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STATUTORY INSTRUMENTS

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**2009 No. 209**

**The Payment Services Regulations 2009**

**PART 9**

**GENERAL**

*Criminal Offences*

**Prohibition on provision of payment services by persons other than payment service providers**

**110.**—(1) A person may not provide a payment service in the United Kingdom, or purport to do so, unless the person is—

- (a) an authorised payment institution;
  - (b) a small payment institution;
  - (c) an EEA authorised payment institution exercising its passport rights;
  - (d) a person mentioned in any of paragraphs (d) to (h) of the definition in regulation 2(1) of a payment service provider, including, where relevant, such a person exercising an EEA right in accordance with Part 2 of Schedule 3 to the 2000 Act (exercise of passport rights by EEA firms)(1); or
  - (e) exempt under regulation 3.
- (2) A person who contravenes paragraph (1) is guilty of an offence and is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding the statutory maximum, or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or both.

**False claims to be a payment service provider or exempt**

**111.**—(1) A person who does not fall within any of sub-paragraphs (a) to (e) of regulation 110(1) may not—

- (a) describe themselves (in whatever terms) as a person falling within any of those sub-paragraphs; or
  - (b) behave, or otherwise hold themselves out, in a manner which indicates (or which is reasonably likely to be understood as indicating) that they are such a person.
- (2) A person who contravenes paragraph (1) is guilty of an offence and is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale, or both.

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(1) Part 2 was amended by the Enterprise Act 2002, section 278(1) and Schedule 25, paragraph 40; by the Consumer Credit Act 2006, section 33(9); by [S.I.2003/1473](#), [2003/2066](#), [2007/126](#) and [2007/3253](#).

## Defences

**112.** In proceedings for an offence under regulation 110 or 111 it is a defence for the accused to show that they took all reasonable precautions and exercised all due diligence to avoid committing the offence.

## Contravention of regulations 49 and 50

**113.—**(1) A person (not being a payment service provider) who contravenes regulation 49(2) or 50(2) is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) No offence is committed if the person took all reasonable steps and exercised all due diligence to ensure that the requirement imposed on the person by regulation 49(2) or 50(2), as the case may be, would be complied with.

## Misleading the Authority or the OFT

**114.—**(1) A person may not, in purported compliance with any requirement imposed by or under these Regulations, knowingly or recklessly give—

- (a) the Authority; or
- (b) the OFT,

information which is false or misleading in a material particular.

(2) A person may not—

- (a) provide any information to another person, knowing the information to be false or misleading in a material particular, or
- (b) recklessly provide to another person any information which is false or misleading in a material particular,

knowing that the information is to be used for the purpose of providing information to the Authority in connection with its functions under these Regulations.

(3) A person may not—

- (a) provide any information to another person, knowing the information to be false or misleading in a material particular, or
- (b) recklessly provide to another person any information which is false or misleading in a material particular,

knowing that the information is to be used for the purpose of providing information to the OFT in connection with their functions under these Regulations.

(4) A person who knows or suspects that an investigation by the OFT under regulation 98 is being or is likely to be conducted may not—

- (a) intentionally or recklessly destroy or otherwise dispose of, falsify or conceal a document (as defined by regulation 99(5)) which may be relevant to such an investigation; or
- (b) cause or permit its destruction, disposal, falsification or concealment.

(5) A person who contravenes paragraph (1), (2), (3) or (4) is guilty of an offence and is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

### **Restriction on penalties**

**115.** A person who is convicted of an offence under these Regulations is not liable to a penalty under regulation 85 or 105 in respect of the same contravention of a requirement imposed by or under these Regulations.

### **Liability of officers of bodies corporate etc**

**116.—**(1) If an offence under these Regulations committed by a body corporate is shown—

- (a) to have been committed with the consent or connivance of an officer, or
- (b) to be attributable to any neglect on their part,

the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with such member's functions of management as if the member were a director of the body.

