
STATUTORY INSTRUMENTS

2009 No. 209

The Payment Services Regulations 2009

PART 6

RIGHTS AND OBLIGATIONS IN RELATION TO THE PROVISION OF PAYMENT SERVICES

Application

Application of Part 6

51.—(1) This Part applies to a contract for payment services where—

- (a) the services are provided from an establishment maintained by a payment service provider or its agent in the United Kingdom;
- (b) subject to paragraph (2), the payment service providers of both the payer and the payee are located within the EEA; and
- (c) where the payment services are carried out in euro or in the currency of an EEA State that has not adopted the euro as its currency.

(2) Regulation 73 applies whether or not the payment service providers of both the payer and the payee are located within the EEA.

(3) Except where the payment service user is a consumer, a micro-enterprise or a charity, the parties may agree that—

- (a) any or all of regulations 54(1), 55(2), 60, 62, 63, 64, 67, 75, 76 and 77 do not apply;
- (b) a different time period applies for the purposes of regulation 59(1).

Disapplication of certain regulations in the case of consumer credit agreements

52. The following provisions of the Consumer Credit Act 1974 shall apply in relation to contracts for the provision of payment services which are regulated agreements for the purposes of that Act in place of the following provisions of these Regulations—

- (a) section 51 (prohibition of unsolicited credit tokens) in place of regulation 58(1)(b);
- (b) sections 66 (acceptance of credit tokens) and 84 (misuse of credit tokens)(1) in place of regulations 59, 61 and 62;
- (c) section 83 (liability for misuse of credit facilities) in place of regulations 59, 61 and 62;
- (d) sections 76 (duty to give notice before taking certain action) and 87 (need for default notice) in relation to the grounds mentioned in regulation 56(2) in place of regulation 56(3) to (6).

(1) Section 84 was amended by [S.I. 2000/2095](#) and [2000/2334](#).

Disapplication of certain regulations in the case of low value payment instruments

53.—(1) This regulation applies in respect of payment instruments which, under the framework contract governing their use—

- (a) can be used only to execute individual payment transactions of 30 euro or less, or in relation to payment transactions executed wholly within the United Kingdom, 60 euro or less;
- (b) have a spending limit of 150 euro, or where payment transactions must be executed wholly within the United Kingdom, 300 euro; or
- (c) store funds that do not exceed 500 euro at any time.

(2) Where this regulation applies the parties may agree that—

- (a) regulations 57(1)(b), 58(1)(c), (d) and (e) and 62(3) do not apply where the payment instrument does not allow for the stopping or prevention of its use;
- (b) regulations 60, 61 and 62(1) and (2) do not apply where the payment instrument is used anonymously or the payment service provider is not in a position, for other reasons concerning the payment instrument, to prove that a payment transaction was authorised;
- (c) the payment service provider is not required under regulation 66(1) to notify the payment service user of the refusal of a payment order if the non-execution is apparent from the context;
- (d) the payer may not revoke the payment order under regulation 67 after transmitting the payment order or giving their consent to execute the payment transaction to the payee;
- (e) execution periods other than those provided by regulations 70 and 71 apply.

(3) Subject to paragraph (2)(b), regulations 61 and 62(1) and (2) apply to electronic money as defined in Article 1(3)(b) of the electronic money directive unless the payer's payment service provider does not have the ability under the contract to—

- (a) freeze the payment account; or
- (b) stop the use of the payment instrument.

Charges

Charges

54.—(1) The payment service provider may only charge the payment service user for the fulfilment of any of its obligations under this Part—

- (a) in accordance with regulation 66(3), 67(6) or 74(2)(b);
- (b) where agreed between the parties; and
- (c) where such charges reasonably correspond to the payment service provider's actual costs.

(2) Where a payment transaction does not involve any currency conversion, the respective payment service providers must ensure that—

- (a) the payee pays any charges levied by the payee's payment service provider; and
- (b) the payer pays any charges levied by the payer's payment service provider.

