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## STATUTORY INSTRUMENTS

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# 2009 No. 209

## The Payment Services Regulations 2009

### 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<sup>(1)</sup> 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—

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(1) [S.I. 2007/2157](#); amended by [S.I. 2007/3299](#).

- (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>(2)</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>(3)</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>(4)</sup> or article 7, 8 or 10 of the Al-Qaida and Taliban (United Nations Measures) Order 2006<sup>(5)</sup>;

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(2) 2002 c.29.

(3) 2000 c.11.

(4) S.I.2006/2657.

(5) S.I.2006/2952.

- (e) an offence under these Regulations; or
- (f) any other financial crimes.

(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.