



Financial Services (Banking Reform) Act 2013

2013 CHAPTER 33

PART 5

REGULATION OF PAYMENT SYSTEMS

Consultation, accountability and oversight

104 Consultation in relation to generally applicable requirements

- (1) In this [^{F1}Part] references to imposing a generally applicable requirement are to—
 - (a) giving a general direction under section 54, or
 - (b) imposing a generally-imposed requirement under section 55,and references to the requirement are to be read accordingly.
- (2) Before imposing a generally applicable requirement, the Payment Systems Regulator must—
 - (a) consult the Bank of England, the FCA and the PRA, and
 - (b) after doing so, publish a draft of the proposed requirement in the way appearing to the Payment Systems Regulator to be best calculated to bring it to the attention of the public.
- (3) The draft must be accompanied by—
 - (a) a cost benefit analysis,
 - (b) an explanation of the purpose of the proposed requirement,
 - [^{F2}(ba) an explanation of the ways in which having regard to specified matters under section 102B(2) has affected the proposed requirement,]
 - (c) an explanation of the Payment Systems Regulator's reasons for believing that imposing the requirement is compatible with its duties under section 49, and
 - (d) notice that representations about the proposed requirement may be made to the Payment Systems Regulator within a specified time.

Changes to legislation: There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013, Section 104. (See end of Document for details)

- (4) Before imposing the proposed requirement the Payment Systems Regulator must have regard to any representations made to it in accordance with subsection (3)(d).
- (5) If the Payment Systems Regulator proposes to impose the requirement, it must publish an account, in general terms, of—
- (a) the representations made to it in accordance with subsection (3)(d), and
 - (b) its response to them.
- [^{F3}(5A) The Payment Systems Regulator must include, in the account mentioned in subsection (5), a list of the respondents who made the representations, where those respondents have consented to the publication of their names.
- (5B) The duty in subsection (5A) is not to be read as authorising or requiring such processing of personal data as would contravene the data protection legislation (but the duty is to be taken into account in determining whether particular processing of data would contravene that legislation).
- (5C) In this section “data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act).
- (5D) Where representations are made to the Payment Systems Regulator by a Committee of the House of Commons or the House of Lords or a Joint Committee of both Houses in accordance with subsection (3)(d), the Payment Systems Regulator’s account mentioned in subsection (5) must also describe how the Payment Systems Regulator has considered the representations made by that Committee in making the proposed requirement.]
- (6) If the requirement differs from the draft published under subsection (2)(b) in a way which is, in the opinion of the Payment Systems Regulator, significant the Payment Systems Regulator must (in addition to complying with subsection (5)) publish details of the difference together with a cost benefit analysis.
- (7) For the purposes of this section a “cost benefit analysis” is—
- (a) an analysis of the costs together with an analysis of the benefits that will arise—
 - (i) if the proposed requirement is imposed, or
 - (ii) if subsection (6) applies, from the requirement imposed, and
 - (b) subject to subsection (8), an estimate of those costs and of those benefits.
- (8) If, in the opinion of the Payment Systems Regulator—
- (a) the costs or benefits referred to in subsection (7) cannot reasonably be estimated, or
 - (b) it is not reasonably practicable to produce an estimate,
- the cost benefit analysis need not estimate them, but must include a statement of the Payment Systems Regulator's opinion and an explanation of it.
- (9) The Payment Systems Regulator may charge a reasonable fee for providing a person with a copy of a draft published under subsection (2)(b).
- (10) Subsections (2)(b) and (3) to (6) do not apply if the Payment Systems Regulator considers that the delay involved in complying with them would be prejudicial to the interests of those who use, or are likely to use, services provided by regulated payment systems.

Changes to legislation: There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013, Section 104. (See end of Document for details)

(11) Subsections (3)(a) and (6) do not apply if the Payment Systems Regulator considers that, making the appropriate comparison—

- (a) there will be no increase in costs, or
- (b) there will be an increase in costs but the increase will be of minimal significance.

(12) In subsection (11) the “appropriate comparison” means—

- (a) in relation to subsection (3)(a), a comparison between the overall position if the requirement is imposed and the overall position if it is not imposed;
- (b) in relation to subsection (6), a comparison between the overall position after the imposing of the requirement and the overall position before it was imposed.

[^{F4}(12A) The duty to provide the explanation referred to in subsection (3)(ba) does not apply in relation to any proposed requirement which changes an existing requirement and the changes consist of, or include, changes which, in the Payment Systems Regulator’s opinion, are not material.

(12B) Where an explanation is not provided by virtue of subsection (12A), the draft of the proposed requirement must be accompanied by a statement of the Payment Systems Regulator’s opinion.]

Textual Amendments

- F1** Word in s. 104(1) substituted (29.8.2023) by Financial Services and Markets Act 2023 (c. 29), s. 86(3), **Sch. 7 para. 6(a)**; S.I. 2023/779, reg. 4(ccc)(iv)
- F2** S. 104(3)(ba) inserted (29.8.2023) by Financial Services and Markets Act 2023 (c. 29), s. 86(3), **Sch. 7 para. 6(b)**; S.I. 2023/779, reg. 4(ccc)(iv)
- F3** S. 104(5A)-(5D) inserted (29.8.2023) by Financial Services and Markets Act 2023 (c. 29), **ss. 53(3), 86(3)**; S.I. 2023/779, reg. 4(mm)
- F4** S. 104(12A)(12B) inserted (29.8.2023) by Financial Services and Markets Act 2023 (c. 29), s. 86(3), **Sch. 7 para. 6(c)**; S.I. 2023/779, reg. 4(ccc)(iv)

Modifications etc. (not altering text)

- C1** S. 104 applied (with modifications) (9.12.2015) by The Payment Card Interchange Fee Regulations 2015 (S.I. 2015/1911), regs. 1, **15(2)** (as amended (1.1.2024) by The Electronic Money, Payment Card Interchange Fee and Payment Services (Amendment) Regulations 2023 (S.I. 2023/790), **reg. 3(10)**)
- C2** S. 104 applied (with modifications) (13.1.2018) by The Payment Services Regulations 2017 (S.I. 2017/752), regs. 1(6), **136(2)** (with reg. 3)

Commencement Information

- I1** S. 104 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

Changes to legislation:

There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013, Section 104.