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## STATUTORY INSTRUMENTS

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# 2009 No. 209

## The Payment Services Regulations 2009

### PART 7

#### THE AUTHORITY

##### *The functions of the Authority*

##### **Functions of the Authority**

**80.**—(1) The Authority is to have the functions conferred on it by these Regulations.

(2) In discharging its function of determining the general policy and principles by reference to which it performs particular functions under these Regulations, the Authority must have regard to—

- (a) the need to use its resources in the most efficient and economic way;
- (b) the responsibilities of those who manage the affairs of payment service providers;
- (c) the principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction;
- (d) the desirability of facilitating innovation in connection with payment services;
- (e) the international character of financial services and markets and the desirability of maintaining the competitive position of the United Kingdom;
- (f) the need to minimise the adverse effects on competition that may arise from anything done in the discharge of those functions; and
- (g) the desirability of facilitating competition in relation to payment services.

##### *Supervision and enforcement*

##### **Monitoring and enforcement**

**81.**—(1) The Authority must maintain arrangements designed to enable it to determine whether—

- (a) persons on whom requirements are imposed by or under Part 2, 3 or 4 of these Regulations are complying with them;
- (b) there has been any contravention of regulation 110(1), 111(1) or 114(1)(a) or (2).

(2) The Authority may maintain arrangements designed to enable it to determine whether persons on whom requirements are imposed by or under Part 5 or 6 of these Regulations are complying with them.

(3) The arrangements referred to in paragraphs (1) and (2) may provide for functions to be performed on behalf of the Authority by any body or person who is, in its opinion, competent to perform them.

(4) The Authority must also maintain arrangements for enforcing the provisions of these Regulations.

(5) Paragraph (3) does not affect the Authority's duty under paragraph (1).

### **Reporting requirements**

**82.**—(1) A payment service provider must give the Authority such information in respect of its provision of payment services and its compliance with requirements imposed by or under Parts 2 to 6 of these Regulations as the Authority may direct.

(2) Information required under this regulation must be given at such times and in such form, and verified in such manner, as the Authority may direct.

### **Entry, inspection without a warrant etc**

**83.**—(1) Paragraph (2) applies where an officer has reasonable cause to believe that any premises are being used by—

- (i) an authorised payment institution, an EEA authorised payment institution or a small payment institution (including any of its branches) in connection with its business activities;
- (ii) an agent providing payment services on behalf of an authorised payment institution, an EEA authorised payment institution or a small payment institution; or
- (iii) an entity to which an authorised payment institution or an EEA authorised payment institution has outsourced any of its business activities.

(2) The officer may on producing evidence of authority at any reasonable time—

- (a) enter the premises;
- (b) inspect the premises;
- (c) observe the carrying on of business activities by the authorised payment institution, the EEA authorised payment institution or the small payment institution, as the case may be;
- (d) inspect any document found on the premises;
- (e) require any person on the premises to provide an explanation of any document or to state where it may be found.

(3) An officer may take copies of, or make extracts from, any document found under paragraph (2).

(4) An officer may exercise powers under this regulation only if the information or document sought to be obtained as a result is reasonably required in connection with the exercise by the Authority of its functions under these Regulations.

(5) An officer may not exercise powers under this regulation in relation to information or documents in respect of which a claim to legal professional privilege (in Scotland, to confidentiality of communications) could be maintained in legal proceedings.

(6) In this regulation—

“document” includes information recorded in any form;

“officer” means an officer of the Authority and includes a member of the Authority's staff or an agent of the Authority;

“premises” means any premises other than premises used only as a dwelling.

## Public censure

**84.** If the Authority considers that a payment service provider has contravened a requirement imposed on them by or under these Regulations the Authority may publish a statement to that effect.

## Financial penalties

**85.—**(1) The Authority may impose a penalty of such amount as it considers appropriate on—

- (a) a payment service provider who has contravened a requirement imposed on them by or under these Regulations; or
- (b) a person who has contravened regulation 110(1), 111(1) or 114(1)(a) or (2).

(2) The Authority may not in respect of any contravention both require a person to pay a penalty under this regulation and cancel their authorisation as a payment institution or their registration as a small payment institution (as the case may be).

(3) A penalty under this regulation is a debt due from that person to the Authority, and is recoverable accordingly.

## Proposal to take disciplinary measures

**86.—**(1) Where the Authority proposes to publish a statement under regulation 84 or to impose a penalty under regulation 85, it must give the person concerned a warning notice.

