
STATUTORY INSTRUMENTS

2009 No. 209

The Payment Services Regulations 2009

PART 9

GENERAL

Criminal Offences

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

110.—(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) an EEA authorised payment institution exercising its passport rights;
- (d) a person mentioned in any of paragraphs (d) to (h) of the definition in regulation 2(1) of a payment service provider, including, where relevant, such a person exercising an EEA right in accordance with Part 2 of Schedule 3 to the 2000 Act (exercise of passport rights by EEA firms)(1); or
- (e) exempt under regulation 3.

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

- (a) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding 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.

False claims to be a payment service provider or exempt

111.—(1) A person who does not fall within any of sub-paragraphs (a) to (e) of regulation 110(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 not exceeding level 5 on the standard scale, or both.

(1) Part 2 was amended by the Enterprise Act 2002, section 278(1) and Schedule 25, paragraph 40; by the Consumer Credit Act 2006, section 33(9); by [S.I.2003/1473](#), [2003/2066](#), [2007/126](#) and [2007/3253](#).

Defences

112. In proceedings for an offence under regulation 110 or 111 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 49 and 50

113.—(1) A person (not being a payment service provider) who contravenes regulation 49(2) or 50(2) is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(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 49(2) or 50(2), as the case may be, would be complied with.

Misleading the Authority or the OFT

114.—(1) A person may not, in purported compliance with any requirement imposed by or under these Regulations, knowingly or recklessly give—

- (a) the Authority; or
- (b) the OFT,

information which is false or misleading in a material particular.

(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 Authority 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 OFT in connection with their functions under these Regulations.

(4) A person who knows or suspects that an investigation by the OFT under regulation 98 is being or is likely to be conducted may not—

- (a) intentionally or recklessly destroy or otherwise dispose of, falsify or conceal a document (as defined by regulation 99(5)) which may be relevant to such an investigation; or
- (b) cause or permit its destruction, disposal, falsification or concealment.

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

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

Restriction on penalties

115. A person who is convicted of an offence under these Regulations is not liable to a penalty under regulation 85 or 105 in respect of the same contravention of a requirement imposed by or under these Regulations.

Liability of officers of bodies corporate etc

116.—(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

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

- (a) in respect of an offence under regulation 110, 111, 113, or 114(1)(a) or (2), by the Authority;
- (b) in respect of an offence under regulation 114(1)(b), (3) or (4), by the OFT; 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

118.—(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(2) (procedure on charge of offence against corporation) and section 46 of and Schedule 3 to the Magistrates' Courts Act 1980(3) (corporations) apply as they do in relation to a body corporate;
- (b) section 70 of the Criminal Procedure (Scotland) Act 1995(4) (proceedings against bodies corporate) applies as it does in relation to a body corporate;
- (c) section 18 of the Criminal Justice (Northern Ireland) Act 1945(5) (procedure on charge) and Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981(6) (corporations) 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.

Duties of the Authority, the Commissioners and the OFT to cooperate

Duty to co-operate and exchange of information

119.—(1) The Authority, the Commissioners and the OFT must take such steps as they consider appropriate to co-operate with each other and—

- (a) the competent authorities designated under Article 20(1), or referred to in Article 82(1), of the payment services directive, of EEA States other than the United Kingdom;
- (b) the European Central Bank, the Bank of England and the national central banks of EEA States other than the United Kingdom; and
- (c) any other relevant competent authorities designated under Community law or the law of the United Kingdom or any other EEA State which is applicable to payment service providers,

-
- (2) 1925 c. 86. Section 33 was amended by the Magistrates' Courts Act 1952 (c.55), section 132 and Schedule 6, by the Courts Act 1971, section 56(1) and Schedule 8, by the Courts Act 1971 (c.23), Schedule 8, and by the Courts Act 2003 (c.39), Schedule 8, paragraph 71 and Schedule 10.
 - (3) 1980 c. 43. Schedule 3 was amended by the Criminal Justice Act 1991 (c.53), section 25(2) and Schedule 13, and by the Criminal Procedures and Investigations Act 1996 (c.25), Schedule 1, paragraph 1. Amendments by the Criminal Justice Act 2003 (c.44), Schedule 3, paragraph 51 and Schedule 37, Part 4 have not come into force at the time of making of these Regulations.
 - (4) 1995 c. 46. Section 70 was amended by the Postal Services Act 2000 (Consequential Modifications No 1) Order 2001 (S.I. 2001/1149), Schedule 1, paragraph 104, the Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), section 10(6), and the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), section 28.
 - (5) 1945 c. 15 (N.I.). Section 18 was amended by the Magistrates' Courts Act 1964 (c.21) and by the Justice (Northern Ireland) Act 2002 (c.26), Schedule 12.
 - (6) S.I. 1981/1675 (N.I. 26).

