

**2009 No. 2475**

**FINANCIAL SERVICES AND MARKETS**

**The Payment Services (Amendment) Regulations 2009**

*Made* - - - - *8th September 2009*

*Laid before Parliament* *10th September 2009*

*Coming into force in accordance with regulation 1(2) and (3)*

The Treasury are a government department designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to payment services and measures relating to payment systems;

The Treasury, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972, make the following Regulations:

**Citation and commencement**

1.—(1) These Regulations may be cited as the Payment Services (Amendment) Regulations 2009.

(2) Subject to paragraph (3), these Regulations come into force on 1st November 2009.

(3) These Regulations come into force on 1st October 2009 for the purposes—

- (a) referred to in regulation 1(2)(b)(v), (vii), (viii) and (ix) of the Payment Services Regulations 2009(c); and
- (b) of enabling the Authority to give directions as to the manner in which an application or request under regulation 5(1) or (2), 10(1)(b), 12(1) or (2) or 29(3) of the Payment Services Regulations 2009 is to be made and enabling the Authority to require the applicant or the person making the request to provide further information in accordance with regulation 5(4), 10A(2), 12(4) or 29(3)(a)(iv) of those Regulations, as the case may be.

**Amendments to the Payment Services Regulations 2009**

2. The Payment Services Regulations 2009 are amended as follows.

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- (a) The European Communities (Designation) (No.3) Order 1998 (S.I. 1998/2793) and the European Communities (Designation) (No.2) Order 2008 (S.I. 2008/1792).
  - (b) 1972 c.68; section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c.51). By virtue of the amendment of section 1(2) made by section 1 of the European Economic Area Act 1993 (c.51) regulations may be made under section 2(2) to implement obligations of the United Kingdom created by or arising under the Agreement on the European Economic Area signed at Oporto on 2<sup>nd</sup> May 1992 (Cm 2073, OJ No L 1, 3.11.1994, p. 3) and the Protocol adjusting that Agreement signed at Brussels on 17<sup>th</sup> March 1993 (Cm 2183, OJ No L 1, 3.1.1994, p.572). Council Directive 2007/64/EC was extended to the EEA by Decision No. 114/2008 of the EEA Joint Committee of 7th November 2008, OJ No. L 339, 18.12.2008, p.103.
  - (c) S.I. 2009/209.

3. After regulation 10 insert—

**“Request for cancellation of authorisation**

**10A.**—(1) A request for cancellation of a person’s authorisation under regulation 10(1)(b) must be made in such manner as the Authority may direct.

(2) At any time after receiving a request and before determining it, the Authority may require the person making the request to provide it with such further information as it reasonably considers necessary to enable it to determine the request.

(3) Different directions may be given and different requirements imposed, in relation to different requests or categories of request.”.

4. In regulation 42(1) for “communicated” substitute “provided”.

5. In regulation 43(7) for “as unenforceable or void (including any right arising out of a breach of the contract)” substitute “, in accordance with the general law of contract, as unenforceable, void or discharged”.

6. In regulation 47—

(a) in paragraph (1)(a) insert at the beginning “in the case of single payment service contracts,”;

(b) in paragraph (1)(b) for “if the payment service user so requests” substitute “subject to paragraph (2)”;

(c) for paragraph (2) substitute—

“(2) Paragraph (1)(b)—

(a) in the case of single payment service contracts, only applies where the payment service user so requests; and

(b) in the case of framework contracts, is subject to any agreement in accordance with regulation 45(3) or 46(3) as to the manner in which information is to be provided or made available.”.

7. In regulation 51(3)(a) for “55(2)” substitute “55(3) or (4)”.

8. In regulation 66(1)(c) insert at the beginning “where it is possible to provide reasons for the refusal and those reasons relate to factual matters,”.

9. In regulation 69—

(a) in paragraphs (1) and (2) before “transaction” insert in each place “payment”;

(b) for paragraph (1)(b) substitute—

“(b) executed wholly within the United Kingdom in sterling; or”.

10. In regulation 72(b) after “end of the” insert “next”.

11. For regulation 110(1)(d) and (e) substitute—

“(d) a credit institution authorised in the UK or exercising an EEA right in accordance with Part 2 of Schedule 3 to the 2000 Act (exercise of passport rights by EEA firms)(a);

(e) an electronic money institution authorised in the UK or exercising an EEA right in accordance with Part 2 of Schedule 3 to the 2000 Act;

(f) the Post Office Limited;

(g) the Bank of England, the European Central Bank or a national central bank of an EEA State other than the United Kingdom,

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(a) Part 2 was amended by the Enterprise Act 2002, section 278(1) and Schedule 25, paragraph 40; by the Consumer Credit Act 2006, section 33(9); by S.I.2003/1473, 2003/2066, 2007/126 and 2007/3253.

