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## STATUTORY INSTRUMENTS

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# 2017 No. 752

## The Payment Services Regulations 2017

### PART 3

#### Authorised Payment Institutions

##### Safeguarding requirements

- 23.**—(1) For the purposes of this regulation “relevant funds” comprise the following—
- (a) sums received from, or for the benefit of, a payment service user for the execution of a payment transaction; and
  - (b) sums received from a payment service provider for the execution of a payment transaction on behalf of a payment service user.

(2) Where—

- (a) only a portion of the sums referred to in paragraph (1)(a) or (b) is to be used for the execution of a payment transaction (with the remainder being used for non-payment services); and
- (b) the precise portion attributable to the execution of the payment transaction is variable or unknown in advance,

the relevant funds are such amount as may be reasonably estimated, on the basis of historical data and to the satisfaction of the FCA, to be representative of the portion attributable to the execution of the payment transaction.

- (3) An authorised payment institution must safeguard relevant funds in accordance with either—
- (a) paragraphs (5) to (11); or
  - (b) paragraphs (12) and (13).

(4) An authorised payment institution may safeguard certain relevant funds in accordance with paragraphs (5) to (11) and the remaining relevant funds in accordance with paragraphs (12) and (13).

(5) An authorised payment institution must keep relevant funds segregated from any other funds that it holds.

(6) Where the authorised payment institution continues to hold the relevant funds at the end of the business day following the day on which they were received it must—

- (a) place them in a separate account that it holds with an authorised credit institution or the Bank of England; or
- (b) invest the relevant funds in such secure, liquid assets as the FCA may approve (“relevant assets”) and place those assets in a separate account with an authorised custodian.

(7) An account in which relevant funds or relevant assets are placed under paragraph (6) must—

- (a) be designated in such a way as to show that it is an account which is held for the purpose of safeguarding relevant funds or relevant assets in accordance with this regulation; and

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- (b) be used only for holding those funds or assets [<sup>F1</sup>, or for holding those funds or assets together with proceeds of an insurance policy or guarantee held in accordance with paragraph (12)(b)].

(8) No person other than the authorised payment institution may have any interest in or right over the relevant funds or relevant assets placed in an account in accordance with paragraph (6)(a) or (b) except as provided by this regulation.

(9) Notwithstanding paragraphs (5), (6), (7)(b) and (8), where an authorised payment institution is a participant in a designated system and the institution holds an account at the Bank of England for the purposes of completing the settlement of transfer orders that have been entered into the designated system on behalf of payment service users—

- (a) funds held in the account pending settlement in accordance with the rules or default arrangements of the designated system, in respect of transfer orders that have been entered into the designated system on behalf of payment service users, may continue to be held in the account with relevant funds;
- (b) the account, or a specified amount of funds in the account, may be subject to an interest or right in favour of the Bank of England in order to ensure the availability of funds to complete the settlement of transfer orders in accordance with the rules or default arrangements of the designated system;
- (c) subject to paragraph (10), funds received into the account by the authorised payment institution upon settlement are to be considered as having been appropriately safeguarded in accordance with this regulation from the time of receipt in the designated system until the time of receipt into the account.

(10) The FCA may direct that paragraph (9)(c) does not apply in relation to a designated system if, in the FCA's view, the rules and default arrangements of that system do not adequately insulate the funds of payment service users from the claims of other creditors of authorised payment institutions which are participants in the system.

(11) The authorised payment institution must keep a record of—

- (a) any relevant funds segregated in accordance with paragraph (5);
- (b) any relevant funds placed in an account in accordance with paragraph (6)(a);
- (c) any relevant assets placed in an account in accordance with paragraph (6)(b);
- (d) any funds held in an account as permitted by paragraph (9)(a);
- (e) any funds expected to be received into an account as described in paragraph (9)(c) in respect of transfer orders that have been entered into the designated system;
- (f) any funds received into an account as described in paragraph (9)(c).

(12) The authorised payment institution must ensure that—

- (a) any relevant funds are covered by—
  - (i) an insurance policy with an authorised insurer;
  - (ii) a comparable guarantee given by an authorised insurer; or
  - (iii) a comparable guarantee given by an authorised credit institution; and
- (b) the proceeds of any such insurance policy or guarantee are payable upon an insolvency event into a separate account held by the authorised payment institution which must—
  - (i) be designated in such a way as to show that it is an account which is held for the purpose of safeguarding relevant funds in accordance with this regulation; and
  - (ii) be used only for holding such proceeds [<sup>F2</sup>, or for holding those proceeds together with funds or assets held in accordance with paragraph (7)].

