

SCHEDULE

Regulation 21

Application and modification of legislation

PART 1

Application and modification of the 2000 Act

Disciplinary powers

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

(a) in section 66—

(i) for subsection (2) substitute—

“(2) A person (“P”) is guilty of misconduct if, while a relevant person, P has been knowingly concerned in a contravention by a payment service provider of either—

(a) Regulation (EC) No 924/2009 of the European Parliament and of the Council on cross-border payments in the Community and repealing Regulation (EC) No 2560/2001; or

(b) Regulation (EU) No 260/2012 of the European Parliament and Council establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009, or both.”;

(ii) omit paragraphs (aa) and (ab) of subsection (3);

(iii) omit subsections (3A) to (3D) and (5A);

(iv) for subsection (6) substitute—

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

(v) omit subsections (7) to (9);

(b) in section 67—

(i) in subsections (1) and (4), omit the words “and if it” to the end;

(ii) omit subsections (2A)(a) and (5A)(a);

(iii) in subsection (7), omit the words from “and if the Authority” to the end; and

(iv) omit subsections (8) and (9);

(c) at the end of section 69 (statement of policy) insert—

“(9) Until such time as a statement has been issued in respect of the imposition and amount of penalties under section 66 as applied by paragraph 1 of the Schedule to the Payments in Euro (Credit Transfers and Direct Debits) Regulations 2012 (“the 2012 Regulations”), the statement issued in respect of the imposition and amount of penalties under section 66 as applied by paragraph 1 of the Schedule to the Cross-Border Payments in Euro Regulations 2010 shall apply for the purposes of the 2012 Regulations.”.

Information gathering and investigations

2. 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: authorised persons etc)—
 - (i) for references to “an authorised person” substitute “a payment service provider”;
 - (ii) in subsection (4), for “this Act” substitute “the Payments in Euro (Credit Transfers and Direct Debits) Regulations 2012”;
 - (iii) in subsection (7) omit paragraphs (b) and (c); and
 - (iv) for subsection (8), substitute—
 - “(8) “Payment service provider” has the meaning given by regulation 2 of the Payments in Euro (Credit Transfers and Direct Debits) Regulations 2012.”;
- (b) omit section 165A (Authority’s power to require information: financial stability), 165B (safeguards etc in relation to exercise of power under section 165A) and 165C (orders under section 165A(2)(d));
- (c) in section 166 (reports by skilled persons)—
 - (i) in subsection (2)(a), for “an authorised person” substitute “a payment service provider”; and
 - (ii) after subsection (6), insert—
 - “(7) “Payment service provider” has the meaning given by regulation 2 of the Payments in Euro (Credit Transfers and Direct Debits) Regulations 2012.”;
- (d) omit section 167 (appointment of persons to carry out general investigations);
- (e) in section 168 (appointment of persons to carry out investigations in particular cases)—
 - (i) in subsection (1)—
 - (aa) for paragraph (a) substitute—
 - “(a) a payment service provider may have contravened any requirement imposed by either—
 - (i) Regulation (EC) No 924/2009 of the European Parliament and of the Council on cross-border payments in the Community and repealing Regulation (EC) No 2560/2001; or
 - (ii) Regulation (EU) No 260/2012 of the European Parliament and Council establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009;”;
 - (bb) in paragraph (b) omit from “191” to the end;
 - (ii) omit subsections (2), (4) and (5); and
 - (iii) in subsection (6) omit “or the Secretary of State”;
- (f) omit section 169 (investigations etc in support of overseas regulator) and section 169A (support of overseas regulator with respect to financial stability);
- (g) in section 170 (investigations: general)—
 - (i) in subsection (1) for “section 167 or 168(3) or (5)” substitute “section 168(3)”;
 - (ii) in subsection (3)(a) omit “or (4)”;
 - (iii) omit subsection (3)(b); and
 - (iv) for subsection (10) substitute—