(2) The warning notice must set out the terms of the proposed statement or state the amount of the proposed penalty.

(3) If, having considered any representations made in response to the warning notice, the Authority decides to publish a statement under regulation 84 or to impose a penalty under regulation 85, it must without delay give the person concerned a decision notice.

(4) The decision notice must set out the terms of the statement or state the amount of the penalty.

(5) If the Authority decides to publish a statement under regulation 84 or impose a penalty on a person under regulation 85, the person concerned may refer the matter to the Tribunal.

(6) Sections 210 (statements of policy) and 211 (statements of policy: procedure) of the 2000 Act apply in respect of the imposition of penalties under regulation 85 and the amount of such penalties as they apply in respect of the imposition of penalties under Part 14 of the 2000 Act (disciplinary measures) and the amount of penalties under that Part of that Act.

(7) After a statement under regulation 84 is published, the Authority must send a copy of it to the person concerned and to any person to whom a copy of the decision notice was given under section 393(4) of the 2000 Act (third party rights) (as applied by paragraph 7 of Schedule 5 to these Regulations).

## Injunctions

**87.—**(1) If, on the application of the Authority, the court is satisfied—

- (a) that there is a reasonable likelihood that any person will contravene a requirement imposed by or under these Regulations; or
- (b) that any person has contravened such a requirement and that there is a reasonable likelihood that the contravention will continue or be repeated,

the court may make an order restraining (or in Scotland an interdict prohibiting) the contravention.

(2) If, on the application of the Authority, the court is satisfied—

- (a) that any person has contravened a requirement imposed by or under these Regulations, and

(b) that there are steps which could be taken for remedying the contravention, the court may make an order requiring that person, and any other person who appears to have been knowingly concerned in the contravention, to take such steps as the court may direct to remedy it.

(3) If, on the application of the Authority, the court is satisfied that any person may have—

(a) contravened a requirement imposed by or under these Regulations, or

(b) been knowingly concerned in the contravention of such a requirement,

it may make an order restraining (or in Scotland an interdict prohibiting) them from disposing of, or otherwise dealing with, any assets of theirs which it is satisfied they are reasonably likely to dispose of or otherwise deal with.

(4) The jurisdiction conferred by this regulation is exercisable by the High Court and the Court of Session.

(5) In paragraph (2), references to remedying a contravention include references to mitigating its effect.

### **Power of Authority to require restitution**

**88.**—(1) The Authority may exercise the power in paragraph (2) if it is satisfied that a payment service provider (referred to in this regulation and regulation 89 as “the person concerned”) has contravened a requirement imposed by or under these Regulations, or been knowingly concerned in the contravention of such a requirement, and that—

(a) profits have accrued to the person concerned as a result of the contravention; or

(b) one or more persons have suffered loss or been otherwise adversely affected as a result of the contravention.

(2) The power referred to in paragraph (1) is a power to require the person concerned, in accordance with such arrangements as the Authority considers appropriate, to pay to the appropriate person or distribute among the appropriate persons such amount as appears to the Authority to be just having regard—

(a) in a case within sub-paragraph (a) of paragraph (1), to the profits appearing to the Authority to have accrued;

(b) in a case within sub-paragraph (b) of that paragraph, to the extent of the loss or other adverse effect;

(c) in a case within both of those paragraphs, to the profits appearing to the Authority to have accrued and to the extent of the loss or other adverse effect.

(3) In paragraph (2) “appropriate person” means a person appearing to the Authority to be someone—

(a) to whom the profits mentioned in paragraph (1)(a) are attributable; or

(b) who has suffered the loss or adverse effect mentioned in paragraph (1)(b).

### **Proposal to require restitution**

**89.**—(1) If the Authority proposes to exercise the power under regulation 88(2), it must give the person concerned a warning notice.

(2) The warning notice must state the amount which the Authority propose to require the person concerned to pay or distribute as mentioned in regulation 88(2).

(3) If, having considered any representations made in response to the warning notice, the Authority decides to exercise the power under regulation 88(2), it must without delay give the person concerned a decision notice.

- (4) The decision notice must—
- (a) state the amount that the person concerned is to pay or distribute;
  - (b) identify the person or persons to whom that amount is to be paid or among whom that amount is to be distributed; and
  - (c) state the arrangements in accordance with which the payment or distribution is to be made.
- (5) If the Authority decides to exercise the power under regulation 88(2), the person concerned may refer the matter to the Tribunal.