(3) The payee's payment service provider may not prevent the payee from—

- (a) requiring payment of a charge by; or
- (b) offering a reduction to,

the payer for the use of a particular payment instrument.

Authorisation of payment transactions

Consent and withdrawal of consent

55.—(1) A payment transaction is to be regarded as having been authorised by the payer for the purposes of this Part only if the payer has given its consent to—

- (a) the execution of the payment transaction; or
 - (b) the execution of a series of payment transactions of which that payment transaction forms part.
- (2) Such consent—
- (a) may be given before or, if agreed between the payer and its payment service provider, after the execution of the payment transaction; and
 - (b) must be given in the form, and in accordance with the procedure, agreed between the payer and its payment service provider.

(3) The payer may withdraw its consent to a payment transaction at any time before the point at which the payment order can no longer be revoked under regulation 67.

(4) Subject to regulation 67(3) to (5), the payer may withdraw its consent to the execution of a series of payment transactions at any time with the effect that any future payment transactions are not regarded as authorised for the purposes of this Part.

Limits on the use of payment instruments

56.—(1) Where a specific payment instrument is used for the purpose of giving consent to the execution of a payment transaction, the payer and its payment service provider may agree on spending limits for any payment transactions executed through that payment instrument.

(2) A framework contract may provide for the payment service provider to have the right to stop the use of a payment instrument on reasonable grounds relating to—

- (a) the security of the payment instrument;
- (b) the suspected unauthorised or fraudulent use of the payment instrument; or
- (c) in the case of a payment instrument with a credit line, a significantly increased risk that the payer may be unable to fulfil its liability to pay.

(3) The payment service provider must, in the manner agreed between the payment service provider and the payer and before carrying out any measures to stop the use of the payment instrument—

- (a) inform the payer that it intends to stop the use of the payment instrument; and
- (b) give its reasons for doing so.

(4) Where the payment service provider is unable to inform the payer in accordance with paragraph (3) before carrying out any measures to stop the use of the payment instrument, it must do so immediately after.

(5) Paragraphs (3) and (4) do not apply where provision of the information in accordance with paragraph (3) would compromise reasonable security measures or is otherwise unlawful.

(6) The payment service provider must allow the use of the payment instrument or replace it with a new payment instrument as soon as practicable after the reasons for stopping its use cease to exist.

Obligations of the payment service user in relation to payment instruments

57.—(1) A payment service user to whom a payment instrument has been issued must—

- (a) use the payment instrument in accordance with the terms and conditions governing its issue and use; and
 - (b) notify the payment service provider in the agreed manner and without undue delay on becoming aware of the loss, theft, misappropriation or unauthorised use of the payment instrument.
- (2) The payment service user must on receiving a payment instrument take all reasonable steps to keep its personalised security features safe.

Obligations of the payment service provider in relation to payment instruments

58.—(1) A payment service provider issuing a payment instrument must—

- (a) subject to regulation 57, ensure that the personalised security features of the payment instrument are not accessible to persons other than the payment service user to whom the payment instrument has been issued;
- (b) not send an unsolicited payment instrument, except where a payment instrument already issued to a payment service user is to be replaced;
- (c) ensure that appropriate means are available at all times to enable the payment service user to notify the payment service provider in accordance with regulation 57(1)(b) or to request that the use of the payment instrument is no longer stopped in accordance with regulation 56(6);
- (d) on request, provide the payment service user at any time during a period of 18 months after the alleged date of notification under regulation 57(1)(b) with the means to prove that such notification to the payment service provider was made;
- (e) prevent any use of the payment instrument once notification has been made under regulation 57(1)(b).

(2) The payment service provider bears the risk of sending a payment instrument or any of its personalised security features to the payment service user.

