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STATUTORY INSTRUMENTS

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**2015 No.**

**FINANCIAL SERVICES AND MARKETS**

**The Payment Accounts Regulations 2015**

*Made* - - - - **\*\*\***

*Coming into force* - - **\*\*\***

*To be laid before Parliament*

The Treasury are designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to financial services.

The Treasury in exercise of the powers conferred by section 2(2) of that Act make the following Regulations.

A draft of these Regulations has been laid before and approved by a resolution of each House of Parliament in accordance with paragraph 2(2) of Schedule 2 to that Act.

**PART 1**

**Introductory provisions**

**Citation and commencement**

- 1.**—(1) These Regulations may be cited as the Payment Accounts Regulations 2015.
- (2) These Regulations come into force as follows—
- (a) regulations 6 to 13 come into force three months after the Authority publishes the linked services list in accordance with regulation 3;
  - (b) otherwise, these Regulations come into force on 18th September 2016.

**Interpretation**

- 2.** In these Regulations—
- “the Act” means the Financial Services and Markets Act 2000(c);

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(a) S.I. 2012/1759.

(b) Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c.51) and the European Union (Amendment) Act 2008 (c.7), Schedule, Part 1.

(c) 2000 c.8.

“alternative arrangement” means a switching service that has been designated as such under regulation 15(1);

“the Authority” means the Financial Conduct Authority;

“business day” means a day on which the relevant payment service provider is open for business as required for the execution of a payment transaction;

“the Charter” means the Charter of Fundamental Rights of the European Union;

“consumer” means any natural person who is acting for purposes which are outside that person’s trade, business or profession;

“credit institution” has the same meaning as in the Payment Services Regulations, but for the purposes of these Regulations does not include a credit union within the meaning of—

(a) the Credit Unions Act 1979(a); or

(b) the Credit Unions (Northern Ireland) Order 1985(b);

“direct debit” has the same meaning as in the Payment Services Regulations;

“designation notice” means a notice given under regulation 21(1);

“designated credit institution” means a credit institution that has been designated under regulation 21(1);

“EBA” means the European Banking Authority;

“EU standardised terminology” means the terms set out in any regulatory technical standards adopted by the European Commission pursuant to Article 3(4) of the Payment Accounts Directive;

“Financial Ombudsman Service” means the ombudsman scheme referred to in section 225 of the Act;

“fee information document” means a document provided under regulation 8(1);

“framework contract” has the same meaning as in the Payment Services Regulations;

“linked services list” means the list published by the Authority under regulation 3(1);

“Money Advice Service” means the body corporate originally established by the Authority under section 6A of the Act (as it had effect before the passing of the Financial Services Act 2012(c));

“overdraft facility” means an explicit credit agreement whereby a payment service provider makes available to a consumer funds which exceed the current balance in the consumer’s payment account;

“overrunning” means a tacitly accepted overdraft whereby a payment service provider makes available to a consumer funds which exceed the current balance in the consumer’s payment account or the agreed overdraft facility;

“payment account” means an account held in the name of one or more consumers through which consumers are able to place funds, withdraw cash and execute and receive payment transactions to and from third parties, including the execution of credit transfers, but does not include any of the following types of account provided that the account is not used for day-to-day payment transactions: savings accounts; credit card accounts where funds are usually paid in for the sole purpose of repaying a credit card debt; current account mortgages or e-money accounts;

“the Payment Accounts Directive” means Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features(d);

“payment instrument” has the same meaning as in the Payment Services Regulations;

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(a) 1979 c.34.

(b) S.I. 1985/1205 (N.I. 12).

(c) 2012 c.21.

(d) OJ No L 257, 28.8.2014, p214.

“payment service provider” has the same meaning as in the Payment Services Regulations but for the purposes of these Regulations, does not include—

- (a) a credit union within the meaning of—
  - (i) the Credit Unions Act 1979;
  - (ii) the Credit Unions (Northern Ireland) Order 1985;
- (b) National Savings and Investments; and
- (c) the Bank of England;

“Payment Services Regulations” means the Payment Services Regulations 2009(a);

“Payment Systems Regulator” means the body established pursuant to section 39 of the Financial Services (Banking Reform) Act 2013(b);

“payment transaction” has the same meaning as in the Payment Services Regulations;

“statement of fees” means a statement provided under regulation 10(1);

“switching” or “switching service” means, upon a consumer’s request, transferring from one payment service provider to another either the information about all or some standing orders for credit transfers, recurring direct debits and recurring incoming credit transfers executed on a payment account, or any positive payment account balance from one payment account to the other, or both, with or without closing the former payment account;

“the Tribunal” means the Upper Tribunal.

## PART 2

### Comparability of fees connected with payment accounts

#### Publication of the linked services list

3.—(1) Following adoption by the European Commission of regulatory technical standards setting out the EU standardised terminology, the Authority must without delay, and at the latest within three months of entry into force of the EU standardised terminology, publish a list of the most representative services linked to a payment account and subject to a fee (“the linked services list”).

(2) The linked services list must—

- (a) feature at least 10 and no more than 20 of the most representative services linked to a payment account and subject to a fee offered by at least one payment service provider;
- (b) contain terms and definitions for each of the services identified; and
- (c) where applicable, use the EU standardised terminology.

#### Periodic review of the linked services list

4.—(1) Every four years, following publication of the linked services list, the Authority must assess, and where appropriate, update the list.

(2) The Authority must notify to the European Commission and to EBA the outcome of its assessment and, where applicable, provide them with the updated list.

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(a) S.I. 2009/209.

(b) 2013 c.33.

### **Revision of the linked services list**

5. Upon the European Commission adopting any change to the regulatory technical standards setting out the EU standardised terminology, the Authority must revise the linked services list to make any consequential amendment within three months of the change to the regulatory technical standards entering into force.

### **Glossary**

6.—(1) A payment service provider must make available to consumers a glossary of at least the terms set out in the linked services list and the related definitions (“the glossary”).

(2) The glossary must be drafted in clear, unambiguous and non-technical language and must not be misleading.

### **Information for consumers**

7. Where applicable, a payment service provider must use the terminology set out in the linked services list in its contractual, commercial and marketing information.

### **Fee information document**

8.—(1) Without prejudice to the requirements of—

- (a) Part 5 of the Payment Services Regulations;
- (b) any rules made by the Authority under Part 9A of the Act for the purposes of implementing Article 12 of Directive 2008/48/EC of the European Parliament and of the Council on credit agreements for consumers<sup>(a)</sup>;
- (c) regulations 3, 4, 5, 10 and 11 of the Consumer Credit (Disclosure of Information) Regulations 2010<sup>(b)</sup>; and
- (d) sections 55C and 61B(2) of the Consumer Credit Act 1974<sup>(c)</sup>,

a payment service provider must ensure that before entering into a contract for a payment account with a consumer, it provides the consumer with a fee information document.

(2) Schedule 1 makes further provision regarding the fee information document.

### **Availability of fee information document and glossary**

9.—(1) A payment service provider must ensure that the fee information document and the glossary are—

- (a) made available to consumers at any time;
- (b) provided in an easily accessible manner, including to non-customers—
  - (i) in electronic form on the payment service provider’s websites where available; and
  - (ii) in the premises of the payment service provider accessible to consumers.

