

SCHEDULES

SCHEDULE 4

Section 40

THE PAYMENT SYSTEMS REGULATOR

Introductory

- 1 In this Schedule—
- (a) “the Regulator” means the Payment Systems Regulator;
 - (b) references to the functions of the Regulator are to functions conferred on it by or under this Part.

Constitution

- 2 (1) The constitution of the Regulator must provide for it to have a board whose members are the directors of the Regulator.
- (2) The board is to consist of the following members—
- (a) a member to chair it, appointed by the FCA with the approval of the Treasury;
 - (b) a member to be the Managing Director, appointed by the FCA with the approval of the Treasury;
 - (c) one or more other members appointed by the FCA.
- (3) The persons who may be appointed under sub-paragraph (2) include persons who are members of the FCA’s governing body.
- (4) A person may be appointed under sub-paragraph (2) only if the person has knowledge or experience which is likely to be relevant to the exercise by the Regulator of its functions.
- (5) A person appointed under sub-paragraph (2)(a) or (b) is liable to removal from office by the FCA (acting with the approval of the Treasury).
- (6) A person appointed under sub-paragraph (2)(c) is liable to removal from office by the FCA.

Status

- 3 (1) The Regulator is not to be regarded as exercising functions on behalf of the Crown.
- (2) The officers and staff of the Regulator are not to be regarded as Crown servants.

Budget

- 4 (1) The Regulator must adopt an annual budget which has been approved by the FCA.
- (2) The budget must be adopted—

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- (a) in the case of the Regulator’s first financial year, as soon as reasonably practicable after it is established, and
 - (b) in the case of each subsequent financial year, before the start of the financial year.
- (3) The Regulator may, with the approval of the FCA, vary the budget for a financial year at any time after its adoption.
- (4) Before adopting or varying a budget, the Regulator must consult—
- (a) the Treasury, and
 - (b) such other persons (if any) as the Regulator considers appropriate.
- (5) The Regulator must publish each budget, and each variation of a budget, in the way it considers appropriate.

Arrangements for discharging functions

- 5 (1) The Regulator may make arrangements for any of its functions to be discharged by—
- (a) a committee, sub-committee, officer or member of staff of the Regulator;
 - (b) an officer or member of staff of the FCA.
- This is subject to sub-paragraphs (2) to (4).
- (2) In exercising any functions within sub-paragraph (3), the Regulator must act through its board.
- (3) The functions referred to in sub-paragraph (2) are—
- (a) giving general directions under section 54;
 - (b) imposing generally-imposed requirements under section 55.
- (4) The function of issuing general guidance may not be discharged by an officer or member of staff of the Regulator or of the FCA.

Annual plan

- 6 (1) The Regulator must in respect of each of its financial years prepare an annual plan which has been approved by the FCA.
- (2) The plan must be prepared—
- (a) in the case of the Regulator’s first financial year, as soon as reasonably practicable after it is established, and
 - (b) in the case of each subsequent financial year, before the start of the financial year.
- (3) The Regulator may, with the approval of the FCA, vary the plan in respect of a financial year at any time after its preparation.
- (4) An annual plan in respect of a financial year must set out—
- (a) the aims of the Regulator for the year,
 - (b) how the extent to which each of those aims is met is to be determined,
 - (c) the relative priorities of each of those aims, and
 - (d) how its resources are to be allocated among the activities to be carried on in connection with the discharge of its functions.

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- (5) In sub-paragraph (4) references to aims for a financial year include aims for a longer period that includes that year.
- (6) Before preparing or varying an annual plan, the Regulator must consult—
 - (a) the Treasury, and
 - (b) such other persons (if any) as the Regulator considers appropriate.
- (7) The Regulator must publish each annual plan, and each variation of an annual plan, in the way it considers appropriate.

