

FINANCIAL SERVICES (BANKING REFORM) ACT 2013

EXPLANATORY NOTES

COMMENTARY

Part 5 – Regulation of Payment Systems

Complaints

Sections 108 to 110: Miscellaneous and supplemental

259. *Sections 108 to 110* contain miscellaneous and supplemental provision. The purpose of *section 108* is to ensure that the Payment Systems Regulator's powers could not be exercised incompatibly with EU law and to avoid the powers themselves consequently being held to be incompatible with EU law.
260. The Payment Services Regulations 2009 (the "2009 Regulations") implement Directive [2007/64/EC](#) of the European Parliament and of the Council of 13th November 2007 on payment services in the internal market (the "Directive"). Under Article 28(1) of the Directive, Member States are required to ensure that "the rules on access of authorised or registered payment service providers to payment systems are objective, non-discriminatory and proportionate...". There is also a prohibition on payment systems imposing on payment service providers, on payment service users or on other payment systems certain restrictive rules governing access to and participation in payment systems. The references in Article 28(1) to "payment systems" do not, however, include all payment systems. For example, those systems designated under Directive [98/26/EC](#) of the European Parliament and of the Council of 19th May 1998 on settlement finality in payment and securities settlement systems are excluded from the scope of Article 28(1).
261. Part 8 of the 2009 Regulations implements Article 28 of the Directive. Regulation 97 of the 2009 Regulations prohibits restrictive rules or conditions governing access to, or participation in, a payment system (other than those to which Article 28(1) does not apply) by "authorised payment institutions", "EEA authorised payment institutions" and "small payment institutions", as defined in the 2009 Regulations.
262. The Directive is a "maximum harmonisation" measure: Member States are not permitted under EU law to adopt any measures which go beyond the measures contained in the Directive. If the Payment Systems Regulator were able to exercise any power for the purposes of enabling a "relevant person" (that is, authorised payment institutions, EEA authorised payment institutions and small payment institutions) to obtain access to, or otherwise participate in, a payment system to which Part 8 of the 2009 Regulations does not apply, that would mean that the maximum harmonisation principle would be contravened. *Section 108* serves to prevent the possibility of such a contravention and therefore to ensure the powers themselves are compatible with the maximum harmonisation principle.

*These notes refer to the Financial Services (Banking Reform) Act
2013 (c.33) which received Royal Assent on 18 December 2013*

263. *Section 109* ensures that the provisions in Schedules 1ZA and 1ZB to FSMA which exempt from liability in damages the FCA, PRA and their employees for anything done or omitted in the discharge, or purported discharge, of the FCA's and the PRA's functions extend to the FCA's and PRA's functions under Part 5 of the Act.
264. *Section 110* contains the interpretative provisions for Part 5 of the Act.