(2) The fee information document and glossary must be provided on paper or another durable medium free of charge upon request by a consumer.

### **Statement of fees**

10.—(1) Without prejudice to the requirements of Part 5 of the Payment Services Regulations, the Consumer Credit (Running-Account Credit Information) Regulations 1983<sup>(d)</sup>

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(a) OJ No L 133, 22.5.2008, p66.

(b) S.I. 2010/1013.

(c) 1974 c.39.

(d) S.I. 1983/1570.

and sections 78(4) and 78A of the Consumer Credit Act 1974, a payment service provider must provide consumers with an annual statement of fees (“statement of fees”) free of charge.

(2) The communication channel used to provide the statement of fees must be agreed with the consumer and the statement of fees must be provided on paper upon the request of the consumer.

(3) A payment service provider may determine that the statement of fees be provided together with information required pursuant to the requirements of the legislation referred to in regulation 10(1), so long as the statement is presented and laid out in a way that is easy to read, using characters of a readable size.

(4) Schedule 2 makes further provision regarding the statement of fees.

### **Branding**

**11.**—(1) A payment service provider may use brand names to designate its services in its contractual, commercial and marketing information to consumers, provided that it clearly identifies, where applicable, the corresponding standardised terms set out in the linked services list.

(2) A payment service provider may use brand names in the fee information document and the statement of fees, provided such brand names are used in addition to the terms set out in the linked services list and as a secondary designation of those services.

### **The comparison website**

**12.**—(1) The Money Advice Service must provide consumers with access, free of charge, to a website comparing fees charged by payment service providers for at least the services included in the linked services list (“the comparison website”).

(2) The comparison website must—

- (a) be operationally independent by ensuring that payment service providers are given equal treatment in search results;
- (b) clearly disclose that it is owned by the Money Advice Service;
- (c) set out, clear, objective criteria on which the comparison will be based;
- (d) use plain and unambiguous language and, where applicable, the terms set out in the linked services list;
- (e) provide accurate and up to date information and state the time of the last update;
- (f) include a broad range of payment account offers covering a significant part of the market, and where the information presented is not a complete overview of the market, a clear statement to that effect before displaying results; and
- (g) provide an effective procedure to report incorrect information on published fees.

### **Payment accounts packaged with another product or service**

**13.** Where a payment account is offered as part of a package with another product or service which is not linked to a payment account, and it is possible to purchase the payment account separately from the payment service provider, the payment service provider must provide the consumer with separate information regarding the costs and fees associated with each of the other products and services offered in that package that can be purchased separately.

## PART 3

### Switching

#### Provision of the switching service

**14.—**(1) A payment service provider must offer a switching service between payment accounts that are —

- (a) denominated in the same currency; and
- (b) opened or held with a payment service provider located in the United Kingdom.

(2) A switching service must meet the requirements set out in Schedule 3, except where regulation 15 applies.

#### Alternative arrangements

**15.—**(1) Regulation 14(2) will not apply where a payment service provider is a party to and compliant with a switching service which the Payment Systems Regulator has designated as an alternative arrangement.

(2) In order to be designated as an alternative arrangement, the Payment Systems Regulator must be satisfied that the switching service —

- (a) is clearly in the interest of the consumer;
- (b) does not impose any burdens additional to those imposed upon the consumer by the requirements of Schedule 3; and
- (c) ensures that the procedure for switching is completed at least within the same overall timeframe that applies in the case of a switching service that meets the requirements set out in Schedule 3.

#### Designation of alternative arrangements

**16.** Schedule 4 makes provision in connection with the designation of alternative arrangements.

#### Facilitation of cross-border account opening for consumers

**17.—**(1) Where a consumer indicates to a payment service provider located within the United Kingdom with whom that consumer holds a payment account (“the UK payment service provider”) that the consumer wishes to open a payment account with a payment service provider located outside the United Kingdom, but within the EU, (“the EU payment service provider”), the UK payment service provider must, on a date specified by the consumer—

- (a) provide the consumer free of charge with—
  - (i) a list of all currently active standing orders for credit transfers and debtor-driven direct debit mandates, where available; and
  - (ii) available information about recurring incoming credit transfers and creditor-driven direct debits executed on the consumer’s payment account in the previous 13 months;
- (b) transfer any positive balance remaining on the payment account held with the UK payment service provider to the payment account opened or held by the consumer with the EU payment service provider; and
- (c) without prejudice to the requirements of regulation 43 of the Payment Service Regulations, close the payment account held by the consumer with the UK payment service provider.

(2) The date specified by the consumer referred to in paragraph (1) must be at least six business days after the UK payment service provider receives the consumer's request, unless otherwise agreed between the consumer and the UK payment service provider.

(3) The requirement in paragraph (1)(b) will only apply where—

- (a) the consumer has—
  - (i) requested that the transfer be made;
  - (ii) provided full details of the account opened or held with the EU payment service provider; and
- (b) there are no outstanding obligations on the account.

(4) Where outstanding obligations prevent the UK payment service provider from closing the payment account in accordance with paragraph (1)(c), it must immediately inform the consumer.

## PART 4

### Access to payment accounts

#### Non-discrimination in the provision of payment accounts

**18.**—(1) A credit institution must not discriminate against consumers legally resident in the EU by reason of their nationality or place of residence or by reason of any other ground referred to in Article 21 of the Charter when those consumers apply for or access a payment account.

(2) The conditions applicable to holding a payment account with basic features within the meaning of regulation 19 must not be discriminatory.

#### Payment account with basic features

**19.**—(1) A payment account with basic features is a payment account, denominated in sterling, which allows consumers to—

- (a) open, operate and close the account;
- (b) place funds in the account;
- (c) withdraw cash from the account within the EU—
  - (i) at the counter of the publicly accessible premises of—
    - (aa) the credit institution; and
    - (bb) any relevant third party;
  - (ii) at automated teller machines operated by the credit institution and any relevant third party during or outside the credit institution's opening hours;
- (d) execute the following payment transactions within the EU—
  - (i) direct debits;
  - (ii) payment transactions through a payment card, including online payments;
  - (iii) credit transfers, including standing orders, at, where available, terminals and counters and via the online facilities of the credit institution.

(2) For the purposes of paragraph (1), “relevant third party” means a payment service provider with which the credit institution offering the payment account with basic features has agreed arrangements that permit any consumer who holds a payment account with the credit institution which is not a payment account with basic features to withdraw cash from—

- (a) that payment service provider's publicly accessible premises; and
- (b) automated teller machines operated by that payment service provider.

(3) A payment account with basic features must allow consumers to execute an unlimited number of operations in relation to the services set out in paragraph (1).

(4) A credit institution must allow consumers to manage and initiate payment transactions from the consumer's payment account with basic features—

- (a) at its publicly accessible premises; and
- (b) via online facilities, where available.

(5) A credit institution must not provide an overdraft facility in relation to a payment account with basic features, and must take all reasonable steps to prevent consumers from carrying out any payment transaction using a payment account with basic features where executing that transaction would result in overrunning.

(6) Subject to paragraph (7), a credit institution must ensure that access to a payment account with basic features is not made conditional on the purchase of—

- (a) additional services; or
- (b) shares in the credit institution.

(7) A credit institution may limit access to a payment account with basic features to a consumer who purchases shares in that credit institution where the requirement to purchase shares in the credit institution applies to all the credit institution's customers.

