
STATUTORY INSTRUMENTS

2015 No. 2038

The Payment Accounts Regulations 2015

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—

- (a) enforcing requirements imposed on payment service providers by or under these Regulations;
- (b) taking action in accordance with regulation 35.

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 time 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 (“A”) under regulation 30(1), or gives such a direction with immediate effect, it must give A written notice.
- (3) The notice must—
- (a) give details of the direction;
 - (b) state the Authority’s reasons for giving the direction;
 - (c) inform A that A may make representations to the Authority within such period as may be specified in the notice (whether or not A has referred the matter to the Tribunal);
 - (d) inform A of when the direction takes effect;
 - (e) inform A 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 A 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),(c) or (e) must inform A of A’s right to refer the matter to the Tribunal.
- (7) A notice given under paragraph (5)(e) must comply with paragraph (3).
- (8) Where a notice informs A of A’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 (“B”) is guilty of misconduct if—
- (a) B 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) B 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 B is not guilty of misconduct by virtue of paragraph (2) if B satisfies the Authority that B had taken such steps as a person in B’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 B, it may—
- (a) impose a penalty upon B of such amount as it considers appropriate;
 - (b) publish a statement of the B’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) 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.

(3) Any warning notice or decision notice given pursuant to this regulation must comply with the requirements of Part 26 (notices) of the Act as modified by paragraph 4 of Schedule 7.

(4) 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.

(5) After a statement under regulation 33 or regulation 35(4)(b) is published, the Authority must send a copy of it to—

- (a) the person concerned; and
- (b) any person to whom a copy of the decision notice has been given under section 393(4)(1) (third party rights) of the Act (as applied by paragraph 4 of Schedule 7 to these Regulations).

(6) Subject to paragraph (7), sections 210(2) (statements of policy) and 211(3) (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(4) of the Act (financial penalties) and the amount of penalties under that section.

(1) Section 393 was amended by section 37(1) of, and paragraphs 1 and 32 of Schedule 9 to the Financial Services Act 2012.

(2) Section 210 was amended by section 24 of, and paragraph 20 of Schedule 2 to, the Financial Services Act 2010 and section 37 of, and paragraph 17 of Schedule 9 to the Financial Services Act 2012.

(3) Section 211 was amended by section 37 of, and paragraph 18 of Schedule 9 to, the Financial Services Act 2012.

(4) Section 206 was amended by section 37 of, and paragraph 12 of Schedule 9 to, the Financial Services Act 2012.

(7) 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 imposed on a person 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 that year pursuant to regulation 34 or regulation 35(4)(a) 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 a specified time 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—

“enforcement costs” in respect of the Authority’s 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

“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 that—

- (a) any person has contravened a requirement imposed by or under these Regulations; and
- (b) 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—

- (a) in England and Wales and Northern Ireland, by the High Court, and

(b) in Scotland, by the Court of Session.

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

Costs of supervision

39.—(1) The functions of the Authority under these Regulations are to be treated for the purposes of paragraph 23(5) (fees) of Part 3 of Schedule 1ZA to the Act as functions conferred on the Authority under that Act.

(2) Any sums which the Authority receives, or expects to receive, by way of penalties imposed by it under these Regulations are to be treated for the purposes of sub-paragraph (7) of that paragraph as sums which the Authority receives, or expects to receive, by way of penalties imposed by it under the Act.

Guidance

40.—(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 provides guidance in response to request made by any person, make a reasonable charge for that guidance.

Authority's exemption from liability in damages

41. The functions of the Authority under these Regulations are to be treated for the purposes of paragraph 25(6) (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

42. Schedule 7 applies primary and secondary legislation with modifications.

(5) Paragraph 23 of Part 3 of Schedule 1ZA was amended by section 47 of, and paragraphs 1 and 16 of Schedule 3 to, the Pension Schemes Act 2015 (c. 8) and by section 129 of, and paragraphs 7(1) and (3) of Part 1 of Schedule 8 to, the Financial Services (Banking Reform) Act 2013 (c.33) and by S.I. 2013/1773.

(6) Paragraph 25 of Part 4 of Schedule 1ZA was amended by section 109(1) of the Financial Services (Banking Reform) Act 2013.

Status:

Point in time view as at 15/12/2015.

Changes to legislation:

There are currently no known outstanding effects for the The Payment Accounts Regulations 2015, PART 5.