
DRAFT STATUTORY INSTRUMENTS

2009 No.

The Saving Gateway Accounts Regulations 2009

PART 2

Other requirements to be satisfied in relation to accounts

General requirements for accounts

10.—(1) A Saving Gateway account must satisfy the requirements that—

- (a) it is the account of a single person (“the account holder”) who is “the applicant” in regulations 6(1) and 13;
- (b) the account holder is or has been an eligible person;
- (c) no person may open more than one Saving Gateway account in their lifetime;
- (d) it is a cash deposit account (including a share account held with a building society within the meaning of the Building Societies Act 1986⁽¹⁾, and a deposit by way of subscription for shares in a credit union);
- (e) the account is denominated in sterling;
- (f) the account is covered by the Financial Services Compensation Scheme⁽²⁾, or another deposit-guarantee scheme introduced and officially recognised in a Member State or EEA State, in accordance with Article 3(1) of Council Directive 94/19/EEC⁽³⁾;
- (g) the account must be in the beneficial ownership of the account holder, and not be held on behalf of any other person; and
- (h) the account must at all times be managed in accordance with the Act and these Regulations by an approved account provider and under terms agreed and recorded in an agreement (the “agreed terms”) made between the account provider and the account holder.

(2) Apart from other requirements of the Act and these Regulations, the agreed terms shall include (or comply with, as the case may be) the conditions that—

- (a) if the account is held by the account holder until the end of the account’s maturity period, the account provider shall pay the account holder a maturity payment (see section 8 of the Act);
- (b) if the account holder dies, while still holding the account, before the end of the account’s maturity period, the account provider shall pay a death payment in accordance with regulation 7(3) and (4);
- (c) there is no restriction on the maximum or minimum amount or on timing (subject to the account provider’s normal business hours) of withdrawals of the credit balance of the account;

⁽¹⁾ 1986 c. 33.

⁽²⁾ Established by the Financial Services Authority pursuant to section 213 of the Financial Services and Markets Act 2000.

⁽³⁾ O.J. 1994, L135/5.

- (d) there is no requirement that a minimum credit balance must be maintained in the account (with the result that an account with a nil balance is not automatically closed);
 - (e) the account provider shall permit payment of sums into the account by cheque, direct debit, standing order, direct credit (other than standing order) or cash (unless, in the case of cash, the provider offers both internet and non-internet accounts, and the non-internet accounts accept cash);
 - (f) no deductions or withdrawals from the account (by way of charges or otherwise) shall be made by the account provider;
 - (g) the account provider shall have no right of charge, lien, set-off, mortgage or other security against the money in the account;
 - (h) the account provider shall satisfy himself that any person to whom he delegates any of his functions or responsibilities under the agreed terms is competent to carry out those functions or responsibilities;
 - (i) where there is a right to transfer the account under regulation 19(1), the whole of the account shall be transferred free of expense to the other approved account provider subject to and in accordance with regulation 19;
 - (j) where the account is transferred to the account provider by a transfer under regulation 19, that no charges or expenses are due in respect of that transfer;
 - (k) the account provider shall notify the account holder if by reason of any failure to satisfy the provisions of these Regulations an account is or will become no longer exempt from tax by virtue of regulation 3 of the Saving Gateway Accounts (No. 2) Regulations 2009(4).
- (3) In applying paragraph (1)(c), any account opened and cancelled as mentioned in regulation 6(2) shall be ignored.

Limit on sums paid into the account

11.—(1) The total of the sums paid into an account in a month (excluding any interest or other sums paid by the approved account provider under the agreed terms) shall not exceed £25.

(2) In calculating the limit in paragraph (1) for the purpose of any payment into the account, previous withdrawals from the account shall be ignored.

Statements for an account

12.—(1) Except where a passbook is provided in accordance with paragraph (5), the account provider must issue a statement for the account—

- (a) at least six monthly, and
- (b) where an account is transferred to another account provider under regulation 19, as at the transfer date.

(2) The statement date in the case of a six monthly statement must be the end of the sixth, twelfth, eighteenth or twenty fourth month of the account's operation, as the case may be.