### **Fees**

**20.**—(1) A credit institution must not charge any fee for the services set out in regulation 19(1) when those services are provided as part of a payment account with basic features.

(2) Where a consumer holding a payment account with basic features—

- (a) authorises a payment transaction from the account; and
- (b) the payment transaction is cancelled as a result of there being insufficient funds available;

the credit institution must not charge the consumer any fee.

### **Designated credit institutions**

**21.**—(1) The Treasury must, by giving notice, designate a sufficient number of United Kingdom credit institutions as credit institutions to which the duty in regulation 22 will apply in order to ensure that—

- (a) access to a payment account with basic features is guaranteed for all eligible consumers in the United Kingdom;
- (b) distortions of competition are prevented.

(2) Schedule 5 makes provision about the designation of credit institutions for this purpose.

### **Duty to offer a payment account with basic features**

**22.**—(1) A designated credit institution must offer a payment account with basic features to any consumer who—

- (a) applies for a payment account with basic features on or after 18 September 2016; and
- (b) meets the eligibility criteria set out in regulation 23.

(2) Where a designated credit institution does not offer a service referred to in regulation 19(1) to consumers holding payment accounts with it which are not payment accounts with basic features, it will not be required to offer that service as part of a payment account with basic features.



## Eligibility criteria

**23.**—(1) In order to be eligible for a payment account with basic features offered by a designated credit institution (“C”), a consumer must be legally resident in the EU, and must either—

- (a) not hold a payment account with any United Kingdom credit institution that has at least the features set out in regulation 19(1); or
- (b) be ineligible for all payment accounts offered by C that are not payment accounts with basic features.

(2) For the purposes of paragraph (1)—

- (a) consumers legally resident within the EU will include—
  - (i) consumers with no fixed address;
  - (ii) asylum seekers; and
  - (iii) consumers who have not been granted a residence permit but whose expulsion is impossible for legal or factual reasons;
- (b) a consumer will not be taken to hold a payment account where the consumer makes a declaration that the credit institution with which the payment account is held has given notice that the payment account will be closed.

(3) A designated credit institution may verify whether a consumer falls within paragraph (1)(a), or may choose to rely on declaration made by the consumer to that effect.

## Timescale for opening a payment account with basic features

**24.** Where an application for a payment account with basic features is made by a consumer to a designated credit institution, the designated credit institution must open or refuse to open the account without undue delay, and no later than 10 business days from receipt of the completed application.

## Refusal of application

**25.**—(1) A designated credit institution must refuse to open a payment account with basic features for a consumer where—

- (a) to do so would be contrary to the Money Laundering Regulations 2007(a);
- (b) to do so would be contrary to section 40 of the Immigration Act 2014 (prohibition on opening current accounts for disqualified persons)(b); or
- (c) the Authority has imposed a requirement or limitation on the designated credit institution under Part 4A of the Act that prevents it from accepting new customers.

(2) A designated credit institution may refuse to open a payment account with basic features where it considers that the applicant’s conduct amounts to the commission of an offence under—

- (a) section 4 of the Public Order Act 1986 (fear or provocation of violence)(c);
- (b) the Protection from Harassment Act 1997(d).

(3) Where an application for a payment account with basic features is refused, the designated credit institution must immediately inform the consumer in writing and free of charge of the reason for the refusal if it may lawfully do so.

(4) Where notification of the reason for refusal is given, the designated credit institution must advise the consumer of—

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(a) S.I. 2007/2157.  
(b) 2014 c.22.  
(c) 1986 c.64.  
(d) 1997 c.40.

- (a) the procedure for submitting a complaint to it against the refusal;
- (b) the consumer's right to contact the Financial Ombudsman Service; and
- (c) relevant contact details.

### **Framework contracts and termination**

26.—(1) Subject to paragraphs (2) and (3), framework contracts for the provision of a payment account with basic features must comply with the requirements of the Payment Service Regulations.

(2) A designated credit institution may only unilaterally terminate a framework contract for the provision of a payment account with basic features where at least one of the following conditions is met—

- (a) the consumer has deliberately used the payment account for illegal purposes;
- (b) there has been no transaction on the account for more than 24 consecutive months;
- (c) the consumer provided incorrect information when applying for the account, and had the correct information been provided, the application would have been refused;
- (d) the consumer is no longer legally resident in the EU;
- (e) the consumer has access to another payment account in the United Kingdom which—
  - (i) allows the consumer to make use of the services listed in regulation 19(1); and
  - (ii) was opened after the payment account with basic features;
- (f) the credit institution considers that the consumer's conduct amounts to the commission of an offence under—
  - (i) section 4 of the Public Order Act 1986;
  - (ii) the Protection from Harassment Act 1997.

(3) Subject to paragraph (4), where a designated credit institution terminates a framework contract for a payment account with basic features on one or more of the grounds mentioned in paragraph (2)(b), (d) or (e), the designated credit institution must inform the consumer of the grounds and the justification for termination—

- (a) at least two months before the termination enters into force;
- (b) in writing; and
- (c) free of charge.

(4) Paragraph (3) will not apply where disclosure to the customer of the grounds and justification for the termination would be contrary to the legislation referred to in regulation 25(1).

(5) Any termination in accordance with paragraph 2(a), (c) or (f) will have immediate effect.

(6) Any notification given by the qualifying credit institution under paragraph (3) must advise the consumer of—

- (a) the procedure for submitting a complaint to it against the termination;
- (b) the consumer's right to contact the Financial Ombudsman Service; and
- (c) relevant contact details.

### **General information on payment accounts with basic features**

27.—(1) The Money Advice Service must raise awareness among the public about—

- (a) the availability of payment accounts with basic features;
- (b) their general pricing conditions;
- (c) the procedures to be followed in order exercise the right to access a payment account with basic features; and

- (d) the consumer's right to complain to the Financial Ombudsman Service where the consumer considers that a credit institution has not complied with the requirements of this Part.
- (2) When discharging its functions under paragraph (1), the Money Advice Service must ensure that particular consideration is given to raising awareness among—
- (a) consumers who do not hold a payment account;
  - (b) vulnerable consumers; and
  - (c) consumers with no fixed address.
- (3) Designated credit institutions must make available to consumers, free of charge, accessible information and assistance about—
- (a) the specific features of the payment account with basic features on offer; and
  - (b) the associated fees and conditions of use.
- (4) Designated credit institutions must ensure that information and assistance provided pursuant to paragraph (3) make it clear that the purchase of additional services is not compulsory in order access a payment account with basic features.

## PART 5

### The Authority

#### **Monitoring and enforcement**

**28.**—(1) The Authority must maintain arrangements for the purpose of enabling it to determine whether payment service providers upon which requirements are imposed by or under —

- (a) Part 2, 3 or 4; or
- (b) regulation 30,

are complying with those requirements.

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

(3) The Authority must also maintain arrangements for enforcing requirements imposed on persons other than the Authority by or under these Regulations.

#### **Reporting requirements**

**29.**—(1) A payment service provider must give the Authority such information in respect of its compliance with the requirements imposed on it by or under Part 2, 3 or 4 or regulation 30 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.

#### **Power to direct payment service providers**

**30.**—(1) The Authority may direct a payment service provider to take such steps as are necessary for the purposes of securing compliance with the requirements of Part 2, 3 or 4.

