
STATUTORY INSTRUMENTS

2017 No. 752

The Payment Services Regulations 2017

PART 11

General

Miscellaneous

Duty to co-operate and exchange of information

147.—(1) The FCA, the Commissioners and the Payment Systems Regulator must take such steps as they consider appropriate to co-operate with each other and—

- (a) the competent authorities designated under Article 22(1), or referred to in Article 100(1), of the payment services directive, of EEA States other than the United Kingdom;
- (b) the European Central Bank, the Bank of England and the national central banks of EEA States other than the United Kingdom;
- (c) any other relevant competent authorities designated under EU law or the law of the United Kingdom or any other EEA State which is applicable to payment service providers; and
- (d) the European Banking Authority,

for the purposes of the exercise by those bodies of their functions under the payment services directive and other relevant EU or national legislation.

(2) Subject to the requirements of the Data Protection Act 1998⁽¹⁾, section 348 of the 2000 Act (restrictions on disclosure of confidential information by FCA etc.)⁽²⁾ (as applied with modifications by paragraph 8 of Schedule 6 to these Regulations), regulation 105 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017⁽³⁾ (disclosure by the Commissioners) and any other applicable restrictions on the disclosure of information, the FCA, the Commissioners and the Payment Systems Regulator may provide information to each other and—

- (a) the bodies mentioned in paragraph (1)(a), (c) and (d);
- (b) the European Central Bank, the Bank of England and the national central banks of EEA States other than the United Kingdom when acting in their capacity as monetary and oversight authorities;
- (c) where relevant, other public authorities responsible for the oversight of payment and settlement systems;

for the purposes of the exercise by those bodies of their functions under the payment services directive and other relevant EU or national legislation.

(1) 1998 c. 29.

(2) 2000 c. 8. Section 348 was amended by paragraph 26 of Schedule 2 to the Financial Services Act 2010, paragraph 18 of Schedule 12 to the Financial Services Act 2012, paragraph 5 of Schedule 8 to the Financial Services (Banking Reform) Act 2013 and paragraph 45 of Schedule 2 to the Bank of England and Financial Services Act 2016, and by S.I. 2016/1239.

(3) S.I. 2017/692.

(3) Part 9 of the Enterprise Act 2002⁽⁴⁾ (information) does not prohibit disclosure of information under paragraph (2) but a person to whom that Part applies must have regard to the considerations mentioned in section 244 of that Act (specified information: considerations relevant to disclosure) before making any such disclosure.

(4) If the European Banking Authority is assisting the FCA, or a competent authority in another EEA State, in relation to a disagreement between those authorities pursuant to Article 19 of Regulation (EU) 1093/2010 of the European Parliament and of the Council of 24th November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC⁽⁵⁾, the FCA must defer any decision in relation to the subject of the disagreement until the disagreement is resolved under that Article.

Actions for breach of requirements

148.—(1) A contravention—

- (a) which is to be taken to have occurred by virtue of regulation 21 (authorised payment institutions, small payment institutions and registered account information service providers acting without permission);
- (b) of a requirement imposed by regulation 23 (safeguarding requirements); or
- (c) of a requirement imposed by or under Part 6 (information requirements for payment services) or 7 (rights and obligations in relation to the provision of payment services),

is actionable at the suit of a private person who suffers loss as a result of the contravention, subject to the defences and other incidents applying to actions for breach of statutory duty.

(2) A person acting in a fiduciary or representative capacity may bring an action under paragraph (1) on behalf of a private person if any remedy—

- (a) will be exclusively for the benefit of the private person; and
- (b) cannot be obtained by way of an action brought otherwise than at the suit of the fiduciary or representative.

(3) In this regulation “private person” means—

- (a) any individual, except where the individual suffers the loss in question in the course of providing payment services; and
- (b) any person who is not an individual, except where that person suffers the loss in question in the course of carrying on business of any kind;

but does not include a government, a local authority (in the United Kingdom or elsewhere) or an international organisation.

(4) Where there has been a contravention of a requirement under regulation 76(5)(b) (payment service provider’s liability for unauthorised payment transactions), 77(6) (payer or payee’s liability for unauthorised payment transactions), 93(4) (non-execution or defective or late execution of payment transactions initiated through a payment initiation service) or 95 (right of recourse) for a payment service provider to compensate another payment service provider, the payment service provider to which compensation is required to be paid is to be treated for the purposes of this regulation as if it were a private person.

(4) 2002 c. 40.

(5) OJ L 331, 15.12.2010, p.12.