(13) No person other than the authorised payment institution may have any interest in or right over the proceeds placed in an account in accordance with paragraph (12)(b) except as provided by this regulation.

(14) Subject to paragraph (15), where there is an insolvency event [<sup>F3</sup>(except payment institution special administration)]—

- (a) the claims of payment service users are to be paid from the asset pool in priority to all other creditors; and
- (b) until all the claims of payment service users have been paid, no right of set-off or security right may be exercised in respect of the asset pool except to the extent that the right of set-off relates to fees and expenses in relation to operating an account held in accordance with paragraph (6)(a) or (b), (9) or (12)(b).

(15) The claims referred to in paragraph (14)(a) shall not be subject to the priority of expenses of an insolvency proceeding except in respect of the costs of distributing the asset pool.

(16) Paragraphs (14) and (15) apply to any relevant funds which a small payment institution voluntarily safeguards in accordance with either paragraphs (5) to (11) or paragraphs (12) and (13).

(17) An authorised payment institution (and any small payment institution which voluntarily safeguards relevant funds) must maintain organisational arrangements sufficient to minimise the risk of the loss or diminution of relevant funds or relevant assets through fraud, misuse, negligence or poor administration.

(18) In this regulation—

“asset pool” means—

- (a) any relevant funds segregated in accordance with paragraph (5);
- (b) any relevant funds held in an account in accordance with paragraph (6)(a);
- (c) where paragraph (9) applies, any funds that are received into the account held at the Bank of England upon settlement in respect of transfer orders that have been entered into the designated system on behalf of payment service users, whether settlement occurs before or after the insolvency event;
- (d) any relevant assets held in an account in accordance with paragraph (6)(b); and
- (e) any proceeds of an insurance policy or guarantee held in an account in accordance with paragraph (12)(b);

“authorised insurer” means a person authorised for the purposes of the 2000 Act to effect and carry out a contract of general insurance as principal <sup>F4</sup>..., other than a person in the same group as the authorised payment institution;

“authorised credit institution” means a person authorised for the purposes of the 2000 Act to accept deposits [<sup>F5</sup>or an approved foreign credit institution (see paragraph (19)), but does not include] a person in the same group as the authorised payment institution;

“authorised custodian” means a person authorised for the purposes of the 2000 Act to safeguard and administer investments <sup>F6</sup>...;

“default arrangements” has the meaning given in regulation 2(1) of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 <sup>F7</sup> (interpretation);

“insolvency event” means any of the following procedures in relation to an authorised payment institution or small payment institution—

- (a) the making of a winding-up order;
- (b) the passing of a resolution for voluntary winding-up;
- (c) the entry of the institution into administration;

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- (d) the appointment of a receiver or manager of the institution's property;
- (e) the approval of a proposed voluntary arrangement (being a composition in satisfaction of debts or a scheme of arrangement);
- (f) the making of a bankruptcy order;
- (g) in Scotland, the award of sequestration;
- (h) the making of any deed of arrangement for the benefit of creditors or, in Scotland, the execution of a trust deed for creditors;
- (i) the conclusion of any composition contract with creditors; <sup>F8</sup>...
- (j) the making of an insolvency administration order or, in Scotland, sequestration, in respect of the estate of a deceased person;
- (k) [<sup>F9</sup>the entry of the institution into payment institution special administration; or;]
- (l) [<sup>F9</sup>the entry of the institution into investment bank special administration.]

“insolvency proceeding” means—

- (a) winding-up, administration, receivership, bankruptcy or, in Scotland, sequestration;
- (b) a voluntary arrangement, deed of arrangement or trust deed for the benefit of creditors; or
- (c) the administration of the insolvent estate of a deceased person;

[<sup>F10</sup>“investment bank special administration” has the same meaning as in the Investment Bank Special Administration Regulations 2011 (see regulation 3(1) of those Regulations);]

[<sup>F10</sup>“payment institution special administration” has the same meaning as in the Payment and Electronic Money Institution Insolvency Regulations 2021 (see regulation 4(3));]

“rules” has the meaning given in regulation 2(1) of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (interpretation);

“security right” means—

- (a) security for a debt owed by an authorised payment institution or a small payment institution and includes any charge, lien, mortgage or other security over the asset pool or any part of the asset pool; and
- (b) any charge arising in respect of the expenses of a voluntary arrangement;

“settlement” and “system” have the same meanings as in the Financial Markets and Insolvency (Settlement Finality) Regulations 1999.