for the purposes of the exercise by those bodies of their functions under the payment services directive and other relevant Community or national legislation.

(2) Subject to the requirements of the Data Protection Act 1998⁽⁷⁾, sections 348 and 349 of the 2000 Act (as applied with modifications by paragraph 5 of Schedule 5 to these Regulations), regulation 49A of the Money Laundering Regulations 2007⁽⁸⁾ (as inserted by paragraph 6(g) of Schedule 6 to these Regulations) and any other applicable restrictions on the disclosure of information, the Authority, the Commissioners and the OFT may provide information to each other and—

- (a) the bodies mentioned in paragraph (1)(a) and (c);
- (b) the European Central Bank, the Bank of England and the national central banks of EEA States other than the United Kingdom when acting in their capacity as monetary and oversight authorities;
- (c) where relevant, other public authorities responsible for the oversight of payment and settlement systems;

for the purposes of the exercise by those bodies of their functions under the payment services directive and other relevant Community or national legislation.

(3) Part 9 of the Enterprise Act 2002 does not prohibit disclosure by the OFT under paragraph (2) but the OFT must have regard to the considerations mentioned in section 244 of that Act (specified information: considerations relevant to disclosure) before making any such disclosure.

Actions for breach of requirements

Right to bring actions

120.—(1) A contravention—

- (a) which is to be taken to have occurred by virtue of regulation 17;
- (b) of a requirement imposed by regulation 19; or
- (c) of a requirement imposed by or under Part 5 or 6,

is actionable at the suit of a private person who suffers loss as a result of the contravention, subject to the defences and other incidents applying to actions for breach of statutory duty.

(2) A person acting in a fiduciary or representative capacity may bring an action under paragraph (1) on behalf of a private person if any remedy—

- (a) will be exclusively for the benefit of the private person; and
- (b) cannot be obtained by way of an action brought otherwise than at the suit of the fiduciary or representative.

(3) In this regulation “private person” means—

- (a) any individual, except where the individual suffers the loss in question in the course of providing payment services; and
- (b) any person who is not an individual, except where that person suffers the loss in question in the course of carrying on business of any kind;

but does not include a government, a local authority (in the United Kingdom or elsewhere) or an international organisation.

(7) 1998 c. 29.

(8) S.I. 2007/2157, amended by S.I. 2007/3299.

Transitional provisions

Transitional provisions: deemed authorisation

121.—(1) Any financial institution (within the meaning of the banking consolidation directive) which—

- (a) is constituted under the law of a part of the United Kingdom and has its head office and, if it has a registered office, that office, in the United Kingdom; and
- (b) before 25th December 2007 had—
 - (i) lawfully provided payment services in the United Kingdom; and
 - (ii) met the condition in Article 24(1)(e) of the banking consolidation directive;

shall be deemed to have been granted authorisation by the Authority under regulation 9.

(2) An institution which is deemed to have been granted authorisation by virtue of paragraph (1) shall continue on or after 25th December 2009 to be deemed to have been granted authorisation only if it has by that date—

- (a) notified the Authority of the payment services referred to in sub-paragraph (b)(i); and
- (b) provided the Authority with the information specified in paragraph 1, 4, 7 to 9 and 12 of Schedule 2 (“the required information”).

(3) Authorisation which continues on or after 25th December 2009 to be deemed to have been granted by virtue of paragraph (2) shall continue to be so deemed until such time as the Authority decides whether to include the institution in the register as an authorised payment institution.

(4) If the Authority decides to include the institution in the register as an authorised payment institution—

- (a) it must as soon as practicable update the register accordingly; and
- (b) the institution shall cease to be deemed to have been granted authorisation by virtue of paragraph (1) or (2).

