
STATUTORY INSTRUMENTS

2009 No. 209

The Payment Services Regulations 2009

PART 3

AUTHORISED PAYMENT INSTITUTIONS

Capital requirements

18.—(1) Subject to paragraph (2), an authorised payment institution must maintain at all times own funds as defined for the purposes of Part 2 of Schedule 3 equal to or in excess of—

- (a) the amount of initial capital specified in Part 1 of Schedule 3, or
- (b) the amount of the own funds requirement calculated in accordance with paragraph 11 of Schedule 3 subject to any adjustment directed by the Authority under paragraph 12 of that Schedule,

whichever is greater.

(2) Paragraph (1) does not apply to an authorised payment institution—

- (a) which is included in the consolidated supervision of a parent credit institution pursuant to the banking consolidation directive; and
- (b) in respect of which all of the conditions specified in Article 69(1) of the banking consolidation directive are met.

Safeguarding requirements

19.—(1) For the purposes of this regulation “relevant funds” comprise the following—

- (a) sums received from, or for the benefit of, a payment service user for the execution of a payment transaction; and
- (b) sums received from a payment service provider for the execution of a payment transaction on behalf of a payment service user.

(2) Where—

- (a) only a portion of the sums referred to in paragraph (1)(a) or (b) is to be used for the execution of a payment transaction (with the remainder being used for non-payment services); and
- (b) the precise portion attributable to the execution of the payment transaction is variable or unknown in advance,

the relevant funds are such amount as may be reasonably estimated, on the basis of historical data and to the satisfaction of the Authority, to be representative of the portion attributable to the execution of the payment transaction.

(3) Where the relevant funds in respect of a payment transaction exceed £50, an authorised payment institution must safeguard such funds in accordance with either—

- (a) paragraphs (4) to (8); or

- (b) paragraphs (9) and (10).
- (4) An authorised payment institution must keep relevant funds segregated from any other funds that it holds.
- (5) Where the authorised payment institution continues to hold the relevant funds at the end of the business day following the day on which they were received it must—
 - (a) place them in a separate account that it holds with an authorised credit institution; or
 - (b) invest the relevant funds in such secure, liquid assets as the Authority may approve (“relevant assets”) and place those assets in a separate account with an authorised custodian.
- (6) An account in which relevant funds or relevant assets are placed under paragraph (5) must—
 - (a) be designated in such a way as to show that it is an account which is held for the purpose of safeguarding relevant funds or relevant assets in accordance with this regulation; and
 - (b) be used only for holding those funds or assets.
- (7) No person other than the authorised payment institution may have any interest in or right over the relevant funds or relevant assets placed in an account in accordance with paragraph (5)(a) or (b) except as provided by this regulation.
- (8) The authorised payment institution must keep a record of—
 - (a) any relevant funds segregated in accordance with paragraph (4);
 - (b) any relevant funds placed in an account in accordance with paragraph (5)(a); and
 - (c) any relevant assets placed in an account in accordance with paragraph (5)(b).
- (9) The authorised payment institution must ensure that—
 - (a) any relevant funds are covered by—
 - (i) an insurance policy with an authorised insurer;
 - (ii) a guarantee from an authorised insurer; or
 - (iii) a guarantee from an authorised credit institution; and
 - (b) the proceeds of any such insurance policy or guarantee are payable upon an insolvency event into a separate account held by the authorised payment institution which must—
 - (i) be designated in such a way as to show that it is an account which is held for the purpose of safeguarding relevant funds in accordance with this regulation; and
 - (ii) be used only for holding such proceeds.
- (10) No person other than the authorised payment institution may have any interest in or right over the proceeds placed in an account in accordance with paragraph (9)(b) except as provided by this regulation.
- (11) Subject to paragraph (12), where there is an insolvency event—
 - (a) the claims of payment service users are to be paid from the asset pool in priority to all other creditors; and
 - (b) until all the claims of payment service users have been paid, no right of set-off or security right may be exercised in respect of the asset pool except to the extent that the right of set-off relates to fees and expenses in relation to operating an account held in accordance with paragraph (5)(a) or (b) or (9)(b).
- (12) The claims referred to in paragraph (11)(a) shall not be subject to the priority of expenses of an insolvency proceeding except in respect of the costs of distributing the asset pool.

(13) Paragraphs (11) and (12) shall apply to any relevant funds which a small payment institution (or an authorised payment institution in relation to relevant funds of £50 or less) voluntarily safeguards in accordance with either paragraphs (4) to (8) or paragraphs (9) and (10).