- “(10) “Investigating authority”, in relation to an investigator, means the Authority.”;
- (h) omit section 171 (powers of persons appointed under section 167);
 - (i) in the heading and subsection (4) of section 172 (additional power of persons appointed as a result of section 168(1) or (4)), omit “or (4)”;
 - (j) omit section 173 (powers of persons appointed as a result of section 168(2));
 - (k) 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) omit “or 398”;
 - (iii) in subsection (4), for “section 167 or 168(3) or (5)” substitute “section 168(3)”;
 - (iv) in subsection (5) for “section 171, 172, 173 or 175” substitute “section 172 or 175”;
 - (l) in subsection (8) of section 175 (information and documents: supplemental provisions) for “section 167 or 168(3) or (5)” substitute “section 168(3)”;
 - (m) in section 176 (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 “a payment service provider”;
 - (iii) omit subsection (4);
 - (iv) in subsection (10) for “section 167 or 168(3) or (5)” substitute “section 168(3)”;
 - (v) in subsection (11)(a) omit “87C, 87J,” and “165A,169A”;
 - (vi) in subsection (11)(b) for “section 171, 172, 173 or 175” substitute “section 172 or 175”; and
 - (n) in subsection (5)(a) of section 177 (offences), for “six months” substitute “three months”.

Disciplinary measures

3.—(1) Sections 210 (statements of policy) and 211 (statements of policy: procedure) apply in respect of the imposition and amount of penalties under regulation 6 as they apply in respect of the imposition and amount of penalties under section 206 (financial penalties) of the 2000 Act with the following modification to section 210.

- (2) At the end of section 210, insert—

“(9) Until such time as a statement of policy has been issued in respect of the imposition and amount of penalties under regulation 6 of the Payments in Euro (Credit Transfers and Direct Debits) Regulations 2012, any statement issued under this section as applied by paragraph 3 of the Schedule to the Cross-Border Payments in Euro Regulations 2010 shall also apply for the purposes of this section.”.

Restriction on disclosure of information

- 4.** Sections 348, 349 and 352 of the 2000 Act apply with the following modifications—
- (a) in section 348—

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- (i) in subsection (2)(b) for the words from “, the competent authority” to the end substitute “under the Payments in Euro (Credit Transfers and Direct Debits) Regulations 2012.”;
- (ii) in subsection (3)(a) for “this Act” substitute “the Payments in Euro (Credit Transfers and Direct Debits) Regulations 2012”;
- (iii) in subsection (5)—
 - (aa) for “this Part”, substitute “the Payments in Euro (Credit Transfers and Direct Debits) Regulations 2012”;
 - (bb) omit paragraphs (b) and (c);
 - (cc) in paragraph (d), omit “to collect or update information under section 139E or”;
 - (dd) in paragraph (e) for “paragraphs (a) to (c)” substitute “paragraph (a)”; and
 - (ee) in paragraph (f), for “those paragraphs” substitute “that paragraph”;
- (iv) in subsection (6)—
 - (aa) omit paragraphs (a) and (b); and
 - (bb) in paragraph (c) for “paragraph 6 of Schedule 1” substitute “regulation 4(2) of the Payments in Euro (Credit Transfers and Direct Debits) Regulations 2012”; and
- (b) in section 349 omit subsections (3A) and (3B).

Warning notices and decision notices

5. 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), omit subsections (5), (7A), (7B), (8) and (10);
- (d) for section 392 (application of sections 393 and 394) substitute—

“392. Application of sections 393 and 394

Sections 393 and 394 apply to—

- (a) a warning notice given in accordance with regulation 7(1) or 10(1) of the Payments in Euro (Credit Transfers and Direct Debits) Regulations 2012;
- (b) a decision notice given in accordance with regulation 7(3) or 10(3) of the Payments in Euro (Credit Transfers and Direct Debits) Regulations 2012.”; and
- (e) in section 395 (the Authority’s procedures)—
 - (i) omit subsections (1)(a), (3) and (4);
 - (ii) in subsection (9) omit “a supervisory notice, or”; and
 - (iii) for subsection (13) substitute—
 - “(13) Until such time as a statement has been issued in accordance with subsection (5), the procedures applicable to the giving of warning notices under section 395 as applied by paragraph 5 of the Schedule to the Cross-Border Payments in Euro Regulations 2010, shall apply to the giving of warning notices under

regulations 7(1) and 10(1), and decision notices under regulations 7(3) and 10(3), of the Payments in Euro (Credit Transfers and Direct Debits) Regulations 2012.”.