(3) The statement shall be sent to the account holder within 30 days of the statement date.

(4) Statements shall include the following information—

- (a) the full name of the account holder;
- (b) his or her address, including postcode;
- (c) the statement date;

- (d) the balance of the account at the previous statement date (if any), and otherwise at the opening of the account;
- (e) all payments into and withdrawals from the account during the statement period ending on the statement date;
- (f) a provisional calculation of the maturity payment (based on the qualifying balance achieved between the opening of the account and the statement date); and
- (g) the closing balance of the account at the statement date.

(5) An account provider may comply with its obligations under this regulation (other than under paragraph (4)(f), if paragraph (6) applies) by issuing the account holder with a passbook for the account which, on presentation at a branch of the account provider, is up-dated to include the same information as a statement, omitting references in paragraph (4) to a statement date or statement period.

(6) The information in paragraph (4)(f) may, at the option of the account provider, be provided in a notice to the account holder which is separate from the statement or passbook.

Conditions for application to open an account

13.—(1) An application by a person who has received a notice of eligibility (“the applicant”) to open an account with an approved account provider must be made to the approved account provider, and satisfy the conditions in paragraphs (2) to (4).

- (2) An application must incorporate a true declaration by the applicant that he or she—
 - (a) has not previously opened a Saving Gateway account (excepting any account opened and closed as mentioned in regulation 6(2)); and
 - (b) is ordinarily resident in the United Kingdom, or is so treated as ordinarily resident under regulation 4(2) to (5);

and where the application is not in writing, must authorise the approved account provider to record the terms of the declaration in a written declaration made on behalf of the applicant.

- (3) An application must contain—
 - (a) the applicant’s full name and date of birth,
 - (b) his or her address, including postcode,
 - (c) the reference number, as stated on his or her notice of eligibility; and
 - (d) an authorisation to the approved account provider to make on the account holder’s behalf any claims to relief from tax in respect of the account.

(4) Where the application is not in writing, the approved account provider shall make the written declaration mentioned in paragraph (2), and notify the applicant of its contents, and such declaration shall take effect from the date on which the applicant agrees the contents (subject to any corrections), and if he or she neither agrees or disagrees with the contents within 14 days, he or she shall be treated as having agreed them.

- (5) An account provider shall decline to accept an application if he has reason to believe that—
 - (a) the notice of eligibility has expired, or is not or might not be genuine,
 - (b) the applicant’s declaration (see Condition 1 in regulation 6(1) if applicable, and paragraph (2) of this regulation) or application is or might be untrue, or contains matters which are or might be untrue, or
 - (c) any requirement of money-laundering legislation is not satisfied.

- (6) An application made under this regulation shall be regarded as in writing if it is made—
 - (a) by telephonic facsimile transmission containing the signature of the individual, or

(b) by electronic communication containing an electronic signature of the individual.

(7) Declarations made by the account provider under paragraph (4) shall be regarded as made in writing if they are produced by electronic means, and the copy of the declaration to be sent to the applicant in accordance with paragraph (4) may be sent by telephonic facsimile transmission or by electronic communication.

(8) Where a person is or may be entitled to a benefit or tax credit specified in section 3(2) of the Act but is unable for the time being to act, the following persons may act for that person—

- (a) a deputy or receiver appointed by the Court of Protection with power to make a claim for a benefit or tax credit on behalf of that person;
- (b) in Scotland, a tutor, curator or guardian acting or appointed in terms of law who is administering the estate of that person;
- (c) in Northern Ireland, a controller appointed by the High Court, with power to make a claim for a benefit or tax credit on behalf of that person;
- (d) where there is no person mentioned in sub-paragraphs (a) to (c), a person appointed on behalf of the person under—
 - (i) regulation 33(1) of the Social Security (Claims and Payments) Regulations 1987⁽⁵⁾,
 - (ii) regulation 33(1) of the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987⁽⁶⁾, or
 - (iii) regulation 18(3) of the Tax Credits (Claims and Notifications) Regulations 2002⁽⁷⁾.