(14) An authorised payment institution (and any small payment institution which voluntarily safeguards relevant funds) must maintain organisational arrangements sufficient to minimise the risk of the loss or diminution of relevant funds or relevant assets through fraud, misuse, negligence or poor administration.

(15) In this regulation—

“asset pool” means—

- (a) any relevant funds segregated in accordance with paragraph (4);
- (b) any relevant funds held in an account in accordance with paragraph (5)(a);
- (c) any relevant assets held in an account in accordance with paragraph (5)(b); and
- (d) any proceeds of an insurance policy or guarantee held in an account in accordance with paragraph (9)(b);

“authorised insurer” means a person authorised for the purposes of the 2000 Act to effect and carry out a contract of general insurance as principal or otherwise authorised in accordance with Article 6 of the First Council Directive [73/239/EEC](#) of 24th July 1973 on the business of direct insurance other than life insurance⁽¹⁾, other than a person in the same group as the authorised payment institution;

“authorised credit institution” means a person authorised for the purposes of the 2000 Act to accept deposits or otherwise authorised as a credit institution in accordance with Article 6 of the banking consolidation directive other than a person in the same group as the authorised payment institution;

“authorised custodian” means a person authorised for the purposes of the 2000 Act to safeguard and administer investments or authorised as an investment firm under Article 5 of Directive [2004/39/EC](#) of 12th April 2004 on markets in financial instruments⁽²⁾ which holds those investments under regulatory standards at least equivalent to those set out under Article 13 of that directive;

“insolvency event” means any of the following procedures in relation to an authorised payment institution or small payment institution—

- (e) the making of a winding-up order;
- (f) the passing of a resolution for voluntary winding-up;
- (g) the entry of the institution into administration;
- (h) the appointment of a receiver or manager of the institution’s property;
- (i) the approval of a proposed voluntary arrangement (being a composition in satisfaction of debts or a scheme of arrangement);
- (j) the making of a bankruptcy order;
- (k) in Scotland, the award of sequestration;
- (l) the making of any deed of arrangement for the benefit of creditors or, in Scotland, the execution of a trust deed for creditors;
- (m) the conclusion of any composition contract with creditors; or
- (n) the making of an insolvency administration order or, in Scotland, sequestration, in respect of the estate of a deceased person;

(1) OJ No L 228, 16.8.1973, p.3.

(2) OJ No L 145, 30.4.2004, p.1.

“insolvency proceeding” means—

- (o) winding-up, administration, receivership, bankruptcy or, in Scotland, sequestration;
- (p) a voluntary arrangement, deed of arrangement or trust deed for the benefit of creditors; or
- (q) the administration of the insolvent estate of a deceased person;

“security right” means—

- (r) security for a debt owed by an authorised payment institution or a small payment institution and includes any charge, lien, mortgage or other security over the asset pool or any part of the asset pool; and
- (s) any charge arising in respect of the expenses of a voluntary arrangement.

Accounting and statutory audit

20.—(1) Where an authorised payment institution carries on activities other than the provision of payment services, it must provide to the Authority separate accounting information in respect of its provision of payment services.

(2) Such accounting information must be subject, where relevant, to an auditor’s report prepared by the institution’s statutory auditors or an audit firm (within the meaning of Directive [2006/43/EC](#) of the European Parliament and of the Council of 17th May 2006 on statutory audits of annual accounts and consolidated accounts **(3)**).

(3) A statutory auditor or audit firm (“the auditor”) must, in any of the circumstances referred to in paragraph (4), communicate to the Authority information on, or its opinion on, matters—

- (a) of which it has become aware in its capacity as auditor of an authorised payment institution or of a person with close links to an authorised payment institution; and
- (b) which relate to payment services provided by that institution.

(4) The circumstances are that—

- (a) the auditor reasonably believes that—
 - (i) there is or has been, or may be or may have been, a contravention of any requirement imposed on the authorised payment institution by or under these Regulations; and
 - (ii) the contravention may be of material significance to the Authority in determining whether to exercise, in relation to that institution, any functions conferred on the Authority by these Regulations;
- (b) the auditor reasonably believes that the information on, or his opinion on, those matters may be of material significance to the Authority in determining whether the institution meets or will continue to meet the conditions set out in regulation 6(4) to (8) and, if applicable, the requirement in regulation 18(1) to maintain own funds;
- (c) the auditor reasonably believes that the institution is not, may not be or may cease to be, a going concern;
- (d) the auditor is precluded from stating in his report that the annual accounts have been properly prepared in accordance with the Companies Act 2006;
- (e) the auditor is precluded from stating in his report, where applicable, that the annual accounts give a true and fair view of the matters referred to in section 495 of the Companies Act 2006 (auditor’s report on company’s annual accounts) including as it is applied and modified by regulation 39 of the Limited Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008⁽⁴⁾ (“the LLP Regulations”); or

⁽³⁾ OJ No L 157, 9.6.2006, p.87.

