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## STATUTORY INSTRUMENTS

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# 2009 No. 209

## The Payment Services Regulations 2009

### PART 1

#### INTRODUCTORY PROVISIONS

##### Citation and commencement

- 1.—(1) These Regulations may be cited as the Payment Services Regulations 2009.
- (2) These Regulations come into force—
- (a) on 2nd March 2009 for the purposes of regulations 25, 80, 92 to 94, 95 in respect of paragraphs 5 and 10 of Schedule 5, 119 and 126 in respect of paragraphs 1 and 6(g) of Schedule 6;
  - (b) on 1st May 2009 for the purposes of—
    - (i) enabling applications for authorisation as a payment institution and the variation of an authorisation to be made under regulation 5 and the Authority to determine such applications in accordance with regulations 6 to 9;
    - (ii) enabling applications for registration as a small payment institution and the variation of a registration to be made under regulation 12 and the Authority to determine such applications in accordance with regulation 13 and regulations 7 to 9 (as applied by regulation 14);
    - (iii) enabling applications for an agent to be included on the register under regulation 29 and the Authority to determine such applications in accordance with that regulation;
    - (iv) enabling the Authority to give directions as to the manner in which an application under regulation 5(1) or (2), 12(1) or (2) or 29(3) is to be made and enabling the Authority to require the applicant to provide further information in accordance with regulation 5(4), 12(4) or 29(3)(a)(iv), as the case may be;
    - (v) enabling the Authority to cancel an authorisation or registration or vary an authorisation or registration on its own initiative in accordance with regulation 10 or 11 (as applied, in the case of a registration, by regulation 14);
    - (vi) requiring a person who has made an application under regulation 5(1) or (2) or 12(1) or (2) to provide information to the Authority in accordance with regulation 16 and enabling the Authority to give directions under that regulation;
    - (vii) enabling a person to make a reference to the Tribunal under regulation 9(9), 10(4), 11(5), 24(4) or 29(11);
    - (viii) enabling an applicant for authorisation as a payment institution to give the Authority a notice of intention under regulation 23(1) and the Authority to give directions as to the manner in which such a notice is to be given and to inform the host state competent authority in accordance with regulation 23(2);
    - (ix) enabling the Authority to decide whether to register an EEA branch, or to cancel such a registration, under regulation 24(1);

- (x) enabling the Authority to give directions under regulation 82 to a person whose application under regulation 5(1) or 12(1) has been granted before 1st November 2009 in respect of—
  - (aa) its provision as from that date of payment services; and
  - (bb) its compliance as from that date with requirements imposed by or under Parts 2 to 6 of these Regulations;
- (xi) enabling the Authority to give directions under paragraph 7, 11, 12 or 16(3) of Schedule 3 to a person whose application under regulation 5(1) has been granted before 1st November 2009;
- (xii) requiring a person whose application under regulation 5(1), 12(1) or 29(3) has been granted before 1st November 2009 to provide information to the Authority in accordance with regulation 32 and enabling the Authority to give directions under that regulation;
- (xiii) regulations 95 in respect of paragraphs 2 and 7 to 9 of Schedule 5, 114 to 118, and 121, 124 and 125; and
- (c) for all other purposes on 1st November 2009.

## Interpretation

### 2.—(1) In these Regulations —

“the 2000 Act” means the Financial Services and Markets Act 2000<sup>(1)</sup>;

“agent” means a person who acts on behalf of an authorised payment institution or a small payment institution in the provision of payment services;

“authorised payment institution” means—

- (a) a person included by the Authority in the register as an authorised payment institution pursuant to regulation 4(1)(a); or
- (b) a person deemed to have been granted authorisation by the Authority by virtue of regulation 121;

“the Authority” means the Financial Services Authority;

“the banking consolidation directive” means Directive [2006/48/EC](#) of the European Parliament and of the Council of 14th June 2006 relating to the taking up and pursuit of the business of credit institutions<sup>(2)</sup>;

“branch” means a place of business of an authorised payment institution, a small payment institution, or an EEA authorised payment institution, other than its head office, which forms a legally dependent part of the institution and which carries out directly all or some of the transactions inherent in its business; and, for the purposes of these Regulations, all places of business set up in the same EEA State other than the United Kingdom by an authorised payment institution are to be regarded as a single branch;

“business day” means any day on which the relevant payment service provider is open for business as required for the execution of a payment transaction;

“charity” means a body whose annual income is less than £1 million and is—

- (c) in England and Wales, a charity as defined by section 1(1) of the Charities Act 2006<sup>(3)</sup>;

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(1) [2000 c.8.](#)

(2) [OJ No L 177, 30.6.2006, p.1.](#)