Annual report

- 7 (1) At least once a year, the Regulator must make a report to the FCA in relation to the discharge of its functions.
- (2) The report must—
 - (a) set out the extent to which the Regulator has met its aims and priorities for the period covered by the report,
 - (b) set out the extent to which the Regulator has advanced its payment systems objectives,
 - (c) include a copy of its latest accounts, and
 - (d) comply with any requirement specified in rules made by the FCA.
- (3) The Regulator must publish each report in the way it considers appropriate.
- (4) Nothing in this paragraph requires the Regulator to make a report at any time in the period of 12 months beginning with its establishment.
- (5) The Treasury may—
 - (a) require the Regulator to comply with any provision of the Companies Act 2006 about accounts and their audit which would not otherwise apply to it, or
 - (b) direct that any provision of that Act about accounts and their audit is to apply to the Regulator with such modifications as are specified in the direction, whether or not the provision would otherwise apply to it.
- (6) Compliance with any requirement under sub-paragraph (5)(a) or (b) is enforceable by injunction or, in Scotland, an order for specific performance under section 45 of the Court of Session Act 1988.
- (7) Proceedings under sub-paragraph (6) may be brought only by the Treasury.
- (8) The FCA's power to make rules under sub-paragraph (2)(d) is to be treated as if it were a power of the FCA to make rules under FSMA 2000 (and rules made under sub-paragraph (2)(d) are to be treated accordingly).

Audit of accounts

- 8 (1) The Regulator must send a copy of its annual accounts to the Comptroller and Auditor General and the Treasury as soon as is reasonably practicable.
- (2) The Comptroller and Auditor General must—
 - (a) examine, certify and report on accounts received under this paragraph, and
 - (b) send a copy of the certified accounts and the report to the Treasury.

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- (3) The Treasury must lay the copy of the certified accounts and the report before Parliament.
- (4) The Regulator must send a copy of the certified accounts and the report to the FCA.
- (5) Except as provided for by paragraph 7(5), the Regulator is exempt from the requirements of Part 16 of the Companies Act 2006 (audit) and its balance sheet must contain a statement to that effect.
- (6) In this paragraph “annual accounts” has the meaning given by section 471 of the Companies Act 2006.

Funding

- 9 (1) For the purposes mentioned in sub-paragraph (2) the FCA may make rules requiring participants in regulated payment systems to pay to the FCA specified amounts or amounts calculated in a specified way.
- (2) The purposes are—
 - (a) meeting the relevant costs (see sub-paragraph (3)), and
 - (b) enabling the Regulator to maintain adequate reserves.
- (3) In this paragraph “the relevant costs” means—
 - (a) the expenses incurred, or expected to be incurred, by the Regulator in connection with the discharge of its functions,
 - (b) the expenses incurred by the FCA in establishing the Regulator,
 - (c) any other expenses incurred by the FCA in connection with the discharge of its functions under this Part, and
 - (d) any expenses incurred, or expected to be incurred, by the FCA in connection with the discharge of the Regulator’s functions by an officer or member of staff of the FCA under arrangements made under paragraph 5.

For the purposes of paragraph (b) it does not matter when the expenses were incurred.
- (4) Before making any rules under sub-paragraph (1) the FCA must consult the Treasury.
- (5) The amounts to be paid under the rules may include a component to cover the expenses of the FCA in collecting the payments (“collection costs”).
- (6) The FCA must pay to the Regulator the amounts that it receives under the rules, apart from the following amounts (which it may keep)—
 - (a) amounts in respect of expenses falling within sub-paragraph (3)(b) to (d);
 - (b) amounts in respect of its collection costs.
- (7) In this paragraph “specified” means specified in the rules.
- (8) The FCA’s power to make rules under this paragraph is to be treated as if it were a power of the FCA to make rules under FSMA 2000 (and rules made under this paragraph are to be treated accordingly).
- (9) But the requirements to carry out a cost benefit analysis under section 138I of FSMA 2000 do not apply in relation to rules made under this paragraph.

Penalty receipts

- 10 (1) The Regulator must in respect of each of its financial years pay to the Treasury its penalty receipts after deducting its enforcement costs.
- (2) The Regulator’s “penalty receipts” in respect of a financial year are any amounts received by it during the year by way of penalties imposed under section 73.
- (3) The Regulator’s “enforcement costs” in respect of a financial year are the expenses incurred by it during the year in connection with—
- (a) the exercise, or consideration of the possible exercise, of any of its enforcement powers in particular cases, or
 - (b) the recovery of penalties imposed under section 73.
- (4) For the purposes of sub-paragraph (3) the Regulator’s enforcement powers are—
- (a) its powers under sections 72 to 75;
 - (b) its powers under any other enactment specified by the Treasury by order;
 - (c) its powers in relation to the investigation of relevant offences;
 - (d) its powers in England and Wales or Northern Ireland in relation to the prosecution of relevant offences.
- (5) In sub-paragraph (4) “relevant offences” means—
- (a) offences under this Part;
 - (b) any other offences specified by the Treasury by order.
- (6) The Treasury may give directions to the Regulator as to how it is to comply with its duty under sub-paragraph (1).
- (7) The directions may in particular—
- (a) specify descriptions of expenditure that are, or are not, to be regarded as incurred in connection with either of the matters mentioned in sub-paragraph (3),
 - (b) relate to the calculation and timing of the deduction in respect of the Regulator’s enforcement costs, and
 - (c) specify the time when any payment is required to be made to the Treasury.
- (8) The directions may also require the Regulator to provide the Treasury at specified times with specified information relating to—
- (a) penalties that the Regulator has imposed under section 73, or
 - (b) the Regulator’s enforcement costs.
- (9) The Treasury must pay into the Consolidated Fund any sums received by them under this paragraph.
- 11 (1) The Regulator must prepare and operate a scheme (“the financial penalty scheme”) for ensuring that the amounts that, as a result of the deduction for which paragraph 10(1) provides, are retained by the Regulator in respect of amounts paid to it by way of penalties imposed under section 73 are applied for the benefit of participants in regulated payment systems.
- (2) The financial penalty scheme may, in particular, make different provision with respect to different classes of participant.