⁽⁴⁾ [S.I. 2008/1911](#).

- (f) the auditor is required to state in his report in relation to the person concerned any of the facts referred to in subsection (2), (3) or (5) of section 498(5) of the Companies Act 2006 (duties of auditor) or, in the case of limited liability partnerships, subsection (2), (3) or (4) of section 498 as applied and modified by regulation 40 of the LLP Regulations.
- (5) In this regulation a person has close links with an authorised payment institution (“A”) if that person is—
 - (a) a parent undertaking of A;
 - (b) a subsidiary undertaking of A;
 - (c) a parent undertaking of a subsidiary undertaking of A; or
 - (d) a subsidiary undertaking of a parent undertaking of A.

Outsourcing

21.—(1) An authorised payment institution must notify the Authority of its intention to enter into a contract with another person under which that other person will carry out any operational function relating to its provision of payment services (“outsourcing”).

(2) Where an authorised payment institution intends to outsource any important operational function, all of the following conditions must be met—

- (a) the outsourcing is not undertaken in such a way as to impair—
 - (i) the quality of the authorised payment institution’s internal control; or
 - (ii) the ability of the Authority to monitor the authorised payment institution’s compliance with these Regulations;
- (b) the outsourcing does not result in any delegation by the senior management of the authorised payment institution of responsibility for complying with the requirements imposed by or under these Regulations;
- (c) the relationship and obligations of the authorised payment institution towards its payment service users under these Regulations is not substantially altered;
- (d) compliance with the conditions which the authorised payment institution must observe in order to be authorised and remain so is not adversely affected; and
- (e) none of the conditions of the payment institution’s authorisation requires removal or variation.

(3) For the purposes of paragraph (2), an operational function is important if a defect or failure in its performance would materially impair—

- (a) compliance by the authorised payment institution with these Regulations and any requirements of its authorisation;
- (b) the financial performance of the authorised payment institution; or
- (c) the soundness or continuity of the authorised payment institution’s payment services.

Record keeping

22.—(1) An authorised payment institution must maintain relevant records and keep them for at least five years from the date on which the record was created.

(2) For the purposes of paragraph (1), records are relevant where they relate to the authorised payment institution’s compliance with this Part and, in particular, would enable the Authority to supervise effectively such compliance.

Exercise of passport rights

Notice of intention

23.—(1) Where an authorised payment institution intends to exercise its passport rights for the first time in a particular EEA State it must give the Authority, in such manner as the Authority may direct, notice of its intention to do so (“a notice of intention”) which—

- (a) identifies the payment services which it seeks to carry on in exercise of those rights in that State;
- (b) gives the names of those responsible for the management of a proposed EEA branch, if any; and
- (c) provides details of the organisational structure of a proposed EEA branch, if any.

(2) The Authority must, within one month beginning with the date on which it receives the notice of intention, inform the host state competent authority of—

- (a) the name and address of the authorised payment institution; and
- (b) the information contained in the notice of intention.

(3) Where an authorised payment institution intends to exercise its passport rights through an EEA agent, the provisions of regulation 29 apply.

Registration of EEA branch

24.—(1) If the Authority, taking into account any information received from the host state competent authority, has reasonable grounds to suspect that, in connection with the establishment of an EEA branch by an authorised payment institution—

- (a) money laundering or terrorist financing within the meaning of the money laundering directive is taking place, has taken place, or has been attempted; or
- (b) the risk of such activities taking place would be increased,

the Authority may refuse to register the EEA branch or cancel any such registration already made and remove the branch from the register.

(2) If the Authority proposes to refuse to register, or cancel the registration of, an EEA branch, it must give the relevant authorised payment institution a warning notice.

(3) The Authority must, having considered any representations made in response to the warning notice—

- (a) if it decides not to register the branch, or to cancel its registration, give the authorised payment institution a decision notice; or
- (b) if it decides to register the branch, or not to cancel the registration, give the authorised payment institution notice of its decision.