Limitation on power to require documents

6. 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 the 2000 Act in respect of the Upper Tribunal

7. Part 9 (hearings and appeals) of the 2000 Act applies in respect of any references to the Upper Tribunal made under regulation 11 as it applies in respect of references made to that Tribunal under that Act, with the following modifications—

- (a) in section 133A (proceedings before Tribunal: decision and supervisory notices etc)—
 - (i) in subsection (1) omit “, as a result of section 388(2),”, and
 - (ii) omit subsections (2), (3) and (5); and
- (b) omit sections 134 to 136 (legal assistance before the Tribunal).

PART 3

Application and modification of secondary legislation

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

8. The Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001(1) apply to any notice, direction or document of any kind given by or to the Authority under these Regulations as they apply 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

9. The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001(2) apply with the following modifications—

- (a) in paragraph (a) of the definition of “overseas regulatory authority” in regulation 2, after “of the Act” insert—
 - “or any function conferred under national legislation in the implementation of either—
- (a) Regulation (EC) No 924/2009 of the European Parliament and of the Council on cross-border payments in the Community and repealing Regulation (EC) No 2560/2001; or
- (b) Regulation (EU) No 260/2012 of the European Parliament and Council establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009;”;

(1) S.I. 2001/1420; relevant amending instruments are S.I. 2005/274 and 2010/1193.

(2) S.I. 2001/2188; relevant amending instruments are the Enterprise Act 2002 c.40 section 2 and S.I. 2001/3437, 2001/3624, 2003/693, 2003/1473, 2003/2174, 2004/1862, 2005/3071, 2006/3413, 2007/3255, 2010/2628, 2011/1043, 2011/1265, 2012/916 and 2012/2554.

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- (b) in regulation 5(4)(a) for “an authorised person, former authorised person or former regulated person” substitute “a payment service provider or former payment service provider (within the meaning of regulation 2 of the Payments in Euro (Credit Transfers and Direct Debits) Regulations 2012)”;
- (c) in regulation 5(6)(e) for “an authorised person, former authorised person or former regulated person” substitute “a payment service provider or former payment service provider (within the meaning of regulation 2 of the Payments in Euro (Credit Transfers and Direct Debits) Regulations 2012)”;
- (d) in regulation 8 after sub-paragraph (b) insert—
 - “(c) confidential information received by the Authority in the course of discharging its functions as the competent authority under either—
 - (i) Regulation (EC) No 924/2009 of the European Parliament and of the Council on cross-border payments in the Community and repealing Regulation (EC) No 2560/2001; or
 - (ii) Regulation (EU) No 260/2012 of the European Parliament and Council establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009.”;
- (e) in regulation 9—
 - (i) in paragraph (1) for “(3),(3A), (3C) and (4)” substitute “(3), (3A) and (4)”;
 - (ii) after paragraph (4) insert—
 - “(4A) 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 confidential information received by the Authority in the course of discharging its functions as the competent authority under either—
 - (a) Regulation (EC) No 924/2009 of the European Parliament and of the Council on cross-border payments in the Community and repealing Regulation (EC) No 2560/2001; or
 - (b) Regulation (EU) No 260/2012 of the European Parliament and Council establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009.”;
- (f) in regulation 11 after sub-paragraph (e) insert—
 - “(f) confidential information received by the Authority in the course of discharging its functions as the competent authority under either—
 - (i) Regulation (EC) No 924/2009 of the European Parliament and of the Council on cross-border payments in the Community and repealing Regulation (EC) No 2560/2001; or
 - (ii) Regulation (EU) No 260/2012 of the European Parliament and Council establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009.”;
- (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
 - (iii) payment service providers or former payment service providers”; and
- (h) in Schedule 1, after Part 4 insert—

“PART 5

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