
STATUTORY INSTRUMENTS

2023 No. 790

The Electronic Money, Payment Card Interchange Fee and Payment Services (Amendment) Regulations 2023

Amendments to the Payment Services Regulations 2017

- 4.—(1) The Payment Services Regulations 2017(1) are amended as follows.
- (2) In regulation 106 (functions of the FCA)—
- (a) in paragraph (3), in sub-paragraph (c), at the end insert—
- “, including in a way consistent with contributing towards achieving compliance by the Secretary of State with—
- (i) section 1 (target for 2050) of the Climate Change Act 2008, and
- (ii) section 5 (environmental targets: effect) of the Environment Act 2021,
- where the FCA considers the exercise of its functions to be relevant to the making of such a contribution;”;
- (b) after paragraph (3), insert—
- “(4) The Treasury may at any time by notice in writing to the FCA make recommendations to the FCA about aspects of the economic policy of His Majesty’s Government to which the FCA should have regard when considering the application of the principles in paragraph (3).
- (5) Section 1JA of the 2000 Act applies in relation to any recommendation made under paragraph (4) as if—
- (a) that recommendation were made under section 1JA(1)(d);
- (b) the reference in subsection (1)(d) to the regulatory principles in section 3B were a reference to the principles set out in regulation 106(3) of these Regulations.”.
- (3) In regulation 123 (interpretation of Part 10)—
- (a) in paragraph (b) of the definition of “compliance failure”, for “regulation 125” substitute “regulation 125(1)”;
- (b) for the definition of “qualifying requirement” substitute—
- ““qualifying requirement” means an obligation, prohibition or restriction imposed by—
- (a) regulation 61 (information on ATM withdrawal charges),
- (b) Part 8 (access to payment systems and bank accounts), with the exception of the obligation imposed on the FCA by regulation 105(5) (access to bank accounts), or
- (c) a direction given by the Payment Systems Regulator under regulation 125(2A);”.

- (4) In regulation 125 (directions)(2)—
- (a) after paragraph (2), insert—
- “(2A) The Payment Systems Regulator may give a direction in writing to a provider of cash withdrawal services falling within paragraph 2(o) of Schedule 1 for the purpose of ensuring that a customer using cash withdrawal services is provided with information including any applicable withdrawal charges, and, where a currency conversion service is offered, the exchange rate to be used for converting a payment transaction—
- (a) before the withdrawal, and
- (b) on receipt of the cash.”;
- (b) for paragraph (3), substitute—
- “(3) A direction may—
- (a) require or prohibit the taking of specified action,
- (b) when given under paragraph (2A), set standards to be met by a provider of cash withdrawal services.”;
- (c) after paragraph (4), insert—
- “(4A) A direction setting standards under paragraph (3)(b) may impose rules on all providers of cash withdrawal services, or on such providers of a specified description.”.
- (5) In Schedule 6 (application and modification of legislation), in Part 1 (application and modification of the 2000 Act)—
- (a) in paragraph 3—
- (i) in sub-paragraph (1), omit paragraph (d);
- (ii) after sub-paragraph (1), insert—
- “(1A) Section 137B(3) of the 2000 Act (FCA general rules: clients’ money, right to rescind etc) applies as if—
- (a) references to authorised persons were references to authorised payment institutions, small payment institutions, registered account information service providers, electronic money institutions and relevant credit unions (“relevant institutions”);
- (b) after subsection (1) there were inserted—
- “(1A) Rules relating to the safeguarding of relevant assets held by a relevant institution may—
- (a) make any provision in relation to those relevant assets which might be made under subsection (1) in relation to clients’ money;
- (b) treat two or more relevant assets as being part of a single asset pool, and make provision for the distribution of assets in that pool;
- (c) authorise the retention by a relevant institution of income or capital gains accruing in relation to relevant assets;
- (d) make provision as to the distribution of such income or capital gains which are not to be retained by the relevant institution.”;

(2) [S.I. 2017/752](#), amended by [S.I. 2018/1201](#).

(3) [2000 c. 8](#). Section 137B was substituted, together with the rest of Part 9A, for sections 138 to 164 by the Financial Services Act [2012 \(c. 21\)](#), section 24(1).

- (c) in subsection (2) the references to “clients’ money” and “money” were read as including a reference to relevant assets;
 - (d) after subsection (3), there were inserted—
 - “(3A) “Relevant assets” means assets held by a relevant institution to satisfy its obligations to safeguard funds received—
 - (a) in exchange for electronic money that has been issued, or
 - (b) where no electronic money has been issued—
 - (i) from, or for the benefit of, a payment service user for the execution of a payment transaction, or
 - (ii) from a payment service provider for the execution of a payment transaction on behalf of a payment service user, including proceeds derived from the realisation of such assets.
 - (3B) In subsection (3A), “assets” include—
 - (a) money;
 - (b) insurance policies, including rights arising under those policies;
 - (c) guarantees, including rights arising under those guarantees;
 - (d) other investments, whether or not specified by the Treasury under section 22 of the 2000 Act.
 - (3C) “Relevant credit union” means a credit union which issues electronic money.
 - (3D) In paragraph (1A)(b), “asset pool” means a collection of assets collectively owned by those persons whose funds the relevant institution is required to safeguard, and in which the relevant institution may also have an interest.”.
- (1B) Section 137P (control of information rules) of the 2000 Act applies as if—
 - (a) references to authorised persons were references to authorised payment institutions, small payment institutions, registered account information service providers and electronic money institutions;
 - (b) the reference to “Either regulator” were read as a reference to the FCA.”;
- (iii) in sub-paragraph (2)—
 - (aa) after “sub-paragraph (1)” insert “, (1A) or (1B)”;
 - (bb) for “section 137A” substitute “sections 137A, 137B and 137P”;
 - (cc) for “sub-paragraph (3)” substitute “sub-paragraphs (2A) and (3)”;
- (iv) after sub-paragraph (2), insert—
 - “(2A) Section 138C (evidential provisions) applies as if in that section—
 - (a) in subsection (1) “by other provisions of this Act” were read as “by or under the Payment Services Regulations 2017”;
 - (b) references to “either regulator”, “a regulator”, “that regulator” or to “the regulator making the rule” were read as references to the FCA”;
- (v) for sub-paragraph (3), substitute—
 - “(3) Section 138D (actions for damages) applies as if in that section—
 - (a) subsection (1) were omitted;

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- (b) in subsection (2), the reference to “an authorised person” were a reference to “an authorised payment institution, a small payment institution, a registered account information service provider or an electronic money institution”;
 - (c) subsection (6) were omitted and “private person” has the meaning given in regulation 148(3) of these Regulations (actions for breach of requirement).”;
- (b) in paragraph 7—
- (i) renumber the existing text as sub-paragraph (2);
 - (ii) before sub-paragraph (2), as so renumbered, insert—
 - “(1) Section 340 (appointment of auditors and actuaries) of the 2000 Act(4) applies with the following modifications—
 - (a) references to “the appropriate regulator” and to the “regulator making the rules” are to be read as references to the FCA;
 - (b) references to an authorised person are to be read as references to an authorised payment institution or a person required by regulation 39(3) of the Payment Services Regulations 2017 to provide an audit opinion to the FCA;
 - (c) subsections (3A), (5A) and (8)(b) were omitted;
 - (d) in subsection (5), “(3A) or” were omitted.”.

(4) Subsection (3A) was substituted, and subsection (5A) inserted, by paragraph 3 of Schedule 13 to the Financial Services Act 2012.