contract with another person under which that other person will carry out any operational function relating to its provision of payment services ("outsourcing").

(2) Where an authorised payment institution intends to outsource any important operational function, all of the following conditions must be met—

- (a) the outsourcing is not undertaken in such a way as to impair—
  - (i) the quality of the authorised payment institution's internal control; or
  - (ii) the ability of the Authority to monitor the authorised payment institution's compliance with these Regulations;
- (b) the outsourcing does not result in any delegation by the senior management of the authorised payment institution of responsibility for complying with the requirements imposed by or under these Regulations;
- (c) the relationship and obligations of the authorised payment institution towards its payment service users under these Regulations is not substantially altered;
- (d) compliance with the conditions which the authorised payment institution must observe in order to be authorised and remain so is not adversely affected; and
- (e) none of the conditions of the payment institution's authorisation requires removal or variation.

(3) For the purposes of paragraph (2), an operational function is important if a defect or failure in its performance would materially impair—

- (a) compliance by the authorised payment institution with these Regulations and any requirements of its authorisation;

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<sup>(25)</sup> S.I. 2008/1911.

<sup>(26)</sup> Section 498 (5) was substituted by S.I 2008/393.

- (b) the financial performance of the authorised payment institution; or
- (c) the soundness or continuity of the authorised payment institution's payment services.

### **Record keeping**

**22.**—(1) An authorised payment institution must maintain relevant records and keep them for at least five years from the date on which the record was created.

(2) For the purposes of paragraph (1), records are relevant where they relate to the authorised payment institution's compliance with this Part and, in particular, would enable the Authority to supervise effectively such compliance.

### *Exercise of passport rights*

### **Notice of intention**

**23.**—(1) Where an authorised payment institution intends to exercise its passport rights for the first time in a particular EEA State it must give the Authority, in such manner as the Authority may direct, notice of its intention to do so ("a notice of intention") which—

- (a) identifies the payment services which it seeks to carry on in exercise of those rights in that State;
- (b) gives the names of those responsible for the management of a proposed EEA branch, if any; and
- (c) provides details of the organisational structure of a proposed EEA branch, if any.

(2) The Authority must, within one month beginning with the date on which it receives the notice of intention, inform the host state competent authority of—

- (a) the name and address of the authorised payment institution; and
- (b) the information contained in the notice of intention.

(3) Where an authorised payment institution intends to exercise its passport rights through an EEA agent, the provisions of regulation 29 apply.

### **Registration of EEA branch**

**24.**—(1) If the Authority, taking into account any information received from the host state competent authority, has reasonable grounds to suspect that, in connection with the establishment of an EEA branch by an authorised payment institution—

- (a) money laundering or terrorist financing within the meaning of the money laundering directive is taking place, has taken place, or has been attempted; or
- (b) the risk of such activities taking place would be increased,

the Authority may refuse to register the EEA branch or cancel any such registration already made and remove the branch from the register.

(2) If the Authority proposes to refuse to register, or cancel the registration of, an EEA branch, it must give the relevant authorised payment institution a warning notice.

(3) The Authority must, having considered any representations made in response to the warning notice—

- (a) if it decides not to register the branch, or to cancel its registration, give the authorised payment institution a decision notice; or

- (b) if it decides to register the branch, or not to cancel the registration, give the authorised payment institution notice of its decision.
- (4) If the Authority decides not to register the branch, or to cancel its registration, the authorised payment institution may refer the matter to the Tribunal.
- (5) If the Authority decides to register an EEA branch, it must update the register as soon as practicable.
- (6) If the Authority decides to cancel the registration, the Authority must, where the period for a reference to the Tribunal has expired without a reference being made, as soon as practicable update the register accordingly.

### **Supervision of firms exercising passport rights**

**25.**—(1) Without prejudice to the generality of regulation 119, the Authority must co-operate with the relevant host state competent authority or home state competent authority, as the case may be, in relation to the exercise of passport rights by any authorised payment institution or EEA authorised payment institution.

(2) The Authority must, in particular—

- (a) notify the host state competent authority whenever it intends to carry out an on-site inspection in the host state competent authority’s territory; and
- (b) provide the host state competent authority or home state competent authority, as the case may be—
  - (i) on request, with all relevant information; and
  - (ii) on its own initiative, with all essential information,

relating to the exercise of passport rights by an authorised payment institution or EEA authorised payment institution, including where there is an infringement or suspected infringement of these Regulations or of the provisions of the payment services directive by an agent, branch or entity carrying out activities on behalf of such an institution.

(3) Where the Authority and the home state competent authority agree, the Authority may carry out on-site inspections on behalf of the home state competent authority in respect of payment services provided by an EEA authorised payment institution exercising its passport rights.

(4) If the Authority has reasonable grounds to suspect that, in connection with the proposed establishment of a branch or the proposed provision of services by an EEA authorised payment institution—

- (a) money laundering or terrorist financing within the meaning of the Money Laundering Regulations 2007 is taking place, has taken place, or has been attempted; or
- (b) the risk of such activities taking place would be increased,

it must inform the relevant home state competent authority of its grounds for suspicion.

### **Carrying on of Consumer Credit Act business by EEA authorised payment institutions**

**26.**—(1) Sections 203 (power to prohibit the carrying on of Consumer Credit Act business)(**27**) and 204 (power to restrict the carrying on of Consumer Credit Act business)(**28**) of, and Schedule 16 (prohibitions and restrictions imposed by OFT)(**29**) to, the 2000 Act apply in relation to EEA authorised payment institutions exercising passport rights in the United Kingdom under these

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(27) Section 203 was amended by the Enterprise Act 2002 (c.40), section 278(1) and Schedule 25, paragraph 40(1) and (7), by the Consumer Credit Act 2006, section 33, by S.I. 2000/2952 and by S.I. 2007/3300.

(28) Section 204 was amended by the Enterprise Act 2002, section 278(1) and Schedule 25, paragraph 40(1) and (8).

(29) Schedule 16 was amended by the Enterprise Act 2002, section 278(1) and Schedule 25, paragraph 40(1) and (21).

Regulations as they apply in relation to EEA firms exercising passport rights under Part 2 of Schedule 3 to the 2000 Act (EEA passport rights) with the following modifications—

- (a) in section 203(10)—
  - (i) for the definition of “a consumer credit EEA firm” substitute—
    - ““a consumer credit EEA firm” means an EEA authorised payment institution (as defined by regulation 2(1) of the Payment Services Regulations 2009) which is exercising passport rights in the United Kingdom and is carrying on any Consumer Credit Act business;” and
  - (ii) for the definition of “listed activity” substitute—
    - ““listed activity” means an activity listed in the Annex to the payment services directive and any activity carried on in accordance with Article 16 of that directive;”;
- (b) in paragraph 2(5)(b) of Schedule 16, for “the firm’s home state regulator” substitute “the home state competent authority (as defined by regulation 2(1) of the Payment Services Regulations 2009)”.

(2) Sections 21 (businesses needing a licence)(**30**) and 39(1) (offences against Part 3)(**31**) of the Consumer Credit Act 1974(**32**) do not apply in relation to the carrying on by an EEA authorised payment institution of a payment service which is Consumer Credit Act business, unless the OFT has exercised the power conferred on it by section 203 of the 2000 Act, as applied with modifications by paragraph (1), in relation to that institution.

(3) In this regulation “Consumer Credit Act business” has the same meaning as in section 203 of the 2000 Act.

## PART 4

### PROVISIONS APPLICABLE TO AUTHORISED PAYMENT INSTITUTIONS AND SMALL PAYMENT INSTITUTIONS

#### **Additional activities**

**27.**—(1) Authorised payment institutions and small payment institutions may, in addition to providing payment services, engage in the following activities—

- (a) the provision of operational and closely related ancillary services, including—
  - (i) ensuring the execution of payment transactions;
  - (ii) foreign exchange services;
  - (iii) safe-keeping activities; and
  - (iv) the storage and processing of data;
- (b) the operation of payment systems; and
- (c) business activities other than the provision of payment services, subject to any relevant Community or national law.

(2) Authorised payment institutions and small payment institutions may grant credit in relation to the provision of the payment services specified in paragraph 1(d), (e) and (g) of Schedule 1 only if—

- (a) such credit is ancillary and granted exclusively in connection with the execution of a payment transaction;

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**(30)** Section 21 was amended by the Consumer Credit Act 2006, section 33(1).

**(31)** Section 39 was amended by the Enterprise Act 2002, section 278(1) and Schedule 25, paragraph 6(1) and (19).

**(32)** 1974 c. 39.

- (b) such credit is not granted from the funds received or held for the purposes of executing payment transactions;
- (c) in cases where such credit is granted by an authorised payment institution exercising its passport rights, there is an obligation upon the payment service user to repay the credit within a period not exceeding 12 months; and
- (d) in relation to an authorised payment institution, in the opinion of the Authority the institution's own funds (comprising the items specified in paragraph 3(a) to (j) of Schedule 3) are, and continue to be, adequate in the light of the overall amount of credit granted.

### **Payment accounts and sums received for the execution of payment transactions**

**28.** Any payment account held by an authorised payment institution or a small payment institution must be used only in relation to payment transactions.

### **Use of agents**

**29.**—(1) Authorised payment institutions and small payment institutions may not provide payment services in the United Kingdom through an agent unless the agent is included on the register.

(2) Authorised payment institutions may not provide payment services in the exercise of their passport rights through an EEA agent unless the agent is included on the register.

(3) An application for an agent to be included on the register must—

(a) contain, or be accompanied by, the following information—

(i) the name and address of the agent;

(ii) where relevant, a description of the internal control mechanisms that will be used by the agent—

(aa) in the case of an agent in the United Kingdom, to comply with the Money Laundering Regulations 2007; and

(bb) in the case of an EEA agent, to comply with provisions of the money laundering directive; and

(iii) in the case of an agent of an authorised payment institution, the identity of the directors and persons responsible for the management of the agent and evidence that they are fit and proper persons; and

(iv) such other information as the Authority may reasonably require; and

(b) be made in such manner as the Authority may direct.

(4) Different directions may be given, and different requirements imposed, in relation to different applications or categories of application.

(5) At any time after receiving an application and before determining it, the Authority may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application.

(6) The Authority may refuse to include the agent on the register only if—

(a) it has not received the information referred to in paragraph (3)(a), or is not satisfied that such information is correct;

(b) it is not satisfied that the directors and persons responsible for the management of the agent are fit and proper persons;

(c) it has reasonable grounds to suspect that, in connection with the provision of services through the agent—

- (i) money laundering or terrorist financing within the meaning of the money laundering directive (or, in the United Kingdom, the Money Laundering Regulations 2007) is taking place, has taken place, or has been attempted; or
- (ii) the risk of such activities taking place would be increased.

(7) Where—

- (a) an authorised payment institution intends to provide payment services through an EEA agent; and
- (b) the Authority proposes to include the EEA agent on the register,

the Authority must inform the host state competent authority and take account of its opinion (if provided within such reasonable period as the Authority specifies) on any of the matters referred to in paragraph (6)(b) or (c).

