

Draft Order laid before Parliament under section 40(2) of the Bank of England Act 1998, section 142Z of the Financial Services and Markets Act 2000, section 206A(8)(b) of the Banking Act 2009 and section 143(3) of the Financial Services (Banking Reform) Act 2013, for approval by resolution of each House of Parliament

DRAFT STATUTORY INSTRUMENTS

2017 No. 0000

BANKS AND BANKING

**The Banking Act 2009 (Service Providers to Payment Systems)
Order 2017**

Made - - - -

Coming into force in accordance with article 1

The Treasury make this Order in exercise of the powers conferred by paragraph 3(2)(a) of Schedule 7 to the Bank of England Act 1998(a), sections 142D and 142E of the Financial Services and Markets Act 2000(b), sections 206A(1) and 259(1) of the Banking Act 2009(c) and section 145(1) of the Financial Services (Banking Reform) Act 2013(d).

Before making this Order the Treasury consulted the Bank of England in accordance with paragraph 3(4) of Schedule 7 to the Bank of England Act 1998, and consulted the Bank of England, the Financial Conduct Authority, the Prudential Regulation Authority and such other persons as the Treasury consider appropriate in accordance with section 206A(6) of the Banking Act 2009.

A draft of this Order has been laid before and approved by resolution of each House of Parliament, in accordance with section 40(2) of the Bank of England Act 1998(e), section 142Z of the Financial Services and Markets Act 2000, section 206A(8)(b) of the Banking Act 2009 and section 143(3) of the Financial Services (Banking Reform) Act 2013.

(a) 1998 c. 11. There have been amendments to paragraph 3 but none is relevant here.
(b) 2000 c. 8. Sections 142D, 142E and 142Z, together with the rest of Part 9B, were inserted by section 4 of the Financial Services (Banking Reform) Act 2013 (c. 33).
(c) 2009 c. 1. Section 206A was inserted by section 20 of the Financial Services Act 2010 (c. 28), and amended by section 104 of the Financial Services Act 2012 (c. 21) and paragraph 28 of Schedule 9 to the Digital Economy Act 2017 (c. 30).
(d) 2013 c. 33.
(e) There have been amendments to section 40 but none is relevant here.

PART 1

Introductory provision

Citation and commencement

1.—(1) This Order may be cited as the Banking Act 2009 (Service Providers to Payment Systems) Order 2017.

(2) Parts 1, 2 and 4 come into force on 30th November 2017.

(3) Part 3 comes into force on 13th January 2018.

PART 2

Service Providers to Payment Systems

Amendment of the Banking Act 2009

2.—(1) The Banking Act 2009 is amended as follows.

(2) In section 181 (overview of Part 5)(a), at the end insert “and certain persons who provide services in relation to such systems”.

(3) In section 183 (interpretation: other expressions)(b)—

(a) after paragraph (b) insert—

“(ba) a reference to a “service provider” is to be construed in accordance with section 206A(2),”;

(b) omit “and” after paragraph (h);

(c) after paragraph (i) insert—

“(j) “the Payment Systems Regulator” means the Payment Systems Regulator established under section 40 of the Financial Services (Banking Reform) Act 2013, and

(k) in sections 188 to 199 (regulation and enforcement), references to the provision of services by a service provider to a payment system include references to—

(i) services provided by the service provider which form part of the arrangements constituting the system, and

(ii) the service provider’s arrangements for governance or risk management, or for any other matters which may affect the provision of the services by the service provider.”.

(4) In section 184 (recognition order)(c), after subsection (3) insert—

“(4) See section 206A for the power to specify in a recognition order a person as a person who provides services that form part of the arrangements constituting the recognised system.”.

(5) In section 186(1) (procedure)(d)—

(a) in paragraph (a) after “Bank of England” insert “and the Payment Systems Regulator”;

(b) at the end insert—

(a) Section 181 was amended by paragraph 3 of Schedule 9 to the Digital Economy Act 2017.

