

Changes to legislation: There are currently no known outstanding effects for the Financial Services and Markets Act 2023, PART 1. (See end of Document for details)

SCHEDULES

SCHEDULE 6

DIGITAL SETTLEMENT ASSETS

PART 1

AMENDMENTS TO THE BANKING ACT 2009

1 The Banking Act 2009 is amended as follows.

Commencement Information

I1 Sch. 6 para. 1 in force at 29.8.2023, see s. 86(2)(a)

2 In the heading to Part 5 (payment systems), after “systems” insert “and service providers”.

Commencement Information

I2 Sch. 6 para. 2 in force at 29.8.2023, see s. 86(2)(a)

3 In section 181 (overview), after “services” insert “, including”.

Commencement Information

I3 Sch. 6 para. 3 in force at 29.8.2023, see s. 86(2)(a)

4 (1) Section 182 (interpretation of payment system) is amended as follows.

(2) In the heading, for ““payment system”” substitute “key terms”.

(3) In subsection (1), after “money” insert “or digital settlement assets”.

(4) After subsection (4) insert—

“(4A) In subsection (1) “digital settlement asset” means a digital representation of value or rights, whether or not cryptographically secured, that—

(a) can be used for the settlement of payment obligations,

(b) can be transferred, stored or traded electronically, and

(c) uses technology supporting the recording or storage of data (which may include distributed ledger technology).

(4B) In this section, “digital settlement asset” includes a right to, or an interest in, a digital settlement asset.”

(5) After subsection (5) insert—

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- “(5A) In this Part, a “DSA service provider” is a person who provides one or more services in relation to a payment system that includes arrangements using digital settlement assets where—
- (a) the person creates or issues the digital settlement assets involved in the payment system,
 - (b) the person provides services to safeguard, or to safeguard and administer, digital settlement assets including their private cryptographic keys (or means of access),
 - (c) the person is directly involved in any of the activities mentioned in paragraphs (a) or (b),
 - (d) the person is a digital settlement asset exchange provider,
 - (e) the person sets rules, standards, or conditions of access or participation in relation to the payment system, or
 - (f) the person provides any service that facilitates, or supports, a transfer of money or digital settlement assets to be made using the payment system, including any infrastructure provider in relation to the system.
- (5B) In this Part “digital settlement asset exchange provider” means a person who provides one or more of the following services, including as creator or issuer of any of the digital settlement assets, by—
- (a) exchanging, or arranging the exchange of—
 - (i) digital settlement assets for money,
 - (ii) money for digital settlement assets,
 - (iii) digital settlement assets and money for digital settlement assets, or
 - (iv) digital settlement assets and money for money,
 - (b) exchanging, or arranging the exchange of, one digital settlement asset for another, or
 - (c) operating an automated process to carry out any of the activities mentioned in paragraphs (a) and (b).
- (5C) The Treasury may by regulations amend—
- (a) the definition of “digital settlement asset” in subsection (4A);
 - (b) the definition of “DSA service provider” in subsection (5A);
 - (c) the definition in section 206AA of a person who provides services connected with a recognised payment system that uses digital settlement assets.”

Commencement Information

I4 Sch. 6 para. 4 in force at 29.8.2023, see s. 86(2)(a)

- 5
- (1) Section 183 (interpretation of other expressions) is amended as follows.
 - (2) In the opening words of paragraph (k) after “system” insert “or to a DSA service provider”.
 - (3) In sub-paragraph (i) of paragraph (k), after “constituting” insert “, or connected with,”.

