

SCHEDULE 5

Regulation 95

Application and modification of legislation

PART 1

Application and modification of the 2000 Act

Disciplinary powers

1. Sections 66(1) (disciplinary powers) to 70 (statements of policy: procedure) of the 2000 Act apply with the following modifications to section 66—

(a) for subsection (2) substitute—

“(2) A person is guilty of misconduct if, while a relevant person, he has been knowingly concerned in a contravention of the Payment Services Regulations 2009 by an authorised payment institution or a small payment institution.”;

(b) for subsection (6) substitute—

“(6) “Relevant person” means any person responsible for the management of the authorised payment institution or small payment institution or, where relevant, any person responsible for the management of the institution’s payment services activities.”; and

(c) omit subsection (7).

The Tribunal

2. Part 9 of the 2000 Act (hearings and appeals) applies in respect of references to the Tribunal made under these Regulations as it applies in respect of references made to the Tribunal under that Act, with the following modifications to section 133 (proceedings: general provision)—

(a) in subsection (6) omit “, or as a result of section 338(2),”;

(b) omit subsection (8); and

(c) in subsection (12) for “has the same meaning as in section 395” substitute “means a notice given under regulation 11(6), (9) or (10)(b) (including as applied by regulation 14) of the Payment Services Regulations 2009”.

Information gathering and investigations

3. Part 11 of the 2000 Act (information gathering and investigations) applies with the following modifications—

(a) in section 165 (Authority’s power to require information)—

(i) for references to “an authorised person” substitute “an authorised payment institution, an EEA authorised payment institution or a small payment institution”;

(ii) in subsection (4), for “this Act” substitute “the Payment Services Regulations 2009”; and

(iii) in subsection (7) omit paragraphs (b) and (c);

(b) in subsection (2)(a) of section 166 (reports by skilled persons), for “an authorised person” substitute “an authorised payment institution, an EEA authorised payment institution or a small payment institution”;

(1) Amended by S.I. 2007/126.

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- (c) in section 167(2) (appointment of persons to carry out general investigations)—
 - (i) in subsection (1)—
 - (aa) omit “or the Secretary of State”;
 - (bb) in paragraph (a) for “a recognised investment exchange or an authorised person or of an appointed representative” substitute “an authorised payment institution, an EEA authorised payment institution or a small payment institution”;
 - (cc) in paragraph (c) for “a recognised investment exchange or an authorised person” substitute “an authorised payment institution, an EEA authorised payment institution or a small payment institution”;
 - (ii) in subsection (4)—
 - (aa) for “in relation to a former authorised person (or appointed representative)” substitute “in relation to a former authorised payment institution, former EEA authorised payment institution or former small payment institution”;
 - (bb) in paragraph (a) for “he was an authorised person (or appointed representative)” substitute “it was an authorised payment institution, EEA authorised payment institution or small payment institution”;
 - (cc) for paragraph (b) substitute—
 - “(b) the ownership or control of a former authorised payment institution, former EEA authorised payment institution or former small payment institution at any time when it was an authorised payment institution, EEA authorised payment institution or small payment institution, as the case may be.”;
 - (iii) in subsection (5) for “regulated activities” substitute “payment services”; and
 - (iv) omit subsection (6);
- (d) in section 168(3) (appointment of persons to carry out investigations in particular cases)—
 - (i) in subsection (1)—
 - (aa) in paragraph (a) for “any regulation made under section 142” substitute “any requirement of or imposed under the Payment Services Regulations 2009”;
 - (bb) in paragraph (b) for “191” to the end substitute “or under regulation 110, 111, 113 or 114 of the Payment Services Regulations 2009”;
 - (ii) for subsection (2) substitute—
 - “(2) Subsection (3) also applies if it appears to an investigating authority that there are circumstances suggesting that a person may be guilty of an offence under, or has contravened a requirement of, the Money Laundering Regulations 2007.”;
 - (iii) omit subsections (4) and (5); and
 - (iv) in subsection (6) omit “or the Secretary of State”;
- (e) in section 169 (investigations etc in support of overseas regulator)—
 - (i) in subsection (8) for “Part XXIII” substitute “sections 348, 349, 351 and 352, as applied with modifications by the Payment Services Regulations 2009”; and
 - (ii) in subsection (13) for “has the same meaning as in section 195” substitute “means a competent authority designated in accordance with Article 20 of the payment services directive”;

(2) Amended by S.I. 2007/126.

(3) Amended by S.I. 2007/126.