(b) Section 183 was amended by paragraph 44 of Schedule 2 to the Financial Services Act 2010, paragraph 53 of Schedule 17 to the Financial Services Act 2012 and paragraph 5 of Schedule 9 to the Digital Economy Act 2017.

(c) Section 184 was amended by paragraph 6 of Schedule 9 to the Digital Economy Act 2017.

(d) Section 186 was amended by section 104 of the Financial Services Act 2012.

“(See section 206A(4) for the procedure to be followed before specifying a person under section 206A(2)(b) (service providers in relation to recognised payment systems) in a recognition order.)”.

(6) In section 186A (amendment of recognition order)(a)—

(a) in subsection (2)—

(i) in paragraph (a) at the end insert “and the Payment Systems Regulator”;

(ii) at the end insert—

“(See section 206A(4) for the procedure to be followed before amending a recognition order so as to specify a person under section 206A(2)(b) (service providers in relation to recognised payment systems) in the order.)”;

(b) after subsection (2) insert—

“(2A) Before amending a recognition order so as to revoke or amend the specification of a person under section 206A(2)(b), the Treasury must also—

(a) consult the FCA and the PRA,

(b) notify the specified person, and

(c) consider any representations made.”;

(c) in subsection (4), at the end insert “or any request by a service provider in relation to such a system for the amendment or revocation of its specification”.

(7) In section 187(3)(a) (de-recognition)(b), at the end insert “and the Payment Systems Regulator”.

(8) In section 188(1) (principles)(c), at the end insert “and principles to which service providers are to have regard in the provision of services to such systems”.

(9) In section 189 (codes of practice)(d), at the end insert “and the provision of services by service providers to such systems”.

(10) In section 190(1)(a) (system rules)(e), at the end insert “including the operation of services that form part of the arrangements constituting the system and are provided by a service provider”.

(11) In section 191 (directions)(f)—

(a) in subsection (1), at the end insert “or a service provider in relation to such a system”;

(b) in subsection (2), in each of paragraphs (a) and (b) at the end insert “or the provision of services to the system”;

(c) in subsection (3)—

(i) after “operator” insert “or service provider”, and

(ii) for “its” substitute “the operator’s or service provider’s”;

(d) in subsection (4)(b), after “operator” insert “or service provider”.

(12) In section 192 (role of the Financial Conduct Authority and Prudential Regulation Authority)(g)—

(a) in subsection (2)—

(i) in paragraph (a) after “section 186(2)(a)” insert “, a service provider in relation to such a system or a service provider which itself satisfies section 186(2)(a)”;

(a) Section 186A was inserted by section 104 of the Financial Services Act 2012 and amended by paragraph 8 of Schedule 9 to the Digital Economy Act 2017.

(b) Section 187 was amended by section 104 of the Financial Services Act 2012 and paragraph 9 of Schedule 9 to the Digital Economy Act 2017.

(c) Section 188 was amended by paragraph 10 of Schedule 9 to the Digital Economy Act 2017.

(d) Section 189 was amended by paragraph 11 of Schedule 9 to the Digital Economy Act 2017.

(e) Section 190 was amended by paragraph 12 of Schedule 9 to the Digital Economy Act 2017.

(f) Section 191 was substituted by section 104 of the Financial Services Act 2012 and amended by paragraph 8 of Schedule 10 to the Financial Services (Banking Reform) Act 2013 and paragraph 13 of Schedule 9 to the Digital Economy Act 2017.

(g) Section 192 was amended by section 104 of the Financial Services Act 2012 and paragraph 14 of Schedule 9 to the Digital Economy Act 2017.