(3) If an offence under these Regulations committed by a partnership is shown—

- (a) to have been committed with the consent or connivance of a partner, or
- (b) to be attributable to any neglect on their part,

the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

(4) If an offence under these Regulations committed by an unincorporated association (other than a partnership) is shown—

- (a) to have been committed with the consent or connivance of an officer, or
- (b) to be attributable to any neglect of such officer,

the officer as well as the association is guilty of the offence and liable to be proceeded against and punished accordingly.

(5) In this regulation—

“officer”—

- (a) in relation to a body corporate, means a director, manager, secretary, chief executive, member of the committee of management, or a person purporting to act in such a capacity; and
- (b) in relation to an unincorporated association, means any officer of the association or any member of its governing body, or a person purporting to act in such capacity; and

“partner” includes a person purporting to act as a partner.

### **Prosecution of offences**

**117.—**(1) Proceedings for an offence under these Regulations may be instituted only—

- (a) in respect of an offence under regulation 110, 111, 113, or 114(1)(a) or (2), by the Authority;
- (b) in respect of an offence under regulation 114(1)(b), (3) or (4), by the OFT; or
- (c) by or with the consent of the Director of Public Prosecutions.

(2) Paragraph (1) does not apply to proceedings in Scotland.

## Proceedings against unincorporated bodies

**118.**—(1) Proceedings for an offence alleged to have been committed by a partnership or an unincorporated association must be brought in the name of the partnership or association (and not in that of its members).

(2) A fine imposed on the partnership or association on its conviction of an offence is to be paid out of the funds of the partnership or association.

(3) Rules of court relating to the service of documents are to have effect as if the partnership or association were a body corporate.

(4) In proceedings for an offence brought against the partnership or association—

- (a) section 33 of the Criminal Justice Act 1925<sup>(2)</sup> (procedure on charge of offence against corporation) and section 46 of and Schedule 3 to the Magistrates' Courts Act 1980<sup>(3)</sup> (corporations) apply as they do in relation to a body corporate;
- (b) section 70 of the Criminal Procedure (Scotland) Act 1995<sup>(4)</sup> (proceedings against bodies corporate) applies as it does in relation to a body corporate;
- (c) section 18 of the Criminal Justice (Northern Ireland) Act 1945<sup>(5)</sup> (procedure on charge) and Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981<sup>(6)</sup> (corporations) apply as they do in relation to a body corporate.

(5) Summary proceedings for an offence under these Regulations may be taken—

- (a) against a body corporate or unincorporated association at any place at which it has a place of business;
- (b) against an individual at any place where they are for the time being.

(6) Paragraph (5) does not affect any jurisdiction exercisable apart from this regulation.

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(2) 1925 c. 86. Section 33 was amended by the Magistrates' Courts Act 1952 (c.55), section 132 and Schedule 6, by the Courts Act 1971, section 56(1) and Schedule 8, by the Courts Act 1971 (c.23), Schedule 8, and by the Courts Act 2003 (c.39), Schedule 8, paragraph 71 and Schedule 10.

(3) 1980 c. 43. Schedule 3 was amended by the Criminal Justice Act 1991 (c.53), section 25(2) and Schedule 13, and by the Criminal Procedures and Investigations Act 1996 (c.25), Schedule 1, paragraph 1. Amendments by the Criminal Justice Act 2003 (c.44), Schedule 3, paragraph 51 and Schedule 37, Part 4 have not come into force at the time of making of these Regulations.

(4) 1995 c. 46. Section 70 was amended by the Postal Services Act 2000 (Consequential Modifications No 1) Order 2001 (S.I. 2001/1149), Schedule 1, paragraph 104, the Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), section 10(6), and the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), section 28.

(5) 1945 c. 15 (N.I.). Section 18 was amended by the Magistrates' Courts Act 1964 (c.21) and by the Justice (Northern Ireland) Act 2002 (c.26), Schedule 12.

(6) S.I. 1981/1675 (N.I. 26).