### **Restitution orders**

**90.**—(1) The court may, on the application of the Authority, make an order under paragraph (2) if it is satisfied that a payment service provider has contravened a requirement imposed by or under these Regulations, or been knowingly concerned in the contravention of such a requirement, and that—

- (a) profits have accrued to them as a result of the contravention; or
  - (b) one or more persons have suffered loss or been otherwise adversely affected as a result of the contravention.
- (2) The court may order the person concerned to pay to the Authority such sum as appears to the court to be just having regard—
- (a) in a case within sub-paragraph (a) of paragraph (1), to the profits appearing to the court to have accrued;
  - (b) in a case within sub-paragraph (b) of that paragraph, to the extent of the loss or other adverse effect;
  - (c) in a case within both of those sub-paragraphs, to the profits appearing to the court to have accrued and to the extent of the loss or other adverse effect.
- (3) Any amount paid to the Authority in pursuance of an order under paragraph (2) must be paid by it to such qualifying person or distributed by it among such qualifying persons as the court may direct.
- (4) In paragraph (3), “qualifying person” means a person appearing to the court to be someone—
- (a) to whom the profits mentioned in paragraph (1)(a) are attributable; or
  - (b) who has suffered the loss or adverse effect mentioned in paragraph (1)(b).
- (5) On an application under paragraph (1) the court may require the person concerned to supply it with such accounts or other information as it may require for any one or more of the following purposes—
- (a) establishing whether any and, if so, what profits have accrued to them as mentioned in sub-paragraph (a) of that paragraph;
  - (b) establishing whether any person or persons have suffered any loss or adverse effect as mentioned in sub-paragraph (b) of that paragraph; and
  - (c) determining how any amounts are to be paid or distributed under paragraph (3).
- (6) The court may require any accounts or other information supplied under paragraph (5) to be verified in such manner as it may direct.
- (7) The jurisdiction conferred by this regulation is exercisable by the High Court and the Court of Session.
- (8) Nothing in this regulation affects the right of any person other than the Authority to bring proceedings in respect of the matters to which this regulation applies.

## Complaints

**91.**—(1) The Authority must maintain arrangements designed to enable payment service users and other interested parties to submit complaints to it that a requirement imposed by or under Parts 2 to 6 of these Regulations has been breached by a payment service provider.

(2) Where it considers it appropriate, the Authority must include in any reply to a complaint under paragraph (1) details of the ombudsman scheme established under Part 16 of the 2000 Act (the ombudsman scheme).

## Miscellaneous

### Costs of supervision

**92.**—(1) The functions of the Authority under these Regulations are to be treated for the purposes of paragraph 17 (fees) of Part 3 of Schedule 1 to the 2000 Act as functions conferred on the Authority under that Act with the following modifications—

- (a) section 2(3) of the 2000 Act (the Authority's general duties) does not apply to the making of rules under paragraph 17 by virtue of this regulation;
- (b) rules made under paragraph 17 by virtue of this regulation are not to be treated as regulating provisions for the purposes of section 159(1) of the 2000 Act (competition scrutiny)(1);
- (c) paragraph 17(2) and (3) are omitted.

(2) The Authority must apply amounts paid to it by way of penalties imposed under regulation 85 towards expenses incurred in carrying out its functions under these Regulations or for any incidental purpose.

### Guidance

**93.**—(1) The Authority may give guidance consisting of such information and advice as it considers appropriate with respect to—

- (a) the operation of these Regulations;
- (b) any matters relating to the functions of the Authority under these Regulations;
- (c) any other matters about which it appears to the Authority to be desirable to give information or advice in connection with these Regulations.

(2) The Authority may—

- (a) publish its guidance;
- (b) offer copies of its published guidance for sale at a reasonable price;
- (c) if it gives guidance in response to a request made by any person, make a reasonable charge for that guidance.

### Authority's exemption from liability in damages

**94.** The functions of the Authority under these Regulations are to be treated for the purposes of paragraph 19 (exemption from liability in damages) of Part 4 of Schedule 1 to the 2000 Act as functions conferred on the Authority under that Act.

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(1) Section 159(1) was amended by the Enterprise Act 2002 (c.40), section 278(1) and Schedule 25, paragraph 40, and by S.I. 2006/2975.

### **Application and modification of primary and secondary legislation**

**95.** The provisions of primary and secondary legislation set out in Schedule 5 apply in respect of the Authority's functions under these Regulations with the modifications set out in that Schedule.