- (ii) in paragraph (b) at the end insert “, a service provider in relation to such a system or a service provider which itself satisfies section 186(2)(b)”;
- (b) in subsection (3)—
 - (i) after “section 186(2)(a) or (b)” insert “, a service provider in relation to such a system or a service provider which itself satisfies section 186(2)(a) or (b)”;
 - (ii) after “under this Part in respect of the operator” insert “or service provider”.
- (13) In section 193 (inspection)(a)—
 - (a) in subsection (1), at the end insert “or the provision of services to such a system by a service provider”;
 - (b) in subsection (2)—
 - (i) in the opening words, after “system” insert “, or a service provider in relation to such a system,”;
 - (ii) in paragraph (a) after “operated” insert “or (as the case may be) premises on or from which any part of the services is provided”.
- (14) In section 194 (inspection: warrant)(b)—
 - (a) in subsection (1), for paragraph (a) substitute—
 - “(a) there is conducted on the premises any part of the management or operation of—
 - (i) a recognised payment system (whether by an operator of the system or by someone providing services used by an operator), or
 - (ii) a service provider in relation to a recognised payment system, and”;
 - (b) in subsection (2)(a) and the opening words of subsection (3), after “system” insert “or the service provider”.
- (15) In section 195 (independent report)(c)—
 - (a) in subsection (1)—
 - (i) the words from “the operator” to the end become paragraph (a);
 - (ii) after that new paragraph (a) insert—
 - “; or
 - (b) a service provider in relation to a recognised payment system to appoint an expert to report on the provision of services to the system.”;
 - (b) in subsection (2), in each of paragraphs (a) and (b), after “operator” insert “or service provider”.
- (16) In section 196 (compliance failure)(d), after “system” insert “, or a service provider in relation to such a system,”.
- (17) In section 197(1) (publication)(e), at the end insert “or a service provider in relation to such a system”.
- (18) In section 198(1) (penalty)(f), after “system” insert “, or a service provider in relation to such a system,”.
- (19) In section 199 (closure)(g)—
 - (a) in subsection (2)—
 - (i) after “concerned” insert “, or the service provider concerned,”;

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- (a) Section 193 was amended by paragraph 15 of Schedule 9 to the Digital Economy Act 2017.
 - (b) Section 194 was amended by paragraph 16 of Schedule 9 to the Digital Economy Act 2017.
 - (c) Section 195 was amended by paragraph 17 of Schedule 9 to the Digital Economy Act 2017.
 - (d) Section 196 was amended by paragraph 18 of Schedule 9 to the Digital Economy Act 2017.
 - (e) Section 197 was amended by paragraph 19 of Schedule 9 to the Digital Economy Act 2017.
 - (f) Section 198 was amended by paragraph 20 of Schedule 9 to the Digital Economy Act 2017.
 - (g) Section 199 was amended by paragraph 21 of Schedule 9 to the Digital Economy Act 2017.

- (ii) after “the system” insert “or (as the case may be) providing services to a recognised payment system”;
 - (b) in subsection (3)—
 - (i) in paragraph (a), after “system” insert “or all services provided to a recognised payment system by the service provider”;
 - (ii) in paragraph (b), at the end insert “or specified services”;
 - (c) after subsection (3) insert—

“(3A) Before giving a closure order to a service provider, the Bank must have regard to the public interest in the continued operation of each recognised payment system in relation to which the service provider is specified under section 206A(2)(b).”;
 - (d) in subsection (4), after “operator” insert “or service provider”.
- (20) In section 200 (management disqualification)(a)—
- (a) in subsection (2), after “system” insert “or about the management of a service provider in relation to such a system”;
 - (b) after subsection (2) insert—

“(2A) Before making an order under subsection (2) in respect of a service provider, the Bank must have regard to the public interest in the continued operation of each recognised payment system in relation to which the service provider is specified under section 206A(2)(b).”.
- (21) In section 201 (warning)(b)—
- (a) in subsection (1)—
 - (i) in the opening words, after “system” insert “, on a service provider in relation to such a system”;
 - (ii) in each of paragraphs (a), (b) and (d), after “operator” insert “, service provider”;
 - (b) after subsection (1) insert—

“(1A) Before imposing a sanction on a person who is a service provider in relation to a recognised payment system the Bank must also—