- (h) a government department or a local authority; or
- (i) exempt under regulation 3.”.

12. After regulation 126 insert—

*“Gibraltar*

**Application to Gibraltar**

127. Schedule 7, which contains provisions concerning the application of these Regulations to Gibraltar, has effect.”

13. After Schedule 6 to the 2009 Regulations, insert—

**“SCHEDULE 7**

Regulation 127

**Exercise of deemed passport rights by Gibraltar-based firms**

1.—(1) These Regulations apply in relation to a firm which—

- (a) has its head office in Gibraltar; and
- (b) is authorised in Gibraltar to provide payment services;

as follows.

(2) The firm is to be treated as having an entitlement, corresponding to its passport right deriving from the payment services directive, to establish a branch or provide services in the United Kingdom.

(3) References in these Regulations to—

- (a) “an EEA authorised payment institution” are to be treated as references to the firm;
- (b) “home state competent authority” are to be treated as references to the competent authority (within the meaning of the payment services directive) in Gibraltar in relation to the firm; and
- (c) “passport rights” are to be treated as references to the entitlement mentioned in sub-paragraph (2).

**Exercise by authorised payment institutions of deemed passport rights in Gibraltar**

2.—(1) For the purposes of these Regulations, an authorised payment institution is to be treated as having an entitlement, corresponding to its passport right, to establish a branch or provide services in Gibraltar.

(2) In relation to an authorised payment institution which establishes a branch, or provides services, in Gibraltar, references in these Regulations to—

- (a) “EEA branch” are to be treated as including a reference to such a branch;
- (b) “host state competent authority” are to be treated as including a reference to the competent authority (within the meaning of the payment services directive) in Gibraltar in relation to the institution;
- (c) “passport rights” are to be treated as including references to the entitlement mentioned in sub-paragraph (1); and
- (d) “EEA State” are to be treated as including references to Gibraltar.

**Modification of legislation**

3.—(1) Section 155(7) of the 2000 Act (consultation) has effect for the purposes of these Regulations as if modified by adding at the end “or if it is making rules for the purpose of

extending rules that apply to EEA authorised payment institutions to Gibraltar-based firms”.

(2) Paragraph 14 of Schedule 17 to the 2000 Act (the ombudsman scheme) has effect for the purposes of these Regulations as if modified by adding at the end—

“(8) Sub-paragraphs (4), (5) and (6) above do not apply if the scheme operator is making rules for the purpose of extending rules that apply to EEA authorised payment institutions to Gibraltar-based firms.”.

*Dave Watts  
Bob Blizzard*

8th September 2009

Two Lords Commissioners of Her Majesty’s Treasury

### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations amend the Payment Services Regulations 2009 (“the principal Regulations”), which implement Directive 2007/64/EC of the European Parliament and of the Council on payment systems in the internal market (OJ No L 319, 5.12.2007, p.1). The Directive establishes an authorisation regime for non-bank payment service providers and sets out the conduct of business rules for all payment service providers.

Regulation 3 amends the principal Regulations to provide for the Financial Services Authority to direct the manner in which requests for cancellation of authorisation may be made.

Regulations 4 to 11 make minor amendments clarifying the principal Regulations.

Regulation 13 inserts a new Schedule into the principal Regulations dealing with the application of the principal Regulations to Gibraltar-based firms operating in the UK and UK firms operating in Gibraltar. Paragraph (1) of that Schedule makes provision for firms authorised and having their head office in Gibraltar to exercise rights to establish branches and provide services in the United Kingdom, corresponding to the “passport” rights of firms authorised in other EEA States under the payment services directive. Paragraph (2) provides for UK firms which seek to establish branches or provide services in Gibraltar to be treated equivalently to those exercising “passport” rights under the payment services directive to establish branches or provide services in other EEA States. Paragraph (3) disapplies provisions of the Financial Services and Markets Act 2000 requiring the FSA and the Financial Service Ombudsman Scheme Operator to consult on rules where the purpose of the rules is to extend existing rules applying to EEA authorised payment institutions to Gibraltar-based firms.

A Transposition Note setting out how the Directive is being transposed into UK law is available from the Payments, Credits and Inclusion Team, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ. Copies have been placed in the library of each House of Parliament and are available on HM Treasury’s website ([www.hm-treasury.gov.uk](http://www.hm-treasury.gov.uk)).

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