
STATUTORY INSTRUMENTS

2017 No. 752

The Payment Services Regulations 2017

PART 4

**Provisions Applicable to Authorised Payment
Institutions and Small Payment Institutions**

Record keeping

31.—(1) An authorised payment institution or small payment institution must maintain relevant records and keep them for at least five years from the date on which the record was created.

(2) For the purposes of paragraph (1), records are relevant where they relate to compliance with obligations imposed by or under Parts 2 to 5 and, in particular, would enable the FCA to supervise effectively such compliance.

Additional activities

32.—(1) Authorised payment institutions and small payment institutions may, in addition to providing payment services, engage in the following activities—

- (a) the provision of operational and closely related ancillary services, including—
 - (i) ensuring the execution of payment transactions;
 - (ii) foreign exchange services;
 - (iii) safe-keeping activities; and
 - (iv) the storage and processing of data;
- (b) the operation of payment systems; and
- (c) business activities other than the provision of payment services, subject to any relevant provision of EU or national law.

(2) Authorised payment institutions and small payment institutions may grant credit in relation to the provision of the payment services specified in paragraph 1(d) or (e) of Schedule 1 (execution of payment transactions where funds are covered by a credit line, issuing payment instruments or acquiring payment transactions) only if—

- (a) such credit is ancillary and granted exclusively in connection with the execution of a payment transaction;
- (b) such credit is not granted from the funds received or held for the purposes of executing payment transactions;
- (c) in cases where such credit is granted by an authorised payment institution exercising its passport rights, there is an obligation upon the payment service user to repay the credit within a period not exceeding 12 months; and

- (d) in relation to an authorised payment institution, in the opinion of the FCA the institution's own funds are, and continue to be, adequate in the light of the overall amount of credit granted.

Payment accounts and sums received for the execution of payment transactions

33. Any payment account held by an authorised payment institution or a small payment institution must be used only in relation to payment transactions.

Use of agents

34.—(1) Authorised payment institutions and small payment institutions may not provide payment services in the United Kingdom through an agent unless the agent is included on the register.

(2) Authorised payment institutions may not provide payment services in exercise of their passport rights through an EEA agent unless the agent is included in the register.

(3) An application for an agent to be included on the register must—

(a) contain, or be accompanied by, the following information—

- (i) the name and address of the agent;
- (ii) where relevant, a description of the internal control mechanisms that will be used by the agent to comply with the provisions of the money laundering directive (or, in the United Kingdom, the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017⁽¹⁾);
- (iii) the identity of the directors and persons responsible for the management of the agent and, if the agent is not a payment service provider, evidence that they are fit and proper persons;
- (iv) the payment services for which the agent is appointed;
- (v) the unique identification code or number of the agent, if any; and
- (vi) such other information as the FCA may reasonably require; and

(b) be made in such manner as the FCA may direct.

(4) Different directions may be given, and different requirements imposed, in relation to different applications or categories of application.

(5) At any time after receiving an application and before determining it, the FCA may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application.

(6) Where the application relates to the provision of payment services in exercise of passport rights through an EEA agent, the FCA must, within one month beginning with the date on which it received the completed application, inform the host state competent authority of the information provided under paragraph (3) or (5).

(7) The FCA may refuse to include the agent on the register only if—

- (a) it has not received the information referred to in paragraph (3)(a), or is not satisfied that such information is correct;
- (b) it is not satisfied that the directors and persons responsible for the management of the agent are fit and proper persons;
- (c) it has reasonable grounds to suspect that, in connection with the provision of services through the agent—

(1) S.I. 2017/692.