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- (3) The financial penalty scheme must ensure that those who have become liable to pay a penalty to the Regulator in any financial year do not receive any benefit under the scheme in the following financial year.
- (4) Up-to-date details of the financial penalty scheme must be set out in a document (the “scheme details”).
- 12 (1) The scheme details must be published by the Regulator in the way appearing to it to be best calculated to bring them to the attention of the public.
- (2) Before making the financial penalty scheme, the Regulator must publish a draft of the proposed scheme in the way appearing to the Regulator to be best calculated to bring it to the attention of the public.
- (3) The draft must be accompanied by notice that representations about the proposals may be made to the Regulator within a specified time.
- (4) Before making the scheme, the Regulator must have regard to any representations made to it in accordance with sub-paragraph (3).
- (5) If the Regulator makes the proposed scheme, it must publish an account, in general terms, of—
 - (a) the representations made to it in accordance with sub-paragraph (3), and
 - (b) its response to them.
- (6) If the scheme differs from the draft published under sub-paragraph (2) in a way which is, in the opinion of the Regulator, significant, the Regulator must (in addition to complying with sub-paragraph (5)) publish details of the difference.
- (7) The Regulator must, without delay, give the Treasury a copy of any scheme details published by it.
- (8) The Regulator may charge a reasonable fee for providing a person with a copy of—
 - (a) a draft published under sub-paragraph (2);
 - (b) scheme details.
- (9) Sub-paragraphs (2) to (6) and (8)(a) also apply to a proposal to alter or replace the financial penalty scheme.

Records

- 13 The Regulator must maintain satisfactory arrangements for—
 - (a) recording decisions made in the exercise of its functions, and
 - (b) the safe-keeping of those records which it considers ought to be preserved.

Exemption from liability in damages

- 14 (1) None of the following is to be liable in damages for anything done or omitted in the discharge, or purported discharge, of the Regulator’s functions—
 - (a) the Regulator;
 - (b) any person (“P”) who is, or is acting as, an officer or member of staff of the Regulator;
 - (c) any person who could be held vicariously liable for things done or omitted by P, but only in so far as the liability relates to P’s conduct.

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- (2) If the Regulator has made arrangements under paragraph 5 for any of its functions to be discharged by an officer or member of staff of the FCA, references in sub-paragraph (1) to a person who is an officer or member of staff of the Regulator include references to the officer or member of staff of the FCA.
- (3) Anything done or omitted by a person mentioned in sub-paragraph (1)(b) or (c) while acting, or purporting to act, as a result of an appointment under section 82 or 83 is to be taken for the purposes of sub-paragraph (1) to have been done or omitted in the discharge or (as the case may be) purported discharge of the Regulator’s functions.
- (4) Sub-paragraph (1) does not apply—
 - (a) if the act or omission is shown to have been in bad faith, or
 - (b) so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful as a result of section 6(1) of the Human Rights Act 1998.

Freedom of information

- 15 In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (public authorities to which Act applies), at the appropriate place insert—
- “The Payment Systems Regulator established under section 40 of the Financial Services (Banking Reform) Act 2013.”

Equality

- 16 In Part 1 of Schedule 19 to the Equality Act 2010 (public authorities: general), under the heading “*Industry, business, finance etc.*”, at the appropriate place insert—
- “The Payment Systems Regulator established under section 40 of the Financial Services (Banking Reform) Act 2013.”