- (2) A direction under paragraph (1) may, in particular, require the payment service provider to—
- (a) take specified action;
  - (b) refrain from taking specified action;
  - (c) review or take remedial action in respect of past conduct.

(3) A payment service provider to which a direction under paragraph (1) is given must comply with the direction.

#### **Power of direction: procedure**

**31.**—(1) A direction given under regulation 30(1) takes effect—

- (a) immediately, if the notice given under paragraph (2) states that this is the case; or
- (b) on such date as may be specified in the notice.

(2) If the Authority proposes to give a direction to a payment service provider (“P”) under regulation 30(1), or gives such a direction with immediate effect, it must give P written notice.

(3) The notice must—

- (a) give details of the direction;
- (b) state the Authority’s reasons for giving the direction;
- (c) inform P that P may make representations to the Authority within such period as may be specified in the notice (whether or not P has referred the matter to the Tribunal);
- (d) inform P of when the direction takes effect;
- (e) inform P of the right to refer a matter to the Tribunal conferred by regulation 32.

(4) The Authority may extend the period allowed under the notice for making representations.

(5) The Authority must give P written notice if, having considered any representations made by P, the Authority decides—

- (a) to give the direction in the way proposed;
- (b) to rescind a direction that has been given and which took immediate effect;
- (c) not to rescind a direction that has been given and which took immediate effect;
- (d) not to give a direction that it had proposed to give; or
- (e) to give a different direction to the one that it had proposed to give.

(6) A notice under paragraph (5)(a) or (c) must inform P of P’s right to refer the matter to the Tribunal.

(7) A notice given under paragraph (5)(e) must comply with paragraph (3).

(8) If a notice informs P of P’s right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.

#### **Right to refer matters to the Tribunal**

**32.** A payment service provider who is aggrieved by the exercise of the Authority’s power to give a direction under regulation 30(1) or any decision taken by the Authority falling within regulation 31(5)(a), (c) or (e) may refer the matter to the Tribunal.

#### **Public censure – payment service providers**

**33.** If the Authority considers that a payment service provider has contravened a requirement imposed upon it by or under these Regulations, the Authority may publish a statement to that effect.

#### **Financial penalties – payment service providers**

**34.** The Authority may impose a penalty of such amount as it considers appropriate on a payment service provider that has contravened a requirement imposed upon it by or under these Regulations.

## **Disciplinary powers**

**35.—**(1) The Authority may take action against a person under this regulation if—

- (a) it appears to the Authority that the person is guilty of misconduct; and
- (b) the Authority is satisfied that it is appropriate in all the circumstances to take action against the person.

(2) For the purposes of this regulation, a person (“P”) is guilty of misconduct if—

- (a) the person has at any time been a manager in relation to a payment service provider;
- (b) there has at that time been (or continued to be) a contravention of a requirement of these Regulations by the payment service provider; and
- (c) the manager was at that time responsible for the management of any of the payment service provider’s activities in relation to which the contravention occurred.

(3) But a person (“P”) is not guilty of misconduct by virtue of paragraph (2) if P satisfies the Authority that P had taken such steps as a person in P’s position could reasonably be expected to take to avoid the contravention occurring (or continuing).

(4) If the Authority is entitled to take action under this regulation against a person, it may do one or more of the following—

- (a) impose a penalty upon the person of such amount as it considers appropriate;
- (b) publish a statement of the person’s misconduct.

## **Proposal to take disciplinary measures**

**36.—**(1) Where the Authority proposes to publish a statement under regulation 33 or regulation 35(4)(b), or to impose a penalty under regulation 34 or regulation 35(4)(a), it must without delay 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 33 or regulation 35(4)(b), or impose a penalty under regulation 34 or regulation 35(4)(a), 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 the statement under regulation 33 or regulation 35(4)(b) or impose a penalty on a person under regulation 34 or regulation 35(4)(a), the person concerned may refer the matter to the Tribunal.

(6) After a statement under regulation 33 or regulation 35(4)(b) 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 Act (third party rights) (as applied by paragraph 4 of Schedule 6 to these Regulations).

(7) Subject to paragraph (8), sections 210 (statements of policy) and 211 (statements of policy: procedure) of the Act apply in respect of the imposition of penalties by the Authority under regulation 34 and regulation 35(4)(a) and the amount of such penalties as they apply in respect of the imposition of penalties under section 206 of the Act (financial penalties) and the amount of penalties under that section.

(8) Section 210(1A) of the Act does not apply in respect of the imposition of penalties by the Authority under regulation 34 or regulation 35(4)(a).

## **Financial penalties – general**

**37.—**(1) A penalty under—

- (a) regulation 34; or

(b) regulation 35(4)(a);

is a debt due from that person to the Authority, and is recoverable accordingly.

(2) The Authority must in respect of each of its financial years pay to the Treasury any amounts received by it during the year by way of such penalties after deducting its enforcement costs.

(3) The Treasury may give directions to the Authority as to how the Authority is to comply with its duty under paragraph (2).

(4) The directions may in particular—

(a) specify the time when any payment is required to be made to the Treasury; and

(b) require the Authority to provide the Treasury at specified times with information relating to the penalties that the Authority has imposed under regulation 34 or regulation 35(4)(a).

(5) The Treasury must pay into the Consolidated Fund any sums received by them under paragraph (2).

(6) The Authority must ensure that the amounts that it retains as a result of the deduction for which paragraph (2) provides are applied for the benefit of payment service providers.

(7) For the purposes of this regulation—

(a) “enforcement costs” in respect of a financial year means the expenses incurred by the Authority during the year in connection with—

(i) the exercise, or consideration of the possible exercise, of any of its enforcement powers in particular cases, and

(ii) the recovery of any penalty imposed under these Regulations; and

(b) “enforcement powers” means the Authority’s powers under this Part.

## **Injunctions**

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

(a) there is a reasonable likelihood that any person will contravene a requirement imposed by or under these Regulations; or

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

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

## **Complaints**

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

(2) Where it considers it appropriate to do so, the Authority may include in any reply to a complaint under paragraph (1) details of the consumer's right to make a complaint to the Financial Ombudsman Service.

### **Costs of supervision**

40. The functions of the Authority under these Regulations are to be treated for the purposes of paragraph 23 (fees) of Part 3 of Schedule 1ZA to the Act as functions conferred on the Authority under that Act.

### **Guidance**

41.—(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 request made by any person, make a reasonable charge for that guidance.

### **Authority's exemption from liability in damages**

42. The functions of the Authority under these Regulations are to be treated for the purposes of paragraph 25 (exemption from liability in damages) of Part 4 of Schedule 1ZA to the Act as functions conferred on the Authority under that Act.

### **Application and modification**

43. Schedule 6 applies primary and secondary legislation with modifications.

### **Evaluation**

44.—(1) The Treasury must provide the European Commission with information on the following for the first time by 18 September 2018 and every two years thereafter:

- (a) compliance by United Kingdom payment service providers with regulations 6 to 11;
- (b) compliance by the Money Advice Service with the requirements of regulation 12;
- (c) the number of payment accounts that have been switched;
- (d) the proportion of applications for switching that have been refused;
- (e) the number of credit institutions offering payment accounts with basic features;
- (f) the number of payment accounts with basic features that have been opened; and
- (g) the proportion of applications for payment accounts with basic features that have been refused.