(3) [2006 c.50.](#)

(d) in Scotland, a charity as defined by section 106 of the Charities and Trustee Investment (Scotland) Act 2005<sup>(4)</sup>;

(e) in Northern Ireland, a charity as defined by section 1(1) of the Charities Act (Northern Ireland) 2008<sup>(5)</sup> or, until that section comes into force, a body which is recognised as a charity for tax purposes by Her Majesty's Revenue and Customs;

"the Commissioners" means the Commissioners for Her Majesty's Revenue and Customs;

"consumer" means an individual who, in contracts for payment services to which these Regulations apply, is acting for purposes other than a trade, business or profession;

"credit institution" has the meaning given in Article 4(1)(a) of the banking consolidation directive;

"direct debit" means a payment service for debiting the payer's payment account where a payment transaction is initiated by the payee on the basis of consent given by the payer to the payee, to the payee's payment service provider or to the payer's own payment service provider;

"durable medium" means any instrument which enables the payment service user to store information addressed personally to them in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored;

"the EEA" means the European Economic Area;

"EEA agent" means an agent through which an authorised payment institution, in the exercise of its passport rights, provides payment services in an EEA State other than the United Kingdom;

"EEA authorised payment institution" means a person authorised in an EEA State other than the United Kingdom to provide payment services in accordance with the payment services directive;

"EEA branch" means a branch established by an authorised payment institution, in the exercise of its passport rights, to carry out payment services in an EEA State other than the United Kingdom;

"the electronic money directive" means Directive [2000/46/EC](#) of the European Parliament and of the Council of 18th September 2000 on the taking up, pursuit and prudential supervision of the business of electronic money institutions<sup>(6)</sup>;

"electronic money institution" has the meaning given in Article 1(3)(a) of the electronic money directive;

"framework contract" means a contract for payment services which governs the future execution of individual and successive payment transactions and which may contain the obligation and conditions for setting up a payment account;

"funds" means banknotes and coins, scriptural money, and electronic money as defined in Article 1(3)(b) of the electronic money directive;

"group" means a group of undertakings which consists of a parent undertaking, its subsidiary undertakings and the entities in which the parent undertaking or its subsidiary undertakings have a holding, as well as undertakings linked to each other by a relationship referred to in Article 12(1) of the Seventh Council Directive [83/349/EEC](#) of 13th June 1983 based on Article 54(3)(g) of the Treaty on consolidated accounts<sup>(7)</sup>;

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(4) [2005 asp 10](#).

(5) [2008 c 12 \(N.I.\)](#).

(6) OJ No L 275, 27.10.2000, p.39.

(7) OJ No L 193, 18.7.1983, p. 1.

“home state competent authority” means the competent authority designated in accordance with Article 20 of the payment services directive as being responsible for the authorisation and prudential supervision of an EEA authorised payment institution which is exercising (or intends to exercise) its passport rights in the United Kingdom;

“host state competent authority” means the competent authority designated in accordance with Article 20 of the payment services directive in an EEA State in which an authorised payment institution exercises (or intends to exercise) its passport rights;

“means of distance communication” means any means which, without the simultaneous physical presence of the payment service provider and the payment service user, may be used for the conclusion of a contract for payment services between those parties;

“micro-enterprise” means an enterprise which, at the time at which the contract for payment services is entered into, is an enterprise as defined in Article 1 and Article 2(1) and (3) of the Annex to Recommendation 2003/361/EC<sup>(8)</sup>;

“the money laundering directive” means Directive 2005/60/EC of the European Parliament and of the Council of 26th October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing<sup>(9)</sup>;

“money remittance” means a service for the transmission of money (or any representation of monetary value), without any payment accounts being created in the name of the payer or the payee, where—

- (a) funds are received from a payer for the sole purpose of transferring a corresponding amount to a payee or to another payment service provider acting on behalf of the payee; or
- (b) funds are received on behalf of, and made available to, the payee;

“notice” means a notice in writing;

“the OFT” means the Office of Fair Trading;

“parent undertaking” has the same meaning as in the Companies Acts (see section 1162 of, and Schedule 7 to, the Companies Act 2006<sup>(10)</sup>);

“passport right” (except for the purposes of regulation 26(1)) means the entitlement of a person to establish a branch or provide services in an EEA State other than that in which they are authorised to provide payment services—

- (a) in accordance with the Treaty establishing the European Community as applied in the EEA; and
- (b) subject to the conditions of the payment services directive;

“payee” means a person who is the intended recipient of funds which have been the subject of a payment transaction;

“payer” means—

- (a) a person who holds a payment account and initiates, or consents to the initiation of, a payment order from that payment account; or
- (b) where there is no payment account, a person who gives a payment order;

“payment account” means an account held in the name of one or more payment service users which is used for the execution of payment transactions;

“payment instrument” means any—

- (a) personalised device; or

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<sup>(8)</sup> OJ No L 124, 20.5.2003, p.36.