Notification of unauthorised or incorrectly executed payment transactions

59.—(1) A payment service user is entitled to redress under regulation 61, 75, 76 or 77 only if it notifies the payment service provider without undue delay, and in any event no later than 13 months after the debit date, on becoming aware of any unauthorised or incorrectly executed payment transaction.

(2) Where the payment service provider has failed to provide or make available information concerning the payment transaction in accordance with Part 5 of these Regulations, the payment service user is entitled to redress under the regulations referred to in paragraph (1) notwithstanding that the payment service user has failed to notify the payment service provider as mentioned in that paragraph.

Evidence on authentication and execution of payment transactions

60.—(1) Where a payment service user—

- (a) denies having authorised an executed payment transaction; or
- (b) claims that a payment transaction has not been correctly executed,

it is for the payment service provider to prove that the payment transaction was authenticated, accurately recorded, entered in the payment service provider's accounts and not affected by a technical breakdown or some other deficiency.

(2) In paragraph (1) “authenticated” means the use of any procedure by which a payment service provider is able to verify the use of a specific payment instrument, including its personalised security features.

(3) Where a payment service user denies having authorised an executed payment transaction, the use of a payment instrument recorded by the payment service provider is not in itself necessarily sufficient to prove either that—

- (a) the payment transaction was authorised by the payer; or
- (b) the payer acted fraudulently or failed with intent or gross negligence to comply with regulation 57.

Payment service provider’s liability for unauthorised payment transactions

61. Subject to regulations 59 and 60, where an executed payment transaction was not authorised in accordance with regulation 55, the payment service provider must immediately—

- (a) refund the amount of the unauthorised payment transaction to the payer; and
- (b) where applicable, restore the debited payment account to the state it would have been in had the unauthorised payment transaction not taken place.

Payer’s liability for unauthorised payment transaction

62.—(1) Subject to paragraphs (2) and (3), the payer is liable up to a maximum of £50 for any losses incurred in respect of unauthorised payment transactions arising—

- (a) from the use of a lost or stolen payment instrument; or
- (b) where the payer has failed to keep the personalised security features of the payment instrument safe, from the misappropriation of the payment instrument.

(2) The payer is liable for all losses incurred in respect of an unauthorised payment transaction where the payer—

- (a) has acted fraudulently; or
- (b) has with intent or gross negligence failed to comply with regulation 57.

(3) Except where the payer has acted fraudulently, the payer is not liable for any losses incurred in respect of an unauthorised payment transaction—

- (a) arising after notification under regulation 57(1)(b);
- (b) where the payment service provider has failed at any time to provide, in accordance with regulation 58(1)(c), appropriate means for notification; or
- (c) where the payment instrument has been used in connection with a distance contract (other than an excepted contract).

(4) In paragraph (3)(c) “distance contract” and “excepted contract” have the meanings given in the Consumer Protection (Distance Selling) Regulations 2000(2).

Refunds for payment transactions initiated by or through a payee

63.—(1) Where the conditions in paragraph (2) and the requirement in regulation 64(1) are satisfied, the payer is entitled to a refund from its payment service provider of the full amount of any authorised payment transaction initiated by or through the payee.

(2) The conditions are that—

- (a) the authorisation did not specify the exact amount of the payment transaction when the authorisation was given in accordance with regulation 55; and
 - (b) the amount of the payment transaction exceeded the amount that the payer could reasonably have expected taking into account the payer's previous spending pattern, the conditions of the framework contract and the circumstances of the case.
- (3) The payer and payment service provider may agree in the framework contract, in respect of direct debits, that the conditions in paragraph (2) need not be satisfied in order for the payer to be entitled to a refund.
- (4) For the purposes of paragraph (2)(b), the payer cannot rely on currency exchange fluctuations where the reference exchange rate provided under regulation 36(2)(d) or paragraph 3(b) of Schedule 4 was applied.
- (5) The payer and payment service provider may agree in the framework contract that the right to a refund does not apply where—
- (a) the payer has given consent directly to the payment service provider for the payment transaction to be executed; and
 - (b) if applicable, information on the payment transaction was provided or made available in an agreed manner to the payer for at least four weeks before the due date by the payment service provider or by the payee.