Account provider – qualifications and Commissioners’ approval

14.—(1) This regulation specifies the circumstances (“qualifying circumstances”) in which a person may be approved by the Commissioners as an account provider.

(2) The qualifying circumstances are the following—

- (a) the person must make an application to the Commissioners for approval in a form specified by the Commissioners;
- (b) the person must undertake with the Commissioners (subject to regulation 13(5))—
 - (i) to accept properly completed applications from any person who has received a notice of eligibility and, where there is a right to transfer the account under regulation 19(1)(a), to accept transfers of an account in accordance with that regulation; or
 - (ii) in the case of a credit union, to accept properly completed applications from any person who has received a notice of eligibility and, where there is a right to transfer the account under regulation 19(1)(a), to accept transfers of an account in accordance with that regulation, if the applicant or account holder is a member, or fulfils or is treated as fulfilling a qualification for admission to membership, of the credit union;
- (c) the person must demonstrate to the satisfaction of the Commissioners that the person can correctly operate the procedures in regulation 22, and receive electronic communications for the purposes of these Regulations from H.M. Revenue and Customs;
- (d) an approved account provider must be—
 - (i) a UK institution which has permission under Part 4 of FISMA 2000⁽⁸⁾ to carry on the regulated activity of accepting deposits;

⁽⁵⁾ S.I. 1987/1968; regulation 33(1) was amended by S.I. 1999/2572, 2005/337 and 2007/2470.

⁽⁶⁾ S.R. 1987 465; regulation 33(1) was amended by S.I. 1999/2574.

⁽⁷⁾ S.I. 2002/2014.

⁽⁸⁾ 2000 c. 8.

- (ii) an EEA firm mentioned in paragraph 5(b) of Schedule 3 to FISMA 2000 (credit institution) which has permission under paragraph 15 of that Schedule to carry on the activity of accepting deposits, as a result of qualifying for authorisation under paragraph 12(1) or (2) of that Schedule (exercise of passport rights by EEA firms); or
 - (iii) a credit institution (within the same meaning) incorporated outside the EEA which has permission under Part 4 of FISMA 2000 to carry on the regulated activity of accepting deposits through a branch in the United Kingdom;
 - (e) an approved account provider must not be prevented from acting as such by any limitation or requirement imposed under section 42 or 43 of FISMA 2000, or by any prohibition or prohibition order in or made under that Act;
 - (f) an account provider which is a credit institution within sub-paragraph (d)(ii) or (iii), and which does not intend to carry out all its functions as an account provider in the United Kingdom, must fulfil one of the requirements mentioned in regulation 15.
- (3) The terms of the Commissioners' approval may include conditions designed to ensure that the provisions of these Regulations are satisfied.

Approved account provider – appointment of tax representative

- 15.**—(1) This regulation specifies the requirements mentioned in regulation 14(2)(f).
- (2) The first requirement is that—
- (a) a person who falls within section 698(2) of ITTOIA 2005⁽⁹⁾ is for the time being appointed by the account provider to be responsible for securing the discharge of the duties mentioned in paragraph (5) which fall to be discharged by the account provider, and
 - (b) his or her identity and the fact of the appointment have been notified to the Commissioners by the account provider.
- (3) The second requirement is that there are for the time being other arrangements with the Commissioners for a person other than the account provider to secure the discharge of such duties.
- (4) The third requirement is that there are for the time being other arrangements with the Commissioners designed to secure the discharge of such duties.
- (5) The duties mentioned in this paragraph are those that fall to be discharged by an account provider under the Act and these Regulations.
- (6) The appointment of a person in pursuance of the first requirement shall be treated as terminated in circumstances where—
- (a) the Commissioners have reason to believe that the person concerned—
 - (i) has failed to secure the discharge of any of the duties mentioned in paragraph (5), or
 - (ii) does not have adequate resources to discharge those duties, and
 - (b) the Commissioners have notified the account provider and that person that they propose to treat his or her appointment as having terminated from the date specified in the notice.
- (7) Where, in accordance with the first requirement, a person is at any time responsible for securing the discharge of duties, the person concerned—
- (a) shall be entitled to act on the account provider's behalf for any of the purposes of the provisions relating to the duties;
 - (b) shall secure (where appropriate by acting on the account provider's behalf) the account provider's compliance with and discharge of the duties; and

(9) 2005 c. 5.