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I5 Sch. 6 para. 5 in force at 29.8.2023, see s. 86(2)(a)

6 In the cross-heading before section 184 (recognition order), after “systems” insert “and service providers”.

Commencement Information

I6 Sch. 6 para. 6 in force at 29.8.2023, see s. 86(2)(a)

7 In the heading to section 184 , after “order” insert “: payment system”.

Commencement Information

I7 Sch. 6 para. 7 in force at 29.8.2023, see s. 86(2)(a)

8 In section 184, in subsection (4), after “constituting” insert “or connected with”.

Commencement Information

I8 Sch. 6 para. 8 in force at 29.8.2023, see s. 86(2)(a)

9 After section 184 insert—

“184A Recognition order: DSA service provider

- (1) The Treasury may by order (“recognition order”) specify a DSA service provider as a recognised DSA service provider for the purposes of this Part.
- (2) A recognition order under this section must specify in as much detail as is reasonably practicable the services provided.
- (3) The Treasury may not specify a DSA service provider operated solely by the Bank of England.”

Commencement Information

I9 Sch. 6 para. 9 in force at 29.8.2023, see s. 86(2)(a)

10 In the heading to section 185 (recognition criteria) after “criteria” insert “: payment system”.

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I10 Sch. 6 para. 10 in force at 29.8.2023, see s. 86(2)(a)

11 After section 185 insert—

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“185A Recognition criteria: DSA service provider

- (1) The Treasury may make a recognition order in respect of a DSA service provider only if satisfied that any deficiencies in the services provided by the service provider, or any disruption to the provision of those services, would be likely—
 - (a) to threaten the stability of, or confidence in, the UK financial system, or
 - (b) to have serious consequences for business or other interests throughout the United Kingdom.
- (2) In considering whether to specify a DSA service provider the Treasury must have regard to—
 - (a) the value of the services in relation to payment systems that the DSA service provider presently provides or is likely to provide in the future,
 - (b) the nature of the services in relation to payment systems that the DSA service provider provides,
 - (c) whether those services or their equivalent could be provided by others, and
 - (d) the relationship between the DSA service provider and—
 - (i) operators of payment systems that use digital settlement assets, and
 - (ii) other DSA service providers.”

Commencement Information

I11 Sch. 6 para. 11 in force at 29.8.2023, see s. 86(2)(a)

- 12 (1) Section 186 (procedure) is amended as follows.
 - (2) In the opening words of subsection (1) after “system” insert “or a DSA service provider”.
 - (3) After subsection (1)(a) insert—
 - “(aa) in the case of a recognition order in respect of a DSA service provider, consult the FCA.”.
 - (4) In subsection (1)(b), after “system” insert “or the DSA service provider (as appropriate)”.
 - (5) In subsection (2)(a), for “the operator of which” substitute “or a DSA service provider, where the operator of the system or the provider”.
 - (6) In subsection (2)(b), after “operator” insert “or provider”.
 - (7) In subsection (3), after “system” insert “or a DSA service provider”.

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I12 Sch. 6 para. 12 in force at 29.8.2023, see s. 86(2)(a)

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- 13 (1) Section 186A (amendment of recognition order) is amended as follows.
- (2) After subsection (2)(a) insert—
- “(aa) in the case of a recognition order in respect of a DSA service provider, consult the FCA,”.
- (3) In subsection (2)(b), after “system” insert “or the recognised DSA service provider (as appropriate)”.
- (4) In subsection (3)(a), for “the operator of which” substitute “or a DSA service provider, where the operator of the system or the provider”.
- (5) In subsection (3)(b), after “operator” insert “or provider”.
- (6) In subsection (4)—
- (a) after first “system” insert “or by a recognised DSA service provider”,
- (b) after second “system” insert “or provider,”.

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I13 Sch. 6 para. 13 in force at 29.8.2023, see s. 86(2)(a)

- 14 (1) Section 187 (de-recognition) is amended as follows.
- (2) In subsection (2)—
- (a) the words after “satisfied” become paragraph (a),
- (b) after that paragraph insert “, or
- (b) that the criteria in section 185A are met in respect of the recognised DSA service provider.”
- (3) After subsection (3)(a) insert—
- “(aa) in the case of a recognition order in respect of a DSA service provider, consult the FCA,”.
- (4) In subsection (3)(b), after “system” insert “or the recognised DSA service provider (as appropriate)”.
- (5) In subsection (4)(a), for “the operator of which” substitute “or a DSA service provider, where the operator of the system or the provider”.
- (6) In subsection (4)(b), after “operator” insert “or provider”.
- (7) In subsection (5), after “system” insert “, or by a recognised DSA service provider”.