(5) The Authority may decide that an institution is not to be included in the register as an authorised payment institution only if—

- (a) it has not received the required information; or
- (b) any of the conditions in regulation 6(4) to (6) (other than the condition that a person must be a body corporate) (“the required conditions”) are not met in respect of that institution.

(6) If the Authority is satisfied that—

- (a) it has received the required information; and
- (b) the required conditions are met,

it must give the institution notice of its decision.

(7) If the Authority proposes to decide that—

- (a) it has not received the required information; or
- (b) any of the required conditions is not met,

it must give the institution a warning notice.

(8) The Authority must, having considered any representations in response to the warning notice—

- (a) if it decides that it has not received the required information or that any of the required conditions is not met, give the institution a decision notice; or

- (b) if it decides that it has received the required information and that the required conditions have been met, give the institution notice of its decision.
- (9) If the Authority gives the institution a decision notice, the institution may refer the matter to the Tribunal.
- (10) Where the period for a reference to the Tribunal has expired without a reference being made, the institution shall cease to be deemed to have been granted authorisation by virtue of paragraph (1) or (2).
- (11) Where an institution is deemed to have been granted authorisation by virtue of paragraph (1) or (2)—
 - (a) the duty to which the Authority is subject under regulation 4(1)(a) to maintain a register shall not apply in respect of it; and
 - (b) Parts 3 and 4 shall not apply to it.

Transitional provisions: requirement to be authorised as a payment institution

122.—(1) Any person which—

- (a) is a body corporate constituted under the law of a part of the United Kingdom and has its head office and, if it has a registered office, that office, in the United Kingdom;
- (b) is not a body—
 - (i) mentioned in any of paragraphs (d) to (h) of the definition in regulation 2(1) of a payment service provider; or
 - (ii) which is deemed to have been granted authorisation by virtue of regulation 121(1) or (2); and
- (c) immediately before 25th December 2007, was lawfully providing payment services in the United Kingdom,

may continue until 1st May 2011 to provide payment services in the United Kingdom notwithstanding that the person has not been granted authorisation by the Authority under regulation 9.

(2) Parts 5 to 8 and regulation 110(1) apply to a person falling within paragraph (1) as if the person were an authorised payment institution.

Transitional provisions: requirement to be registered as a small payment institution

123.—(1) Any person who—

- (a) immediately before 25th December 2007, was lawfully providing payment services in the United Kingdom;
- (b) is not a body—
 - (i) mentioned in any of paragraphs (d) to (h) of the definition in regulation 2(1) of a payment service provider; or
 - (ii) which is deemed to have been granted authorisation by virtue of regulation 121(1) or (2) or which falls within regulation 122(1); and
- (c) meets the conditions set out in regulation 13(4) to (6) and complies with the financial limit referred to in regulation 8 (as applied by regulation 14(c)),

may continue until 25th December 2010 to provide payment services in the United Kingdom notwithstanding that the person has not been granted registration by the Authority under regulation 9 (as applied by regulation 14).

(2) Parts 5 to 8 and regulation 110(1) apply to a person falling within paragraph (1) as if the person were a small payment institution.

Transitional provisions: early applications

124.—(1) Where an application is made under regulation 5(1) or (2) or 12(1) or (2) before 1st August 2009 and is a completed application, the Authority must determine it before 1st November 2009.

(2) The requirement under regulation 23(2) for information to be given to the host state competent authority within one month of receipt by the Authority of a notice of intention does not apply where the notice of intention is received by the Authority before 1st November 2009.

(3) Any requirement under these Regulations to update the register does not apply until 1st November 2009.

Transitional provisions: the ombudsman scheme

125. Part 16 of, and Schedule 17 to, the 2000 Act (the ombudsman scheme)⁽⁹⁾ shall apply as if persons who fall within regulation 122(1) or 123(1) were payment service providers within the meaning of these Regulations.

Amendments to primary and secondary legislation

Amendments to primary and secondary legislation

126. Schedule 6, which contains amendments to primary and secondary legislation, has effect.

(9) Part 16 and Schedule 17 were amended by the Consumer Credit Act 2006 (c.14), sections 59, 60 and 61 and Schedule 2, and by the Tribunals, Courts and Enforcement Act 2007 (c.15), section 62(3) and Schedule 13.