
STATUTORY INSTRUMENTS

2017 No. 752

The Payment Services Regulations 2017

PART 11

General

Criminal Offences

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

138.—(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) a registered account information service provider;
 - ^{F1}(d)
 - (e) a credit institution authorised in the United Kingdom ^{F2}...;
 - ^{F3}(ea) [^{F4}after IP completion day,] a credit institution while it is an exempt person for the purposes of section 19(1)(b) of the Financial Services and Markets Act 2000 by virtue of regulation 47 of the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 but only in respect of a payment service specified in paragraph (3);]
 - (f) an electronic money institution which for the purposes of the Electronic Money Regulations 2011 ^{M1} is—
 - (i) registered in the United Kingdom as an authorised electronic money institution or a small electronic money institution; ^{F5}...
 - ^{F5}(ii)
 - ^{F6}(fa) [^{F7}after IP completion day,] a relevant electronic money institution while it is exempt from the prohibitions in regulation 63(1) of the Electronic Money Regulations 2011 and this regulation by virtue of paragraph 12L of Schedule 3 to the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018 but only in respect of a payment service specified in paragraph (4);]
 - (g) the Post Office Limited;
 - (h) the Bank of England, ^{F8}...
 - (i) a government department or a local authority; or
 - (j) exempt under regulation 3 (exemption for certain bodies).
- (2) A person who contravenes paragraph (1) is guilty of an offence and is liable—

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- (a) on summary conviction, to imprisonment for a term not exceeding three months or to a fine, which in Scotland or Northern Ireland may not exceed 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.

[^{F9}(3) A payment service is specified as one that may be provided by a credit institution under paragraph (1)(ea) only to the extent that the credit institution was providing the service in the United Kingdom immediately before [^{F10}IP completion day] in accordance with the exercise of an EEA passport right under Title 5 of [Directive 2013/36/EU](#) as in force immediately before [^{F10}IP completion day] and the service is necessary as specified in paragraph (4).

(4) This paragraph applies where the service is necessary—

- (a) for the performance of a contract entered into before [^{F10}IP completion day] and provided for the purposes of performing such a contract or to redeem outstanding electronic money;
- (b) for the purpose of reducing the financial risk of a party to a contract entered into before [^{F10}IP completion day] or of a third party affected by the performance of such a contract;
- (c) in order to transfer the property, rights or liabilities under a contract entered into before [^{F10}IP completion day] to a person authorised to carry on a regulated activity under section 31(1)(a) of FSMA (other than a person authorised to carry on a regulated activity under that section of FSMA by virtue of the provisions contained in the Financial Services Contracts (Transitional and Saving Provision) (EU Exit) Regulations 2019); or
- (d) in order to comply with a requirement imposed by or under an enactment.

(5) For the purposes of paragraph (4)(a), the performance of a contract entered into before [^{F10}IP completion day] includes the performance of an obligation under the contract which is contingent or conditional.

(6) A payment service is specified as one that may be provided by a relevant electronic money institution under paragraph (1)(fa) only to the extent that—

- (a) the relevant electronic money institution was providing the service in the United Kingdom immediately before [^{F10}IP completion day] in accordance with the exercise of an EEA passport right under article 3(1) of [Directive 2009/110/EC](#) as in force immediately before [^{F10}IP completion day]; and
- (b) the services are necessary for the performance of a contract entered into before [^{F10}IP completion day] and provided for the purposes of performing such a contract.

(7) In this regulation, a “relevant electronic money institution” is an EEA authorised electronic money institution which was exercising its EEA passport rights in the United Kingdom immediately before [^{F10}IP completion day] (other than through an establishment in the United Kingdom maintained by it or its agent) while it is exempt from the prohibitions in regulation 63(1) of the Electronic Money Regulations 2011 and this regulation by virtue of paragraph 12L of Schedule 3 to the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018.]

Textual Amendments

- F1** [Reg. 138\(1\)\(d\)](#) omitted (31.12.2020) by virtue of [The Electronic Money, Payment Services and Payment Systems \(Amendment and Transitional Provisions\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1201\)](#), reg. 1(3), [Sch. 2 para. 61\(a\)](#) (with reg. 4, Sch. 3 Pt. 2) (as amended by [S.I. 2020/56](#), regs. 1, 8); [2020 c. 1](#), Sch. 5 para. 1(1)

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- F2** Words in reg. 138(1)(e) omitted (31.12.2020) by virtue of The Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018 (S.I. 2018/1201), reg. 1(3), **Sch. 2 para. 61(b)** (with reg. 4, Sch. 3 Pt. 2) (as amended by S.I. 2020/56, regs. 1, 8); 2020 c. 1, Sch. 5 para. 1(1)
- F3** Reg. 138(1)(ea) inserted (6.9.2019) by The Financial Services (Electronic Money, Payment Services and Miscellaneous Amendments) (EU Exit) Regulations 2019 (S.I. 2019/1212), regs. 1(2), **5(2)(a)(i)**
- F4** Words in reg. 138(1)(ea) inserted (31.1.2020 immediately before exit day) by The Financial Services (Consequential Amendments) Regulations 2020 (S.I. 2020/56), regs. 1, **4(a)**
- F5** Reg. 138(1)(f)(ii) and word omitted (31.12.2020) by virtue of The Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018 (S.I. 2018/1201), reg. 1(3), **Sch. 2 para. 61(c)** (with reg. 4, Sch. 3 Pt. 2) (as amended by S.I. 2020/56, regs. 1, 8); 2020 c. 1, Sch. 5 para. 1(1)
- F6** Reg. 138(1)(fa) inserted (6.9.2019) by The Financial Services (Electronic Money, Payment Services and Miscellaneous Amendments) (EU Exit) Regulations 2019 (S.I. 2019/1212), regs. 1(2), **5(2)(a)(ii)**
- F7** Words in reg. 138(1)(fa) inserted (31.1.2020 immediately before exit day) by The Financial Services (Consequential Amendments) Regulations 2020 (S.I. 2020/56), regs. 1, **4(b)**
- F8** Words in reg. 138(1)(h) omitted (31.12.2020) by virtue of The Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018 (S.I. 2018/1201), reg. 1(3), **Sch. 2 para. 61(d)** (with reg. 4, Sch. 3 Pt. 2) (as amended by S.I. 2020/56, regs. 1, 8); 2020 c. 1, Sch. 5 para. 1(1)
- F9** Reg. 138(3)-(7) inserted (6.9.2019) by The Financial Services (Electronic Money, Payment Services and Miscellaneous Amendments) (EU Exit) Regulations 2019 (S.I. 2019/1212), regs. 1(2), **5(2)(b)**
- F10** Words in reg. 138(3)-(7) substituted (31.1.2020 immediately before exit day) by The Financial Services (Consequential Amendments) Regulations 2020 (S.I. 2020/56), regs. 1, **4(c)**