- (c) shall be personally liable in respect of any failure of the account provider to comply with or discharge any such duty as if the duties imposed on the account provider were imposed jointly and severally on the account provider and the person concerned.

Account provider – withdrawal by Commissioners of approval

16.—(1) This regulation specifies the circumstances (“the disqualifying circumstances”) in which the Commissioners may by notice withdraw their approval of a person as an account provider.

(2) The disqualifying circumstances are that the Commissioners have reason to believe—

- (a) that any provision of the Act or these Regulations, or any term of an undertaking given in accordance with regulation 14(2)(b) or condition under regulation 14(3), is not or at any time has not been satisfied, either in respect of an account managed by the account provider or otherwise; or
- (b) that a person to whom they have given approval to act as an account provider is not qualified so to act.

(3) The notice to which paragraph (1) refers shall specify—

- (a) the date from which the Commissioners’ approval is withdrawn; and
- (b) the disqualifying circumstances.

(4) On receiving the notice referred to in paragraph (1), subject to any appeal under section 23(1)(b) of the Act, the account provider shall notify the account holder of the right to transfer the account under regulation 19(1)(a), and the notice shall inform the account holder of the rights under regulation 18(3).

Approved account provider ceasing to act

17.—(1) A person shall give notice to the Commissioners and to the account holder of an account which it manages of its intention to cease to act as the approved account provider not less than 30 days before it so ceases so that its obligations to the Commissioners under the account can be conveniently discharged at or about the time it ceases so to act.

(2) The notice to the account holder shall inform him or her of the right to transfer the account under regulation 19(1)(a), and of the rights under regulation 18(3).

Account provider ceasing to qualify

18.—(1) A person shall cease to qualify as an approved account provider and shall notify the Commissioners within 30 days of the relevant event in sub-paragraphs (a) to (d), of that relevant event, where—

- (a) the person no longer fulfils the conditions of regulation 14;
- (b) there is an insolvency event in relation to the account provider;
- (c) an application has been made for a bank insolvency order or a bank administration order; or
- (d) in the case of a credit institution within regulation 14(2)(d)(ii) or (iii), action corresponding to that described in sub-paragraph (b) or (c) has been taken by or in relation to the institution under the law of an EEA State or other State.

(2) On giving the notice referred to in paragraph (1), the person shall also notify the account holder of the right to transfer the account under regulation 19(1)(a), and the notice shall inform the account holder of the rights under paragraph (3).

(3) Where an account holder—

- (a) receives a notice under paragraph (2), or regulation 16(4) or 17, and

(b) gives instructions to the account provider in accordance with regulation 19(1)(a), with the consequence that the account is transferred pursuant to regulation 19 to another approved account provider (“the transferee”) within 30 days of the sending of the notice, the period between the account provider ceasing to be approved, or act or qualify as an approved account provider, and the transfer to the transferee, shall be ignored in determining whether the account has at all times been managed by an approved account provider.

Transfer of accounts to other account providers

19.—(1) Where—

- (a) in a case falling within regulation 16, 17 or 18, the account holder, within 14 days of the sending to him or her of the notice under regulation 16(4), 17(2) or 18(2), instructs the account provider to transfer the account to another named approved account provider,
- (b) in a case where both account providers have agreed to the transfer of the account, the account holder instructs the account provider to transfer the account to another named approved account provider, or
- (c) arrangements are made by an account provider (subject to complying with regulation 16, 17 or 18, as the case may be) to transfer all its accounts to another approved account provider,

the transfer shall have effect and be treated as a transfer of the account.

