



Financial Services (Banking Reform) Act 2013

2013 CHAPTER 33

PART 5

REGULATION OF PAYMENT SYSTEMS

Information and investigation powers

81 Power to obtain information or documents

- (1) The Payment Systems Regulator may by notice in writing require a person to provide information or documents—
 - (a) which the Payment Systems Regulator thinks will help the Treasury in determining whether to make a designation order, or
 - (b) which the Payment Systems Regulator otherwise requires in connection with its functions under this Part.
- (2) In particular, a notice under subsection (1) may require a participant in a regulated payment system to notify the Payment Systems Regulator if events of a specified kind occur.
- (3) A notice under subsection (1) may require information or documents to be provided—
 - (a) in a specified form or manner;
 - (b) at a specified time;
 - (c) in respect of a specified period.

82 Reports by skilled persons

- (1) The Payment Systems Regulator may—
 - (a) require a person who is a participant in a regulated payment system to provide the Payment Systems Regulator with a report on any matter relating to the person's participation in the system ("the matter concerned"), or

- (b) appoint a person to provide the Payment Systems Regulator with a report on the matter concerned.

The person whose participation in the payment system is to be the subject of the report is referred to in this section as “the relevant participant”.

- (2) The power conferred by subsection (1)(a) is exercisable by giving the relevant participant a notice in writing.
- (3) When acting under subsection (1)(a), the Payment Systems Regulator may require the report to be in a form specified in the notice.
- (4) The Payment Systems Regulator must give written notice of an appointment under subsection (1)(b) to the relevant participant.
- (5) A person appointed to make a report under this section—
 - (a) must be a person appearing to the Payment Systems Regulator to have the skills necessary to make a report on the matter concerned, and
 - (b) where the appointment is to be made by the relevant participant, must be a person nominated or approved by the Payment Systems Regulator.
- (6) It is the duty of—
 - (a) the relevant participant, and
 - (b) any person who is providing (or who has at any time provided) services to the relevant participant in relation to the matter concerned,to give the person appointed to prepare a report all such assistance as the appointed person may reasonably require.
- (7) The obligation imposed by subsection (6) is enforceable, on the application of the Payment Systems Regulator, by an injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.
- (8) The Payment Systems Regulator may direct the relevant participant to pay any expenses incurred by the Payment Systems Regulator in relation to an appointment under subsection (1)(b).

83 Appointment of persons to conduct investigations

- (1) If it considers that it is desirable to do so in order to advance any of its payment systems objectives, the Payment Systems Regulator may appoint one or more competent persons to conduct an investigation on its behalf into the nature, conduct or state of the business of any participant in a regulated payment system.
- (2) If it appears to the Payment Systems Regulator that there are circumstances suggesting that there may have been a compliance failure, the Payment Systems Regulator may appoint one or more competent persons to conduct an investigation on its behalf.

84 Investigations: general

- (1) This section applies if the Payment Systems Regulator appoints one or more competent persons (“investigators”) under section 83 to conduct an investigation on its behalf.
- (2) The Payment Systems Regulator must give written notice of the appointment of an investigator to the person who is the subject of the investigation.

- (3) Subsections (2) and (9) do not apply if—
 - (a) the Payment Systems Regulator believes that the notice required by subsection (2) or (9) would be likely to result in the investigation being frustrated, or
 - (b) the investigator is appointed under subsection (2) of section 83.
- (4) A notice under subsection (2) must—
 - (a) specify the provision under which the investigator was appointed, and
 - (b) state the reason for the appointment.
- (5) Nothing prevents the Payment Systems Regulator from appointing as an investigator—
 - (a) a member of its staff, or
 - (b) a member of staff of the FCA.
- (6) An investigator who conducts an investigation must make a report of the investigation to the Payment Systems Regulator.
- (7) The Payment Systems Regulator may, by a direction to an investigator, control—
 - (a) the scope of the investigation,
 - (b) the period during which the investigation is to be conducted,
 - (c) the conduct of the investigation, and
 - (d) the reporting of the investigation.
- (8) A direction may, in particular—
 - (a) confine the investigation to particular matters;
 - (b) extend the investigation to additional matters;
 - (c) require the investigator to discontinue the investigation or to take only those steps that are specified in the direction;
 - (d) require the investigator to make such interim reports as are so specified.
- (9) If there is a change in the scope or conduct of the investigation and, in the opinion of the Payment Systems Regulator, the person who is the subject of the investigation is likely to be significantly prejudiced by not being made aware of it, that person must be given written notice of the change.

85 Powers of persons appointed under section 83

- (1) An investigator may require any person within subsection (2)—
 - (a) to attend before the investigator at a specified time and place and answer questions, or
 - (b) otherwise to provide any information which the investigator requires.
- (2) The persons referred to in subsection (1) are—
 - (a) the person who is the subject of the investigation (“the person under investigation”);
 - (b) any person connected with the person under investigation;
 - (c) in the case of an investigation into whether there has been a compliance failure, any person who in the investigator’s opinion is or may be able to give information which is or may be relevant to the investigation.