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I14 Sch. 6 para. 14 in force at 29.8.2023, see s. 86(2)(a)

- 15 (1) Section 188 (principles) is amended as follows.
- (2) In subsection (1)—
- (a) the words after “publish” to the second “systems” become paragraph (a);
- (b) after that paragraph insert “,

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- (b) principles to which recognised DSA service providers are to have regard in the provision of services to payment systems (whether or not recognised);
- (c) the words after “and” become paragraph (c);
- (d) at end insert “or to such DSA service providers”.

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I15 Sch. 6 para. 15 in force at 29.8.2023, see s. 86(2)(a)

- 16 In section 189 (codes of practice)—
- (a) the words after “about” to the first “systems” become paragraph (a);
 - (b) after that paragraph, insert “,
 - (b) the provision of services by DSA service providers in relation to payment systems (whether or not recognised), or”;
 - (c) omit “and”;
 - (d) the words after “and” become paragraph (c);
 - (e) at end insert “or to such DSA service providers”.

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I16 Sch. 6 para. 16 in force at 29.8.2023, see s. 86(2)(a)

- 17 In section 190 (system rules), in subsection (1)(a)—
- (a) after “constituting” insert “, or connected with,”;
 - (b) at end insert “, or a DSA service provider”.

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I17 Sch. 6 para. 17 in force at 29.8.2023, see s. 86(2)(a)

- 18 After section 190 insert—

“190A Service provider rules

- (1) The Bank of England may require a recognised DSA service provider—
 - (a) to establish rules for the operation of services provided by the recognised DSA service provider;
 - (b) to establish rules for the operation of services provided by a service provider to the recognised DSA service provider;
 - (c) to change the rules in a specified way or so as to achieve a specified purpose;
 - (d) to notify the Bank of any proposed change to the rules;
 - (e) not to change the rules without the approval of the Bank.
- (2) A requirement under subsection (1)(d) or (e) may be general or specific.”

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118 Sch. 6 para. 18 in force at 29.8.2023, see s. 86(2)(a)

- 19 (1) Section 191 (directions) is amended as follows.
- (2) In subsection (1)—
- (a) the words after the first “to” to the first “system” become paragraph (a);
 - (b) after that paragraph insert “,
(b) to a recognised DSA service provider,”;
 - (c) the words after “or” become paragraph (c);
 - (d) at the end of that paragraph insert “or to such DSA service providers”.
- (3) In subsection (2)—
- (a) in paragraph (a), omit “to the system”;
 - (b) in paragraph (b), omit “to the system”.
- (4) In subsection (3)—
- (a) after “operator” insert “, DSA service provider”;
 - (b) after “operator’s” insert “, DSA service provider’s”.
- (5) In subsection (4)(b), after “operator” insert “, DSA service provider”.

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119 Sch. 6 para. 19 in force at 29.8.2023, see s. 86(2)(a)

- 20 After section 192 (role of FCA and PRA), insert—

“192A Power of Bank to require FCA to refrain from specified action

- (1) Where the first, second and third conditions are met, the Bank of England may give a direction under this section to the FCA.
- (2) The first condition is that the FCA is proposing to exercise any of its powers in relation to—
 - (a) a recognised payment system that includes arrangements using digital settlement assets, or
 - (b) a recognised DSA service provider.
- (3) The second condition is that the Bank of England is of the opinion that the exercise of the power in the manner proposed may—
 - (a) threaten the stability of the UK financial system,
 - (b) have serious consequences for business or other interests in the United Kingdom (including for the payment system or provider in relation to which the powers are proposed to be exercised), or
 - (c) have an adverse effect on the Bank’s ability to act in its capacity as a monetary authority.
- (4) The third condition is that the Bank of England is of the opinion that the giving of the direction is necessary in order to avoid an outcome mentioned in subsection (3).

