



# Financial Services (Banking Reform) Act 2013

## 2013 CHAPTER 33

### PART 5

#### REGULATION OF PAYMENT SYSTEMS

##### *Consultation, accountability and oversight*

#### **103 Regulator's general duty to consult**

- (1) The Payment Systems Regulator must make and maintain effective arrangements for consulting relevant persons on—
  - (a) the extent to which its general policies and practices are consistent with its general duties under section 49, and
  - (b) how its payment systems objectives may best be achieved.
- (2) The following are “relevant persons” for the purposes of this section—
  - (a) participants in regulated payment systems, and
  - (b) those who use, or are likely to use, services provided by regulated payment systems.
- (3) Arrangements under this section must include the establishment and maintenance of one or more panels of persons to represent the interests of relevant persons.
- (4) Where the Payment Systems Regulator establishes a panel under subsection (3), it must appoint one of the members of the panel to be its chair.
- (5) The Treasury's approval is required for the appointment or dismissal of the chair of a panel established under subsection (3).
- (6) The Payment Systems Regulator must—
  - (a) consider representations that are made to it in accordance with arrangements made under this section, and

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*Status: This is the original version (as it was originally enacted).*

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- (b) from time to time publish, in such manner as it thinks fit, responses to the representations.

#### **104 Consultation in relation to generally applicable requirements**

- (1) In this section references to imposing a generally applicable requirement are to—
  - (a) giving a general direction under section 54, or
  - (b) imposing a generally-imposed requirement under section 55,
 and references to the requirement are to be read accordingly.
- (2) Before imposing a generally applicable requirement, the Payment Systems Regulator must—
  - (a) consult the Bank of England, the FCA and the PRA, and
  - (b) after doing so, publish a draft of the proposed requirement in the way appearing to the Payment Systems Regulator to be best calculated to bring it to the attention of the public.
- (3) The draft must be accompanied by—
  - (a) a cost benefit analysis,
  - (b) an explanation of the purpose of the proposed requirement,
  - (c) an explanation of the Payment Systems Regulator’s reasons for believing that imposing the requirement is compatible with its duties under section 49, and
  - (d) notice that representations about the proposed requirement may be made to the Payment Systems Regulator within a specified time.
- (4) Before imposing the proposed requirement the Payment Systems Regulator must have regard to any representations made to it in accordance with subsection (3)(d).
- (5) If the Payment Systems Regulator proposes to impose the requirement, it must publish an account, in general terms, of—
  - (a) the representations made to it in accordance with subsection (3)(d), and
  - (b) its response to them.
- (6) If the requirement differs from the draft published under subsection (2)(b) in a way which is, in the opinion of the Payment Systems Regulator, significant the Payment Systems Regulator must (in addition to complying with subsection (5)) publish details of the difference together with a cost benefit analysis.
- (7) For the purposes of this section a “cost benefit analysis” is—
  - (a) an analysis of the costs together with an analysis of the benefits that will arise—
    - (i) if the proposed requirement is imposed, or
    - (ii) if subsection (6) applies, from the requirement imposed, and
  - (b) subject to subsection (8), an estimate of those costs and of those benefits.
- (8) If, in the opinion of the Payment Systems Regulator—
  - (a) the costs or benefits referred to in subsection (7) cannot reasonably be estimated, or
  - (b) it is not reasonably practicable to produce an estimate,
 the cost benefit analysis need not estimate them, but must include a statement of the Payment Systems Regulator’s opinion and an explanation of it.

- (9) The Payment Systems Regulator may charge a reasonable fee for providing a person with a copy of a draft published under subsection (2)(b).
- (10) Subsections (2)(b) and (3) to (6) do not apply if the Payment Systems Regulator considers that the delay involved in complying with them would be prejudicial to the interests of those who use, or are likely to use, services provided by regulated payment systems.
- (11) Subsections (3)(a) and (6) do not apply if the Payment Systems Regulator considers that, making the appropriate comparison—
  - (a) there will be no increase in costs, or
  - (b) there will be an increase in costs but the increase will be of minimal significance.
- (12) In subsection (11) the “appropriate comparison” means—
  - (a) in relation to subsection (3)(a), a comparison between the overall position if the requirement is imposed and the overall position if it is not imposed;
  - (b) in relation to subsection (6), a comparison between the overall position after the imposing of the requirement and the overall position before it was imposed.

