

2012 No. 1791

FINANCIAL SERVICES AND MARKETS

The Payment Services Regulations 2012

Made - - - - *9th July 2012*

Laid before Parliament *10th July 2012*

Coming into force in accordance with regulation 1(2)

The Treasury are a government department designated for the purposes of section 2(2) of the European Communities Act 1972^(a) in relation to:

- (a) payment services and measures relating to payment systems^(b); and
- (b) the prevention of money laundering and terrorist financing^(c).

The Treasury, in exercise of the powers conferred on them by section 2(2) of the European Communities Act 1972, make the following Regulations:

Citation and commencement

1.—(1) These Regulations may be cited as the Payment Services Regulations 2012.

(2) These Regulations come into force—

- (a) on 1st August 2012 for the purposes of regulations 3(6) and 4; and
- (b) on 1st October 2012 for all other purposes.

Amendment of the Money Laundering Regulations 2007

2. In regulation 30 (cancellation of registration in a register maintained under regulation 25) of the Money Laundering Regulations 2007^(d), after paragraph (2) insert—

“(2A) The Commissioners may cancel the registration of a money service business in a register maintained under regulation 25(1)(b) where the money service business—

- (a) is providing a payment service in the United Kingdom, or is purporting to do so;
- (b) is not included in the register of payment service providers maintained by the Authority under regulation 4(1) of the Payment Service Regulations 2009; and
- (c) is not a person mentioned in paragraphs (c) to (h) of the definition of a payment service provider in regulation 2(1) of the Payment Services Regulations 2009, or a person to whom regulation 3 or 121 of those Regulations applies.”.

(a) 1972 c.68; section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c.51) and the European Union (Amendment) Act 2008 (c.7), Schedule 1, Part 1.
(b) S.I. 1998/2793 and S.I. 2008/1792.
(c) S.I. 2007/2133.
(d) S.I. 2007/2157; regulation 30 was amended by article 3 of, and paragraphs 168 and 170 of Schedule 2 to, S.I. 2009/56.

Amendment of the Payment Services Regulations 2009

3.—(1) The Payment Services Regulations 2009(a) are amended as follows.

(2) In regulation 13 (conditions for registration as a small payment institution), after paragraph (4) insert—

“(4A) Where the applicant is a partnership, an unincorporated association or a body corporate, the applicant must satisfy the Authority that 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 a small payment institution.

(4B) The applicant must satisfy the Authority that—

- (a) where the applicant is a body corporate, the directors;
- (b) the persons responsible for the management of the institution; and
- (c) 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.

(4C) If the applicant is a body corporate which 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.

(4D) Regulation 6(9) applies for the purposes of paragraph (4C) of this regulation as it applies for the purposes of regulation 6(8).”.

(3) In regulation 14 (supplementary provisions)—

- (a) in paragraph (c), for “will continue to be” substitute “are”;
- (b) for paragraph (d) substitute—

“(d) in regulation 10(1)—

- (i) for sub-paragraph (e) substitute—

“(e) the person does not meet, or is unlikely to meet, any of the conditions set out in regulation 13(4) to (6) or the financial limit referred to in regulation 8;”;

- (ii) after sub-paragraph (i) insert—

“or

- (j) the person has failed to comply with paragraph (2) or (3) of regulation 125A.”;

- (c) in paragraph (e), in the sub-paragraph to be substituted for sub-paragraph (a) of regulation 11(1), for “no longer meets” substitute “does not meet” and omit “continue to”.

(4) In regulation 29(3)(a)(iii) (use of agents), delete “in the case of an agent of an authorised payment institution,”.

(5) After regulation 125 (transitional provisions: the ombudsman scheme) insert—

(a) S.I. 2009/209, to which there are amendments not relevant to these Regulations.

“Transitional provisions: small payment institutions registered before 1st October 2012 and applications pending on that date

125A.—(1) Where a person has applied for registration as a small payment institution before 1st October 2012 and its application has not been determined before that date, it must provide the Authority with the information referred to in paragraphs 1, 7, 8 and 9 of Schedule 2 to the extent relevant to that person.

(2) Where a small payment institution is included on the register maintained under regulation 4(1)(b) on 1st October 2012, it must provide the Authority before 1st October 2013 with the information referred to in paragraphs 1, 7, 8 and 9 of Schedule 2 to the extent relevant to that institution.

(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.”.

(6) In paragraph 19(d) of Schedule 3 (application of accounting standards), for “Auditing Practices Board” substitute “Financial Reporting Council Limited or a predecessor body”.

Amendment of the Electronic Money Regulations 2011

4. In paragraph 25(d) of Schedule 2 (application of accounting standards) to the Electronic Money Regulations 2011(a), for “Auditing Practices Board” substitute “Financial Reporting Council Limited or a predecessor body”.

James Duddridge
Michael Fabricant

9th July 2012

Two of the Lords Commissioners of Her Majesty’s Treasury

(a) S.I. 2011/99, to which there are amendments not relevant to these Regulations.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Money Laundering Regulations 2007 (S.I. 2007/2157), the Payment Services Regulations 2009 (S.I. 2009/209) and the Electronic Money Regulations 2011 (S.I. 2011/99) in relation to the provision of payment services and electronic money.

Regulation 2 amends the Money Laundering Regulations 2007 in order to enable the Commissioners for Her Majesty's Revenue and Customs to cancel the registration of a money service business maintained under those Regulations where the money service business:

- (a) is providing or purporting to provide a payment service in the United Kingdom;
- (b) is not included in the register of payment service providers maintained by the Financial Services Authority for the purposes of the Payment Services Regulations 2009; and
- (c) does not benefit from any relevant exception to inclusion on the register of payment service providers.

Paragraphs (1) to (5) of regulation 3 amend the Payment Services Regulations 2009 in order to impose additional registration requirements on small payment institutions.

Regulations 3(6) and 4 amend the Payment Services Regulations 2009 and the Electronic Money Regulations 2011 to reflect the fact that, as part of a restructuring of the Financial Reporting Council, the Auditing Practices Board has been dissolved.

An Impact Assessment of the effect of this instrument on the costs of business and the voluntary sector has been prepared and is available on HM Treasury's website (www.hmtreasury.gov.uk) or from the Banking and Credit Team, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ and is annexed to the Explanatory Memorandum which is available alongside the instrument at www.legislation.gov.uk.

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