(8) The Authority must decide whether to include the agent on the register within a reasonable period of it having received a completed application.

(9) If the Authority proposes to refuse to include the agent on the register, it must give the authorised payment institution or the small payment institution, as the case may be, a warning notice.

(10) The Authority must, having considered any representations made in response to the warning notice—

- (a) if it decides not to include the agent on the register, give the applicant a decision notice; or
- (b) if it decides to include the agent on the register, give the applicant notice of its decision, stating the date on which the registration takes effect.

(11) If the Authority decides not to include the agent on the register the applicant may refer the matter to the Tribunal.

(12) If the Authority decides to include the agent on the register, it must update the register as soon as practicable.

(13) An application under paragraph (3) may be combined with an application under regulation 5 or 12, in which case the application must be determined in the manner set out in regulation 9 (if relevant, as applied by regulation 14).

(14) An authorised payment institution or a small payment institution must ensure that agents acting on its behalf inform payment service users of the agency arrangement.

### **Removal of agent from register**

**30.**—(1) The Authority may remove an agent of an authorised payment institution or small payment institution from the register where—

- (a) the authorised payment institution or small payment institution requests, or consents to, the agent's removal from the register;
- (b) the authorised payment institution or small payment institution has obtained registration through false statements or any other irregular means;
- (c) regulation 29(6)(b) or (c) applies;
- (d) the removal is desirable in order to protect the interests of consumers; or
- (e) the agent's provision of payment services is otherwise unlawful.

(2) Where the Authority proposes to remove an agent from the register, other than at the request of the authorised payment institution or small payment institution, it must give the authorised payment institution or small payment institution a warning notice.

(3) The Authority must, having considered any representations made in response to the warning notice—

- (a) if it decides to remove the agent, give the authorised payment institution or small payment institution a decision notice; or
  - (b) if it decides not to remove the agent, give the authorised payment institution or small payment institution notice of its decision.
- (4) If the Authority decides to remove the agent, other than at the request of the authorised payment institution or small payment institution, the institution concerned may refer the matter to the Tribunal.
- (5) Where the period for a reference to the Tribunal has expired without a reference being made, the Authority must as soon as practicable update the register accordingly.

### **Reliance**

**31.**—(1) Where an authorised payment institution or a small payment institution relies on a third party for the performance of operational functions it must take all reasonable steps to ensure that these Regulations are complied with.

(2) Without prejudice to paragraph (1), an authorised payment institution or a small payment institution is responsible, to the same extent as if it had expressly permitted it, for anything done or omitted by any of its employees, any agent or branch providing payment services on its behalf, or any entity to which activities are outsourced.

### **Duty to notify change in circumstance**

**32.**—(1) Where it becomes apparent to an authorised payment institution or a small payment institution that there is, or is likely to be, a significant change in circumstances which is relevant to—

- (a) in the case of an authorised payment institution—
  - (i) its fulfilment of any of the conditions set out in regulation 6(4) to (8) and, if applicable, the requirement in regulation 18(1) to maintain own funds;
  - (ii) the payment services which it seeks to carry on in exercise of its passport rights;
- (b) in the case of a small payment institution, its fulfilment of any of the conditions set out in regulation 13(4) to (6) and compliance with the financial limit referred to in regulation 8 (as applied by regulation 14(c)); and
- (c) in the case of the use of an agent to provide payment services, the matters referred to in regulation 29(6)(b) and (c),

it must provide the Authority with details of the change without undue delay, or, in the case of a substantial change in circumstances which has not yet taken place, details of the likely change a reasonable period before it takes place.

(2) Any information to be provided to the Authority under this regulation must be in such form or verified in such manner as it may direct.

## **PART 5**

### **INFORMATION REQUIREMENTS FOR PAYMENT SERVICES**

#### *Application*

#### **Application of Part 5**

**33.**—(1) This Part applies to a contract for payment services where—

- (a) the services are provided from an establishment maintained by a payment service provider or its agent in the United Kingdom;
  - (b) the payment service providers of both the payer and the payee are located within the EEA; and
  - (c) the payment services are carried out either in euro or in the currency of an EEA State that has not adopted the euro as its currency.
- (2) Regulations 36 to 39 apply to payment services provided under a single payment service contract.
- (3) Regulations 40 to 46 apply to payment services provided under a framework contract.
- (4) Except where the payment service user is—
- (a) a consumer,
  - (b) a micro-enterprise, or
  - (c) a charity,

the parties may agree that any or all of the provisions of this Part do not apply to a contract for payment services.

#### **Disapplication of certain regulations in the case of consumer credit agreements**

**34.** Where the contract under which a payment service is provided is, or would be, when entered into, a regulated agreement—

- (a) regulations 41, 42 and 43 do not apply;
- (b) the payment service provider is only required under regulation 40(1) to provide the information specified in paragraph 3(b) of Schedule 4; and
- (c) the payment service provider is only required under regulation 45(1) to provide the information specified in paragraph (2)(d) of regulation 45.

#### **Disapplication of certain regulations in the case of low-value payment instruments**

**35.—**(1) This regulation applies in respect of payment instruments which, under the framework contract governing their use—

- (a) can be used only to execute individual payment transactions of 30 euro or less, or in relation to payment transactions executed wholly within the United Kingdom, 60 euro or less;
  - (b) have a spending limit of 150 euro, or where payment transactions must be executed wholly within the United Kingdom, 300 euro; or
  - (c) store funds that do not exceed 500 euro at any time.
- (2) Where this regulation applies—
- (a) regulations 40 and 44 do not apply and the payment service provider is only required to provide the payer with information about the main characteristics of the payment service, including—
    - (i) the way in which the payment instrument can be used;
    - (ii) the liability of the payer, as set out in regulation 62;
    - (iii) charges levied;
    - (iv) any other material information the payer might need to take an informed decision; and
    - (v) an indication of where the information specified in Schedule 4 is made available in an easily accessible manner;

- (b) the parties may agree that regulations 45 and 46 do not apply and instead—
  - (i) the payment service provider must provide or make available a reference enabling the payment service user to identify—
    - (aa) the payment transaction;
    - (bb) the amount of the payment transaction;
    - (cc) any charges payable in respect of the payment transaction;
  - (ii) in the case of several payment transactions of the same kind made to the same payee, the payment service provider must provide or make available to the payment service user information about the total amount of the payment transactions and any charges for those payment transactions; or
  - (iii) where the payment instrument is used anonymously or the payment service provider is not otherwise technically able to provide or make available the information specified in paragraph (i) or (ii), the payment service provider must enable the payer to verify the amount of funds stored; and
- (c) the parties may agree that regulation 47(1) does not apply to information provided or made available in accordance with regulation 42.

#### *Single payment service contracts*

#### **Information required prior to the conclusion of a single payment service contract**

**36.**—(1) A payment service provider must provide or make available to the payment service user the information specified in paragraph (2), whether by supplying a copy of the draft single payment service contract or supplying a copy of the draft payment order or otherwise, either—

- (a) before the payment service user is bound by the single payment service contract; or
  - (b) immediately after the execution of the payment transaction, where the contract is concluded at the payment service user's request using a means of distance communication which does not enable provision of such information in accordance with sub-paragraph (a).
- (2) The information referred to in paragraph (1) is—
- (a) the information or unique identifier that has to be provided by the payment service user in order for a payment order to be properly executed;
  - (b) the maximum time in which the payment service will be executed;
  - (c) the charges payable by the payment service user to the user's payment service provider and, where applicable, a breakdown of the amounts of such charges;
  - (d) where applicable, the actual or reference exchange rate to be applied to the payment transaction; and
  - (e) such of the information specified in Schedule 4 as is relevant to the single payment service contract in question.

#### **Information required after receipt of the payment order**

**37.**—(1) The payer's payment service provider must, immediately after receipt of the payment order, provide or make available to the payer the information specified in paragraph (2).

- (2) The information referred to in paragraph (1) is—
- (a) a reference enabling the payer to identify the payment transaction and, where appropriate, information relating to the payee;
  - (b) the amount of the payment transaction in the currency used in the payment order;

- (c) the amount of any charges for the payment transaction payable by the payer and, where applicable, a breakdown of the amounts of such charges;
- (d) where an exchange rate is used in the payment transaction and the actual rate used in the payment transaction differs from the rate provided in accordance with regulation 36(2)(d), the actual rate used or a reference to it, and the amount of the payment transaction after that currency conversion; and
- (e) the date on which the payment service provider received the payment order.

#### **Information for the payee after execution**

**38.**—(1) The payee’s payment service provider must, immediately after the execution of the payment transaction, provide or make available to the payee the information specified in paragraph (2).

- (2) The information referred to in paragraph (1) is—
  - (a) a reference enabling the payee to identify the payment transaction and, where appropriate, the payer and any information transferred with the payment transaction;
  - (b) the amount of the payment transaction in the currency in which the funds are at the payee’s disposal;
  - (c) the amount of any charges for the payment transaction payable by the payee and, where applicable, a breakdown of the amount of such charges;
  - (d) where applicable, the exchange rate used in the payment transaction by the payee’s payment service provider, and the amount of the payment transaction before that currency conversion; and
  - (e) the credit value date.

#### **Avoidance of duplication of information**

**39.** Where a payment order for a single payment transaction is transmitted by way of a payment instrument issued under a framework contract, the payment service provider in respect of that single payment transaction need not provide or make available under regulations 36 to 38 information which has been provided or made available, or will be provided or made available, under regulations 40 to 45 by another payment service provider in respect of the framework contract.

#### *Framework contracts*

#### **Prior general information for framework contracts**

**40.**—(1) A payment service provider must provide to the payment service user the information specified in Schedule 4, either—

- (a) in good time before the payment service user is bound by the framework contract; or
- (b) where the contract is concluded at the payment service user’s request using a means of distance communication which does not enable provision of such information in accordance with sub-paragraph (a), immediately after the conclusion of the contract.

(2) The payment service provider may discharge the duty under paragraph (1) by supplying a copy of the draft framework contract provided that such contract includes the information specified in Schedule 4.

### **Information during period of contract**

41. If the payment service user so requests at any time during the contractual relationship, the payment service provider must provide the information specified in Schedule 4 and the terms of the framework contract.

### **Changes in contractual information**

42.—(1) Subject to paragraph (4), any proposed changes to—

- (a) the existing terms of the framework contract; or
- (b) the information specified in Schedule 4,

must be communicated by the payment service provider to the payment service user no later than two months before the date on which they are to take effect.

(2) The framework contract may provide for any such proposed changes to be made unilaterally by the payment service provider where the payment service user does not, before the proposed date of entry into force of the changes, notify the payment service provider to the contrary.

(3) Where paragraph (2) applies, the payment service provider must inform the payment service user that—

- (a) the payment service user will be deemed to have accepted the changes in the circumstances referred to in that paragraph; and
- (b) the payment service user has the right to terminate the framework contract immediately and without charge before the proposed date of their entry into force.