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- (3) An investigator may also require any person to produce at a specified time and place any specified documents or documents of a specified description.
- (4) A requirement under subsection (1) or (3) may be imposed only so far as the investigator concerned reasonably considers the question, provision of information or production of the document to be relevant to the purposes of the investigation.
- (5) In the case of an investigation into whether there has been a compliance failure, the investigator may also require any person falling within subsection (2)(c) to give the investigator all assistance in connection with the investigation which the person is reasonably able to give.
- (6) For the purposes of this section, a person is connected with the person under investigation (“A”) if the person is or has at any relevant time been—
 - (a) a member of A’s group,
 - (b) a controller of A, or
 - (c) a partnership of which A is a member.
- (7) In this section—
 - “controller” has the same meaning as in FSMA 2000 (see section 422 of that Act);
 - “group” has the same meaning as in FSMA 2000 (see section 421 of that Act);
 - “investigator” means a person conducting an investigation under section 83;
 - “specified” means specified in a notice in writing.

86 Information and documents: supplemental provisions

- (1) In this section “relevant document” means a document produced in response to a requirement imposed under section 81 or 85.
- (2) In a case where—
 - (a) the Payment Systems Regulator has power under section 81, or an investigator has power under section 85, to require a person to produce a document, but
 - (b) it appears that the document is in the possession of another person,the power may be exercised in relation to that other person.
- (3) Any person to whom a relevant document is produced may—
 - (a) take copies or extracts from the document, or
 - (b) require the person producing the document, or any relevant person (see subsection (4)), to provide an explanation of the document.
- (4) “Relevant person”, in relation to a person who is required to produce a document, means a person who—
 - (a) has been or is or is proposed to be a director or controller of that person,
 - (b) has been or is an auditor of that person,
 - (c) has been or is an actuary, accountant or lawyer appointed or instructed by that person, or
 - (d) has been or is an employee of that person.

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- (5) A relevant document may be retained for so long as the person to whom it is produced considers that it is necessary to retain it (rather than copies of it) for the purposes for which the document was requested.
- (6) If the person to whom a relevant document is produced has reasonable grounds for believing—
 - (a) that the document may have to be produced for the purposes of any legal proceedings, and
 - (b) that it might otherwise be unavailable for those purposes,it may be retained until the proceedings are concluded.
- (7) If a person who is required under section 81 or 85 to produce a document fails to do so, the Payment Systems Regulator or an investigator may require the person to state, to the best of the person's knowledge and belief, where the document is.
- (8) A lawyer may be required under section 81 or 85 or this section to provide the name and address of a client.
- (9) A person may not be required under section 81 or 85 or this section to disclose information or produce a document in respect of which the person owes an obligation of confidence as a result of carrying on the business of banking unless—
 - (a) the person is the person under investigation or a member of that person's group,
 - (b) the person to whom the obligation of confidence is owed is the person under investigation or a member of that person's group,
 - (c) the person to whom the obligation of confidence is owed consents to the disclosure or production, or
 - (d) the imposing on the person of a requirement with respect to such information or document has been specifically authorised by the Payment Systems Regulator.
- (10) If a person claims a lien on a document, its production under section 81 or 85 does not affect the lien.
- (11) In this section—
 - “controller” has the same meaning as in FSMA 2000 (see section 422 of that Act);
 - “group” has the same meaning as in FSMA 2000 (see section 421 of that Act);
 - “investigator” means a person appointed under section 83.

87 Admissibility of statements made to investigators

- (1) A statement made to an investigator by a person in compliance with an information requirement is admissible in evidence in any proceedings, so long as it also complies with any requirements governing the admissibility of evidence in the circumstances in question.
- (2) But in criminal proceedings in which that person is charged with an offence to which this subsection applies—
 - (a) no evidence relating to the statement may be adduced by or on behalf of the prosecution, and

- (b) no question relating to the statement may be asked by or on behalf of the prosecution,
- unless evidence relating to the statement is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.
- (3) Subsection (2) applies to any offence other than—
- (a) an offence under section 90(6);
 - (b) an offence under section 5 of the Perjury Act 1911 (false statements made otherwise than on oath);
 - (c) an offence under section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made otherwise than on oath);
 - (d) an offence under Article 10 of the Perjury (Northern Ireland) Order 1979.
- (4) In this section—
- “information requirement” means a requirement imposed by an investigator under section 85 or 86;
- “investigator” means a person appointed under section 83.

88 Entry of premises under warrant

- (1) A justice of the peace may issue a warrant under this section if satisfied on information on oath given by or on behalf of the Payment Systems Regulator or an investigator that there are reasonable grounds for believing that the first or second set of conditions is satisfied.
- (2) The first set of conditions is—
- (a) that a person on whom an information requirement has been imposed has failed (wholly or in part) to comply with it, and
 - (b) that on the premises specified in the warrant—
 - (i) there are documents which have been required, or
 - (ii) there is information which has been required.
- (3) In this section “information requirement” means—
- (a) a requirement imposed by the Payment Systems Regulator under section 81 or 86, or
 - (b) a requirement imposed by an investigator under section 85 or 86.
- (4) The second set of conditions is—
- (a) that the premises specified in the warrant are premises of a participant in a regulated payment system,
 - (b) that there are on the premises documents or information in relation to which an information requirement could be imposed, and
 - (c) that if such a requirement were to be imposed—
 - (i) it would not be complied with, or
 - (ii) the documents or information to which it related would be removed, tampered with or destroyed.
- (5) A warrant under this section authorises a constable—
- (a) to enter the premises specified in the warrant,
 - (b) to search the premises and take possession of any documents or information appearing to be documents or information of a kind in respect of which a