 - (a) give the operator of the payment system a notice (a “warning notice”),
 - (b) give the operator at least 21 days to make representations,
 - (c) consider any representations made, and
 - (d) as soon as reasonably practicable, give the operator a notice stating whether the Bank intends to impose the sanction.”;
 - (c) in each of subsections (2) and (3), for “subsection (1)” substitute “subsections (1) and (1A)”.
- (22) In section 202 (appeal)(c)—
- (a) in subsection (1), after “201(1)(d)” insert “or (1A)(d)”;
 - (b) in subsection (2), after “the person” insert “and, if the person is a service provider in relation to a recognised payment system, the operator of the payment system,”.
- (23) In section 202A (injunctions)(d)—
- (a) in each of subsections (2)(a) and (3)(a), after “system” insert “or a service provider in relation to such a system”;

(a) Section 200 was amended by paragraph 22 of Schedule 9 to the Digital Economy Act 2017.
 (b) Section 201 was amended by paragraph 23 of Schedule 9 to the Digital Economy Act 2017.
 (c) Section 202 was amended by S.I. 2010/22.
 (d) Section 202A was inserted by section 104 of the Financial Services Act 2012 and amended by paragraph 24 of Schedule 9 to the Digital Economy Act 2017.

- (b) in subsection (2), in the words after paragraph (b), after “operator” insert “or service provider”;
 - (c) in subsection (3), in the words after paragraph (b), after “operator” in both places that it occurs insert “, service provider”.
- (24) In section 203(1) (fees)(a), after “systems” insert “, and service providers in relation to such systems.”.
- (25) In section 204 (information)(b)—
- (a) in subsection (1)(a) after “206A” insert “, or to specify a person under section 206A(2)(b)”;
 - (b) in each of subsections (1A) and (2), after “system” insert “or a service provider in relation to such a system”.
- (26) In section 205 (pretending to be recognised)(c), after subsection (1) insert—
- “(1A) It is an offence for a person who is not a service provider in relation to a recognised payment system—
- (a) to assert that the person is such a service provider, or
 - (b) to do anything which suggests that the person is such a service provider.”.
- (27) In section 206 (saving for informal oversight), in each of subsections (1) and (2), after “systems” insert “, or persons who provide services in relation to payment systems.”.
- (28) In section 206A(4)(a) (services forming part of recognised payment systems)(d), after “Bank of England” insert “, the Payment Systems Regulator”.
- (29) In section 261 (index of defined terms)(e), in the Table, at the appropriate place insert—

“Payment Systems Regulator	183”.
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Amendment of the Banking Act 2009 (Inter-Bank Payment Systems) (Disclosure and Publication of Specified Information) Regulations 2010

3. In the Banking Act 2009 (Inter-Bank Payment Systems) (Disclosure and Publication of Specified Information) Regulations 2010(f)—

- (a) in regulation 3(1)(b)(i) (disclosure of specified information), after “payment systems” in the first place it appears insert “and service providers in relation to such systems”;
- (b) in regulation 7(1) (publication of specified information), after “payment systems” insert “and service providers in relation to such systems”.

(a) Section 203 was amended by paragraph 25 of Schedule 9 to the Digital Economy Act 2017.

(b) Section 204 was amended by paragraph 45 of Schedule 2 to the Financial Services Act 2010, section 104 of the Financial Services Act 2012, paragraph 60 of Schedule 2 to the Bank of England and Financial Services Act 2016 (c. 14) and paragraph 26 of Schedule 9 to the Digital Economy Act 2017.

(c) Section 205 was amended by paragraph 27 of Schedule 9 to the Digital Economy Act 2017.

(d) Section 206A was inserted by section 20 of the Financial Services Act 2010 and amended by section 104 of the Financial Services Act 2012 and paragraph 28 of Schedule 9 to the Digital Economy Act 2017.

(e) There have been several amendments to section 261, none of which is relevant to this instrument.

(f) S.I. 2010/828, amended by S.I. 2013/472, 2014/549 and 2015/488.