Marginal Citations

M1 S.I. 2011/99.

False claims to be a payment service provider or exempt

139.—(1) A person who does not fall within any of sub-paragraphs (a) to (f) of regulation 138(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, which in Scotland or Northern Ireland may not exceed level 5 on the standard scale, or both.

Defences

140. In proceedings for an offence under regulation 138 or 139 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 57 and 58

141.—(1) A person (not being a payment service provider) who contravenes regulation 57(2) or 58(2) (information on charges and exchange rates) is guilty of an offence and liable on summary conviction to a fine, which in Scotland or Northern Ireland may not exceed level 5 on the standard scale.

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(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 57(2) or 58(2), as the case may be, would be complied with.

Misleading the FCA or the Payment Systems Regulator

142.—(1) A person may not, in purported compliance with any requirement imposed by or under these Regulations, knowingly or recklessly give information which is false or misleading in a material particular to—

- (a) the FCA; or
- (b) the Payment Systems Regulator.

(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 FCA 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 Payment Systems Regulator in connection with its functions under these Regulations.

(4) A person who contravenes paragraph (1), (2) or (3) is guilty of an offence and is liable—

- (a) on summary conviction, to a fine, which in Scotland or Northern Ireland may not exceed the statutory maximum;
- (b) on conviction on indictment, to a fine.

Restriction on penalties

143. A person who is convicted of an offence under these Regulations is not liable to a penalty under regulation 111 or 127 (financial penalties) in respect of the same contravention of a requirement imposed by or under these Regulations.

Liability of officers of bodies corporate etc

144.—(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

145.—(1) Proceedings for an offence under these Regulations may be instituted only—

- (a) in respect of an offence under regulation 138 (prohibition on provision of payment services by persons other than payment service providers), 139 (false claims to be a payment service provider or exempt), 141 (contravention of regulations 57 and 58), or 142(4) in so far as it relates to regulation 142(1)(a) or (2) (misleading the FCA), by the FCA;
- (b) in respect of an offence under regulation 142(4) in so far as it relates to regulation 142(1)(b) or (3) (misleading the Payment Systems Regulator), by the Payment Systems Regulator; 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

146.—(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 (procedure on charge of offence against corporation) ^{M2} and section 46 of and Schedule 3 to the Magistrates' Courts Act 1980 (corporations) ^{M3} apply as they do in relation to a body corporate;
- (b) section 70 of the Criminal Procedure (Scotland) Act 1995 (proceedings against organisations) ^{M4} applies as it does in relation to a body corporate;

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- (c) section 18 of the Criminal Justice (Northern Ireland) Act 1945 (procedure on charge)^{M5} and Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981 (corporations)^{M6} 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.

Marginal Citations

- M2** 1925 c. 86. Section 33 was amended by Schedule 6 to the [Magistrates' Court Act 1952 \(c. 55\)](#), paragraph 19 of Schedule 8 to the [Courts Act 1971 \(c. 23\)](#) and paragraph 71 of Schedule 8 to the [Courts Act 2003 \(c. 39\)](#).
- M3** 1980 c. 43. Schedule 3 was amended by sections 25 and 101 of, and Schedule 13 to, the [Criminal Justice Act 1991 \(c. 53\)](#), and by paragraph 51 of Schedule 3 and Part 4 of Schedule 37 to the [Criminal Justice Act 2003 \(c. 44\)](#).
- M4** 1995 c.46. Section 70 was amended by section 10(6) of the [Criminal Procedure \(Scotland\) Act 2004 \(asp 5\)](#), section 28 of the [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), section 66 of the [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), section 6(4) of the [Partnerships \(Prosecution\) \(Scotland\) Act 2013 \(c. 21\)](#) and section 83(a) of the [Criminal Justice \(Scotland\) Act 2016 \(asp 1\)](#), and by S.I. 2001/1149.
- M5** 1945 c. 15 (N.I. 1). Section 18 was amended by the [Magistrates Court Act \(Northern Ireland\) 1964 \(c. 21 \(N.I.\)\)](#), paragraph 1 of Schedule 12 to the [Justice \(Northern Ireland\) Act 2002 \(c. 26\)](#) and by S.I. 1972/538 (N.I. 1).
- M6** S.I. 1981/1675 (N.I. 26).

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Changes and effects yet to be applied to :

- Regulations power to amend conferred by [2021 c. 22 s. 23](#)