<sup>(9)</sup> OJ No L 309, 25.11.2005, p.15.

<sup>(10)</sup> 2006 c.46.

(b) personalised set of procedures agreed between the payment service user and the payment service provider,

used by the payment service user in order to initiate a payment order;

“payment order” means any instruction by—

(a) a payer; or

(b) a payee,

to their respective payment service provider requesting the execution of a payment transaction;

“payment services” means any of the activities specified in Part 1 of Schedule 1 when carried out as a regular occupation or business activity, other than any of the activities specified in Part 2 of that Schedule;

“payment services directive” means Directive [2007/64/EC](#) of the European Parliament and of the Council of 13th November 2007 on payment services in the internal market<sup>(11)</sup>;

“payment service provider” means any of the following persons when they carry out payment services—

(a) authorised payment institutions;

(b) small payment institutions;

(c) EEA authorised payment institutions;

(d) credit institutions;

(e) electronic money institutions;

(f) the Post Office Limited;

(g) the Bank of England, the European Central Bank and the national central banks of EEA States other than the United Kingdom, other than when acting in their capacity as a monetary authority or carrying out other functions of a public nature; and

(h) government departments and local authorities, other than when carrying out functions of a public nature;

“payment service user” means a person when making use of a payment service in the capacity of either payer or payee, or both;

“payment system” means a funds transfer system with formal and standardised arrangements and common rules for the processing, clearing and settlement of payment transactions;

“payment transaction” means an act, initiated by the payer or payee, of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the payer and payee;

“qualifying holding” has the meaning given in article 4(11) of the banking consolidation directive;

“reference exchange rate” means the exchange rate which is used as the basis to calculate any currency exchange and which is made available by the payment service provider or comes from a publicly available source;

“reference interest rate” means the interest rate which is used as the basis for calculating any interest to be applied and which comes from a publicly available source which can be verified by both parties to a contract for payment services;

“the register” means the register maintained by the Authority under regulation 4;

“regulated agreement” has the meaning given by section 189(1) of the Consumer Credit Act 1974<sup>(12)</sup> (definitions);

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<sup>(11)</sup> OJ No L 319, 5.12.2007, p.1.

<sup>(12)</sup> [1974 c.39](#).

“single payment service contract” means a contract for a single payment transaction not covered by a framework contract;

“small payment institution” means a person included by the Authority in the register pursuant to regulation 4(1)(b);

“subsidiary undertaking” has the same meaning as in the Companies Acts (see section 1162 of, and Schedule 7 to, the Companies Act 2006);

“the Tribunal” means the Financial Services and Markets Tribunal<sup>(13)</sup>;

“unique identifier” means a combination of letters, numbers or symbols specified to the payment service user by the payment service provider and to be provided by the payment service user in relation to a payment transaction in order to identify unambiguously one or both of—

- (a) the other payment service user who is a party to the payment transaction;
- (b) the other payment service user’s payment account;

“value date” means a reference time used by a payment service provider for the calculation of interest on the funds debited from or credited to a payment account.

(2) In these Regulations references to amounts in euro include references to equivalent amounts in another currency.

(3) Unless otherwise defined, expressions used in these Regulations which are also used in the payment services directive have the same meaning as in that directive.

(4) Expressions used in these Regulations and in a modification to a provision in primary or secondary legislation applied by these Regulations have the same meaning as in these Regulations.

### **Exemption for certain bodies**

**3.—**(1) Subject to paragraph (2) and regulation 4(1)(d), these Regulations do not apply to the following persons—

- (a) credit unions;
- (b) municipal banks; and
- (c) the National Savings Bank.

(2) Where municipal banks provide or propose to provide payment services they must give notice to the Authority.

(3) In this regulation—

“credit union” means a credit union within the meaning of—

- (a) the Credit Unions Act 1979<sup>(14)</sup>;
- (b) the Credit Unions (Northern Ireland) Order 1985<sup>(15)</sup>;

“municipal bank” means a company which, immediately before 1st December 2001, fell within the definition in section 103 of the Banking Act 1987<sup>(16)</sup>.

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<sup>(13)</sup> Established under section 132 of the 2000 Act.

<sup>(14)</sup> 1979 c.34.

<sup>(15)</sup> S.I. 1985/1205 (N.I. 12).

<sup>(16)</sup> 1987 c.22; repealed by S.I. 2001/3649, article 3(1)(d).