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- (5) A direction under this section is a direction requiring the FCA not to exercise the power or not to exercise it in a specified manner.
- (6) The direction may be expressed to have effect during a specified period or until revoked.
- (7) The FCA is not required to comply with a direction under this section if or to the extent that in the opinion of the FCA compliance would be incompatible with any international obligation of the United Kingdom.”

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I20 Sch. 6 para. 20 in force at 29.8.2023, see s. 86(2)(a)

- 21 (1) Section 193 (inspection) is amended as follows.
 - (2) In subsection (1)—
 - (a) after first “system” insert “, a recognised DSA service provider”;
 - (b) after second “system” insert “or such a DSA service provider”.
 - (3) In the opening words of subsection (2)—
 - (a) after first “system” insert “, or a recognised DSA service provider”;
 - (b) after second “system” insert “or such a DSA service provider”.

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I21 Sch. 6 para. 21 in force at 29.8.2023, see s. 86(2)(a)

- 22 (1) Section 194 (inspection: warrant) is amended as follows.
 - (2) In subsection (1)(a)—
 - (a) at end of sub-paragraph (i), omit “or” and insert—
 - “(ia) a recognised DSA service provider, or”;
 - (b) in sub-paragraph (ii), after “system” insert “or a recognised DSA service provider”.
 - (3) In subsection (2)(a), after “system” insert “, the DSA service provider”.
 - (4) In subsection (3), after “system” insert “, the DSA service provider”.

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I22 Sch. 6 para. 22 in force at 29.8.2023, see s. 86(2)(a)

- 23 (1) Section 195 (independent report) is amended as follows.
 - (2) In subsection (1)(a), omit “or”.
 - (3) After subsection (1)(b), insert—
 - “(c) a recognised DSA service provider to appoint an expert to report on the provision of services to payment systems (whether or not recognised), or

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- (d) a service provider in relation to a recognised DSA service provider to appoint an expert to report on the provision of services to the DSA service provider.”

(4) In subsection (2)(a), after “operator” insert “, recognised DSA service provider”.

(5) In subsection (2)(b), after “operator” insert “, recognised DSA service provider”.

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I23 Sch. 6 para. 23 in force at 29.8.2023, see s. 86(2)(a)

24 In section 196 (compliance failure)—

- (a) after first “system” insert “, a recognised DSA service provider”;
- (b) after second “system” insert “or such a DSA service provider”.

Commencement Information

I24 Sch. 6 para. 24 in force at 29.8.2023, see s. 86(2)(a)

25 In section 197 (publication), in subsection (1)—

- (a) after first “system” insert “, a recognised DSA service provider”;
- (b) after second “system” insert “or such a DSA service provider”.

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I25 Sch. 6 para. 25 in force at 29.8.2023, see s. 86(2)(a)

26 In section 198 (penalty), in subsection (1)—

- (a) after first “system” insert “, a recognised DSA service provider”;
- (b) after second “system” insert “or such a DSA service provider”.

Commencement Information

I26 Sch. 6 para. 26 in force at 29.8.2023, see s. 86(2)(a)

27 (1) Section 199 (closure) is amended as follows.

(2) In subsection (2)—

- (a) after “concerned” insert “, the DSA service provider concerned”;
- (b) after second “system” insert “, providing services”;
- (c) after third “system” insert “or recognised DSA service provider”.

(3) In subsection (3)(a)—

- (a) after first “system” insert “, or DSA service provider”;
- (b) after second “system” insert “, or a recognised DSA service provider”.

(4) In subsection (3A)—

- (a) after “system” insert “, or of each recognised DSA service provider”;
- (b) after “206A(2)(b)” insert “or 206A(2A)(b) (as the case may be).”

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(5) In subsection (4), after “operator” insert “, DSA service provider,”.

