
STATUTORY INSTRUMENTS

2009 No. 209

The Payment Services Regulations 2009

PART 4

PROVISIONS APPLICABLE TO AUTHORISED PAYMENT INSTITUTIONS AND SMALL PAYMENT INSTITUTIONS

Additional activities

27.—(1) Authorised payment institutions and small payment institutions may, in addition to providing payment services, engage in the following activities—

- (a) the provision of operational and closely related ancillary services, including—
 - (i) ensuring the execution of payment transactions;
 - (ii) foreign exchange services;
 - (iii) safe-keeping activities; and
 - (iv) the storage and processing of data;
- (b) the operation of payment systems; and
- (c) business activities other than the provision of payment services, subject to any relevant Community or national law.

(2) Authorised payment institutions and small payment institutions may grant credit in relation to the provision of the payment services specified in paragraph 1(d), (e) and (g) of Schedule 1 only if—

- (a) such credit is ancillary and granted exclusively in connection with the execution of a payment transaction;
- (b) such credit is not granted from the funds received or held for the purposes of executing payment transactions;
- (c) in cases where such credit is granted by an authorised payment institution exercising its passport rights, there is an obligation upon the payment service user to repay the credit within a period not exceeding 12 months; and
- (d) in relation to an authorised payment institution, in the opinion of the Authority the institution's own funds (comprising the items specified in paragraph 3(a) to (j) of Schedule 3) are, and continue to be, adequate in the light of the overall amount of credit granted.

Payment accounts and sums received for the execution of payment transactions

28. Any payment account held by an authorised payment institution or a small payment institution must be used only in relation to payment transactions.

Use of agents

29.—(1) Authorised payment institutions and small payment institutions may not provide payment services in the United Kingdom through an agent unless the agent is included on the register.

(2) Authorised payment institutions may not provide payment services in the exercise of their passport rights through an EEA agent unless the agent is included on the register.

(3) An application for an agent to be included on the register must—

(a) contain, or be accompanied by, the following information—

(i) the name and address of the agent;

(ii) where relevant, a description of the internal control mechanisms that will be used by the agent—

(aa) in the case of an agent in the United Kingdom, to comply with the Money Laundering Regulations 2007; and

(bb) in the case of an EEA agent, to comply with provisions of the money laundering directive; and

(iii) in the case of an agent of an authorised payment institution, the identity of the directors and persons responsible for the management of the agent and evidence that they are fit and proper persons; and

(iv) such other information as the Authority may reasonably require; and

(b) be made in such manner as the Authority may direct.

(4) Different directions may be given, and different requirements imposed, in relation to different applications or categories of application.

(5) At any time after receiving an application and before determining it, the Authority may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application.

(6) The Authority may refuse to include the agent on the register only if—

(a) it has not received the information referred to in paragraph (3)(a), or is not satisfied that such information is correct;

(b) it is not satisfied that the directors and persons responsible for the management of the agent are fit and proper persons;

(c) it has reasonable grounds to suspect that, in connection with the provision of services through the agent—

(i) money laundering or terrorist financing within the meaning of the money laundering directive (or, in the United Kingdom, the Money Laundering Regulations 2007) is taking place, has taken place, or has been attempted; or

(ii) the risk of such activities taking place would be increased.

(7) Where—

(a) an authorised payment institution intends to provide payment services through an EEA agent; and

(b) the Authority proposes to include the EEA agent on the register,

the Authority must inform the host state competent authority and take account of its opinion (if provided within such reasonable period as the Authority specifies) on any of the matters referred to in paragraph (6)(b) or (c).

(8) The Authority must decide whether to include the agent on the register within a reasonable period of it having received a completed application.

(9) If the Authority proposes to refuse to include the agent on the register, it must give the authorised payment institution or the small payment institution, as the case may be, a warning notice.

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

- (a) if it decides not to include the agent on the register, give the applicant a decision notice; or
- (b) if it decides to include the agent on the register, give the applicant notice of its decision, stating the date on which the registration takes effect.

(11) If the Authority decides not to include the agent on the register the applicant may refer the matter to the Tribunal.

(12) If the Authority decides to include the agent on the register, it must update the register as soon as practicable.

(13) An application under paragraph (3) may be combined with an application under regulation 5 or 12, in which case the application must be determined in the manner set out in regulation 9 (if relevant, as applied by regulation 14).

(14) An authorised payment institution or a small payment institution must ensure that agents acting on its behalf inform payment service users of the agency arrangement.

Removal of agent from register

30.—(1) The Authority may remove an agent of an authorised payment institution or small payment institution from the register where—

- (a) the authorised payment institution or small payment institution requests, or consents to, the agent's removal from the register;
- (b) the authorised payment institution or small payment institution has obtained registration through false statements or any other irregular means;
- (c) regulation 29(6)(b) or (c) applies;
- (d) the removal is desirable in order to protect the interests of consumers; or
- (e) the agent's provision of payment services is otherwise unlawful.

(2) Where the Authority proposes to remove an agent from the register, other than at the request of the authorised payment institution or small payment institution, it must give the authorised payment institution or small payment institution a warning notice.

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

- (a) if it decides to remove the agent, give the authorised payment institution or small payment institution a decision notice; or
- (b) if it decides not to remove the agent, give the authorised payment institution or small payment institution notice of its decision.

(4) If the Authority decides to remove the agent, other than at the request of the authorised payment institution or small payment institution, the institution concerned may refer the matter to the Tribunal.

(5) Where the period for a reference to the Tribunal has expired without a reference being made, the Authority must as soon as practicable update the register accordingly.

Reliance

31.—(1) Where an authorised payment institution or a small payment institution relies on a third party for the performance of operational functions it must take all reasonable steps to ensure that these Regulations are complied with.

(2) Without prejudice to paragraph (1), an authorised payment institution or a small payment institution is responsible, to the same extent as if it had expressly permitted it, for anything done or omitted by any of its employees, any agent or branch providing payment services on its behalf, or any entity to which activities are outsourced.

Duty to notify change in circumstance

32.—(1) Where it becomes apparent to an authorised payment institution or a small payment institution that there is, or is likely to be, a significant change in circumstances which is relevant to—

- (a) in the case of an authorised payment institution—
 - (i) its fulfilment of any of the conditions set out in regulation 6(4) to (8) and, if applicable, the requirement in regulation 18(1) to maintain own funds;
 - (ii) the payment services which it seeks to carry on in exercise of its passport rights;
- (b) in the case of a small payment institution, its fulfilment of any of the conditions set out in regulation 13(4) to (6) and compliance with the financial limit referred to in regulation 8 (as applied by regulation 14(c)); and
- (c) in the case of the use of an agent to provide payment services, the matters referred to in regulation 29(6)(b) and (c),

it must provide the Authority with details of the change without undue delay, or, in the case of a substantial change in circumstances which has not yet taken place, details of the likely change a reasonable period before it takes place.

(2) Any information to be provided to the Authority under this regulation must be in such form or verified in such manner as it may direct.