## **105 Independent inquiries**

- (1) Section 68 of the Financial Services Act 2012 (cases in which Treasury may arrange independent inquiries) is amended as follows.
- (2) In subsection (1), for “two” substitute “three”.
- (3) After subsection (3) insert—

“(3A) The third case is where it appears to the Treasury that—

  - (a) events have occurred in relation to a regulated payment system which caused or risked causing significant damage to business or other interests throughout the United Kingdom, and
  - (b) those events might not have occurred, or the threat or damage might have been reduced, but for a serious failure in—
    - (i) the system established by Part 5 of the Financial Services (Banking Reform) Act 2013 for the regulation of payment systems, or
    - (ii) the operation of that system.”
- (4) In section 83(1) (interpretation), after the definition of “regulated activity” insert—

““regulated payment system” has the same meaning as in Part 5 of the Financial Services (Banking Reform) Act 2013 (see section 110 of that Act);”.

## **106 Investigations into regulatory failure**

- (1) Part 5 of the Financial Services Act 2012 (inquiries and investigations) is amended as follows.
- (2) After section 76 insert—

**“76A Duty of Payment Systems Regulator to investigate and report on possible regulatory failure**

- (1) Subsection (3) applies where it appears to the Payment Systems Regulator that—
    - (a) events have occurred in relation to a regulated payment system which had or could have had a significant adverse effect on effective competition in the interests of—
      - (i) participants in the payment system, or
      - (ii) those who use, or are likely to use, the services provided by the payment system, and
    - (b) those events might not have occurred, or the adverse effect might have been reduced, but for a serious failure in—
      - (i) the system established by Part 5 of the Financial Services (Banking Reform) Act 2013 for the regulation of payment systems, or
      - (ii) the operation of that system.
  - (2) Subsection (3) also applies where the Treasury direct the Payment Systems Regulator that it appears to the Treasury that the conditions in subsection (1) are met in relation to specified events.
  - (3) The Payment Systems Regulator must carry out an investigation into the events and the circumstances surrounding them and report to the Treasury on the result of the investigation.
  - (4) Subsection (3) does not apply by virtue of subsection (1) if the Treasury direct the Payment Systems Regulator that it is not required to carry out an investigation into the events concerned.
  - (5) In this section “participant”, in relation to a regulated payment system, has the same meaning as in Part 5 of the Financial Services (Banking Reform) Act 2013 (see section 42 of that Act).”
- (3) In section 77 (power of Treasury to require FCA or PRA to undertake investigation)—
    - (a) in subsection (1)(a), for “either regulator” substitute “a regulator”;
    - (b) in subsection (3), omit the “or” at the end of paragraph (b) and after paragraph (c) insert “, or
    - (d) a regulated payment system.”;
    - (c) the heading of that section becomes “**Power of Treasury to require regulator to undertake investigation**”.
  - (4) In section 78 (conduct of investigation), in subsection (1), for “or 74” substitute “, 74 or 76A”.
  - (5) In section 79 (conclusion of investigation), for “or 74” substitute “, 74 or 76A”.
  - (6) In section 80 (statements of policy), in subsection (1)(a), for “or 74” substitute “, 74 or 76A”.
  - (7) In section 81 (publication of directions), in subsection (1), after paragraph (b) insert—
    - “(ba) section 76A(4);”.

- (8) In section 83(1) (interpretation)—
- (a) after the definition of “listed securities” insert—  
    ““the Payment Systems Regulator” means the body established under section 40 of the Financial Services (Banking Reform) Act 2013;”;
  - (b) in the definition of “regulator”, for “or the PRA” substitute “, the PRA or the Payment Systems Regulator”.

## **107 Competition scrutiny**

- (1) Chapter 4 of Part 9A of FSMA 2000 (competition scrutiny) applies to the Payment Systems Regulator’s practices and regulating provisions in relation to payment systems as it applies to the FCA’s practices and regulating provisions within the meaning of that Chapter.
- (2) In subsection (1)—
- (a) the reference to the Payment Systems Regulator’s practices in relation to payment systems is a reference to practices adopted by it in the exercise of functions under this Part, and
  - (b) the reference to the Payment Systems Regulator’s regulating provisions in relation to payment systems is a reference to the following—
    - (i) any general directions given under section 54;
    - (ii) any generally-imposed requirements under section 55;
    - (iii) any guidance given under section 96.