(4) Changes in the interest or exchange rates may be applied immediately and without notice where—

- (a) such a right is agreed under the framework contract and the changes are based on the reference interest or exchange rates information on which has been provided to the payment service user in accordance with this Part; or
- (b) the changes are more favourable to the payment service user.

(5) The payment service provider must inform the payment service user of any change to the interest rate as soon as possible unless the parties have agreed on a specific frequency or manner in which the information is to be provided or made available.

(6) Any change in the interest or exchange rate used in payment transactions must be implemented and calculated in a neutral manner that does not discriminate against payment service users.

### **Termination of framework contract**

43.—(1) The payment service user may terminate the framework contract at any time unless the parties have agreed on a period of notice not exceeding one month.

(2) Subject to paragraph (3), any charges for the termination of the contract must reasonably correspond to the actual costs to the payment service provider of termination.

(3) The payment service provider may not charge the payment service user for the termination, after the expiry of 12 months, of a framework contract concluded for a fixed period of more than 12 months or for an indefinite period.

(4) The payment service provider may terminate a framework contract concluded for an indefinite period by giving at least two months' notice, if the contract so provides.

(5) Notice of termination given in accordance with paragraph (4) must be provided in the same way as information is required by regulation 47(1) to be provided or made available.

(6) Where charges for the payment service are levied on a regular basis, such charges must be apportioned up until the time of the termination of the contract and any charges paid in advance must be reimbursed proportionally.

(7) This regulation does not affect any right of a party to the framework contract to treat it as unenforceable or void (including any right arising out of a breach of the contract).

#### **Information prior to execution of individual payment transaction**

**44.** Where an individual payment transaction under a framework contract is initiated by the payer, at the payer's request the payer's payment service provider must inform the payer of—

- (a) the maximum execution time;
- (b) the charges payable by the payer in respect of the payment transaction; and
- (c) where applicable, a breakdown of the amounts of such charges.

#### **Information for the payer on individual payment transactions**

**45.—**(1) The payer's payment service provider under a framework contract must provide to the payer the information specified in paragraph (2) as soon as reasonably practicable either—

- (a) after the amount of an individual payment transaction is debited from the payer's payment account; or
- (b) where the payer does not use a payment account, after receipt of the payment order.

(2) The information referred to in paragraph (1) is—

- (a) a reference enabling the payer to identify each payment transaction and, where appropriate, information relating to the payee;
- (b) the amount of the payment transaction in the currency in which the payer's payment account is debited or in the currency used for the payment order;
- (c) the amount of any charges for the payment transaction and, where applicable, a breakdown of the amounts of such charges, or the interest payable by the payer;
- (d) where applicable, the exchange rate used in the payment transaction by the payer's payment service provider and the amount of the payment transaction after that currency conversion; and
- (e) the debit value date or the date of receipt of the payment order.

(3) A framework contract may include a condition that the information specified in paragraph (2) be provided or made available periodically at least once a month and in an agreed manner which enables the payer to store and reproduce the information unchanged.

#### **Information for the payee on individual payment transactions**

**46.—**(1) As soon as reasonably practicable after the execution of an individual payment transaction under a framework contract, the payee's payment service provider must provide to the payee the information specified in paragraph (2).

(2) The information referred to in paragraph (1) is-

- (a) a reference enabling the payee to identify the payment transaction and, where appropriate, the payer, and any information transferred with the payment transaction;
- (b) the amount of the payment transaction in the currency in which the payee's payment account is credited;
- (c) the amount of any charges for the payment transaction and, where applicable, a breakdown of the amounts of such charges, or the interest payable by the payee;

- (d) where applicable, the exchange rate used in the payment transaction by the payee's payment service provider, and the amount of the payment transaction before that currency conversion; and
- (e) the credit value date.

(3) A framework contract may include a condition that the information specified in paragraph (2) is to be provided or made available periodically at least once a month and in an agreed manner which enables the payee to store and reproduce the information unchanged.

### *Common provisions*

#### **Communication of information**

**47.—**(1) Subject to regulation 35(2)(c), any information provided or made available in accordance with this Part must be provided or made available—

- (a) in an easily accessible manner;
- (b) if the payment service user so requests, on paper or on another durable medium;
- (c) in easily understandable language and in a clear and comprehensible form; and
- (d) in English or in the language agreed by the parties.

(2) Paragraph (1)(b) is subject to any agreement in accordance with regulation 45(3) or 46(3) as to the manner in which information is to be provided or made available.

#### **Charges for information**

**48.—**(1) A payment service provider may not charge for providing or making available information which is required to be provided or made available by this Part.

(2) The payment service provider and the payment service user may agree on charges for any information which is provided at the request of the payment service user where such information is—

- (a) additional to the information required to be provided or made available by this Part;
- (b) provided more frequently than is specified in this Part; or
- (c) transmitted by means of communication other than those specified in the framework contract.

(3) Any charges imposed under paragraph (2) must reasonably correspond to the payment service provider's actual costs.

#### **Currency and currency conversion**

**49.—**(1) Payment transactions must be executed in the currency agreed between the parties.

(2) Where a currency conversion service is offered before the initiation of the payment transaction—

- (a) at the point of sale; or
- (b) by the payee,

the party offering the currency conversion service to the payer must disclose to the payer all charges as well as the exchange rate to be used for converting the payment transaction.

#### **Information on additional charges or reductions**

**50.—**(1) The payee must inform the payer of any charge requested or reduction offered by the payee for the use of a particular payment instrument before the initiation of the payment transaction.

(2) The payment service provider, or any relevant third party, must inform the payment service user of any charge requested by the payment service provider or third party, as the case may be, for the use of a particular payment instrument before the initiation of the payment transaction.

## PART 6

### RIGHTS AND OBLIGATIONS IN RELATION TO THE PROVISION OF PAYMENT SERVICES

#### *Application*

#### **Application of Part 6**

**51.**—(1) This Part applies to a contract for payment services where—

- (a) the services are provided from an establishment maintained by a payment service provider or its agent in the United Kingdom;
- (b) subject to paragraph (2), the payment service providers of both the payer and the payee are located within the EEA; and
- (c) where the payment services are carried out in euro or in the currency of an EEA State that has not adopted the euro as its currency.

(2) Regulation 73 applies whether or not the payment service providers of both the payer and the payee are located within the EEA.

(3) Except where the payment service user is a consumer, a micro-enterprise or a charity, the parties may agree that—

- (a) any or all of regulations 54(1), 55(2), 60, 62, 63, 64, 67, 75, 76 and 77 do not apply;
- (b) a different time period applies for the purposes of regulation 59(1).

#### **Disapplication of certain regulations in the case of consumer credit agreements**

**52.** The following provisions of the Consumer Credit Act 1974 shall apply in relation to contracts for the provision of payment services which are regulated agreements for the purposes of that Act in place of the following provisions of these Regulations—

- (a) section 51 (prohibition of unsolicited credit tokens) in place of regulation 58(1)(b);
- (b) sections 66 (acceptance of credit tokens) and 84 (misuse of credit tokens)(**33**) in place of regulations 59, 61 and 62;
- (c) section 83 (liability for misuse of credit facilities) in place of regulations 59, 61 and 62;
- (d) sections 76 (duty to give notice before taking certain action) and 87 (need for default notice) in relation to the grounds mentioned in regulation 56(2) in place of regulation 56(3) to (6).

#### **Disapplication of certain regulations in the case of low value payment instruments**

**53.**—(1) This regulation applies in respect of payment instruments which, under the framework contract governing their use—

- (a) can be used only to execute individual payment transactions of 30 euro or less, or in relation to payment transactions executed wholly within the United Kingdom, 60 euro or less;

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(33) Section 84 was amended by [S.I. 2000/2095](#) and [2000/2334](#).

- (b) have a spending limit of 150 euro, or where payment transactions must be executed wholly within the United Kingdom, 300 euro; or
  - (c) store funds that do not exceed 500 euro at any time.
- (2) Where this regulation applies the parties may agree that—
- (a) regulations 57(1)(b), 58(1)(c), (d) and (e) and 62(3) do not apply where the payment instrument does not allow for the stopping or prevention of its use;
  - (b) regulations 60, 61 and 62(1) and (2) do not apply where the payment instrument is used anonymously or the payment service provider is not in a position, for other reasons concerning the payment instrument, to prove that a payment transaction was authorised;
  - (c) the payment service provider is not required under regulation 66(1) to notify the payment service user of the refusal of a payment order if the non-execution is apparent from the context;
  - (d) the payer may not revoke the payment order under regulation 67 after transmitting the payment order or giving their consent to execute the payment transaction to the payee;
  - (e) execution periods other than those provided by regulations 70 and 71 apply.
- (3) Subject to paragraph (2)(b), regulations 61 and 62(1) and (2) apply to electronic money as defined in Article 1(3)(b) of the electronic money directive unless the payer's payment service provider does not have the ability under the contract to—
- (a) freeze the payment account; or
  - (b) stop the use of the payment instrument.

### *Charges*

#### **Charges**

- 54.**—(1) The payment service provider may only charge the payment service user for the fulfilment of any of its obligations under this Part—
- (a) in accordance with regulation 66(3), 67(6) or 74(2)(b);
  - (b) where agreed between the parties; and
  - (c) where such charges reasonably correspond to the payment service provider's actual costs.
- (2) Where a payment transaction does not involve any currency conversion, the respective payment service providers must ensure that—
- (a) the payee pays any charges levied by the payee's payment service provider; and
  - (b) the payer pays any charges levied by the payer's payment service provider.
- (3) The payee's payment service provider may not prevent the payee from—
- (a) requiring payment of a charge by; or
  - (b) offering a reduction to,
- the payer for the use of a particular payment instrument.

### *Authorisation of payment transactions*

#### **Consent and withdrawal of consent**

- 55.**—(1) A payment transaction is to be regarded as having been authorised by the payer for the purposes of this Part only if the payer has given its consent to—

- (a) the execution of the payment transaction; or
  - (b) the execution of a series of payment transactions of which that payment transaction forms part.
- (2) Such consent—
- (a) may be given before or, if agreed between the payer and its payment service provider, after the execution of the payment transaction; and
  - (b) must be given in the form, and in accordance with the procedure, agreed between the payer and its payment service provider.
- (3) The payer may withdraw its consent to a payment transaction at any time before the point at which the payment order can no longer be revoked under regulation 67.
- (4) Subject to regulation 67(3) to (5), the payer may withdraw its consent to the execution of a series of payment transactions at any time with the effect that any future payment transactions are not regarded as authorised for the purposes of this Part.

