
STATUTORY INSTRUMENTS

2010 No. 89

The Cross-Border Payments in Euro Regulations 2010

Citation and commencement

1. These Regulations may be cited as the Cross-Border Payments in Euro Regulations 2010 and come into force on 11th February 2010.

Interpretation

2.—(1) In these Regulations—

“the 2000 Act” means the Financial Services and Markets Act 2000(1);

“the Authority” means the Financial Services Authority;

“the Community Regulation” means Regulation (EC) No. 924/2009 of the European Parliament and of the Council on cross-border payments in the Community and repealing Regulation (EC) No 2560/2001(2);

“cross-border payment” has the same meaning as in the Community Regulation;

“payment services”, “payment service provider” and “payment service user” have the same meaning as in the Payment Services Regulations 2009(3).

(2) 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.

Functions of the Authority

3. The Authority is to have the functions conferred on it by these Regulations.

Monitoring and enforcement

4.—(1) The Authority must maintain arrangements designed to enable it to determine whether payment service providers on whom requirements are imposed by the Community Regulation are complying with them.

(2) The arrangements referred to in paragraph (1) 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.

(3) The Authority must also maintain arrangements for enforcing the provisions of these Regulations.

(4) Paragraph (2) does not affect the Authority’s duty under paragraph (1).

Public censure

5. If the Authority considers that a payment service provider has contravened a requirement imposed on it by the Community Regulation the Authority may publish a statement to that effect.

(1) 2000 c.8.

(2) OJ No L 266, 9.10.2009, p.11.

(3) S.I. 2009/209. A relevant amending instrument is S.I. 2009/2475.

Financial penalties

6.—(1) The Authority may impose a penalty of such amount as it considers appropriate on a payment service provider who has contravened a requirement imposed on it by the Community Regulation.

(2) A penalty under this regulation is a debt due from that payment service provider to the Authority and is recoverable accordingly.

Proposal to take disciplinary measures

7.—(1) Where the Authority proposes to publish a statement under regulation 5 or to impose a penalty under regulation 6, it must give the payment service provider 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 5 or to impose a penalty under regulation 6, it must without delay give the payment service provider concerned a decision notice.

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

(5) After a statement under regulation 5 is published, the Authority must send a copy of it to the payment service provider 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 5 of the Schedule to these Regulations).

Injunctions

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

- (a) that there is a reasonable likelihood that a payment service provider will contravene a requirement imposed by the Community Regulation; or
- (b) that a payment service provider 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 a payment service provider has contravened a requirement imposed by the Community Regulation, 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—

- (a) a payment service provider may have contravened a requirement imposed by the Community Regulation, or
- (b) any person may have 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

9.—(1) The Authority may exercise the power in paragraph (2) if it is satisfied that a payment service provider has contravened a requirement imposed by the Community Regulation, or has been knowingly concerned in the contravention of such a requirement, and that—

- (a) profits have accrued to the payment service provider 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 payment service provider 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 paragraph (1), 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

10.—(1) If the Authority proposes to exercise the power under regulation 9(2), it must give the payment service provider concerned a warning notice.

(2) The warning notice must state the amount which the Authority proposes to require the payment service provider to pay or distribute as mentioned in regulation 9(2).

(3) If, having considered any representations made in response to the warning notice, the Authority decides to exercise the power under regulation 9(2), it must without delay give the person a decision notice.

(4) The decision notice must—

- (a) state the amount that the payment service provider concerned is to pay or distribute;
- (b) identify the person 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.

Financial Services and Markets Tribunal

11.—(1) Before 6th April 2010, if the Authority decides to—

- (a) publish a statement under regulation 5;

- (b) impose a penalty under regulation 6; or
- (c) exercise the power under regulation 9(2),

the payment service provider concerned may refer the matter to the Financial Services and Markets Tribunal.

(2) On or after 6th April 2010, if the Authority decides to take any of the actions mentioned in paragraph (1)(a), (b) and (c), the payment service provider concerned may refer the matter to the Upper Tribunal(4).

Complaints

12.—(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 the Community Regulation 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).

Costs of supervision

13.—(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.

(2) The 2000 Act applies in relation to those functions with the following modifications—

- (a) section 2(3) (the Authority’s general duties) does not apply to the making of rules under paragraph 17 of Part 3 of Schedule 1 by virtue of this regulation;
- (b) rules made under paragraph 17 of Part 3 of Schedule 1 by virtue of this regulation are not to be treated as regulating provisions for the purposes of section 159(1) (competition scrutiny: interpretation)(5);
- (c) paragraph 17(2) and (3) of Part 3 of Schedule 1 are omitted.

(3) The Authority must apply amounts paid to it by way of penalties imposed under regulation 6 towards expenses incurred in carrying out its functions under these Regulations or for any incidental purpose.

Guidance

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

- (a) matters on which it is required to issue guidelines in accordance with the Community Regulation;
- (b) the operation of these Regulations;
- (c) any matters relating to the functions of the Authority under these Regulations;
- (d) 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—

(4) Article 2(2) of the Transfer of Tribunal Functions Order 2010 (S.I. 2010/22) provides for the functions of the Financial Services and Markets Tribunal to be transferred to the Upper Tribunal. It comes into force on 6th April 2010.

(5) 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](#).

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

15. 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.

Exchange of information

16. Subject to—

- (a) the requirements of the Data Protection Act 1998⁽⁶⁾;
- (b) sections 348 (restrictions on disclosure of confidential information by Authority etc), 349⁽⁷⁾ (exceptions from section 348) and 352⁽⁸⁾ (offences) of the 2000 Act (as applied with modifications by paragraph 4 of the Schedule to these Regulations); and
- (c) any other applicable restrictions on the disclosure of information,

the Authority may provide information to the competent authorities designated under Article 9 of the Community Regulation for the purposes of co-operating with them to resolve disputes relating to cross-border payments.

Civil proceedings

17.—(1) Any contravention by a payment service provider of—

- (a) Article 3(1); or
- (b) the second sentence of Article 4(3),

of the Community Regulation is actionable at the suit (or in Scotland, the instance) 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—

- (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 (or in Scotland, the instance) 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.

⁽⁶⁾ 1998 c. 29.

⁽⁷⁾ Subsections (3A) and (3B) were inserted by the Companies Act 2006, section 964(1) and (4).

⁽⁸⁾ Amended by the Criminal Justice Act 2003, section 280(2), Schedule 26, paragraph 54, from a date to be appointed.

Application to Gibraltar

- 18.** These Regulations apply in relation to any branch in the UK of a firm which—
- (a) has its head office in Gibraltar; and
 - (b) is authorised in Gibraltar to provide payment services,
- as they apply in relation to a payment service provider.

Application and modification of primary and secondary legislation

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

Revocation

- 20.** The Cross-Border Payments in Euro Regulations 2003⁽⁹⁾ are revoked.

19th January 2010

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

(9) [S.I. 2003/488](#).