Requests for refunds for payment transactions initiated by or through a payee

- 64.**—(1) The payer must request a refund under regulation 63 from its payment service provider within 8 weeks from the date on which the funds were debited.
- (2) The payment service provider may require the payer to provide such information as is reasonably necessary to ascertain whether the conditions in regulation 63(2) are satisfied.
- (3) Subject to paragraph (4), the payment service provider must either—
- (a) refund the full amount of the payment transaction; or
 - (b) provide justification for refusing to refund the payment transaction, indicating the bodies to which the payer may refer the matter if the payer does not accept the justification provided.
- (4) Where an agreement in accordance with regulation 63(3) applies, the payment service provider must, notwithstanding that a condition in regulation 63(2) is not satisfied, refund the full amount of the payment transaction.
- (5) Any refund or justification for refusing a refund must be provided within 10 business days of receiving a request for a refund or, where applicable, within 10 business days of receiving any further information requested under paragraph (2).

Execution of payment transactions

Receipt of payment orders

- 65.**—(1) Subject to paragraphs (2) to (5), for the purposes of these Regulations the time of receipt of a payment order is the time at which the payment order, given directly by the payer or indirectly by or through a payee, is received by the payer's payment service provider.
- (2) If the time of receipt of a payment order does not fall on a business day for the payer's payment service provider, the payment order is deemed to have been received on the first business day thereafter.
- (3) The payment service provider may set a time towards the end of a business day after which any payment order received will be deemed to have been received on the following business day.

(4) Where the payment service user initiating a payment order agrees with its payment service provider that execution of the payment order is to take place—

(a) on a specific day;

(b) on the last day of a certain period; or

(c) on the day on which the payer has put funds at the disposal of its payment service provider, the time of receipt is deemed to be the day so agreed.

(5) If the day agreed under paragraph (4) is not a business day for the payer's payment service provider, the payment order is deemed to have been received on the first business day thereafter.

Refusal of payment orders

66.—(1) Subject to paragraph (4), where a payment service provider refuses to execute a payment order, it must notify the payment service user of—

(a) the refusal;

(b) if possible, the reasons for such refusal; and

(c) the procedure for rectifying any factual errors that led to the refusal.

(2) Any notification under paragraph (1) must be given or made available in an agreed manner and at the earliest opportunity, and in any event within the periods specified in regulation 70.

(3) The framework contract may provide for the payment service provider to charge the payment service user for such notification where the refusal is reasonably justified.

(4) The payment service provider is not required to notify the payment service user under paragraph (1) where such notification would be otherwise unlawful.

(5) Where all the conditions set out in the payer's framework contract have been satisfied, the payment service provider may not refuse to execute an authorised payment order irrespective of whether the payment order is initiated by the payer or by or through a payee, unless such execution is otherwise unlawful.

(6) For the purposes of regulations 70, 75 and 76 a payment order of which execution has been refused is deemed not to have been received.

Revocation of a payment order

67.—(1) Subject to paragraphs (2) to (5), a payment service user may not revoke a payment order after it has been received by the payer's payment service provider.

(2) In the case of a payment transaction initiated by or through the payee, the payer may not revoke the payment order after transmitting the payment order or giving consent to execute the payment transaction to the payee.

(3) In the case of a direct debit, the payer may not revoke the payment order after the end of the business day preceding the day agreed for debiting the funds.

(4) Where a day is agreed under regulation 65(4), the payment service user may not revoke a payment order after the end of the business day preceding the agreed day.

(5) At any time after the time limits for revocation set out in paragraphs (1) to (4), the payment order may only be revoked if the revocation is—

(a) agreed between the payment service user and its payment service provider; and

(b) in the case of a payment transaction initiated by or through the payee, including in the case of a direct debit, also agreed with the payee.