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I27 Sch. 6 para. 27 in force at 29.8.2023, see s. 86(2)(a)

- 28 (1) Section 200 (management disqualification) is amended as follows.
- (2) In subsection (1), after “system” insert “or from being a DSA service provider”.
- (3) In subsection (2)—
- (a) after first “system” insert “, or a recognised DSA service provider,”;
 - (b) after second “system” insert “or such a DSA service provider”.
- (4) In subsection (2A)—
- (a) after “system” insert “, or of each recognised DSA service provider,”;
 - (b) after “206A(2)(b)” insert “or 206A(2A)(b) (as the case may be).”

Commencement Information

I28 Sch. 6 para. 28 in force at 29.8.2023, see s. 86(2)(a)

- 29 (1) Section 201 (warning) is amended as follows.
- (2) In subsection (1)—
- (a) after first “system” insert “, on a DSA service provider,”;
 - (b) after second “system” insert “or such a DSA service provider”;
 - (c) in paragraph (a), after “operator” insert “, DSA service provider”;
 - (d) in paragraph (b), after “operator” insert “, DSA service provider”;
 - (e) in paragraph (d), after “operator” insert “, DSA service provider”.
- (3) In subsection (1A)—
- (a) after first “system” insert “or recognised DSA service provider”;
 - (b) in paragraph (a), after “system” insert “, or DSA service provider”;
 - (c) in paragraph (b), after “operator” insert “, or DSA service provider”;
 - (d) in paragraph (d), after “operator” insert “or DSA service provider”.

Commencement Information

I29 Sch. 6 para. 29 in force at 29.8.2023, see s. 86(2)(a)

- 30 In section 202 (appeal), in subsection (2)—
- (a) after first “system” insert “or recognised DSA service provider”;
 - (b) after second “system” insert “or DSA service provider (as the case may be)”.

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I30 Sch. 6 para. 30 in force at 29.8.2023, see s. 86(2)(a)

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- 31 (1) Section 202A (injunctions) is amended as follows.
- (2) In subsection (2)—
- (a) in paragraph (a)—
 - (i) after first “system” insert “, a recognised DSA service provider,”;
 - (ii) after second “system” insert “or such a DSA service provider”;
 - (b) in the words following paragraph (b), after “operator” insert “, DSA service provider”.
- (3) In subsection (3)—
- (a) in paragraph (a)—
 - (i) after first “system” insert “, a recognised DSA service provider,”;
 - (ii) after second “system” insert “or such a DSA service provider”;
 - (b) in the words following paragraph (b), after “operator” insert “, DSA service provider”.

Commencement Information

I31 Sch. 6 para. 31 in force at 29.8.2023, see s. 86(2)(a)

- 32 In section 203 (fees), in subsection (1)—
- (a) after first “systems” insert “, recognised DSA service providers,”;
 - (b) after second “systems” insert “or such DSA service providers”.

Commencement Information

I32 Sch. 6 para. 32 in force at 29.8.2023, see s. 86(2)(a)

- 33 After section 203B (annual report) insert—

“203C Policy statement

- (1) The Bank of England must prepare a statement of the general policy it proposes to follow in relation to its oversight under this Part of —
 - (a) recognised payment systems that include arrangements using digital settlement assets,
 - (b) DSA service providers, and
 - (c) service providers as described in sections 206A and 206AA.
- (2) Before issuing a statement of policy under this section, the Bank must consult the FCA.
- (3) The Bank must —
 - (a) publish the statement on its website,
 - (b) send a copy to the Treasury, and
 - (c) review the statement from time to time and revise it if necessary (and paragraphs (a) and (b) apply to a revision).
- (4) Nothing in this section is to be regarded as preventing the Bank of England from exercising any of its powers under this Part where it considers it

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necessary to do so by reason of urgency, before it has prepared a statement under this section.”

Commencement Information

I33 Sch. 6 para. 33 in force at 29.8.2023, see s. 86(2)(a)

- 34 (1) Section 204 (information) is amended as follows.
- (2) In subsection (1)(a), after “206A(2)(b)” insert “or 206A(2A)(b)”.
- (3) In subsection (1A)—
- (a) after first “system” insert “, a recognised DSA service provider,”;
 - (b) after second “system” insert “or such a DSA service provider”.
- (4) In subsection (2)—
- (a) after first “system” insert “, a recognised DSA service provider,”;
 - (b) after second “system” insert “or such a DSA service provider”.

