
STATUTORY INSTRUMENTS

2017 No. 752

The Payment Services Regulations 2017

PART 3

Authorised Payment Institutions

Exercise of passport rights

Application of regulations 27 to 30 to account information service providers

26. Regulations 27 to 30 apply in relation to a registered account information service provider as if the provider were an authorised payment institution, and apply in relation to an EEA registered account information service provider as if the provider were an EEA authorised payment institution.

Notice of intention

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

- (a) states the name and address of the authorised payment institution, and any authorisation or reference number;
- (b) identifies the EEA States in which it intends to operate;
- (c) identifies the payment services which it seeks to carry on in those States;
- (d) if the authorised payment institution intends to use an agent to provide the services in any of those States, includes the information referred to in regulation 34(3)(a) (use of agents);
- (e) if the authorised payment institution intends to use an EEA branch to provide the services in any of those States, includes—
 - (i) the information referred to in paragraphs 2 and 5 of Schedule 2 (information to be included in or with an application for authorisation) in relation to the services to be provided through each EEA branch;
 - (ii) the names of those responsible for the management of each proposed EEA branch; and
 - (iii) details of the organisational structure of each proposed EEA branch; and
- (f) if the authorised payment institution intends to enter into a contract with a person in another EEA State under which that person will carry out any operational function relating to its provision of payment services in that EEA State, includes notification of that intention.

(2) If any of the information provided by an authorised payment institution in a notice of intention changes, including by the addition of a further branch, the authorised payment institution must give the FCA notice of such changes in a further notice of intention.

(3) The FCA must, within one month beginning with the date on which it receives a complete notice of intention, inform the host state competent authority of the information contained in the notice of intention.

Decision following notice of intention

28.—(1) If the FCA, taking into account any information received from the host state competent authority, proposes to determine that an authorised payment institution is not permitted to exercise passport rights in an EEA State as notified in a notice of intention, the FCA must give the relevant authorised payment institution a warning notice.

(2) The FCA must, within the period of three months beginning with the date on which it receives a notice of intention and having considered any representations made in response to the warning notice—

(a) if it decides—

(i) that the authorised payment institution is not permitted to exercise passport rights in the EEA State, not to register an EEA branch, or to cancel the registration an EEA branch, give the authorised payment institution a decision notice; or

(ii) that the authorised payment institution is permitted to exercise passport rights in the EEA State, to register an EEA branch, or not to cancel the registration of an EEA branch, give the authorised payment institution notice of its decision; and

(b) notify the host state competent authority of its decision, providing reasons for that decision if the FCA does not agree with the assessment of the host state competent authority.

(3) If the FCA decides that the authorised payment institution is not permitted to exercise passport rights in the EEA State, not to register an EEA branch, or to cancel the registration of an EEA branch, the authorised payment institution may refer the matter to the Upper Tribunal.

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

(5) If the FCA decides to cancel the registration of an EEA branch, the FCA must, where the period for a reference to the Upper Tribunal has expired without a reference being made, as soon as practicable update the register accordingly.

(6) The authorised payment institution may commence activities as notified in its notice of intention only after the FCA has notified the institution of its decision under paragraph (2)(a)(ii) and, in the case of services to be provided through an EEA branch, after entry of the branch on the register.

(7) After registration, the authorised payment institution must notify the FCA of the date on which it starts to provide payment services in the other EEA State through the EEA branch, and the FCA must notify such date to the host state competent authority.

Notice of intention from an EEA authorised payment institution

29.—(1) If a home state competent authority sends information to the FCA about an EEA authorised payment institution which intends to provide payment services in the United Kingdom, the FCA must, before the end of the period of one month beginning on the day which the FCA receives all the required information—

(a) assess the information; and

(b) provide relevant information to the home state competent authority in connection with the intended provision of payment services in the United Kingdom, including in particular any reasonable grounds for concern with regard to money laundering or terrorist financing within the meaning of the money laundering directive in connection with the intended appointment of an agent or establishment of a branch in the United Kingdom.

(2) The EEA authorised payment institution may provide payment services in the United Kingdom in accordance with the information it has provided to the home state competent authority upon entry of the branch or agent in the register maintained by the home state competent authority.

Supervision of firms exercising passport rights

30.—(1) Without prejudice to the generality of regulation 147 (duty to co-operate and exchange of information), the FCA must co-operate with the 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 FCA 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, including on compliance with the conditions at regulation 6(4) and (5) (conditions for authorisation),

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 or branch.

(3) Where the FCA and the home state competent authority agree, the FCA 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) The FCA may direct that an EEA authorised payment institution exercising its passport rights to provide payment services in the United Kingdom through a branch or an agent in the United Kingdom must report to the FCA on such activities, for information and statistical purposes and, where the EEA authorised payment institution has exercised its right of establishment in the United Kingdom, to monitor compliance with Parts 6 (information requirements for payment services) and 7 (rights and obligations in relation to the provision of payment services) of these Regulations.

(5) Reports required under paragraph (4) must be given at such times and in such form, and verified in such manner, as the FCA may direct.

(6) An agent in the United Kingdom appointed by an EEA authorised payment institution or a branch of an EEA authorised payment institution in the United Kingdom must maintain the confidentiality of any confidential information provided to the FCA under paragraph (4).

(7) The FCA may direct that an EEA authorised payment institution exercising its passport rights to provide payment services in the United Kingdom through an agent under the right of establishment must appoint a central contact point in the United Kingdom in order to ensure adequate communication and information reporting on compliance with Parts 6 and 7 and to facilitate supervision by the FCA and the home state competent authority.

(8) If a host state competent authority informs the FCA that an authorised payment institution providing services through an EEA branch or an EEA agent does not comply with a provision of the payment services directive, the FCA must—

- (a) exercise its powers as appropriate without undue delay, to ensure that the authorised payment institution complies with the relevant provisions; and
- (b) inform the host state competent authority and the competent authority of any other relevant EEA State of the measures taken without delay.

(9) Where immediate action is necessary to address a serious risk to the collective interests of payment service users in the United Kingdom, the FCA may, in addition to providing information under paragraph (2), take precautionary measures in relation to an EEA authorised payment institution pending action by the home state competent authority.

(10) Any measures taken under paragraph (9) must be temporary and must end when the risk identified has been addressed.

(11) If the FCA decides to take measures under paragraph (9), it must inform the home state competent authority, the competent authority of any other relevant EEA State, and the European Banking Authority of the measures to be taken and the reason that immediate action is necessary—

- (a) in advance of taking the measures, if that is compatible with the need for immediate action; and
- (b) in any event without undue delay.

(12) In paragraphs (8)(b) and (11) “competent authority of any other relevant EEA State” means a competent authority designated in accordance with Article 22 of the payment services directive in an EEA State which the FCA considers to have an interest in the measures taken, or to be taken, by the FCA.