
STATUTORY INSTRUMENTS

2009 No. 209

The Payment Services Regulations 2009

PART 3

AUTHORISED PAYMENT INSTITUTIONS

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)(1) and 204 (power to restrict the carrying on of Consumer Credit Act business)(2) of, and Schedule 16

(1) 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.

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

(prohibitions and restrictions imposed by OFT)⁽³⁾ to, the 2000 Act apply in relation to EEA authorised payment institutions exercising passport rights in the United Kingdom under these 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)⁽⁴⁾ and 39(1) (offences against Part 3)⁽⁵⁾ of the Consumer Credit Act 1974⁽⁶⁾ 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.

⁽³⁾ Schedule 16 was amended by the Enterprise Act 2002, section 278(1) and Schedule 25, paragraph 40(1) and (21).

⁽⁴⁾ Section 21 was amended by the Consumer Credit Act 2006, section 33(1).

⁽⁵⁾ Section 39 was amended by the Enterprise Act 2002, section 278(1) and Schedule 25, paragraph 6(1) and (19).

⁽⁶⁾ 1974 c. 39.