### **Limits on the use of payment instruments**

- 56.**—(1) Where a specific payment instrument is used for the purpose of giving consent to the execution of a payment transaction, the payer and its payment service provider may agree on spending limits for any payment transactions executed through that payment instrument.
- (2) A framework contract may provide for the payment service provider to have the right to stop the use of a payment instrument on reasonable grounds relating to—
- (a) the security of the payment instrument;
  - (b) the suspected unauthorised or fraudulent use of the payment instrument; or
  - (c) in the case of a payment instrument with a credit line, a significantly increased risk that the payer may be unable to fulfil its liability to pay.
- (3) The payment service provider must, in the manner agreed between the payment service provider and the payer and before carrying out any measures to stop the use of the payment instrument—
- (a) inform the payer that it intends to stop the use of the payment instrument; and
  - (b) give its reasons for doing so.
- (4) Where the payment service provider is unable to inform the payer in accordance with paragraph (3) before carrying out any measures to stop the use of the payment instrument, it must do so immediately after.
- (5) Paragraphs (3) and (4) do not apply where provision of the information in accordance with paragraph (3) would compromise reasonable security measures or is otherwise unlawful.
- (6) The payment service provider must allow the use of the payment instrument or replace it with a new payment instrument as soon as practicable after the reasons for stopping its use cease to exist.

### **Obligations of the payment service user in relation to payment instruments**

- 57.**—(1) A payment service user to whom a payment instrument has been issued must—
- (a) use the payment instrument in accordance with the terms and conditions governing its issue and use; and
  - (b) notify the payment service provider in the agreed manner and without undue delay on becoming aware of the loss, theft, misappropriation or unauthorised use of the payment instrument.

(2) The payment service user must on receiving a payment instrument take all reasonable steps to keep its personalised security features safe.

### **Obligations of the payment service provider in relation to payment instruments**

**58.**—(1) A payment service provider issuing a payment instrument must—

- (a) subject to regulation 57, ensure that the personalised security features of the payment instrument are not accessible to persons other than the payment service user to whom the payment instrument has been issued;
- (b) not send an unsolicited payment instrument, except where a payment instrument already issued to a payment service user is to be replaced;
- (c) ensure that appropriate means are available at all times to enable the payment service user to notify the payment service provider in accordance with regulation 57(1)(b) or to request that the use of the payment instrument is no longer stopped in accordance with regulation 56(6);
- (d) on request, provide the payment service user at any time during a period of 18 months after the alleged date of notification under regulation 57(1)(b) with the means to prove that such notification to the payment service provider was made;
- (e) prevent any use of the payment instrument once notification has been made under regulation 57(1)(b).

(2) The payment service provider bears the risk of sending a payment instrument or any of its personalised security features to the payment service user.

### **Notification of unauthorised or incorrectly executed payment transactions**

**59.**—(1) A payment service user is entitled to redress under regulation 61, 75, 76 or 77 only if it notifies the payment service provider without undue delay, and in any event no later than 13 months after the debit date, on becoming aware of any unauthorised or incorrectly executed payment transaction.

(2) Where the payment service provider has failed to provide or make available information concerning the payment transaction in accordance with Part 5 of these Regulations, the payment service user is entitled to redress under the regulations referred to in paragraph (1) notwithstanding that the payment service user has failed to notify the payment service provider as mentioned in that paragraph.

### **Evidence on authentication and execution of payment transactions**

**60.**—(1) Where a payment service user—

- (a) denies having authorised an executed payment transaction; or
- (b) claims that a payment transaction has not been correctly executed,

it is for the payment service provider to prove that the payment transaction was authenticated, accurately recorded, entered in the payment service provider's accounts and not affected by a technical breakdown or some other deficiency.

(2) In paragraph (1) “authenticated” means the use of any procedure by which a payment service provider is able to verify the use of a specific payment instrument, including its personalised security features.

(3) Where a payment service user denies having authorised an executed payment transaction, the use of a payment instrument recorded by the payment service provider is not in itself necessarily sufficient to prove either that—

- (a) the payment transaction was authorised by the payer; or
- (b) the payer acted fraudulently or failed with intent or gross negligence to comply with regulation 57.

#### **Payment service provider's liability for unauthorised payment transactions**

**61.** Subject to regulations 59 and 60, where an executed payment transaction was not authorised in accordance with regulation 55, the payment service provider must immediately—

- (a) refund the amount of the unauthorised payment transaction to the payer; and
- (b) where applicable, restore the debited payment account to the state it would have been in had the unauthorised payment transaction not taken place.

#### **Payer's liability for unauthorised payment transaction**

**62.**—(1) Subject to paragraphs (2) and (3), the payer is liable up to a maximum of £50 for any losses incurred in respect of unauthorised payment transactions arising—

- (a) from the use of a lost or stolen payment instrument; or
- (b) where the payer has failed to keep the personalised security features of the payment instrument safe, from the misappropriation of the payment instrument.

(2) The payer is liable for all losses incurred in respect of an unauthorised payment transaction where the payer—

- (a) has acted fraudulently; or
- (b) has with intent or gross negligence failed to comply with regulation 57.

(3) Except where the payer has acted fraudulently, the payer is not liable for any losses incurred in respect of an unauthorised payment transaction—

- (a) arising after notification under regulation 57(1)(b);
- (b) where the payment service provider has failed at any time to provide, in accordance with regulation 58(1)(c), appropriate means for notification; or
- (c) where the payment instrument has been used in connection with a distance contract (other than an excepted contract).

(4) In paragraph (3)(c) “distance contract” and “excepted contract” have the meanings given in the Consumer Protection (Distance Selling) Regulations 2000(**34**).

#### **Refunds for payment transactions initiated by or through a payee**

**63.**—(1) Where the conditions in paragraph (2) and the requirement in regulation 64(1) are satisfied, the payer is entitled to a refund from its payment service provider of the full amount of any authorised payment transaction initiated by or through the payee.

(2) The conditions are that—

- (a) the authorisation did not specify the exact amount of the payment transaction when the authorisation was given in accordance with regulation 55; and
- (b) the amount of the payment transaction exceeded the amount that the payer could reasonably have expected taking into account the payer's previous spending pattern, the conditions of the framework contract and the circumstances of the case.

(3) The payer and payment service provider may agree in the framework contract, in respect of direct debits, that the conditions in paragraph (2) need not be satisfied in order for the payer to be entitled to a refund.

(4) For the purposes of paragraph (2)(b), the payer cannot rely on currency exchange fluctuations where the reference exchange rate provided under regulation 36(2)(d) or paragraph 3(b) of Schedule 4 was applied.

(5) The payer and payment service provider may agree in the framework contract that the right to a refund does not apply where—

- (a) the payer has given consent directly to the payment service provider for the payment transaction to be executed; and
- (b) if applicable, information on the payment transaction was provided or made available in an agreed manner to the payer for at least four weeks before the due date by the payment service provider or by the payee.

### **Requests for refunds for payment transactions initiated by or through a payee**

**64.**—(1) The payer must request a refund under regulation 63 from its payment service provider within 8 weeks from the date on which the funds were debited.

(2) The payment service provider may require the payer to provide such information as is reasonably necessary to ascertain whether the conditions in regulation 63(2) are satisfied.

(3) Subject to paragraph (4), the payment service provider must either—

- (a) refund the full amount of the payment transaction; or
- (b) provide justification for refusing to refund the payment transaction, indicating the bodies to which the payer may refer the matter if the payer does not accept the justification provided.

(4) Where an agreement in accordance with regulation 63(3) applies, the payment service provider must, notwithstanding that a condition in regulation 63(2) is not satisfied, refund the full amount of the payment transaction.

(5) Any refund or justification for refusing a refund must be provided within 10 business days of receiving a request for a refund or, where applicable, within 10 business days of receiving any further information requested under paragraph (2).

### *Execution of payment transactions*

### **Receipt of payment orders**

**65.**—(1) Subject to paragraphs (2) to (5), for the purposes of these Regulations the time of receipt of a payment order is the time at which the payment order, given directly by the payer or indirectly by or through a payee, is received by the payer's payment service provider.

(2) If the time of receipt of a payment order does not fall on a business day for the payer's payment service provider, the payment order is deemed to have been received on the first business day thereafter.

(3) The payment service provider may set a time towards the end of a business day after which any payment order received will be deemed to have been received on the following business day.

(4) Where the payment service user initiating a payment order agrees with its payment service provider that execution of the payment order is to take place—

- (a) on a specific day;
- (b) on the last day of a certain period; or

(c) on the day on which the payer has put funds at the disposal of its payment service provider, the time of receipt is deemed to be the day so agreed.

(5) If the day agreed under paragraph (4) is not a business day for the payer's payment service provider, the payment order is deemed to have been received on the first business day thereafter.

### **Refusal of payment orders**

**66.**—(1) Subject to paragraph (4), where a payment service provider refuses to execute a payment order, it must notify the payment service user of—

- (a) the refusal;
- (b) if possible, the reasons for such refusal; and
- (c) the procedure for rectifying any factual errors that led to the refusal.

(2) Any notification under paragraph (1) must be given or made available in an agreed manner and at the earliest opportunity, and in any event within the periods specified in regulation 70.

(3) The framework contract may provide for the payment service provider to charge the payment service user for such notification where the refusal is reasonably justified.

(4) The payment service provider is not required to notify the payment service user under paragraph (1) where such notification would be otherwise unlawful.

(5) Where all the conditions set out in the payer's framework contract have been satisfied, the payment service provider may not refuse to execute an authorised payment order irrespective of whether the payment order is initiated by the payer or by or through a payee, unless such execution is otherwise unlawful.

(6) For the purposes of regulations 70, 75 and 76 a payment order of which execution has been refused is deemed not to have been received.

### **Revocation of a payment order**

**67.**—(1) Subject to paragraphs (2) to (5), a payment service user may not revoke a payment order after it has been received by the payer's payment service provider.

(2) In the case of a payment transaction initiated by or through the payee, the payer may not revoke the payment order after transmitting the payment order or giving consent to execute the payment transaction to the payee.

(3) In the case of a direct debit, the payer may not revoke the payment order after the end of the business day preceding the day agreed for debiting the funds.

(4) Where a day is agreed under regulation 65(4), the payment service user may not revoke a payment order after the end of the business day preceding the agreed day.

(5) At any time after the time limits for revocation set out in paragraphs (1) to (4), the payment order may only be revoked if the revocation is—

- (a) agreed between the payment service user and its payment service provider; and
- (b) in the case of a payment transaction initiated by or through the payee, including in the case of a direct debit, also agreed with the payee.

(6) A framework contract may provide for the payment service provider to charge for revocation under this regulation.

### **Amounts transferred and amounts received**

**68.**—(1) Subject to paragraph (2), the payment service providers of the payer and payee must ensure that the full amount of the payment transaction is transferred and that no charges are deducted from the amount transferred.

(2) The payee and its payment service provider may agree for the payment service provider to deduct its charges from the amount transferred before crediting it to the payee provided that the full amount of the payment transaction and the amount of the charges are clearly stated in the information provided to the payee.

(3) If charges other than those provided for by paragraph (2) are deducted from the amount transferred—

- (a) in the case of a payment transaction initiated by the payer, the payer’s payment service provider must ensure that the payee receives the full amount of the payment transaction;
- (b) in the case of a payment transaction initiated by the payee, the payee’s payment service provider must ensure that the payee receives the full amount of the payment transaction.