- (i) money laundering or terrorist financing within the meaning of the money laundering directive (or, in the United Kingdom, the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017) is taking place, has taken place, or has been attempted; or
 - (ii) the risk of such activities taking place would be increased.
- (8) If the FCA proposes to refuse to include the agent on the register, it must give the authorised payment institution or the small payment institution, as the case may be, a warning notice.
- (9) The FCA must, having considered any representations made in response to the warning notice—
 - (a) if it decides not to include the agent on the register, give the applicant a decision notice; or
 - (b) if it decides to include the agent on the register, give the applicant notice of its decision, stating the date on which the registration takes effect.
- (10) Where the application relates to the provision of payment services in exercise of passport rights through an EEA agent, the FCA must—
 - (a) take into account any information received from the host state competent authority in making its decision; and
 - (b) notify the host state competent authority of its decision, providing reasons for that decision if the FCA does not agree with the assessment of the host state competent authority.
- (11) The FCA must give any notice required by paragraph (9) or (10)—
 - (a) where the application relates to the provision of payment services in the United Kingdom, within a period of two months beginning on the date on which the FCA received the completed application;
 - (b) where the application relates to the provision of payment services in the exercise of passport rights through an EEA agent, within a period of three months beginning on the date on which the FCA received the completed application.
- (12) If the FCA decides not to include the agent on the register the applicant may refer the matter to the Upper Tribunal.
- (13) If the FCA decides to include the agent on the register, it must update the register as soon as practicable.
- (14) An authorised payment institution must notify the FCA of the date on which it starts to provide payment services in another EEA State through a registered EEA agent, and the FCA must notify such date to the host state competent authority.
- (15) An application under paragraph (3) may be combined with an application under regulation 5 or 13, in which case the application must be determined in the manner set out in regulation 9 (determination of application for authorisation) (if relevant, as applied by regulation 15 (supplementary provisions relating to applications for registration as a small payment institution)).
- (16) An authorised payment institution or a small payment institution must ensure that agents acting on its behalf inform payment service users of the agency arrangement.
- (17) An authorised payment institution or small payment institution must notify the FCA without undue delay if there is any change in the information provided under paragraph (3) or (5).

Removal of agent from register

- 35.—**(1) The FCA may remove an agent of an authorised payment institution or small payment institution from the register where—
- (a) the authorised payment institution or small payment institution requests, or consents to, the agent's removal from the register;

- (b) the authorised payment institution or small payment institution has obtained registration through false statements or any other irregular means;
 - (c) regulation 34(7)(b) or (c) (use of agents) applies;
 - (d) the removal is desirable in order to protect the interests of consumers; or
 - (e) the agent's provision of payment services is otherwise unlawful.
- (2) Where the FCA proposes to remove an agent from the register, other than at the request of the authorised payment institution or small payment institution, it must give the authorised payment institution or small payment institution a warning notice.
- (3) The FCA must, having considered any representations made in response to the warning notice—
- (a) if it decides to remove the agent, give the authorised payment institution or small payment institution a decision notice; or
 - (b) if it decides not to remove the agent, give the authorised payment institution or small payment institution notice of its decision.
- (4) If the FCA decides to remove the agent, other than at the request of the authorised payment institution or small payment institution, the institution concerned may refer the matter to the Upper Tribunal.
- (5) Where the period for a reference to the Upper Tribunal has expired without a reference being made, the FCA must as soon as practicable update the register accordingly.

Reliance

36.—(1) Where an authorised payment institution or a small payment institution relies on a third party for the performance of operational functions it must take all reasonable steps to ensure that these Regulations are complied with.

(2) Without prejudice to paragraph (1), an authorised payment institution or a small payment institution is responsible, to the same extent as if it had expressly permitted it, for anything done or omitted by any of its employees, any agent or branch providing payment services on its behalf, or any entity to which activities are outsourced.

Duty to notify change in circumstance

37.—(1) Where it becomes apparent to an authorised payment institution or a small payment institution that there is, or is likely to be, a significant change in circumstances which is relevant to—

- (a) in the case of an authorised payment institution—
 - (i) its fulfilment of any of the conditions set out in regulation 6(4) to (9) (conditions for authorisation) and, if applicable, the requirement in regulation 22(1) (capital requirements) to maintain own funds;
 - (ii) the payment services which it seeks to carry on in exercise of its passport rights;
- (b) in the case of a small payment institution, its fulfilment of any of the conditions set out in regulation 14(5) to (11) (conditions for registration as a small payment institution) and compliance with the financial limit referred to in regulation 8 (as modified by regulation 15) (variation of registration at request of small payment institution); and
- (c) in the case of the use of an agent to provide payment services, the matters referred to in regulation 34(7)(b) and (c) (use of agents),

it must provide the FCA with details of the change without undue delay, or, in the case of a substantial change in circumstances which has not yet taken place, details of the likely change a reasonable period before it takes place.

(2) Any information to be provided to the FCA under this regulation must be in such form or verified in such manner as it may direct.