- (f) in section 170 (investigations: general)—
 - (i) in subsection (1) omit “or (5)”;
 - (ii) in subsection (3)(a) omit “or (4)”;
 - (iii) for subsection (10) substitute—
 - “(10) “Investigating authority” in relation to an investigator means the Authority.”;
- (g) in section 171(4) (powers of persons appointed under section 167), omit subsections (3A) and (7);
- (h) in subsection (4) of section 172 (additional power of persons appointed as a result of section 168(1) or (4)), omit “or (4)”;
- (i) in section 174 (admissibility of statements made to investigators)—
 - (i) in subsection (2) omit “or in proceedings in relation to action to be taken against that person under section 123”;
 - (ii) in subsection (3)(a) for “398” substitute “regulation 114 of the Payment Services Regulations 2009”; and
 - (iii) in subsection (4) omit “or (5)”;
- (j) in subsection (8) of section 175 (information and documents: supplemental provisions) omit “or (5)”;
- (k) in section 176(5)(entry of premises under warrant)—
 - (i) in subsection (1)—
 - (aa) omit “the Secretary of State,”; and
 - (bb) for “the first, second or third” substitute “the first or second”;
 - (ii) in subsection (3)(a) for “an authorised person or an appointed representative” substitute “an authorised payment institution, a small payment institution or an EEA authorised payment institution”;
 - (iii) omit subsection (4);
 - (iv) in subsection (10) omit “or (5)”;
 - (v) in subsection (11)(a) omit “87C, 87J,”; and
- (l) in subsection (5)(a) of section 177 (offences), for “six months” substitute “three months”.

Auditors and actuaries

4. Sections 341 (access to books etc) to 346 (provision of false or misleading information to auditor or actuary) of the 2000 Act apply as though in sections 341(1), 342(1) to (3) and (7), 343(1) to (3), (7) and (8), 344(2), 345(1) and 346(1) and (2) the references to “an authorised person” were to “an authorised payment institution”.

Restriction on disclosure of information

5. Sections 348 (restrictions on disclosure of confidential information by Authority etc), 349 (exceptions from section 348), 351 (competition information) and 352 (offences) of the 2000 Act apply with the following modifications—

- (a) in section 348—

(4) Amended by S.I. 2007/126.
(5) Amended by S.I. 2005/1433.

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- (i) in subsection (2)(b) for the words from “, the competent authority” to the end substitute “under the Payment Services Regulations 2009”;
 - (ii) in subsection (3)(a) for “this Act” substitute “the Payments Services Regulations 2009”;
 - (iii) in subsection (5)—
 - (aa) for “this Part”, substitute “the Payment Services Regulations 2009”;
 - (bb) omit paragraphs (b) and (c);
 - (cc) in paragraph (e) for “paragraphs (a) to (c)” substitute “paragraph (a)”;
 - (iv) in subsection (6)—
 - (aa) omit paragraphs (a) and (b); and
 - (bb) in paragraph (c) for “paragraph 6 of Schedule 1” substitute “regulation 81 of the Payment Services Regulations 2009”; and
- (b) in section 349(6) omit subsections (3A) and (3B).

Insolvency

6. Sections 359(7) (administration order), 367 (winding-up petitions) and 368 (winding-up petitions: EEA and Treaty firms) of the 2000 Act apply with the following modifications—

- (a) for references to “an authorised person” substitute “an authorised payment institution or an EEA authorised payment institution”;
- (b) in section 359—
 - (i) omit subsections (1)(b), (3)(b) and (5);
 - (ii) for subsection (1)(c) substitute—
 - “(c) is providing or has provided payment services in contravention of regulation 110(1) of the Payment Services Regulations 2009.”;
 - (iii) in subsection (3)(a) omit “or partnership” and for “an agreement” substitute “a contract for payment services”; and
 - (iv) in subsection (4) omit the definitions of “agreement”, “authorised deposit taker” and “relevant deposit”;
- (c) in section 367—
 - (i) omit subsections (1)(b), (2), (5), (6) and (7);
 - (ii) for subsection (1)(c) substitute—
 - “(c) is providing or has provided payment services in contravention of regulation 110(1) of the Payment Services Regulations 2009.”; and
 - (iii) in subsection (4) for “an agreement” substitute “a contract for payment services”; and
- (d) in section 368 for the words from “winding up” to the end substitute “winding up of an EEA authorised payment institution unless it has been asked to do so by the home state competent authority.”.

(6) Subsections (3A) and (3B) were inserted by the Companies Act 2006, section 964(1),(4).

(7) Substituted by the Enterprise Act 2002, section 248(3), Schedule 17, paragraphs 53 and 55 and amended by [S.I. 2005/1455](#). Amendments made by the Dormant Bank and Building Society Accounts Act 2008 (c.31) sections 15 and 31 and Schedule 2 paragraph 6(1) are not in force at the time of making of these Regulations.