### *Execution time and value date*

### **Application of regulations 70 to 72**

**69.**—(1) Regulations 70 to 72 apply to any transaction—

- (a) in euro;
- (b) in sterling; or
- (c) involving only one currency conversion between the euro and sterling, provided that—
  - (i) the currency conversion is carried out in the United Kingdom; and
  - (ii) in the case of cross-border payment transactions, the cross-border transfer takes place in euro.

(2) In respect of any other transaction, the payment service user may agree with the payment service provider that regulations 70 (other than regulation 70(4)) to 72 do not apply.

### **Payment transactions to a payment account**

**70.**—(1) Subject to paragraphs (2), (3) and (4), the payer’s payment service provider must ensure that the amount of the payment transaction is credited to the payee’s payment service provider’s account by the end of the business day following the time of receipt of the payment order.

(2) Until 1st January 2012, the payer and their payment service provider may agree that the amount of the payment transaction is to be credited to the payee’s payment service provider’s account by the end of the third business day following the time of receipt of the payment order.

(3) Where a payment transaction is initiated by way of a paper payment order—

- (a) the reference in paragraph (1) to the end of the business day following the time of receipt of the payment order is to be treated as a reference to the end of the second business day following the time of receipt of the payment order; and
- (b) the reference in paragraph (2) to the end of the third business day following the time of receipt of the payment order is to be treated as a reference to the end of the fourth business day following the time of receipt of the payment order.

(4) Where a payment transaction—

- (a) does not fall within paragraphs (a) to (c) of regulation 69(1); but

(b) is to be executed wholly within the EEA, the payer's payment service provider must ensure that the amount of the payment transaction is credited to the payee's payment service provider's account by the end of the fourth business day following the time of receipt of the payment order.

(5) The payee's payment service provider must value date and credit the amount of the payment transaction to the payee's payment account following its receipt of the funds.

(6) The payee's payment service provider must transmit a payment order initiated by or through the payee to the payer's payment service provider within the time limits agreed between the payee and its payment service provider, enabling settlement in respect of a direct debit to occur on the agreed due date.

### **Absence of payee's payment account with the payment service provider**

71.—(1) Paragraph (2) applies where a payment service provider accepts funds on behalf of a payee who does not have a payment account with that payment service provider.

(2) The payment service provider must make the funds available to the payee immediately after the funds have been credited to that payment service provider's account.

### **Cash placed on a payment account**

72. Where a payment service user places cash on its payment account with a payment service provider in the same currency as that payment account, the payment service provider must—

- (a) if the user is a consumer, micro-enterprise or charity, ensure that the amount is made available and value dated immediately after the receipt of the funds;
- (b) in any other case, ensure that the amount is made available and value dated no later than the end of the business day after the receipt of the funds.

### **Value date and availability of funds**

73.—(1) The credit value date for the payee's payment account must be no later than the business day on which the amount of the payment transaction is credited to the account of the payee's payment service provider.

(2) The payee's payment service provider must ensure that the amount of the payment transaction is at the payee's disposal immediately after that amount has been credited to that payment service provider's account.

(3) The debit value date for the payer's payment account must be no earlier than the time at which the amount of the payment transaction is debited to that payment account.

## *Liability*

### **Incorrect unique identifiers**

74.—(1) Where a payment order is executed in accordance with the unique identifier, the payment order is deemed to have been correctly executed by each payment service provider involved in executing the payment order with respect to the payee specified by the unique identifier.

(2) Where the unique identifier provided by the payment service user is incorrect, the payment service provider is not liable under regulation 75 or 76 for non-execution or defective execution of the payment transaction, but the payment service provider—

- (a) must make reasonable efforts to recover the funds involved in the payment transaction; and

(b) may, if agreed in the framework contract, charge the payment service user for any such recovery.

(3) Where the payment service user provides information additional to that specified in regulation 36(2)(a) or paragraph 2(b) of Schedule 4, the payment service provider is liable only for the execution of payment transactions in accordance with the unique identifier provided by the payment service user.

#### **Non-execution or defective execution of payment transactions initiated by the payer**

**75.**—(1) This regulation applies where a payment order is initiated by the payer.

(2) The payer’s payment service provider is liable to the payer for the correct execution of the payment transaction unless it can prove to the payer and, where relevant, to the payee’s payment service provider, that the payee’s payment service provider received the amount of the payment transaction in accordance with regulation 70.

(3) The payer’s payment service provider must, on request, make immediate efforts to trace the payment transaction and notify the payer of the outcome.

(4) Where the payer’s payment service provider is liable under paragraph (2), it must without undue delay refund to the payer the amount of the non-executed or defective payment transaction and, where applicable, restore the debited payment account to the state in which it would have been had the defective payment transaction not taken place.

(5) Where the payer’s payment service provider can prove (as set out in paragraph (2)) that the payee’s payment service provider received the amount of the payment transaction in accordance with regulation 70, the payee’s payment service provider is liable to the payee for the correct execution of the payment transaction and must—

- (a) immediately make available the amount of the payment transaction to the payee; and
- (b) where applicable, credit the corresponding amount to the payee’s payment account.

#### **Non-execution or defective execution of payment transactions initiated by the payee**

**76.**—(1) This regulation applies where a payment order is initiated by the payee.

(2) The payee’s payment service provider is liable to the payee for the correct transmission of the payment order to the payer’s payment service provider in accordance with regulation 70(6).

(3) Where the payee’s payment service provider is liable under paragraph (2), it must immediately re-transmit the payment order in question to the payer’s payment service provider.

(4) The payee’s payment service provider must, on request, make immediate efforts to trace the payment transaction and notify the payee of the outcome.

(5) Where the payee’s payment service provider can prove to the payee and, where relevant, to the payer’s payment service provider, that it is not liable under paragraph (2) in respect of a non-executed or defectively executed payment transaction, the payer’s payment service provider is liable to the payer and must, as appropriate and without undue delay—

- (a) refund to the payer the amount of the payment transaction; and
- (b) restore the debited payment account to the state in which it would have been had the defective payment transaction not taken place.

#### **Liability of payment service provider for charges and interest**

**77.** A payment service provider is liable to its payment service user for—

- (a) any charges for which the payment service user is responsible; and

(b) any interest which the payment service user must pay, as a consequence of the non-execution or defective execution of the payment transaction.

### **Right of recourse**

**78.** Where the liability of a payment service provider (“the first provider”) under regulation 75 or 76 is attributable to another payment service provider or an intermediary, the other payment service provider or intermediary must compensate the first provider for any losses incurred or sums paid pursuant to those regulations.

### **Force majeure**

**79.—(1)** A person is not liable for any contravention of a requirement imposed on it by or under this Part where the contravention is due to abnormal and unforeseeable circumstances beyond the person’s control, the consequences of which would have been unavoidable despite all efforts to the contrary.

(2) A payment service provider is not liable for any contravention of a requirement imposed on it by or under this Part where the contravention is due to the obligations of the payment service provider under other provisions of Community or national law.

## **PART 7**

### **THE AUTHORITY**

#### *The functions of the Authority*

### **Functions of the Authority**

**80.—(1)** The Authority is to have the functions conferred on it by these Regulations.

(2) In discharging its function of determining the general policy and principles by reference to which it performs particular functions under these Regulations, the Authority must have regard to—

- (a) the need to use its resources in the most efficient and economic way;
- (b) the responsibilities of those who manage the affairs of payment service providers;
- (c) the principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction;
- (d) the desirability of facilitating innovation in connection with payment services;
- (e) the international character of financial services and markets and the desirability of maintaining the competitive position of the United Kingdom;
- (f) the need to minimise the adverse effects on competition that may arise from anything done in the discharge of those functions; and
- (g) the desirability of facilitating competition in relation to payment services.

#### *Supervision and enforcement*

### **Monitoring and enforcement**

**81.—(1)** The Authority must maintain arrangements designed to enable it to determine whether—

- (a) persons on whom requirements are imposed by or under Part 2, 3 or 4 of these Regulations are complying with them;
  - (b) there has been any contravention of regulation 110(1), 111(1) or 114(1)(a) or (2).
- (2) The Authority may maintain arrangements designed to enable it to determine whether persons on whom requirements are imposed by or under Part 5 or 6 of these Regulations are complying with them.
- (3) The arrangements referred to in paragraphs (1) and (2) may provide for functions to be performed on behalf of the Authority by any body or person who is, in its opinion, competent to perform them.
- (4) The Authority must also maintain arrangements for enforcing the provisions of these Regulations.
- (5) Paragraph (3) does not affect the Authority's duty under paragraph (1).

### **Reporting requirements**

- 82.**—(1) A payment service provider must give the Authority such information in respect of its provision of payment services and its compliance with requirements imposed by or under Parts 2 to 6 of these Regulations as the Authority may direct.
- (2) Information required under this regulation must be given at such times and in such form, and verified in such manner, as the Authority may direct.

### **Entry, inspection without a warrant etc**

- 83.**—(1) Paragraph (2) applies where an officer has reasonable cause to believe that any premises are being used by—
- (i) an authorised payment institution, an EEA authorised payment institution or a small payment institution (including any of its branches) in connection with its business activities;
  - (ii) an agent providing payment services on behalf of an authorised payment institution, an EEA authorised payment institution or a small payment institution; or
  - (iii) an entity to which an authorised payment institution or an EEA authorised payment institution has outsourced any of its business activities.
- (2) The officer may on producing evidence of authority at any reasonable time—
- (a) enter the premises;
  - (b) inspect the premises;
  - (c) observe the carrying on of business activities by the authorised payment institution, the EEA authorised payment institution or the small payment institution, as the case may be;
  - (d) inspect any document found on the premises;
  - (e) require any person on the premises to provide an explanation of any document or to state where it may be found.
- (3) An officer may take copies of, or make extracts from, any document found under paragraph (2).
- (4) An officer may exercise powers under this regulation only if the information or document sought to be obtained as a result is reasonably required in connection with the exercise by the Authority of its functions under these Regulations.
- (5) An officer may not exercise powers under this regulation in relation to information or documents in respect of which a claim to legal professional privilege (in Scotland, to confidentiality of communications) could be maintained in legal proceedings.

(6) In this regulation—

“document” includes information recorded in any form;

“officer” means an officer of the Authority and includes a member of the Authority’s staff or an agent of the Authority;

“premises” means any premises other than premises used only as a dwelling.

### **Public censure**

**84.** If the Authority considers that a payment service provider has contravened a requirement imposed on them by or under these Regulations the Authority may publish a statement to that effect.

### **Financial penalties**

**85.—**(1) The Authority may impose a penalty of such amount as it considers appropriate on—

(a) a payment service provider who has contravened a requirement imposed on them by or under these Regulations; or

(b) a person who has contravened regulation 110(1), 111(1) or 114(1)(a) or (2).