(2) The Authority must gather the information referred to in paragraph (1) and supply it to the Treasury at least two months before the Treasury has to supply the information to the European Commission.

## Review

45.—(1) The Treasury must from time to time—

- (a) carry out a review of these Regulations;
- (b) set out the conclusion of the review in a report; and
- (c) publish the report.

(2) In carrying out the review the Treasury must, so far as is reasonable, have regard to how the Payment Accounts Directive (which is implemented by means of these Regulations) is implemented in other member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by these Regulations;
- (b) assess the extent to which those objectives are achieved; and
- (c) assess whether those objectives remain appropriate and if so, the extent to which they could be achieved by a system which involves less onerous regulatory provision.

(4) The first report must be published by 18 September 2021.

(5) Subsequent reports must be published at intervals not exceeding five years.

	<i>Name</i>
	<i>Name</i>
Date	Two of the Lords Commissioners of Her Majesty's Treasury

## SCHEDULES

### SCHEDULE 1

Regulation 8(2)

## Content and presentational format of the fee information document

### Compliance with implementing technical standards

1. The fee information document must comply with the requirements of any implementing technical standards adopted by the European Commission under Article 4(6) of the Payment Accounts Directive regarding a standardised presentational format of the fee information document and its common symbol.

### Content

2. The fee information document must—

- (a) use the terms contained in the linked services list; and
- (b) where the payment service provider offers any service featured in the linked services list, quote the corresponding fee for that service.

### Packaged accounts

3. Where one or more services featured in the linked services list are offered as part of a package of services, the fee information document must disclose—

- (a) the fee for the entire package;
- (b) the services included in the package and their quantity; and
- (c) the additional fee for any service that exceeds the quantity covered by the package fee.



## **Presentational format**

4. The fee information document must—
  - (a) be provided on paper or another durable medium;
  - (b) be a short and stand-alone document;
  - (c) be presented and laid out in a way that is clear and easy to read using characters of a reasonable size;
  - (d) be no less comprehensible in the event that, having been originally produced in colour, it is printed or photocopied in black and white;
  - (e) be written in English or, if agreed by the consumer and payment service provider, in another language;
  - (f) be accurate, not misleading, and expressed in the currency of the payment account or, if agreed by the consumer and the payment service provider, in another currency of the European Union;
  - (g) contain the title “fee information document” at the top of the first page next to the common symbol referred to in paragraph 1 to distinguish the fee information document from other documentation;
  - (h) include a statement that it contains fees for the most representative services related to the payment account and that complete pre-contractual and contractual information on all the services is provided in other documents.

## **SCHEDULE 2**

Regulation 10(4)

### **Content and presentational format of the statement of fees**

#### **Compliance with implementing technical standards**

1. The statement of fees must comply with the requirements of any implementing technical standards regarding a standardised presentational format of the statement of fees and its common symbol adopted by the European Commission under Article 5(4) of the Payment Accounts Directive.

#### **Content**

2. The statement of fees must—
  - (a) state all fees incurred during the relevant period for services linked to a payment account;
  - (b) where applicable, use the terms set out in the linked services list; and
  - (c) be accurate, not misleading, and expressed in the currency of the payment account or, if agreed by the consumer and the payment service provider, in another currency.

#### **Mandatory information**

3. The statement of fees must specify at least the following information—
  - (a) the unit fee charged for each service and the number of times the service was used during the relevant period;
  - (b) where the services are combined in a package—
    - (i) the fee charged for the package as a whole;
    - (ii) the number of times the package fee was charged during the relevant period; and
    - (iii) the additional fee charged for any service exceeding the quantity covered by the package fee;

- (c) the total amount of fees incurred during the relevant period for—
  - (i) each service;
  - (ii) each package of service provided; and
  - (iii) services exceeding the quantity covered by the package fee;
- (d) the overdraft facility interest rate or rates applied to the payment account during the relevant period;
- (e) the total amount of interest charged relating to the overdraft facility during the relevant period;
- (f) the credit interest rate or rates applied to the payment account during the relevant period;
- (g) the total amount of interest earned during the relevant period; and
- (h) the total amount of fees charged for all services provided during the relevant period.

#### **Presentational format**

4. The statement of fees must—
- (a) be presented and laid out in a way that is clear and easy to read, using characters of a reasonable size;
  - (b) contain the title “statement of fees” at the top of the first page of the statement next to the common symbol referred to in paragraph 1 to distinguish the document from other documentation; and
  - (c) be written in English, or if agreed by the consumer and the payment service provider, in another language.

## SCHEDULE 3 Switching service

Regulation 14(2)

#### **Interpretation**

1. In this Schedule—

“transferring payment service provider” means the payment service provider that provides the account from which the service is switched; and

“receiving payment service provider” means the payment service provider that provides the payment account to which the service switched.

#### **Authorisation**

2.—(1) The receiving payment service provider must perform the switching service upon receipt of the authorisation from the consumer.

(2) In the case of two or more holders of the account, authorisation must be obtained from each of them.

(3) The authorisation must be drawn up in English or in any other language agreed between the parties.

(4) The authorisation must allow the consumer to—

- (a) provide specific consent to the performance by the transferring payment service provider of each of the tasks set out in paragraph 3(a) to (f);
- (b) provide specific consent to the performance by the receiving payment service provider of each of the tasks referred to in paragraph 5(1)(a) to (f);

- (c) specifically identify incoming credit transfers, standing orders for credit transfers and direct debit mandates that are to be switched; and
- (d) specify the date from which standing orders for credit transfers and direct debits are to be executed from the payment account opened or held with the receiving payment service provider.

(5) The date specified in accordance with sub-paragraph (4)(d) must be at least six business days after the date on which the receiving payment service provider receives the documents transferred from the transferring payment service provider pursuant to paragraphs 3(a) and (b).

### **Request from the receiving payment service provider**

3. Within two business days from receipt of the authorisation referred to in paragraph 2, the receiving payment service provider must request that the transferring payment service provider carry out each of the following tasks, if provided for in the consumer's authorisation—

- (a) transmission to the receiving payment service provider and, if specifically requested by the consumer, to the consumer, of a list of the existing standing orders for credit transfers and available information on direct debit mandates that are being switched;
- (b) transmission to the receiving payment service provider and, if specifically requested by the consumer, to the consumer, of the available information about recurring incoming credit transfers and creditor-driven direct debits executed on the consumer's payment account during the previous 13 months;
- (c) where the transferring payment service provider does not provide a system for automated redirection of the incoming credit transfers and direct debits to the payment account held by the consumer with the receiving payment service provider, stopping accepting direct debits and incoming credit transfers with effect from the date specified in the authorisation;
- (d) cancellation of standing orders with effect from the date specified in the authorisation;
- (e) transferral of any remaining positive balance to the payment account opened or held with the receiving payment service provider on the date specified by the consumer; and
- (f) closure of the account held by the consumer with the transferring payment service provider on the date specified by the consumer.