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- warrant under this section was issued (“the relevant kind”) or to take, in relation to any such documents or information, any other steps which may appear to be necessary for preserving them or preventing interference with them,
- (c) to take copies of, or extracts from, any documents or information appearing to be of the relevant kind,
 - (d) to require any person on the premises to provide an explanation of any document or information appearing to be of the relevant kind or to state where it may be found, and
 - (e) to use such force as may be reasonably necessary.
- (6) A warrant under this section may be executed by any constable.
- (7) The warrant may authorise persons to accompany any constable who is executing it.
- (8) The powers in subsection (5) may be exercised by a person who—
- (a) is authorised by the warrant to accompany a constable, and
 - (b) exercises those powers in the company of, and under the supervision of, a constable.
- (9) In England and Wales, sections 15(5) to (8) and 16(3) to (12) of the Police and Criminal Evidence Act 1984 (execution of search warrants and safeguards) apply to warrants issued under this section.
- (10) In Northern Ireland, Articles 17(5) to (8) and 18(3) to (12) of the Police and Criminal Evidence (Northern Ireland) Order 1989 apply to warrants issued under this section.
- (11) This section has effect in relation to Scotland as if—
- (a) for any reference to a justice of the peace there were substituted a reference to a justice of the peace or a sheriff, and
 - (b) for any reference to information on oath there were substituted a reference to evidence on oath.
- (12) In this section “investigator” means a person appointed under section 83.

89 Retention of documents taken under section 88

- (1) Any document of which possession is taken under section 88 (“a seized document”) may be retained so long as it is necessary to retain it (rather than copies of it) in the circumstances.
- (2) A person claiming to be the owner of a seized document may apply to a magistrates’ court or (in Scotland) the sheriff for an order for the delivery of the document to the person appearing to the court or sheriff to be the owner.
- (3) If on an application under subsection (2) the court or (in Scotland) the sheriff cannot ascertain who is the owner of the seized document the court or sheriff (as the case may be) may make such order as the court or sheriff thinks fit.
- (4) An order under subsection (2) or (3) does not affect the right of any person to take legal proceedings against any person in possession of a seized document for the recovery of the document.
- (5) Any right to bring proceedings (as described in subsection (4)) may only be exercised within 6 months of the date of the order made under subsection (2) or (3).

90 Enforcement of information and investigation powers

- (1) If a person other than an investigator (“the defaulter”) fails to comply with a requirement imposed under any of sections 81 to 88, the person imposing the requirement may certify that fact in writing to the court.
- (2) If the court is satisfied that the defaulter failed without reasonable excuse to comply with the requirement, it may deal with the defaulter (and in the case of a body corporate, any director or other officer of the body) as if that person were in contempt.
- (3) In subsection (2) “officer”, in relation to a limited liability partnership, means a member of the limited liability partnership.
- (4) A person who knows or suspects that an investigation is being or is likely to be conducted under section 83 is guilty of an offence if the person—
 - (a) falsifies, conceals, destroys or otherwise disposes of a document which the person knows or suspects is or would be relevant to such an investigation, or
 - (b) causes or permits the falsification, concealment, destruction or disposal of such a document.
- (5) It is a defence for a person charged with an offence under subsection (4) to show that the person had no intention of concealing facts disclosed by the documents from the investigator.
- (6) A person is guilty of an offence if the person, in purported compliance with a requirement imposed under any of sections 81 to 88—
 - (a) provides information which the person knows to be false or misleading in a material particular, or
 - (b) recklessly provides information which is false or misleading in a material particular.
- (7) A person guilty of an offence under subsection (4) or (6) is liable—
 - (a) on summary conviction—
 - (i) in England and Wales, to imprisonment for a term not exceeding 12 months (or 6 months, if the offence was committed before the commencement of section 154(1) of the Criminal Justice Act 2003) or a fine, or both;
 - (ii) in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum, or both;
 - (iii) in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum, or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine, or both.
- (8) Any person who intentionally obstructs the exercise of any rights conferred by a warrant under section 88 is guilty of an offence and liable on summary conviction—
 - (a) in England and Wales, to imprisonment for a term not exceeding 51 weeks (or 3 months, if the offence was committed before the commencement of section 280(2) of the Criminal Justice Act 2003) or a fine, or both;
 - (b) in Scotland, to imprisonment for a term not exceeding 3 months or a fine not exceeding level 5 on the standard scale, or both;
 - (c) in Northern Ireland, to imprisonment for a term not exceeding 3 months or a fine not exceeding level 5 on the standard scale, or both.

(9) In this section—

“court” means the High Court or, in Scotland, the Court of Session;

“investigator” means a person appointed under section 83.