(2) The Authority may not in respect of any contravention both require a person to pay a penalty under this regulation and cancel their authorisation as a payment institution or their registration as a small payment institution (as the case may be).

(3) A penalty under this regulation is a debt due from that person to the Authority, and is recoverable accordingly.

### **Proposal to take disciplinary measures**

**86.—**(1) Where the Authority proposes to publish a statement under regulation 84 or to impose a penalty under regulation 85, it must give the person concerned a warning notice.

(2) The warning notice must set out the terms of the proposed statement or state the amount of the proposed penalty.

(3) If, having considered any representations made in response to the warning notice, the Authority decides to publish a statement under regulation 84 or to impose a penalty under regulation 85, it must without delay give the person concerned a decision notice.

(4) The decision notice must set out the terms of the statement or state the amount of the penalty.

(5) If the Authority decides to publish a statement under regulation 84 or impose a penalty on a person under regulation 85, the person concerned may refer the matter to the Tribunal.

(6) Sections 210 (statements of policy) and 211 (statements of policy: procedure) of the 2000 Act apply in respect of the imposition of penalties under regulation 85 and the amount of such penalties as they apply in respect of the imposition of penalties under Part 14 of the 2000 Act (disciplinary measures) and the amount of penalties under that Part of that Act.

(7) After a statement under regulation 84 is published, the Authority must send a copy of it to the person concerned and to any person to whom a copy of the decision notice was given under section 393(4) of the 2000 Act (third party rights) (as applied by paragraph 7 of Schedule 5 to these Regulations).

### **Injunctions**

**87.—**(1) If, on the application of the Authority, the court is satisfied—

(a) that there is a reasonable likelihood that any person will contravene a requirement imposed by or under these Regulations; or

(b) that any person has contravened such a requirement and that there is a reasonable likelihood that the contravention will continue or be repeated,  
the court may make an order restraining (or in Scotland an interdict prohibiting) the contravention.

(2) If, on the application of the Authority, the court is satisfied—

- (a) that any person has contravened a requirement imposed by or under these Regulations, and
- (b) that there are steps which could be taken for remedying the contravention,

the court may make an order requiring that person, and any other person who appears to have been knowingly concerned in the contravention, to take such steps as the court may direct to remedy it.

(3) If, on the application of the Authority, the court is satisfied that any person may have—

- (a) contravened a requirement imposed by or under these Regulations, or
- (b) been knowingly concerned in the contravention of such a requirement,

it may make an order restraining (or in Scotland an interdict prohibiting) them from disposing of, or otherwise dealing with, any assets of theirs which it is satisfied they are reasonably likely to dispose of or otherwise deal with.

(4) The jurisdiction conferred by this regulation is exercisable by the High Court and the Court of Session.

(5) In paragraph (2), references to remedying a contravention include references to mitigating its effect.

#### **Power of Authority to require restitution**

**88.**—(1) The Authority may exercise the power in paragraph (2) if it is satisfied that a payment service provider (referred to in this regulation and regulation 89 as “the person concerned”) has contravened a requirement imposed by or under these Regulations, or been knowingly concerned in the contravention of such a requirement, and that—

- (a) profits have accrued to the person concerned as a result of the contravention; or
- (b) one or more persons have suffered loss or been otherwise adversely affected as a result of the contravention.

(2) The power referred to in paragraph (1) is a power to require the person concerned, in accordance with such arrangements as the Authority considers appropriate, to pay to the appropriate person or distribute among the appropriate persons such amount as appears to the Authority to be just having regard—

- (a) in a case within sub-paragraph (a) of paragraph (1), to the profits appearing to the Authority to have accrued;
- (b) in a case within sub-paragraph (b) of that paragraph, to the extent of the loss or other adverse effect;
- (c) in a case within both of those paragraphs, to the profits appearing to the Authority to have accrued and to the extent of the loss or other adverse effect.

(3) In paragraph (2) “appropriate person” means a person appearing to the Authority to be someone—

- (a) to whom the profits mentioned in paragraph (1)(a) are attributable; or
- (b) who has suffered the loss or adverse effect mentioned in paragraph (1)(b).

### **Proposal to require restitution**

**89.**—(1) If the Authority proposes to exercise the power under regulation 88(2), it must give the person concerned a warning notice.

(2) The warning notice must state the amount which the Authority propose to require the person concerned to pay or distribute as mentioned in regulation 88(2).

(3) If, having considered any representations made in response to the warning notice, the Authority decides to exercise the power under regulation 88(2), it must without delay give the person concerned a decision notice.

(4) The decision notice must—

- (a) state the amount that the person concerned is to pay or distribute;
- (b) identify the person or persons to whom that amount is to be paid or among whom that amount is to be distributed; and
- (c) state the arrangements in accordance with which the payment or distribution is to be made.

(5) If the Authority decides to exercise the power under regulation 88(2), the person concerned may refer the matter to the Tribunal.

### **Restitution orders**

**90.**—(1) The court may, on the application of the Authority, make an order under paragraph (2) if it is satisfied that a payment service provider has contravened a requirement imposed by or under these Regulations, or been knowingly concerned in the contravention of such a requirement, and that—

- (a) profits have accrued to them as a result of the contravention; or
- (b) one or more persons have suffered loss or been otherwise adversely affected as a result of the contravention.

(2) The court may order the person concerned to pay to the Authority such sum as appears to the court to be just having regard—

- (a) in a case within sub-paragraph (a) of paragraph (1), to the profits appearing to the court to have accrued;
- (b) in a case within sub-paragraph (b) of that paragraph, to the extent of the loss or other adverse effect;
- (c) in a case within both of those sub-paragraphs, to the profits appearing to the court to have accrued and to the extent of the loss or other adverse effect.

(3) Any amount paid to the Authority in pursuance of an order under paragraph (2) must be paid by it to such qualifying person or distributed by it among such qualifying persons as the court may direct.

(4) In paragraph (3), “qualifying person” means a person appearing to the court to be someone—

- (a) to whom the profits mentioned in paragraph (1)(a) are attributable; or
- (b) who has suffered the loss or adverse effect mentioned in paragraph (1)(b).

(5) On an application under paragraph (1) the court may require the person concerned to supply it with such accounts or other information as it may require for any one or more of the following purposes—

- (a) establishing whether any and, if so, what profits have accrued to them as mentioned in sub-paragraph (a) of that paragraph;
- (b) establishing whether any person or persons have suffered any loss or adverse effect as mentioned in sub-paragraph (b) of that paragraph; and

(c) determining how any amounts are to be paid or distributed under paragraph (3).

(6) The court may require any accounts or other information supplied under paragraph (5) to be verified in such manner as it may direct.

(7) The jurisdiction conferred by this regulation is exercisable by the High Court and the Court of Session.

(8) Nothing in this regulation affects the right of any person other than the Authority to bring proceedings in respect of the matters to which this regulation applies.

## Complaints

**91.**—(1) The Authority must maintain arrangements designed to enable payment service users and other interested parties to submit complaints to it that a requirement imposed by or under Parts 2 to 6 of these Regulations has been breached by a payment service provider.

(2) Where it considers it appropriate, the Authority must include in any reply to a complaint under paragraph (1) details of the ombudsman scheme established under Part 16 of the 2000 Act (the ombudsman scheme).

## Miscellaneous

### Costs of supervision

**92.**—(1) The functions of the Authority under these Regulations are to be treated for the purposes of paragraph 17 (fees) of Part 3 of Schedule 1 to the 2000 Act as functions conferred on the Authority under that Act with the following modifications—

- (a) section 2(3) of the 2000 Act (the Authority’s general duties) does not apply to the making of rules under paragraph 17 by virtue of this regulation;
- (b) rules made under paragraph 17 by virtue of this regulation are not to be treated as regulating provisions for the purposes of section 159(1) of the 2000 Act (competition scrutiny)(**35**);
- (c) paragraph 17(2) and (3) are omitted.

(2) The Authority must apply amounts paid to it by way of penalties imposed under regulation 85 towards expenses incurred in carrying out its functions under these Regulations or for any incidental purpose.

### Guidance

**93.**—(1) The Authority may give guidance consisting of such information and advice as it considers appropriate with respect to—

- (a) the operation of these Regulations;
- (b) any matters relating to the functions of the Authority under these Regulations;
- (c) any other matters about which it appears to the Authority to be desirable to give information or advice in connection with these Regulations.

(2) The Authority may—

- (a) publish its guidance;
- (b) offer copies of its published guidance for sale at a reasonable price;

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(35) Section 159(1) was amended by the Enterprise Act 2002 (c.40), section 278(1) and Schedule 25, paragraph 40, and by S.I. 2006/2975.

- (c) if it gives guidance in response to a request made by any person, make a reasonable charge for that guidance.

#### **Authority's exemption from liability in damages**

**94.** The functions of the Authority under these Regulations are to be treated for the purposes of paragraph 19 (exemption from liability in damages) of Part 4 of Schedule 1 to the 2000 Act as functions conferred on the Authority under that Act.

#### **Application and modification of primary and secondary legislation**

**95.** The provisions of primary and secondary legislation set out in Schedule 5 apply in respect of the Authority's functions under these Regulations with the modifications set out in that Schedule.

## **PART 8**

### **ACCESS TO PAYMENT SYSTEMS**

#### *General*

#### **Application of Part 8**

- 96.—**(1) This Part does not apply to the following kinds of payment systems—
- (a) a designated system;
  - (b) a payment system consisting solely of payment service providers belonging to the same group where one of the payment service providers enjoys effective control over the others;
  - (c) a payment system where the sole payment service provider (whether as a single entity or a group)—
    - (i) acts or is able to act as the payment service provider for both the payer and the payee and is solely responsible for the management of the system; and
    - (ii) licenses other payment service providers to participate in the system subject to their having no right to negotiate fees in respect of the system between or amongst themselves (although they may establish their own pricing in relation to payers and payees).

(2) In paragraph (1)(a), “designated system” means a system which is declared by a designation order for the time being in force under regulation 4 of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999<sup>(36)</sup> to be a designated system for the purposes of those Regulations.

#### **Prohibition on restrictive rules on access to payment systems**

**97.—**(1) Rules or conditions governing access to, or participation in, a payment system by authorised payment institutions, EEA authorised payment institutions and small payment institutions must—

- (a) be objective, proportionate and non-discriminatory; and
- (b) not prevent, restrict or inhibit access or participation more than is necessary to—

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(36) S.I. 1999/2979.

- (i) safeguard against specific risks such as settlement risk, operational risk or business risk; or
  - (ii) protect the financial and operational stability of the payment system.
- (2) Paragraph (1) applies only to such small payment institutions as are legal persons.
- (3) Rules or conditions governing access to, or participation in, a payment system which, in respect of payment service providers, payment service users or other payment systems—
- (a) restrict effective participation in other payment systems;
  - (b) discriminate (whether directly or indirectly) between—
    - (i) different authorised payment institutions, or
    - (ii) different small payment institutions,in relation to the rights, obligations or entitlements of participants in the payment system; or
  - (c) impose any restrictions on the basis that a person is not of a particular institutional status, are prohibited.