### **Tasks for the transferring payment service provider**

4.—(1) Upon receipt of a request from the receiving service provider, the transferring payment service provider must carry out the following tasks, if provided for in the consumer's authorisation—

- (a) send the receiving payment service provider the information described in paragraphs 3(a) and (b) within five business days;
- (b) where the transferring payment service provider does not provide a system for automated redirection of incoming credit transfers and direct debits to the payment account held or opened by the consumer with the receiving payment service provider, stop accepting incoming credit transfers and direct debits on the payment account with effect from the date specified in the authorisation;
- (c) cancel standing orders from the date specified in the authorisation;
- (d) transfer any remaining positive balance from the payment account to the payment account opened or held with the receiving payment service provider on the date specified in the authorisation;
- (e) without prejudice to regulation 43 of the Payment Services Regulations, close the payment account on the date specified in the authorisation if—
  - (i) the consumer has no outstanding obligations on that payment account; and

(ii) the actions described in sub-paragraphs (a), (b) and (d) have been completed.

(2) Where any outstanding obligations on the payment account prevent closure of the account pursuant to sub-paragraph (1)(e), the transferring payment service provider must immediately inform the consumer that this is the case.

(3) Where the transferring payment service provider stops accepting incoming credit transfers and direct debits in accordance with sub-paragraph (1)(b), it must inform the payer or the payee of the reason for not completing the payment transaction within five business days.

### **Tasks for the receiving payment service provider**

5.—(1) Within five business days of receipt of the information requested from the transferring payment service provider as referred to in paragraph 3, the receiving payment service provider must, if provided for in the authorisation and to the extent that the information provided by the transferring payment service provider or the consumer enables the receiving payment service provider to do so, carry out the following tasks—

- (a) set up the standing orders for credit transfers requested by the consumer and execute them with effect from the date specified in the authorisation;
- (b) make any necessary preparations to accept direct debits and accept them with effect from the date specified in the authorisation;
- (c) where relevant, inform consumers of their rights pursuant to Article 5(3)(d) of Regulation (EU) 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro<sup>(a)</sup>;
- (d) inform payers specified in the authorisation and making recurrent incoming credit transfers into a consumer's payment account of the details of the consumer's payment account with the receiving payment service provider and transmit to the payers a copy of the consumer's authorisation;
- (e) where the receiving payment service provider does not have all the information it needs to complete the task referred to in sub-paragraph (d), ask the consumer or the transferring payment service provider to provide the missing information;
- (f) inform payees specified in the authorisation and using a direct debit to collect funds from the consumer's payment account of the details of the consumer's payment account with the receiving payment service provider and the date from which direct debits are to be collected from that payment account and transmit to the payees a copy of the consumer's authorisation;
- (g) where the receiving payment service provider does not have all the information that it needs to inform the payees, it must ask the consumer or the transferring payment service provider to provide the missing information.

(2) Where the consumer chooses to personally provide the information referred to in sub-paragraphs 1(d) and 1(f) to the payers or payees rather than provide specific consent in accordance with paragraph 2 allowing the receiving payment service provider to do so, the receiving payment service provider must provide the consumer with standard letters providing details of—

- (a) the payment account; and
- (b) the starting date specified in the authorisation

within the deadline referred to in paragraph 5(1).

(3) Without prejudice to regulation 56(2) of the Payment Services Regulations, the transferring payment service provider must not block any payment instrument before the date specified in the consumer's authorisation.

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(a) OJ No L 94, 30.3.2012, p.30.

### **Fees connected with the switching service**

6.—(1) At the request of a consumer, transferring and receiving payment service providers must provide the consumer with access free of charge to details of any standing orders and direct debits applicable to the accounts the consumer holds with them.

(2) The transferring payment service provider must not charge the consumer or the receiving payment service provider for the provision of information requested from it by the receiving payment service provider pursuant to paragraphs 3(a) and (b).

(3) Any fee payable by the consumer applied by the transferring payment service provider in respect of the termination of the framework contract for the payment account held with the transferring payment service provider must be determined in accordance with regulation 43 of the Payment Services Regulations.

(4) Transferring or receiving payment service providers may charge the consumer a fee for any service referred to in paragraphs 3 to 5 not subject to the provisions in this paragraph provided that any such fee is—

- (a) reasonable; and
- (b) in line with the actual costs to the payment service provider of providing the relevant service.

### **Financial loss for consumers**

7.—(1) Subject to sub-paragraph (2), where a consumer suffers any financial loss as a direct result of the non-compliance of a payment service provider with any requirement provided for in paragraphs 3 to 5, the payment service provider must reimburse the full extent of the loss without delay.

(2) The duty to reimburse provided for in sub-paragraph (1) will not apply in the case of unavoidable losses arising as a result of—

- (a) abnormal and unforeseeable circumstances beyond the control of the payment service provider; or
- (b) the payment service provider's compliance with any statutory obligation.

### **Information about the switching service**

8.—(1) Payment service providers must make available the following information about the switching service—

- (a) the roles of the transferring and receiving payment service provider as provided for in this Schedule;
- (b) the time limits that apply to the completion of the tasks provided for in this Schedule;
- (c) any fees that will be charged;
- (d) details of any information that the consumer is required to provide;
- (e) details of the complaints arrangements maintained under regulation 39.

(2) The information referred to in sub-paragraph (1) must be made available —

- (a) free of charge on paper or another durable medium at all premises of the payment service provider accessible to consumers; and
- (b) in electronic form on the payment service provider's website at all times.

## Designation of alternative arrangements

### Interpretation

1. In this Schedule, “the Regulator” means the Payment Systems Regulator.

### Application for designation

2.—(1) Any person may apply to the Regulator for a certificate (“a designation certificate”) designating a switching service of which that person is the operator as an alternative arrangement for the purposes of these Regulations.

(2) Any such application—

- (a) must be made in such manner as the Regulator may direct; and
- (b) must be accompanied by such information as the Regulator may reasonably require for the purpose of determining the application.

(3) At any time after receiving the application and before determining it, the Regulator may require the applicant to furnish additional information.

(4) The directions and requirements given or imposed under sub-paragraphs (2) and (3) may differ as between different applications.

(5) Any information to be furnished to the Regulator under this paragraph must be in such form and verified in such manner as it may specify.

(6) Every application must be accompanied by copies of the rules of the switching service to which the application relates, and any guidance relating to that switching service.

### Issuing the designation certificate

3.—(1) Where—

- (a) an application has been made under paragraph 1;
- (b) the applicant has paid any fee charged by virtue of paragraph 4(1); and
- (c) the Regulator is satisfied that the requirements of regulation 15(2) are met with respect to the switching service to which the application relates;

the Regulator may issue a designation certificate declaring the switching service to be an alternative arrangement (and identifying the operator of that switching service) for the purposes of these Regulations.

(2) A designation certificate must state the date on which it comes into effect.

(3) Where the Regulator refuses an application for a designation certificate, it must give the applicant a written notice to that effect stating the reasons for the refusal.

### Application fee

4.—(1) The Regulator may charge a fee to an applicant for a designation certificate.

(2) Fees chargeable by the Regulator under this paragraph must not exceed an amount which reasonably represents the amount of costs incurred or likely to be incurred in determining whether the designation certificate should be issued.

(3) If a charge imposed for making an application to the Regulator for a designation certificate is not paid, the Registrar may treat the application as not having been made.

### **Annual fee**

5.—(1) The Regulator may charge an annual fee to the operator of a designated alternative arrangement.