Warning notices and decision notices

7. Part 26 of the 2000 Act (notices) applies with the following modifications—
- (a) omit section 388(2) (decision notices);
 - (b) in section 390 (final notices)—
 - (i) omit subsections (6) and (10); and
 - (ii) in subsection (8) omit “or (6)(c)”;
 - (c) in section 391 (publication), in subsection (10) for “has the same meaning as in section 395” substitute “means a notice given under regulation 11(6), (9) or (10)(b) (including as applied by regulation 14) of the Payment Services Regulations 2009”;
 - (d) for section 392 (application of sections 393 and 394) substitute—

“**392.** Sections 393 and 394 apply to—

 - (a) a warning notice given in accordance with regulations 10(2) (including as applied by regulation 14), 24(2) (in relation to the cancellation of a registration), 30(2), 86(1) or 89(1) of the Payment Services Regulations 2009;
 - (b) a decision notice given in accordance with regulations 10(3)(a) (including as applied by regulation 14), 24(3)(a) (in relation to the cancellation of a registration), 30(3)(a), 86(3) or 89(3) of the Payment Services Regulations 2009.”; and
 - (e) in section 395 (the Authority’s procedures) in subsection (13) for “in accordance with” to the end substitute “under regulation 11(6), (9) or (10)(b) (including as applied by regulation 14) of the Payment Services Regulations 2009”.

Limitation on power to require documents

8. Section 413 of the 2000 Act (protected items) applies for the purposes of these Regulations as it applies for the purposes of that Act.

PART 2

Application and modification of secondary legislation

The Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001

9. The Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001(8) applies to any notice, direction or document of any kind given by or to the Authority under these Regulations as it applies to any notice, direction or document of any kind under the 2000 Act.

The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001

10. The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001(9) applies with the following modifications—
- (a) in regulation 2—

(8) [S.I. 2001/1420](#); a relevant amending instrument is [S.I. 2005/274](#).

(9) [S.I. 2001/2188](#); relevant amending instruments are [S.I. 2003/1473](#), [2005/3071](#), [2006/3413](#).

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- (i) in the definition of “directive restrictions” for “and article 9 of the insurance mediation directive” substitute “, article 9 of the insurance mediation directive and Article 22 of the payment services directive”;
- (ii) in paragraph (a) of the definition of “overseas regulatory authority” after “of the Act” insert “or any function conferred under national legislation in implementation of the payment services directive”; and
- (iii) after the definition of “overseas regulatory authority” insert—
 - ““payment services directive” means Directive [2007/64/EC](#) of the European Parliament and of the Council of 13th November 2007 on payment services in the internal market;
 - “payment services directive information” means confidential information received by the Authority in the course of discharging its functions as the competent authority under the payment services directive.”;
- (b) in regulation 5(4)(a) for “an authorised person, former authorised person or former regulated person” substitute “an authorised payment institution, former authorised payment institution, small payment institution or former small payment institution”;
- (c) in regulation 5(6)(e) for “an authorised person, former authorised person or former regulated person” substitute “an authorised payment institution, former authorised payment institution, small payment institution or former small payment institution”;
- (d) in regulation 8 after sub-paragraph (b) insert—
 - “(c) payment services directive information.”;
- (e) in regulation 9—
 - (i) in paragraph (1) for “(3) and (3A)” substitute “(3), (3A) and (4)”;
 - (ii) after paragraph (3B) insert—
 - “(4) Paragraph (1) does not permit disclosure to the persons specified in the first column in Part 5 of Schedule 1 unless the disclosure is of payment services directive information.”;
- (f) in regulation 11 after sub-paragraph (d) insert—
 - “(e) payment services directive information.”;
- (g) in the second column in Part 1 of Schedule 1, in the list of functions beside—
 - (i) “An official receiver appointed under section 399 of the Insolvency Act 1986, or an official receiver for Northern Ireland appointed under article 355 of the Insolvency (Northern Ireland) Order 1989”, after paragraph (ii) insert—
 - “or
 - (iii) payment service providers or former payment service providers”;
 - (ii) “The Department of Enterprise, Trade and Investment in Northern Ireland”, after paragraph (c)(ii) insert—
 - “or
 - (iii) payment service providers or former payment service providers”;
 - (iii) “The Pensions Regulator”, after paragraph (ii) insert—
 - “or
 - (iii) payment service providers or former payment service providers”;
 - (iv) “The Charity Commissioners for England and Wales”, after paragraph (ii) insert—
 - “or

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- (iii) payment service providers or former payment service providers”; and
- (h) in Schedule 1, after Part 4 insert—

“PART 5

<i>Person</i>	<i>Functions</i>
The Commissioners for Her Majesty’s Revenue and Customs	Their functions under the Money Laundering Regulations 2007”