### *Supervision and enforcement*

#### **Power of OFT to investigate**

**98.**—(1) The OFT may conduct an investigation where there are reasonable grounds for suspecting that any rule or condition governing access to, or participation in, a payment system contravenes regulation 97(1) or (3).

(2) Where the investigation relates to a possible breach of regulation 97(1)(b)(ii), the OFT must consult the Bank of England and the Authority.

#### **OFT power to require information**

**99.**—(1) For the purposes of an investigation under regulation 98 the OFT may require any person—

- (a) to produce to it or to a person appointed by it, at a specified time and place, any specified document, or
- (b) to provide to it or to a person appointed by it, at a specified time and place, any specified information,

which the OFT considers relates to any matter relevant to the investigation.

(2) The power conferred by paragraph (1) is to be exercised by a notice indicating the subject matter and purpose of the investigation.

(3) Information required to be provided under paragraph (1) must be provided in the specified manner and form, or, if that is not possible, in the nearest equivalent manner and form.

(4) The power conferred by paragraph (1) to require a person to produce a document includes power—

- (a) to require them to provide an explanation of the document, or
- (b) if the document is not produced, to require them to state, to the best of their knowledge and belief, where it is.

(5) In this regulation—

“document” includes information recorded in any form;

“information” includes estimates and forecasts;

“specified” means—

- (a) specified, or described, in the notice referred to in paragraph (2), or
- (b) falling within a category which is specified, or described, in such notice.

### **Failure to comply with information requirement**

**100.**—(1) If, on an application made by the OFT, it appears to the court that a person (the “information defaulter”) has failed to do something that they were required to do under regulation 99, the court may make an order under this regulation.

(2) An order under this regulation may require the information defaulter—

- (a) to do the thing that they failed to do within such period as may be specified in the order;
- (b) otherwise to take such steps to remedy the consequence of the failure as may be so specified.

(3) In this regulation, “the court” means—

- (a) in England and Wales and Northern Ireland, the High Court or the county court;
- (b) in Scotland, the Court of Session or the sheriff court.

### **Privileged communications**

**101.**—(1) A person is not required under regulation 99 to produce or disclose a privileged communication.

(2) In paragraph (1) “privileged communication” means a communication—

- (a) between a professional legal adviser and their client, or
- (b) made in connection with, or in contemplation of, legal proceedings and for the purposes of those proceedings,

which in proceedings in the High Court would be protected from disclosure on grounds of legal professional privilege.

(3) In the application of this regulation to Scotland the reference in paragraph (2) to—

- (a) proceedings in the High Court is to be read as a reference to legal proceedings generally; and
- (b) an entitlement on grounds of legal professional privilege is to be read as a reference to an entitlement on the grounds of confidentiality of communications.

### **Notice of OFT decision**

**102.** Before the OFT, as the result of an investigation under regulation 98, makes a decision that any rules or conditions governing access to, or participation in, a payment system contravene regulation 97(1) or (3), the OFT must—

- (a) give notice to the person (or persons) who the OFT considers are responsible for the contravention, and
- (b) give that person (or those persons) an opportunity to make representations.

### **Publication of OFT decision**

**103.** Where the OFT makes a decision after an investigation under regulation 98, the OFT must publish its decision, together with its reasons for making it.

### **Enforcement of decisions**

**104.**—(1) If the OFT makes a decision that any rules or conditions governing access to, or participation in, a payment system contravene regulation 97(1) or (3), the OFT may give such directions as the OFT considers appropriate to such person or persons as it considers appropriate.

(2) A direction under paragraph (1) may (in particular)—

(a) require the person concerned to change any rule or condition so that it no longer contravenes regulation 97(1) or (3); and

(b) relate to the conduct of the person in implementing any rule or condition.

(3) A direction under paragraph (1) must be given in writing.

(4) If a person fails, without reasonable excuse, to comply with a direction under paragraph (1), the OFT may apply to the High Court (or, in Scotland, the Court of Session) for an order requiring that person to comply with the direction within a time specified in the order.

(5) An order under paragraph (4) may provide for all of the costs of, or incidental to, the application for the order to be borne by the person in default.

### **Power of OFT to impose financial penalties**

**105.**—(1) Where the OFT is satisfied that any rules or conditions governing access to, or participation in, a payment system contravene regulation 97(1) or (3), the OFT may impose a penalty of such amount as it considers appropriate on such persons as it considers appropriate.

(2) The OFT may impose a penalty on a person under paragraph (1) only if the OFT is satisfied that the infringement has been committed intentionally or negligently by that person.

(3) Notice of a penalty under this regulation must—

(a) be in writing; and

(b) specify the date before which the penalty is required to be paid.

(4) The date specified must not be earlier than the end of the period within which an appeal against the notice may be brought under regulation 106.

(5) Any sums received by the OFT under this regulation are to be paid into the Consolidated Fund.

### *Miscellaneous*

### **Appeal to the Competition Appeal Tribunal**

**106.**—(1) A person may appeal to the Competition Appeal Tribunal (**37**) from a decision by the OFT to give a direction under regulation 104(1) to that person or to impose a penalty under regulation 105 on that person.

(2) In determining an appeal under paragraph (1) the Competition Appeal Tribunal shall apply the same principles as would be applied by a court on an application for judicial review.

(3) Sections 14 (constitution of tribunal) and 15 (tribunal rules) of the Enterprise Act 2002 apply in respect of appeals to the Competition Appeal Tribunal under paragraph (1) as they apply in respect of appeals to the Competition Appeal Tribunal under that Act.

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(37) Established under section 12 of the Enterprise Act 2002 (c.40).

### **Disclosure of information by OFT**

**107.** Subject to regulation 119(2) and (3), Part 9 of the Enterprise Act 2002 (information) applies in respect of information which comes to the OFT by virtue of these Regulations as it applies in respect of information which is specified information for the purposes of Part 9.

### **Defamation**

**108.** For the purposes of the law relating to defamation, absolute privilege attaches to any decision made or notice given by the OFT in the exercise of any of its functions under this Part.

### **Guidance**

**109.**—(1) The OFT may give guidance consisting of such information and advice as it considers appropriate with respect to the exercise of its functions under this Part.

(2) The OFT may—

- (a) publish its guidance;
- (b) if it gives guidance in response to a request made by any person, make a reasonable charge for that guidance.

## **PART 9**

### **GENERAL**

#### *Criminal Offences*

### **Prohibition on provision of payment services by persons other than payment service providers**

**110.**—(1) A person may not provide a payment service in the United Kingdom, or purport to do so, unless the person is—

- (a) an authorised payment institution;
- (b) a small payment institution;
- (c) an EEA authorised payment institution exercising its passport rights;
- (d) a person mentioned in any of paragraphs (d) to (h) of the definition in regulation 2(1) of a payment service provider, including, where relevant, such a person exercising an EEA right in accordance with Part 2 of Schedule 3 to the 2000 Act (exercise of passport rights by EEA firms)(**38**); or
- (e) exempt under regulation 3.

(2) A person who contravenes paragraph (1) is guilty of an offence and is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding the statutory maximum, or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or both.

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(38) Part 2 was amended by the Enterprise Act 2002, section 278(1) and Schedule 25, paragraph 40; by the Consumer Credit Act 2006, section 33(9); by [S.I.2003/1473](#), [2003/2066](#), [2007/126](#) and [2007/3253](#).

### **False claims to be a payment service provider or exempt**

**111.**—(1) A person who does not fall within any of sub-paragraphs (a) to (e) of regulation 110(1) may not—

- (a) describe themselves (in whatever terms) as a person falling within any of those sub-paragraphs; or
- (b) behave, or otherwise hold themselves out, in a manner which indicates (or which is reasonably likely to be understood as indicating) that they are such a person.

(2) A person who contravenes paragraph (1) is guilty of an offence and is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale, or both.

### **Defences**

**112.** In proceedings for an offence under regulation 110 or 111 it is a defence for the accused to show that they took all reasonable precautions and exercised all due diligence to avoid committing the offence.

### **Contravention of regulations 49 and 50**

**113.**—(1) A person (not being a payment service provider) who contravenes regulation 49(2) or 50(2) is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) No offence is committed if the person took all reasonable steps and exercised all due diligence to ensure that the requirement imposed on the person by regulation 49(2) or 50(2), as the case may be, would be complied with.

### **Misleading the Authority or the OFT**

**114.**—(1) A person may not, in purported compliance with any requirement imposed by or under these Regulations, knowingly or recklessly give—

- (a) the Authority; or
- (b) the OFT,

information which is false or misleading in a material particular.

(2) A person may not—

- (a) provide any information to another person, knowing the information to be false or misleading in a material particular, or
- (b) recklessly provide to another person any information which is false or misleading in a material particular,

knowing that the information is to be used for the purpose of providing information to the Authority in connection with its functions under these Regulations.

(3) A person may not—

- (a) provide any information to another person, knowing the information to be false or misleading in a material particular, or
- (b) recklessly provide to another person any information which is false or misleading in a material particular,

knowing that the information is to be used for the purpose of providing information to the OFT in connection with their functions under these Regulations.

- (4) A person who knows or suspects that an investigation by the OFT under regulation 98 is being or is likely to be conducted may not—
- (a) intentionally or recklessly destroy or otherwise dispose of, falsify or conceal a document (as defined by regulation 99(5)) which may be relevant to such an investigation; or
  - (b) cause or permit its destruction, disposal, falsification or concealment.
- (5) A person who contravenes paragraph (1), (2), (3) or (4) is guilty of an offence and is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.

### **Restriction on penalties**

**115.** A person who is convicted of an offence under these Regulations is not liable to a penalty under regulation 85 or 105 in respect of the same contravention of a requirement imposed by or under these Regulations.

### **Liability of officers of bodies corporate etc**

**116.—**(1) If an offence under these Regulations committed by a body corporate is shown—

- (a) to have been committed with the consent or connivance of an officer, or
- (b) to be attributable to any neglect on their part,

the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) 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 such member's functions of management as if the member were a director of the body.

(3) If an offence under these Regulations committed by a partnership is shown—

- (a) to have been committed with the consent or connivance of a partner, or
- (b) to be attributable to any neglect on their part,

the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

(4) If an offence under these Regulations committed by an unincorporated association (other than a partnership) is shown—

- (a) to have been committed with the consent or connivance of an officer, or
- (b) to be attributable to any neglect of such officer,

the officer as well as the association is guilty of the offence and liable to be proceeded against and punished accordingly.

(5) 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.

## Prosecution of offences

- 117.**—(1) Proceedings for an offence under these Regulations may be instituted only—
- (a) in respect of an offence under regulation 110, 111, 113, or 114(1)(a) or (2), by the Authority;
  - (b) in respect of an offence under regulation 114(1)(b), (3) or (4), by the OFT; or
  - (c) by or with the consent of the Director of Public Prosecutions.
- (2) Paragraph (1) does not apply to proceedings in Scotland.