(2) The annual fee charged must not exceed the total of the costs incurred by the Regulator in exercising the functions under this Schedule in respect of the designated alternative arrangement to which the fee relates.

(3) The operator must—

- (a) pay a first annual fee to the Regulator within twelve months of the issue of the designation certificate; and
- (b) pay an annual fee to the Regulator before each anniversary of the issue of the designation certificate.

(4) Sub-paragraph (3)(b) does not apply in relation to an anniversary of the issue of a designation certificate on or immediately before which the designation certificate ceases, by virtue of its terms, to have effect.

(5) If any payment required pursuant to this paragraph is not made when it falls due, the Regulator may recover the amount of the payment as a debt.

### **Cancellation of designation**

6.—(1) A designation certificate may be cancelled by the Regulator if at any time it appears to it that the switching service to which the certificate relates no longer meets the requirements of regulation 15(2).

(2) For the purpose of monitoring whether a switching service, following designation as an alternative arrangement, continues to meet the requirements of regulation 15(2), the Regulator may by notice in writing require a person to provide such information or documents as it considers appropriate.

(3) The Regulator may cancel a designation certificate, provided that it gives the operator of the switching service to which the designation certificate relates notice in writing of the cancellation at least three months before the date upon which the cancellation takes effect.

(4) A designation certificate may be cancelled at any time at the request of the operator of the switching service to which it relates.

### **Provision of information in respect of alternative arrangements**

7.—(1) The Regulator may by notice in writing require a person to provide information—

- (a) which the Regulator thinks will help it in determining whether to issue a designation certificate under paragraph 3(1); or
- (b) which the Regulator otherwise requires in connection with its functions under this Schedule.

(2) A notice under sub-paragraph (1) may require information to be provided—

- (a) in a specified form or manner;
- (b) at a specified time;
- (c) in respect of a specified period.

### **Directions**

8.—(1) The Regulator may give directions in writing to the operator of a designated alternative arrangement for the purpose of ensuring that the alternative arrangement continues to meet the requirements of regulation 15(2).

(2) A direction may—

- (a) require or prohibit the taking of specified action in the operation of the alternative arrangement;
- (b) set standards to be met in the operation of the alternative arrangement.

### **Injunctions**

**9.**—(1) If, on the application of the Regulator, the court is reasonably satisfied that—

- (a) a person has failed to comply with a notice to provide information issued under paragraph 7; or
  - (b) the operator of a designated alternative arrangement has failed comply with a direction given under paragraph 8; and
  - (c) that there are steps that could be taken for remedying the failure,
- the court may make an order requiring the person or operator to take such steps as the court may direct to remedy it.

(2) In sub-paragraph (1), references to remedying a failure include mitigating its effect.

(3) The jurisdiction conferred by this section is exercisable—

- (a) in England and Wales and Northern Ireland, by the High Court, and
- (b) in Scotland, by the Court of Session.

### **Appeals against refusal or cancellation**

**10.** Where the Regulator has—

- (a) refused an application for a designation certificate under paragraph 3(3); or
- (b) notified the operator of a switching service that has been designated as an alternative arrangement that it intends to cancel the designation certificate in accordance with paragraph 6(3);

the operator may appeal the Regulator's decision to the Tribunal.

### **Exemption from liability in damages**

**11.**—(1) Neither the Regulator nor any person who is, or is acting as, a member, officer or member of staff of the Regulator shall be liable in damages for anything done or omitted in the discharge, or purported discharge, of the Regulator's functions under these Regulations.

(2) Sub-paragraph (1) does not apply—

- (a) if the act or omission is shown to have been in bad faith; or
- (b) so as to prevent the award of damages made in respect of an act or omission on the ground that the act or omission was unlawful as a result of section 6(1) of the Human Rights Act 1998 (acts of public authorities)(a).

### **Publication of information and advice**

**12.** The Regulator may give guidance consisting of such information and advice as it considers appropriate, and in such form and manner as it considers appropriate, with regard to any matter dealt with in regulation 15(2) or this Schedule.

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(a) 1998 c.42.



## SCHEDULE 5

Regulation 21(2)

### Designated credit institutions

#### Factors to be taken into account

1. In considering whether to give a designation notice to a credit institution, the Treasury must take into account the following factors—

- (a) the credit institution's geographical coverage;
- (b) the distribution of consumers within the United Kingdom; and
- (c) the credit institution's share of the United Kingdom's payment account market.

#### Procedure

2.—(1) Before giving a designation notice to a credit institution, the Treasury must—

- (a) consult the Authority;
- (b) notify the credit institution that it is minded to give the designation notice; and
- (c) consider any representations made.

(2) When considering whether to give a designation notice to a credit institution, the Treasury may have regard to any information that the Authority has gathered in the course of the exercise of its functions under sections 234I and 234J of the Act.

#### Cancellation

3.—(1) The Treasury may cancel a designation notice.

(2) Before cancelling a designation notice, the Treasury must—

- (a) consult the Authority;
- (b) notify the credit institution to which the designation notice relates that it is minded to cancel the designation notice; and
- (c) consider any representations made.

(3) Following cancellation of a designation notice, the credit institution must continue to offer a payment account with basic features to any customer holding such an account with the credit institution as at the time of cancellation until such time as the customer ceases to be eligible to hold such an account under these Regulations.

## SCHEDULE 6

Regulation 43

### Application and modification of legislation

#### PART 1

#### Application and modification of the Act

#### The Tribunal

1.—(1) Section 133 (proceedings before Tribunal: general provision) to section 133B (offences) of the Act apply in respect of references and appeals made to the Tribunal under these Regulations as they apply in respect of references and appeals made to the Tribunal under the Act in respect of a decision of the FCA with the following modifications.

(2) Section 133 applies as if for subsection (7A) there were substituted—

i(7A) A reference is a “disciplinary reference” for the purposes of this section if it is in respect of any of the following decisions made under the Payment Accounts Regulations 2015—

- (a) a decision to publish a statement under regulation 33;
- (b) a decision to impose a penalty under regulation 34;
- (c) a decision to publish a statement under regulation 35;
- (d) a decision to impose a penalty under regulation 35.1.

(3) Section 133A applies as if in subsection (1) “, as a result of section 388(2),” were omitted.

### **Information gathering and investigations**

2.—(1) Subject to sub-paragraph (2), Part 11 of the Act (information gathering and investigations) applies to the Authority’s functions under these Regulations as it applies to its functions under the Act with the modifications set out in sub-paragraphs (3) to (16).

(2) Sections 165A to 165C, 169A and 173 do not apply.

(3) References to an authorised person are to be treated as references to a payment service provider.

(4) References to a regulator (other than to an overseas regulator) are to be treated as references to the Authority.

(5) Section 165 (Authority’s power to require information) applies as if in subsection (7) paragraphs (b), (c) and (d) were omitted.

(6) Section 166 (reports by skilled persons) applies as if subsections (10) and (11) were omitted.

(7) Section 166A (appointment of skilled person to collect and update information) applies as if subsection (10) were omitted.

(8) Section 167 (appointment of persons to carry out general investigations) applies as if—

- (a) references to an investigating authority were references to the Authority;
- (b) references to—
  - (i) a recognised investment exchange; and
  - (ii) an appointed representative;were omitted;
- (c) in subsection (5) for “regulated activities” there were substituted “payment services”; and
- (d) subsections (5A) and (6) were omitted.