Commencement Information

I34 Sch. 6 para. 34 in force at 29.8.2023, see s. 86(2)(a)

- 35 (1) Section 205 (pretending to be recognised) is amended as follows.
- (2) In the opening words of subsection (1) after “system” insert “or DSA service provider”.
- (3) In subsection (1)(a), after “system” insert “or provider”.
- (4) In subsection (1)(b), after “system” insert “or provider”.
- (5) In subsection (1A), after “system” insert “or recognised DSA service provider”.

Commencement Information

I35 Sch. 6 para. 35 in force at 29.8.2023, see s. 86(2)(a)

- 36 (1) Section 206 (saving for informal oversight) is amended as follows.
- (2) In subsection (1)—
- (a) after first “systems” insert “, DSA service providers”;
 - (b) after second “systems” insert “or DSA service providers”.
- (3) In subsection (2)—
- (a) after first “systems” insert “, DSA service providers”;
 - (b) after second “systems” insert “or DSA service providers”.

Commencement Information

I36 Sch. 6 para. 36 in force at 29.8.2023, see s. 86(2)(a)

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- 37 (1) Section 206A (services forming part of recognised payment systems) is amended as follows.
- (2) For the heading substitute “Service providers”.
- (3) In subsection (1)—
- (a) omit the words “persons who are”;
 - (b) the words after “providers” become paragraph (a);
 - (c) after that paragraph insert “, or
(b) in relation to a recognised DSA service provider.”
- (4) After subsection (2) insert—
- “(2A) A person is a service provider in relation to a recognised DSA service provider if—
- (a) the person provides services to the recognised DSA service provider, and
 - (b) the person is specified as a person within paragraph (a) by the Treasury in the recognition order made in respect of the DSA service provider.
- (2B) A payment system that includes arrangements using digital settlement assets is a service provider in relation to a recognised DSA service provider if—
- (a) the system provides services to the recognised DSA service provider, and
 - (b) the system is specified as a system within paragraph (a) by the Treasury in the recognition order made in respect of the DSA service provider.”

(5) After subsection (3) insert—

“(3A) In relation to a recognised payment system that includes arrangements using digital settlement assets, subsection (2)(a) includes a person providing services connected with the system. See section 206AA.”

(6) In the opening words of subsection (4), after “(2)(b)” insert “or (2A)(b) or systems under subsection (2B)(b)”.

(7) In subsection (4)(b) after “system” insert “or DSA service provider”.

(8) In subsection (5) after “(2)(b)” insert “, (2A)(b) or (2B)(b)”.

Commencement Information

I37 Sch. 6 para. 37 in force at 29.8.2023, see s. 86(2)(a)

- 38 After section 206A insert—

“206AA Service providers connected with a recognised payment system that uses digital settlement assets

For the purposes of section 206A(3A), a person provides services connected with the system where—

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- (a) the person creates or issues the digital settlement assets involved in the payment system,
- (b) the person provides services to safeguard, or to safeguard and administer, digital settlement assets including their private cryptographic keys (or means of access),
- (c) the person is directly involved in any of the activities mentioned in paragraphs (a) or (b),
- (d) the person is a digital settlement asset exchange provider,
- (e) the person sets rules, standards, or conditions of access or participation in relation to the payment system, or
- (f) the person provides any service that facilitates, or supports, a transfer of money or digital settlement assets to be made using the payment system, including any infrastructure provider in relation to the system.”

Commencement Information

I38 Sch. 6 para. 38 in force at 29.8.2023, see s. 86(2)(a)

- 39 In section 259 (statutory instruments), in the Table in subsection (3), in Part 5, at the appropriate place insert—

“182(5C)	Meaning of “digital settlement asset” and “DSA service provider”	Draft affirmative resolution”
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Commencement Information

I39 Sch. 6 para. 39 in force at 29.8.2023, see s. 86(2)(a)

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