PART 3

Provision of information by the Bank of England to the Payment Systems Regulator

Amendment of the Bank of England Act 1998

4. In Schedule 7 to the Bank of England Act 1998 (restriction on disclosure of information), in the Table in paragraph 3(1) (disclosure by the Bank to other authorities)(a), at the end insert—

“The Payment Systems Regulator established under section 40 of the Financial Services (Banking Reform) Act 2013	Functions conferred by, or by virtue of, that Act, the Payment Card Interchange Fee Regulations 2015(b) and the Payment Services Regulations 2017(c).”.
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PART 4

Amendment of the Financial Services and Markets Act 2000 (Excluded Activities and Prohibitions) Order 2014

Amendment of the Financial Services and Markets Act 2000 (Excluded Activities and Prohibitions) Order 2014

5.—(1) The Financial Services and Markets Act 2000 (Excluded Activities and Prohibitions) Order 2014(d) is amended as follows.

(2) In article 1 (citation, commencement and interpretation), in paragraph (4)—

(a) in the appropriate place insert—

““inter-bank payment system” means arrangements which are—

- (a) a payment system as defined in section 182 of the Banking Act 2009(e), and
- (b) designed to facilitate or control the transfer of money between banks and building societies which participate in the arrangements,

(and see article 13(11) for further provision as to the meaning of inter-bank payment system in that article);”;

(b) in the definition of “payment exposures”, in paragraph (d) omit “(as defined in section 182 of the Banking Act 2009)”.

(3) In article 6 (excluded activities: general exceptions), in paragraph (4)(e) omit “within the meaning of section 182 of the Banking Act 2009”.

(4) In article 13 (prohibitions: inter-bank payment systems), in the definition of “inter-bank payment system” in paragraph (11), omit “has the meaning given by section 182 of the Banking Act 2009, but”.

	<i>Name</i>
	<i>Name</i>
Date	Two of the Lords Commissioners of Her Majesty’s Treasury

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- (a) Paragraph 3 has been amended by paragraph 70 of Schedule 12 to the Pensions Act 2004 (c. 35), paragraph 7 of Schedule 2 to the Statistics and Registration Service Act 2007 (c. 18), paragraph 85 of Schedule 18 to the Financial Services Act 2012, paragraph 22 of Schedule 2 to the Bank of England and Financial Services Act 2016, and S.I. 2001/3649 and 2009/1941.
 - (b) S.I. 2015/1911.
 - (c) S.I. 2017/752.
 - (d) S.I. 2014/2080, amended by S.I. 2016/1032.
 - (e) The definition of “inter-bank payment system” in section 182 was amended by paragraph 4 of Schedule 9 to the Digital Economy Act 2017.

EXPLANATORY NOTE

(This note is not part of the Order)

Part 2 of this Order amends Part 5 of the Banking Act 2009 (c. 1), which provides for the Bank of England to oversee certain payment systems, such that the Part applies to certain service providers in relation to such systems.

In article 2—

- paragraphs (4) to (7) require the Treasury to consult the Payment Systems Regulator in relation to the making, amendment and revocation of orders recognising payment systems as systems over which the Bank of England has oversight, and amend the procedure for the amendment of such orders where the amendment revokes or changes the specification of service providers over which the Bank of England has oversight.
- paragraphs (8) to (12) make amendments providing for the Bank of England's functions and powers to oversee specified service providers;
- paragraphs (13) to (22) make amendments providing for the inspection and investigation of specified service providers, and enforcement of compliance failures;
- paragraphs (2), (3) and (23) to (29) make other related amendments.

Article 3 makes consequential amendments to related secondary legislation.

Part 3 of this Order amends the Bank of England Act 1998 (c. 11) so that the Bank of England may disclose information obtained by it under that Act to the Payment Systems Regulator.

Part 4 of this Order amends the Financial Services and Markets Act 2000 (Excluded Activities and Prohibitions) Order 2014 in consequence of amendments to the Banking Act 2009 made by the Digital Economy Act 2017 (c. 30).

A full impact assessment has not been produced for this instrument as no significant impact on the costs of business or the voluntary sector is foreseen.

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