(4) If the Authority decides not to register the branch, or to cancel its registration, the authorised payment institution may refer the matter to the Tribunal.

(5) If the Authority decides to register an EEA branch, it must update the register as soon as practicable.

(6) If the Authority decides to cancel the registration, the Authority must, where the period for a reference to the Tribunal has expired without a reference being made, as soon as practicable update the register accordingly.

Supervision of firms exercising passport rights

25.—(1) Without prejudice to the generality of regulation 119, the Authority must co-operate with the relevant host state competent authority or home state competent authority, as the case may be, in relation to the exercise of passport rights by any authorised payment institution or EEA authorised payment institution.

(2) The Authority must, in particular—

- (a) notify the host state competent authority whenever it intends to carry out an on-site inspection in the host state competent authority's territory; and
- (b) provide the host state competent authority or home state competent authority, as the case may be—
 - (i) on request, with all relevant information; and
 - (ii) on its own initiative, with all essential information,

relating to the exercise of passport rights by an authorised payment institution or EEA authorised payment institution, including where there is an infringement or suspected infringement of these Regulations or of the provisions of the payment services directive by an agent, branch or entity carrying out activities on behalf of such an institution.

(3) Where the Authority and the home state competent authority agree, the Authority may carry out on-site inspections on behalf of the home state competent authority in respect of payment services provided by an EEA authorised payment institution exercising its passport rights.

(4) If the Authority has reasonable grounds to suspect that, in connection with the proposed establishment of a branch or the proposed provision of services by an EEA authorised payment institution—

- (a) money laundering or terrorist financing within the meaning of the Money Laundering Regulations 2007 is taking place, has taken place, or has been attempted; or
- (b) the risk of such activities taking place would be increased,

it must inform the relevant home state competent authority of its grounds for suspicion.

Carrying on of Consumer Credit Act business by EEA authorised payment institutions

26.—(1) Sections 203 (power to prohibit the carrying on of Consumer Credit Act business)(6) and 204 (power to restrict the carrying on of Consumer Credit Act business)(7) of, and Schedule 16 (prohibitions and restrictions imposed by OFT)(8) to, the 2000 Act apply in relation to EEA authorised payment institutions exercising passport rights in the United Kingdom under these Regulations as they apply in relation to EEA firms exercising passport rights under Part 2 of Schedule 3 to the 2000 Act (EEA passport rights) with the following modifications—

(a) in section 203(10)—

(i) for the definition of “a consumer credit EEA firm” substitute—

““a consumer credit EEA firm” means an EEA authorised payment institution (as defined by regulation 2(1) of the Payment Services Regulations 2009) which is exercising passport rights in the United Kingdom and is carrying on any Consumer Credit Act business;” and

(ii) for the definition of “listed activity” substitute—

(6) Section 203 was amended by the Enterprise Act 2002 (c.40), section 278(1) and Schedule 25, paragraph 40(1) and (7), by the Consumer Credit Act 2006, section 33, by S.I. 2000/2952 and by S.I. 2007/3300.

(7) Section 204 was amended by the Enterprise Act 2002, section 278(1) and Schedule 25, paragraph 40(1) and (8).

(8) Schedule 16 was amended by the Enterprise Act 2002, section 278(1) and Schedule 25, paragraph 40(1) and (21).

““listed activity” means an activity listed in the Annex to the payment services directive and any activity carried on in accordance with Article 16 of that directive;”;

- (b) in paragraph 2(5)(b) of Schedule 16, for “the firm’s home state regulator” substitute “the home state competent authority (as defined by regulation 2(1) of the Payment Services Regulations 2009)”.

(2) Sections 21 (businesses needing a licence)(9) and 39(1) (offences against Part 3)(10) of the Consumer Credit Act 1974(11) do not apply in relation to the carrying on by an EEA authorised payment institution of a payment service which is Consumer Credit Act business, unless the OFT has exercised the power conferred on it by section 203 of the 2000 Act, as applied with modifications by paragraph (1), in relation to that institution.

(3) In this regulation “Consumer Credit Act business” has the same meaning as in section 203 of the 2000 Act.

(9) Section 21 was amended by the Consumer Credit Act 2006, section 33(1).

(10) Section 39 was amended by the Enterprise Act 2002, section 278(1) and Schedule 25, paragraph 6(1) and (19).

(11) 1974 c. 39.