[<sup>F11</sup>(19) In paragraph (18), “approved foreign credit institution” means—

- (a) the central bank of a State that is a member of the Organisation for Economic Co-operation and Development (“an OECD state”),
- (b) a credit institution that is supervised by the central bank or other banking regulator of an OECD state,
- (c) any credit institution that—
  - (i) is subject to regulation by the banking regulator of a State that is not an OECD state,
  - (ii) is required by the law of the country or territory in which it is based to provide audited accounts,
  - (iii) has minimum net assets of £5 million (or its equivalent in any other currency at the relevant time),
  - (iv) has a surplus of revenue over expenditure for the last two financial years, and
  - (v) has an annual report which is not materially qualified.]

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- F1** Words in reg. 23(7)(b) inserted (13.1.2018) by [The Payment Systems and Services and Electronic Money \(Miscellaneous Amendments\) Regulations 2017 \(S.I. 2017/1173\)](#), regs. 1(4), **7(b)(i)**
- F2** Words in reg. 23(12)(b)(ii) inserted (13.1.2018) by [The Payment Systems and Services and Electronic Money \(Miscellaneous Amendments\) Regulations 2017 \(S.I. 2017/1173\)](#), regs. 1(4), **7(b)(ii)**
- F3** Words in reg. 23(14) inserted (8.7.2021) by [The Payment and Electronic Money Institution Insolvency Regulations 2021 \(S.I. 2021/716\)](#), reg. 2, **Sch. 4 para. 6(2)** (with reg. 5)
- F4** Words in reg. 23(18) omitted (31.12.2020) by virtue of [The Electronic Money, Payment Services and Payment Systems \(Amendment and Transitional Provisions\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1201\)](#), reg. 1(3), **Sch. 2 para. 29(2)(a)** (with reg. 4, Sch. 3 Pt. 2) (as amended by S.I. 2020/56, regs. 1, 8); 2020 c. 1, Sch. 5 para. 1(1)
- F5** Words in reg. 23(18) substituted (31.12.2020) by [The Electronic Money, Payment Services and Payment Systems \(Amendment and Transitional Provisions\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1201\)](#), reg. 1(3), **Sch. 2 para. 29(2)(b)** (with reg. 4, Sch. 3 Pt. 2) (as amended by S.I. 2020/56, regs. 1, 8); 2020 c. 1, Sch. 5 para. 1(1)
- F6** Words in reg. 23(18) omitted (31.12.2020) by virtue of [The Electronic Money, Payment Services and Payment Systems \(Amendment and Transitional Provisions\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1201\)](#), reg. 1(3), **Sch. 2 para. 29(2)(c)** (with reg. 4, Sch. 3 Pt. 2) (as amended by S.I. 2020/56, regs. 1, 8); 2020 c. 1, Sch. 5 para. 1(1)
- F7** S.I. 1999/2979. The definition of “default arrangements” was amended by S.I. 2006/50, 2010/2993 and 2013/504.
- F8** Word in reg. 23(18) omitted (8.7.2021) by virtue of [The Payment and Electronic Money Institution Insolvency Regulations 2021 \(S.I. 2021/716\)](#), reg. 2, **Sch. 4 para. 6(3)(a)** (with reg. 5)
- F9** Words in reg. 23(18) inserted (8.7.2021) by [The Payment and Electronic Money Institution Insolvency Regulations 2021 \(S.I. 2021/716\)](#), reg. 2, **Sch. 4 para. 6(3)(a)** (with reg. 5)
- F10** Words in reg. 23(18) inserted (8.7.2021) by [The Payment and Electronic Money Institution Insolvency Regulations 2021 \(S.I. 2021/716\)](#), reg. 2, **Sch. 4 para. 6(3)(b)** (with reg. 5)
- F11** Reg. 23(19) inserted (31.12.2020) by [The Electronic Money, Payment Services and Payment Systems \(Amendment and Transitional Provisions\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1201\)](#), reg. 1(3), **Sch. 2 para. 29(3)** (with reg. 4, Sch. 3 Pt. 2) (as amended by S.I. 2020/56, regs. 1, 8); 2020 c. 1, Sch. 5 para. 1(1)

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**Modifications etc. (not altering text)**

- C1** Reg. 23 excluded (20.11.2018) by [The Electronic Money, Payment Services and Payment Systems \(Amendment and Transitional Provisions\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1201\)](#), reg. 1(2), **Sch. 3 para. 19(1)(d)** (with reg. 4)

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**Changes and effects yet to be applied to :**

- Regulations power to amend conferred by [2021 c. 22 s. 23](#)
- Regulations revoked by [2023 c. 29 Sch. 1 Pt. 2](#)

**Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:**

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- reg. 125(2A) inserted by [S.I. 2023/790 reg. 4\(4\)\(a\)](#)
- reg. 125(4A) inserted by [S.I. 2023/790 reg. 4\(4\)\(c\)](#)