(6) A framework contract may provide for the payment service provider to charge for revocation under this regulation.

Amounts transferred and amounts received

68.—(1) Subject to paragraph (2), the payment service providers of the payer and payee must ensure that the full amount of the payment transaction is transferred and that no charges are deducted from the amount transferred.

(2) The payee and its payment service provider may agree for the payment service provider to deduct its charges from the amount transferred before crediting it to the payee provided that the full amount of the payment transaction and the amount of the charges are clearly stated in the information provided to the payee.

(3) If charges other than those provided for by paragraph (2) are deducted from the amount transferred—

- (a) in the case of a payment transaction initiated by the payer, the payer's payment service provider must ensure that the payee receives the full amount of the payment transaction;
- (b) in the case of a payment transaction initiated by the payee, the payee's payment service provider must ensure that the payee receives the full amount of the payment transaction.

Execution time and value date

Application of regulations 70 to 72

69.—(1) Regulations 70 to 72 apply to any transaction—

- (a) in euro;
- (b) in sterling; or
- (c) involving only one currency conversion between the euro and sterling, provided that—
 - (i) the currency conversion is carried out in the United Kingdom; and
 - (ii) in the case of cross-border payment transactions, the cross-border transfer takes place in euro.

(2) In respect of any other transaction, the payment service user may agree with the payment service provider that regulations 70 (other than regulation 70(4)) to 72 do not apply.

Payment transactions to a payment account

70.—(1) Subject to paragraphs (2), (3) and (4), the payer's payment service provider must ensure that the amount of the payment transaction is credited to the payee's payment service provider's account by the end of the business day following the time of receipt of the payment order.

(2) Until 1st January 2012, the payer and their payment service provider may agree that the amount of the payment transaction is to be credited to the payee's payment service provider's account by the end of the third business day following the time of receipt of the payment order.

(3) Where a payment transaction is initiated by way of a paper payment order—

- (a) the reference in paragraph (1) to the end of the business day following the time of receipt of the payment order is to be treated as a reference to the end of the second business day following the time of receipt of the payment order; and
- (b) the reference in paragraph (2) to the end of the third business day following the time of receipt of the payment order is to be treated as a reference to the end of the fourth business day following the time of receipt of the payment order.

(4) Where a payment transaction—

- (a) does not fall within paragraphs (a) to (c) of regulation 69(1); but
- (b) is to be executed wholly within the EEA,

the payer's payment service provider must ensure that the amount of the payment transaction is credited to the payee's payment service provider's account by the end of the fourth business day following the time of receipt of the payment order.

(5) The payee's payment service provider must value date and credit the amount of the payment transaction to the payee's payment account following its receipt of the funds.

(6) The payee's payment service provider must transmit a payment order initiated by or through the payee to the payer's payment service provider within the time limits agreed between the payee and its payment service provider, enabling settlement in respect of a direct debit to occur on the agreed due date.

Absence of payee's payment account with the payment service provider

71.—(1) Paragraph (2) applies where a payment service provider accepts funds on behalf of a payee who does not have a payment account with that payment service provider.

(2) The payment service provider must make the funds available to the payee immediately after the funds have been credited to that payment service provider's account.

Cash placed on a payment account

72. Where a payment service user places cash on its payment account with a payment service provider in the same currency as that payment account, the payment service provider must—

- (a) if the user is a consumer, micro-enterprise or charity, ensure that the amount is made available and value dated immediately after the receipt of the funds;
- (b) in any other case, ensure that the amount is made available and value dated no later than the end of the business day after the receipt of the funds.

Value date and availability of funds

73.—(1) The credit value date for the payee's payment account must be no later than the business day on which the amount of the payment transaction is credited to the account of the payee's payment service provider.

(2) The payee's payment service provider must ensure that the amount of the payment transaction is at the payee's disposal immediately after that amount has been credited to that payment service provider's account.