(9) Section 168 (appointment of persons to carry out investigations in particular cases) applies as if—

- (a) references to an investigating authority were references to the Authority;
- (b) in subsection (1)—
  - (i) in paragraph (b) for “191F” to the end, there were substituted “or;”;
  - (ii) after paragraph (b) there were inserted—
    - i(c) a person may have contravened any requirement of or imposed under the Payment Accounts Regulations 2015.1; and
- (c) subsections (2), (4), (5) and (6) were omitted.

(10) Section 169 (investigations etc in support of overseas regulator) applies as if—

- (a) references to an overseas regulator were references to a competent authority in a member State other than the United Kingdom designated in accordance with Article 21 of the Payment Accounts Directive;
- (b) in subsection (8) for “Part XXIII” there were substituted “sections 348, 349 and 352”; and

- (c) subsection (13) were omitted.
- (11) Section 170 (investigations: general) applies as if—
  - (a) references to an investigating authority were references to the Authority;
  - (b) in subsection (1) “or (5)” were omitted;
  - (c) in subsection (3)(a) “or (4)” were omitted;
  - (d) subsection (3)(b) were omitted; and
  - (e) subsection (10) were omitted.
- (12) Section 171 (powers of persons appointed under section 167) applies as if subsections (3A) and (7) were omitted.
- (13) Section 172 (additional power of persons appointed as a result of section 168(1) or (4)) applies as if in subsection (4) “or (4)” were omitted.
- (14) Section 174 (admissibility of statements made to investigators) applies as if—
  - (a) in subsection (2)—
    - (i) “or in proceedings in relation to action to be taken against that person under section 123”; and
    - (ii) “or (as the case may be) a regulator”;
 were omitted;
  - (b) in subsection (3)(a) “177(4) or” were omitted;
  - (c) in subsection (4) “or (5)” were omitted; and
  - (d) in subsection (5) “, 173” were omitted.
- (15) Section 175 (information and documents: supplemental provisions) applies as if in subsection (8) “or (5)” were omitted.
- (16) Section 176 (entry of premises under a warrant) applies as if—
  - (a) in subsection (1) “the Secretary of State” were omitted;
  - (b) in subsection (3)(a) “or an appointed representative” were omitted;
  - (c) in subsection (10) “or (5)” were omitted;
  - (d) in subsection (11)(a) for “87C” to “169A” there were substituted “165”; and
  - (e) in subsection (11)(b) “, 173” were omitted.

### **Restriction on disclosure of information**

3.—(1) Sections 348 (restrictions on disclosure of confidential information by FCA, PRA etc), 349 (exceptions from section 348) and 352 (offences) of the Act apply to information received in connection with the Authority’s functions under these Regulations as they apply in relation to information received in connection with the Authority’s functions under the Act with the following modifications.

- (2) Section 348 applies as if—
  - (a) in subsection (3)(a) for “this Act” there were substituted “the Payment Accounts Regulations 2015”;
  - (b) in subsection (5)—
    - (i) paragraphs (aa) and (c) were omitted;
    - (ii) in paragraph (e) for “paragraphs (a) to (c)” there were substituted “paragraph (a)”;
    - (iii) in paragraph (ea) for “those paragraphs” there were substituted “that paragraph”;
    - (iv) paragraph (f) were omitted;
  - (c) subsection (6) were omitted.
- (3) Section 349 applies as if subsections (3A) and (3B) were omitted.

- (4) Section 352 applies as if—
- (a) in subsection (1) “or 350(5)” were omitted;
  - (b) subsection (4) were omitted;
  - (c) in subsection (5) “or (4)” were omitted;
  - (d) in subsection 6(a) “or that it had been disclosed in accordance with section 350” were omitted.

### **Warning notices and decision notices**

- 4.—**(1) Subject to sub-paragraph (2), Part 26 of the Act (notices) applies to notices given by the Authority under these Regulations as it applies to notices given by the Authority under the Act with the following modifications.
- (2) Section 391A does not apply.
- (3) Section 387 (warning notices) applies as if subsections (1A) and (3A) were omitted.
- (4) Section 388 (decision notices) applies as if subsections (1A) and (2) were omitted.
- (5) Section 390 (final notices) applies as if—
- (a) subsections (6) and (10) were omitted; and
  - (b) in subsection (8) “or (6)(c)” were omitted.
- (6) Section 391 (publication) applies as if—
- (a) for subsection (1ZB) there were substituted—  
i(1ZB) A warning notice falls within this subsection if it is given under regulation 36 of the Payment Accounts Regulations 2015.î; and
  - (b) subsections (4A), (5A), (6A), (7A), (7B), (8A) and (11) were omitted.
- (7) Section 392 (application of sections 393 and 394) applies as if for paragraphs (a) and (b) there were substituted—  
iwarning notices and decision notices given in accordance with regulation 36 of the Payment Accounts Regulations 2015.î.
- (8) Section 395 (the FCA’s and PRA’s procedures) applies as if—
- (a) subsection 1(b)(ii) were omitted;
  - (b) in subsection (9) “other than a warning notice or decision notice relating to a decision of the PRA that is required by a decision of the FCA of the kind mentioned in subsection 1(b)(ii)” were omitted;
  - (c) subsection (9A) were omitted; and
  - (d) in subsection (13) for “in accordance with” to the end there were substituted “under regulation 31 of the Payment Accounts Regulations 2015.”.

### **Misleading the Authority**

**5.** Section 398 of the Act (misleading FCA or PRA: residual cases) applies in respect of requirements imposed by or under these Regulations, as it applies in respect of requirements imposed by or under the Act.

### **Institution of proceedings**

**6.** Section 401 of the Act (proceedings for offences) applies in respect of offences under these Regulations as it applies in respect of offences under the Act, but as if—

- (a) references to the appropriate regulator were references to the Authority; and
- (b) subsections (3A) and (3B) were omitted.

## Limitation on power to require documents

7. Section 413 of the Act (protected items) applies for the purposes of these Regulations as it applies for the purposes of the Act.

## PART 2

### Application and modification of secondary legislation

#### **The Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001**

8.—The Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001(a) applies to any notice given by or to the Authority under these Regulations as it applies to relevant documents within the meaning of regulation 1(2) of those Regulations with the following modifications —

- (a) references to an investigating authority apply as if they are references to the Authority; and
- (b) regulation 6A is omitted.

#### **The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001**

9. The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001(b) applies with the following modifications—

- (a) in regulation 2—
  - (i) after the definition of “overseas regulatory authority” insert—

“Payment Accounts Directive” means Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features;

“payment accounts directive information” means confidential information received by the Authority in the course of discharging its functions as the competent authority under the Payment Accounts Directive;î;
  - (ii) in the definition of “single market restrictions”, after paragraph (m) add—

î(n) articles 21(2) and 22 of the Payment Accounts Directive;î;
- (b) in regulation 8—
  - (i) at the end of paragraph (c) omit “and”; and
  - (ii) at the of paragraph (d) insert—

î; and

(e) payment accounts directive information.î; and
- (c) in regulation 11, after paragraph (g) insert—

î(h) payment accounts directive information.î.

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(a) S.I. 2001/1420.

(b) S.I. 2001/2188)