(2) Any transfer relating to an account shall be made directly between one account provider (“the transferor”) and another approved account provider (“the transferee”), and the account shall not be affected for the purposes of these Regulations by reason of the transfer

(3) The account holder shall make a fresh application under regulation 13 (with any necessary modifications to reflect the fact that it is made on a transfer) to the transferee.

(4) The transferor shall on the date of the transfer give the transferee a notice containing the information mentioned in paragraph (5) and the declaration mentioned in paragraph (6).

(5) The information mentioned in this paragraph is—

- (a) the date of the transfer,
- (b) the account holder’s full name and reference number,
- (c) the date of the opening of the account, and the expected end of the maturity period under regulation 7(1)(b),
- (d) the qualifying balance of the account achieved up to the date of the transfer, and
- (e) the total of the sums paid into the account (calculated in accordance with regulation 11(1) and (2)) in the month in which the transfer is made.

(6) The declaration mentioned in this paragraph is a declaration by the transferor that—

- (a) it has fulfilled all its obligations to the account holder, the Commissioners or otherwise, which are imposed by these Regulations;
- (b) it has transferred to the transferee or its nominee all the funds in the account;
- (c) it will forward any further payment received in respect of the account to the transferee, on receipt of the payment; and
- (d) the information contained in the notice is correct.

Recoupment of maturity payments and death payments etc.

20.—(1) Where—

- (a) the account holder was not an eligible person at the relevant date;
- (b) there is a breach of section 6(2)(a) or (b) of the Act in relation to an account;
- (c) there is a breach of Condition 1 in regulation 6(1) in relation to an account; or
- (d) there is a breach of regulation 10(1)(c) or 13(2) in relation to an account;

the account is void and the persons mentioned in paragraph (3) shall account to the Commissioners for any maturity payment or death payment wrongly made in respect of the account.

(2) Where—

- (a) a person was entitled to a benefit under the terms of section 3(1)(a) of the Act, or was an eligible person by reason of entitlement to working tax credit or child tax credit under the terms of regulation 3, but such entitlement has been overturned, or it has subsequently been determined that payment of the relevant benefit or tax credit should not have been made, or should have been made at a different rate; or
- (b) an amount is paid by the Commissioners to an account provider in pursuance of the Act, due to a mis-statement in a monthly return or financial claim, or a mistake by an officer of Revenue and Customs;

the persons mentioned in paragraph (3) shall account to the Commissioners for any maturity payment, death payment or overpayment wrongly made in respect of the account.

(3) The persons mentioned in paragraphs (1) and (2) are—

- (a) the account provider (to the extent that it has assets relating to the account, or directly or indirectly representing any of the payments, in its possession or control);
- (b) the account holder, or former account holder (to the extent that the payments have been made or credited to the account holder);
- (c) any person in whom the maturity payments, death payments or overpayments, or any property directly or indirectly representing any of them, is vested (whether beneficially or otherwise);

and they shall be jointly and severally liable.

(4) Sections 49 (late notice of appeal) and 54 (settling of appeals by agreement) of the Management Act(10) apply in relation to appeals under section 23 of the Act, other than tax appeals.

(5) Where a person accountable under this regulation is notified by the Commissioners that an amount is due from him or her under it, that amount shall be treated for the purposes of Part 6 of the Management Act (collection and recovery) as if it were tax charged in an assessment and due and payable.

(6) The time limits in sections 34 to 36 of the Management Act shall apply to amounts payable under this regulation as they apply to assessments.

“Repair” of invalid accounts

21.—(1) Except in the case of a breach of regulation 10(1)(b) or (c) or 13(2), or the case mentioned in regulation 20(2)(a), (where no repair of an account is possible), it is an overriding requirement to be satisfied in relation to an account that the account provider and account holder, as the case may be, take any steps necessary to remedy any breach of these Regulations.

(2) Where a breach is remedied as mentioned in paragraph (1), the account shall, to the extent of that breach, be treated as having been a valid account at all times, except for the purposes of sections 19 to 21 of the Act (penalties).

(10) 1970 c. 9; section 49 was substituted, and section 54 amended, by paragraphs 29 and 33 of Schedule 1 to the Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56).