(3) The debit value date for the payer's payment account must be no earlier than the time at which the amount of the payment transaction is debited to that payment account.

Liability

Incorrect unique identifiers

74.—(1) Where a payment order is executed in accordance with the unique identifier, the payment order is deemed to have been correctly executed by each payment service provider involved in executing the payment order with respect to the payee specified by the unique identifier.

(2) Where the unique identifier provided by the payment service user is incorrect, the payment service provider is not liable under regulation 75 or 76 for non-execution or defective execution of the payment transaction, but the payment service provider—

- (a) must make reasonable efforts to recover the funds involved in the payment transaction; and
- (b) may, if agreed in the framework contract, charge the payment service user for any such recovery.

(3) Where the payment service user provides information additional to that specified in regulation 36(2)(a) or paragraph 2(b) of Schedule 4, the payment service provider is liable only for the execution of payment transactions in accordance with the unique identifier provided by the payment service user.

Non-execution or defective execution of payment transactions initiated by the payer

75.—(1) This regulation applies where a payment order is initiated by the payer.

(2) The payer's payment service provider is liable to the payer for the correct execution of the payment transaction unless it can prove to the payer and, where relevant, to the payee's payment service provider, that the payee's payment service provider received the amount of the payment transaction in accordance with regulation 70.

(3) The payer's payment service provider must, on request, make immediate efforts to trace the payment transaction and notify the payer of the outcome.

(4) Where the payer's payment service provider is liable under paragraph (2), it must without undue delay refund to the payer the amount of the non-executed or defective payment transaction and, where applicable, restore the debited payment account to the state in which it would have been had the defective payment transaction not taken place.

(5) Where the payer's payment service provider can prove (as set out in paragraph (2)) that the payee's payment service provider received the amount of the payment transaction in accordance with regulation 70, the payee's payment service provider is liable to the payee for the correct execution of the payment transaction and must—

- (a) immediately make available the amount of the payment transaction to the payee; and
- (b) where applicable, credit the corresponding amount to the payee's payment account.

Non-execution or defective execution of payment transactions initiated by the payee

76.—(1) This regulation applies where a payment order is initiated by the payee.

(2) The payee's payment service provider is liable to the payee for the correct transmission of the payment order to the payer's payment service provider in accordance with regulation 70(6).

(3) Where the payee's payment service provider is liable under paragraph (2), it must immediately re-transmit the payment order in question to the payer's payment service provider.

(4) The payee's payment service provider must, on request, make immediate efforts to trace the payment transaction and notify the payee of the outcome.

(5) Where the payee's payment service provider can prove to the payee and, where relevant, to the payer's payment service provider, that it is not liable under paragraph (2) in respect of a non-executed or defectively executed payment transaction, the payer's payment service provider is liable to the payer and must, as appropriate and without undue delay—

- (a) refund to the payer the amount of the payment transaction; and
- (b) restore the debited payment account to the state in which it would have been had the defective payment transaction not taken place.

Liability of payment service provider for charges and interest

77. A payment service provider is liable to its payment service user for—

- (a) any charges for which the payment service user is responsible; and
- (b) any interest which the payment service user must pay,

as a consequence of the non-execution or defective execution of the payment transaction.

Right of recourse

78. Where the liability of a payment service provider (“the first provider”) under regulation 75 or 76 is attributable to another payment service provider or an intermediary, the other payment service provider or intermediary must compensate the first provider for any losses incurred or sums paid pursuant to those regulations.

Force majeure

79.—(1) A person is not liable for any contravention of a requirement imposed on it by or under this Part where the contravention is due to abnormal and unforeseeable circumstances beyond the person’s control, the consequences of which would have been unavoidable despite all efforts to the contrary.

(2) A payment service provider is not liable for any contravention of a requirement imposed on it by or under this Part where the contravention is due to the obligations of the payment service provider under other provisions of Community or national law.