## Proceedings against unincorporated bodies

**118.**—(1) 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).

(2) 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.

(3) Rules of court relating to the service of documents are to have effect as if the partnership or association were a body corporate.

- (4) In proceedings for an offence brought against the partnership or association—
- (a) section 33 of the Criminal Justice Act 1925(**39**) (procedure on charge of offence against corporation) and section 46 of and Schedule 3 to the Magistrates' Courts Act 1980(**40**) (corporations) apply as they do in relation to a body corporate;
  - (b) section 70 of the Criminal Procedure (Scotland) Act 1995(**41**) (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(**42**) (procedure on charge) and Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981(**43**) (corporations) apply as they do in relation to a body corporate.
- (5) Summary proceedings for an offence under these Regulations may be taken—
- (a) against a body corporate or unincorporated association at any place at which it has a place of business;
  - (b) against an individual at any place where they are for the time being.
- (6) Paragraph (5) does not affect any jurisdiction exercisable apart from this regulation.

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(39) 1925 c. 86. Section 33 was amended by the Magistrates' Courts Act 1952 (c.55), section 132 and Schedule 6, by the Courts Act 1971, section 56(1) and Schedule 8, by the Courts Act 1971 (c.23), Schedule 8, and by the Courts Act 2003 (c.39), Schedule 8, paragraph 71 and Schedule 10.

(40) 1980 c. 43. Schedule 3 was amended by the Criminal Justice Act 1991 (c.53), section 25(2) and Schedule 13, and by the Criminal Procedures and Investigations Act 1996 (c.25), Schedule 1, paragraph 1. Amendments by the Criminal Justice Act 2003 (c.44), Schedule 3, paragraph 51 and Schedule 37, Part 4 have not come into force at the time of making of these Regulations.

(41) 1995 c. 46. Section 70 was amended by the Postal Services Act 2000 (Consequential Modifications No 1) Order 2001 (S.I. 2001/1149), Schedule 1, paragraph 104, the Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), section 10(6), and the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), section 28.

(42) 1945 c. 15 (N.I.). Section 18 was amended by the Magistrates' Courts Act 1964 (c.21) and by the Justice (Northern Ireland) Act 2002 (c.26), Schedule 12.

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

*Duties of the Authority, the Commissioners and the OFT to cooperate*

**Duty to co-operate and exchange of information**

**119.**—(1) The Authority, the Commissioners and the OFT must take such steps as they consider appropriate to co-operate with each other and—

- (a) the competent authorities designated under Article 20(1), or referred to in Article 82(1), of the payment services directive, of EEA States other than the United Kingdom;
- (b) the European Central Bank, the Bank of England and the national central banks of EEA States other than the United Kingdom; and
- (c) any other relevant competent authorities designated under Community law or the law of the United Kingdom or any other EEA State which is applicable to payment service providers,

for the purposes of the exercise by those bodies of their functions under the payment services directive and other relevant Community or national legislation.

(2) Subject to the requirements of the Data Protection Act 1998<sup>(44)</sup>, sections 348 and 349 of the 2000 Act (as applied with modifications by paragraph 5 of Schedule 5 to these Regulations), regulation 49A of the Money Laundering Regulations 2007<sup>(45)</sup> (as inserted by paragraph 6(g) of Schedule 6 to these Regulations) and any other applicable restrictions on the disclosure of information, the Authority, the Commissioners and the OFT may provide information to each other and—

- (a) the bodies mentioned in paragraph (1)(a) and (c);
- (b) the European Central Bank, the Bank of England and the national central banks of EEA States other than the United Kingdom when acting in their capacity as monetary and oversight authorities;
- (c) where relevant, other public authorities responsible for the oversight of payment and settlement systems;

for the purposes of the exercise by those bodies of their functions under the payment services directive and other relevant Community or national legislation.

(3) Part 9 of the Enterprise Act 2002 does not prohibit disclosure by the OFT under paragraph (2) but the OFT must have regard to the considerations mentioned in section 244 of that Act (specified information: considerations relevant to disclosure) before making any such disclosure.

*Actions for breach of requirements*

**Right to bring actions**

**120.**—(1) A contravention—

- (a) which is to be taken to have occurred by virtue of regulation 17;
- (b) of a requirement imposed by regulation 19; or
- (c) of a requirement imposed by or under Part 5 or 6,

is actionable at the suit of a private person who suffers loss as a result of the contravention, subject to the defences and other incidents applying to actions for breach of statutory duty.

(2) A person acting in a fiduciary or representative capacity may bring an action under paragraph (1) on behalf of a private person if any remedy—

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<sup>(44)</sup> 1998 c. 29.

<sup>(45)</sup> S.I. 2007/2157, amended by S.I. 2007/3299.

- (a) will be exclusively for the benefit of the private person; and
  - (b) cannot be obtained by way of an action brought otherwise than at the suit of the fiduciary or representative.
- (3) In this regulation “private person” means—
- (a) any individual, except where the individual suffers the loss in question in the course of providing payment services; and
  - (b) any person who is not an individual, except where that person suffers the loss in question in the course of carrying on business of any kind;
- but does not include a government, a local authority (in the United Kingdom or elsewhere) or an international organisation.

#### *Transitional provisions*

#### **Transitional provisions: deemed authorisation**

**121.**—(1) Any financial institution (within the meaning of the banking consolidation directive) which—

- (a) is constituted under the law of a part of the United Kingdom and has its head office and, if it has a registered office, that office, in the United Kingdom; and
- (b) before 25th December 2007 had—
  - (i) lawfully provided payment services in the United Kingdom; and
  - (ii) met the condition in Article 24(1)(e) of the banking consolidation directive;

shall be deemed to have been granted authorisation by the Authority under regulation 9.

(2) An institution which is deemed to have been granted authorisation by virtue of paragraph (1) shall continue on or after 25th December 2009 to be deemed to have been granted authorisation only if it has by that date—

- (a) notified the Authority of the payment services referred to in sub-paragraph (b)(i); and
- (b) provided the Authority with the information specified in paragraph 1, 4, 7 to 9 and 12 of Schedule 2 (“the required information”).

(3) Authorisation which continues on or after 25th December 2009 to be deemed to have been granted by virtue of paragraph (2) shall continue to be so deemed until such time as the Authority decides whether to include the institution in the register as an authorised payment institution.

(4) If the Authority decides to include the institution in the register as an authorised payment institution—

- (a) it must as soon as practicable update the register accordingly; and
- (b) the institution shall cease to be deemed to have been granted authorisation by virtue of paragraph (1) or (2).

(5) The Authority may decide that an institution is not to be included in the register as an authorised payment institution only if—

- (a) it has not received the required information; or
- (b) any of the conditions in regulation 6(4) to (6) (other than the condition that a person must be a body corporate) (“the required conditions”) are not met in respect of that institution.

(6) If the Authority is satisfied that—

- (a) it has received the required information; and
- (b) the required conditions are met,

it must give the institution notice of its decision.

- (7) If the Authority proposes to decide that—
- (a) it has not received the required information; or
  - (b) any of the required conditions is not met,

it must give the institution a warning notice.

(8) The Authority must, having considered any representations in response to the warning notice—

- (a) if it decides that it has not received the required information or that any of the required conditions is not met, give the institution a decision notice; or
- (b) if it decides that it has received the required information and that the required conditions have been met, give the institution notice of its decision.

(9) If the Authority gives the institution a decision notice, the institution may refer the matter to the Tribunal.

(10) Where the period for a reference to the Tribunal has expired without a reference being made, the institution shall cease to be deemed to have been granted authorisation by virtue of paragraph (1) or (2).

(11) Where an institution is deemed to have been granted authorisation by virtue of paragraph (1) or (2)—

- (a) the duty to which the Authority is subject under regulation 4(1)(a) to maintain a register shall not apply in respect of it; and
- (b) Parts 3 and 4 shall not apply to it.

#### **Transitional provisions: requirement to be authorised as a payment institution**

**122.**—(1) Any person which—

- (a) is a body corporate constituted under the law of a part of the United Kingdom and has its head office and, if it has a registered office, that office, in the United Kingdom;
- (b) is not a body—
  - (i) mentioned in any of paragraphs (d) to (h) of the definition in regulation 2(1) of a payment service provider; or
  - (ii) which is deemed to have been granted authorisation by virtue of regulation 121(1) or (2); and
- (c) immediately before 25th December 2007, was lawfully providing payment services in the United Kingdom,

may continue until 1st May 2011 to provide payment services in the United Kingdom notwithstanding that the person has not been granted authorisation by the Authority under regulation 9.

(2) Parts 5 to 8 and regulation 110(1) apply to a person falling within paragraph (1) as if the person were an authorised payment institution.

#### **Transitional provisions: requirement to be registered as a small payment institution**

**123.**—(1) Any person who—

- (a) immediately before 25th December 2007, was lawfully providing payment services in the United Kingdom;
- (b) is not a body—

- (i) mentioned in any of paragraphs (d) to (h) of the definition in regulation 2(1) of a payment service provider; or
- (ii) which is deemed to have been granted authorisation by virtue of regulation 121(1) or (2) or which falls within regulation 122(1); and
- (c) meets the conditions set out in regulation 13(4) to (6) and complies with the financial limit referred to in regulation 8 (as applied by regulation 14(c)),

may continue until 25th December 2010 to provide payment services in the United Kingdom notwithstanding that the person has not been granted registration by the Authority under regulation 9 (as applied by regulation 14).

(2) Parts 5 to 8 and regulation 110(1) apply to a person falling within paragraph (1) as if the person were a small payment institution.

#### **Transitional provisions: early applications**

**124.**—(1) Where an application is made under regulation 5(1) or (2) or 12(1) or (2) before 1st August 2009 and is a completed application, the Authority must determine it before 1st November 2009.

(2) The requirement under regulation 23(2) for information to be given to the host state competent authority within one month of receipt by the Authority of a notice of intention does not apply where the notice of intention is received by the Authority before 1st November 2009.

(3) Any requirement under these Regulations to update the register does not apply until 1st November 2009.

#### **Transitional provisions: the ombudsman scheme**

**125.** Part 16 of, and Schedule 17 to, the 2000 Act (the ombudsman scheme)(**46**) shall apply as if persons who fall within regulation 122(1) or 123(1) were payment service providers within the meaning of these Regulations.

#### *Amendments to primary and secondary legislation*

#### **Amendments to primary and secondary legislation**

**126.** Schedule 6, which contains amendments to primary and secondary legislation, has effect.

9th February 2009

*Dave Watts*  
*Tony Cunningham*  
Two of the Lords Commissioners of Her  
Majesty's Treasury

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(46) Part 16 and Schedule 17 were amended by the Consumer Credit Act 2006 (c.14), sections 59, 60 and 61 and Schedule 2, and by the Tribunals, Courts and Enforcement Act 2007 (c.15), section 62(3) and Schedule 13.