

Status: Point in time view as at 12/11/2009. This version of this cross heading contains provisions that are not valid for this point in time.

Changes to legislation: Banking Act 2009, Cross Heading: Enforcement is up to date with all changes known to be in force on or before 07 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)



Banking Act 2009

2009 CHAPTER 1

PART 5

INTER-BANK PAYMENT SYSTEMS

Enforcement

VALID FROM 31/12/2009

193 Inspection

- (1) The Bank of England may appoint one or more persons to inspect the operation of a recognised inter-bank payment system.
- (2) The operator of a recognised inter-bank payment system must—
 - (a) grant an inspector access, on request and at any reasonable time, to premises on or from which any part of the system is operated, and
 - (b) otherwise co-operate with an inspector.

VALID FROM 31/12/2009

194 Inspection: warrant

- (1) A justice of the peace may on the application of an inspector issue a warrant entitling an inspector or a constable to enter premises if—
 - (a) any part of the management or operation of a recognised inter-bank payment system is conducted on the premises (whether by an operator of the system or by someone providing services used by an operator), and
 - (b) any of the following conditions is satisfied.
- (2) Condition 1 is that—

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- (a) a requirement under section 204 in connection with the payment system has not been complied with, and
 - (b) there is reason to believe that information relevant to the requirement is on the premises.
- (3) Condition 2 is that there is reason to suspect that if a requirement under section 204 were imposed in connection with the payment system in respect of information on the premises—
- (a) the requirement would not be complied with, and
 - (b) the information would be destroyed or otherwise tampered with.
- (4) Condition 3 is that an inspector—
- (a) gave reasonable notice of a wish to enter the premises, and
 - (b) was refused entry.
- (5) Condition 4 is that a person occupying or managing the premises has failed to co-operate with an inspector.
- (6) A warrant—
- (a) permits an inspector or a constable to enter the premises,
 - (b) permits an inspector or a constable to search the premises and copy or take possession of information or documents, and
 - (c) permits a constable to use reasonable force.
- (7) Sections 15(5) to (8) and 16 of the Police and Criminal Evidence Act 1984 (warrants: procedure) apply to warrants under this section.
- (8) In the application of this section to Scotland—
- (a) the reference to a justice of the peace includes a reference to a sheriff, and
 - (b) ignore subsection (7).
- (9) In the application of this section to Northern Ireland—
- (a) the reference to a justice of the peace is a reference to a lay magistrate, and
 - (b) the reference to sections 15(5) to (8) and 16 of the Police and Criminal Evidence Act 1984 is a reference to the equivalent provisions of the Police and Criminal Evidence (Northern Ireland) Order 1989.

VALID FROM 31/12/2009

195 Independent report

- (1) The Bank of England may require the operator of a recognised inter-bank payment system to appoint an expert to report on the operation of the system.
- (2) The Bank may impose a requirement only if it thinks—
- (a) the operator is not taking sufficient account of principles published by the Bank under section 188,
 - (b) the operator is failing to comply with a code of practice under section 189, or
 - (c) the report is likely for any other reason to assist the Bank in the performance of its functions under this Part.

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- (3) The Bank may impose requirements about—
- (a) the nature of the expert to be appointed;
 - (b) the content of the report;
 - (c) treatment of the report (including disclosure and publication);
 - (d) timing.

VALID FROM 31/12/2009

196 Compliance failure

In this Part “compliance failure” means a failure by the operator of a recognised inter-bank payment system to—

- (a) comply with a code of practice under section 189,
- (b) comply with a requirement under section 190,
- (c) comply with a direction under section 191, or
- (d) ensure compliance with a requirement under section 195.

VALID FROM 31/12/2009

197 Publication

- (1) The Bank of England may publish details of a compliance failure by the operator of a recognised inter-bank payment system.
- (2) The Bank may publish details of a sanction imposed under sections 198 to 200.

VALID FROM 31/12/2009

198 Penalty

- (1) The Bank of England may require the operator of a recognised inter-bank payment system to pay a penalty in respect of a compliance failure.
- (2) A penalty—
 - (a) must be paid to the Bank of England, and
 - (b) may be enforced by the Bank as a debt.
- (3) The Bank must prepare a statement of the principles which it will apply in determining—
 - (a) whether to impose a penalty, and
 - (b) the amount of a penalty.
- (4) The Bank must—
 - (a) publish the statement on its internet website,
 - (b) send a copy to the Treasury,

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- (c) review the statement from time to time and revise it if necessary (and paragraphs (a) and (b) apply to a revision), and
- (d) in applying the statement to a compliance failure, apply the version in force when the failure occurred.

VALID FROM 31/12/2009

199 Closure

- (1) This section applies if the Bank of England thinks that a compliance failure—
 - (a) threatens the stability of, or confidence in, the UK financial system, or
 - (b) has serious consequences for business or other interests throughout the United Kingdom.
- (2) The Bank may give the operator of the inter-bank payment system concerned an order to stop operating the system (a “closure order”)—
 - (a) for a specified period,
 - (b) until further notice, or
 - (c) permanently.
- (3) A closure order may apply to—
 - (a) all activities of the payment system, or
 - (b) specified activities.
- (4) An operator who fails to comply with a closure order commits an offence.
- (5) A person guilty of an offence is liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum, or
 - (b) on conviction on indictment, to a fine.

200 Management disqualification

- (1) The Bank of England may by order prohibit a specified person from being an operator of a recognised inter-bank payment system—
 - (a) for a specified period,
 - (b) until further notice, or
 - (c) permanently.
- (2) The Bank may by order prohibit a specified person from holding an office or position involving responsibility for taking decisions about the management of a recognised inter-bank payment system—
 - (a) for a specified period,
 - (b) until further notice, or
 - (c) permanently.
- (3) A person who breaches a prohibition under subsection (1) or (2) commits an offence.
- (4) A person guilty of an offence is liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum, or

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- (b) on conviction on indictment, to a fine.

Commencement Information

II S. 200 in force at 12.11.2009 for specified purposes by S.I. 2009/3000, arts. 2, 4, Sch. para. 2

201 Warning

- (1) Before imposing a sanction on the operator of an inter-bank payment system or on another person the Bank of England must—
- give the operator or other person a notice (a “warning notice”),
 - give the operator or other person at least 21 days to make representations,
 - consider any representations made, and
 - as soon as is reasonably practicable, give the operator or other person a notice stating whether or not the Bank intends to impose the sanction.
- (2) In subsection (1) “imposing a sanction” means—
- publishing details under section 197(1),
 - requiring the payment of a penalty under section 198,
 - giving a closure order under section 199, or
 - making an order under section 200.
- (3) Despite subsection (1), if satisfied that it is necessary the Bank may without notice—
- give a closure order under section 199, or
 - make an order under section 200.

Commencement Information

II S. 201 in force at 12.11.2009 for specified purposes by S.I. 2009/3000, arts. 2, 4, Sch. para. 2

VALID FROM 31/12/2009

202 Appeal

- (1) Where the Bank of England notifies a person under section 201(1)(d) that the Bank intends to impose a sanction, the person may appeal to the Financial Services and Markets Tribunal.
- (2) Where the Bank of England imposes a sanction on a person without notice in reliance on section 201(3), the person may appeal to the Financial Services and Markets Tribunal.
- (3) Part 9 of the Financial Services and Markets Act 2000 applies to appeals under this section; and for that purpose—
- a reference to the FSA is to be taken as a reference to the Bank of England,
 - for section 133(9) of that Act substitute the proposition that a sanction may not be imposed while an appeal could be brought or is pending.
 - Part 9 is to be read with any other necessary modifications.

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