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## STATUTORY INSTRUMENTS

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# 2017 No. 752

## The Payment Services Regulations 2017

### PART 1

#### Introductory provisions

#### Citation, commencement and extent

- 1.—(1) These Regulations may be cited as the Payment Services Regulations 2017.
- (2) The following provisions come into force on 13th August 2017—
- (a) this regulation and regulations 2 (interpretation), 106 (functions of the FCA), 112(6) (policy on imposition of penalties), 118 (costs of supervision), 120 (guidance), 121 (FCA's exemption from liability in damages) and 147 (duty to co-operate and exchange of information);
  - (b) regulation 122 and the following provisions of Schedule 6 (application and modification of legislation)—
    - (i) paragraph 1 (disciplinary powers) in so far as that paragraph applies sections 69 and 70 of the 2000 Act;
    - (ii) paragraph 3 (FCA rules) for the purpose of enabling the FCA to make rules;
    - (iii) paragraph 5 (control over payment institutions) in so far as that paragraph applies the provisions of sections 179 and 191E of the 2000 Act which confer functions on the FCA;
    - (iv) paragraph 12 (application of the Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001 <sup>M1</sup>);
  - (c) regulation 156 in so far as it gives effect to the following provisions of Schedule 8 (amendments to legislation)—
    - (i) paragraph 2(6) (amendment of section 379A of the 2000 Act);
    - (ii) paragraph 3(b) (amendment of Schedule 15 to the Enterprise Act 2002 <sup>M2</sup>);
    - (iii) paragraph 5 (amendment of the Electronic Money Regulations 2011 <sup>M3</sup>) for the purpose of enabling the FCA to impose requirements, give directions and make rules;
  - (d) for the purpose of enabling the FCA to impose requirements and give directions—
    - (i) regulation 5(3) and (5) (applications for authorisation as a payment institution);
    - (ii) regulation 6(7)(e) and (f) (professional indemnity insurance for authorised payment institutions);
    - (iii) regulation 11(1) and (3) (cancellation of registration);
    - (iv) regulation 13(1), (2), (3) and (5) (application for registration);
    - (v) regulation 15 (small payment institutions: supplementary provision) in so far as it applies regulation 11(1) and (3);

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- (vi) regulation 17(1)(b) and (3) (application for registration as an account information service provider);
  - (vii) regulation 18(4)(b) (professional indemnity insurance for registered account information service providers);
  - (viii) regulation 19 (registered account information service providers: supplementary provision) in so far as it applies regulation 11(1) and (3);
  - (ix) regulation 20(3) (duty to notify changes);
  - (x) regulation 27(1) (notice of intention);
  - (xi) regulation 30(4), (5) and (7) (supervision of firms exercising passport rights);
  - (xii) regulation 34(3) and (4) (application for registration of agent);
  - (xiii) regulation 37(2) (duty to notify change in circumstances);
  - (xiv) regulation 38(4) (notification of use of limited network exclusion);
  - (xv) regulation 39(3) to (5) (notification of use of electronic communications exclusion);
  - (xvi) regulation 71(8)(c) (denial of access to an account information service provider);
  - (xvii) regulation 98(3) (management of operational and security risks);
  - (xviii) regulation 99(2) (incident reporting);
  - (xix) regulation 105(4)(b) (refusal of access to bank account);
  - (xx) regulation 109(1) to (3) and (5) (reporting requirements);
  - (xxi) regulation 119 to the extent that it gives effect to paragraph 5(1), (3) and (4) of Schedule 5 (credit agreements).
- (3) The following provisions come into force on 13th October 2017—
- (a) Part 2, for the purposes of enabling—
    - (i) the making and determination of applications for authorisation or registration (including the imposition of requirements in relation to authorisations and registrations); and
    - (ii) the giving of notices under regulation 3(2) (exemption for municipal banks);
  - (b) for the purposes of enabling the giving of notifications and the making of applications to the FCA and enabling the FCA to take action in response to such notifications and applications, regulations 25 (outsourcing), 34 (use of agents) and 39 (notification of use of electronic communications exclusion);
  - (c) In Schedule 6 (application and modification of legislation), paragraphs 2 (the Upper Tribunal), 5 (control over payment institutions) in so far as not already in force, 8 (restriction on disclosure of information), 10 (warning notices and decision notices) and 13 (application of the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001);
  - (d) regulations 142 to 146 (misleading the FCA);
  - (e) regulation 150 (transitional and saving provisions), for the purposes of enabling the provision of information or giving of notification under regulation 150(3), and enabling the FCA to take action in response to such information or notification;
  - (f) regulation 156 in so far as it gives effect to—
    - (i) paragraph 5 of Schedule 8 (amendment of the Electronic Money Regulations 2011), for the purpose of enabling the giving of notifications, the making or determining of applications and the taking of action in response to such applications and notifications under the Electronic Money Regulations 2011;

(ii) paragraph 6 of Schedule 8 (amendment of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975<sup>M4</sup>), for the purpose of the FCA's determination of applications for authorisation or registration under Part 2 of these Regulations (including the imposition of requirements in relation to authorisations and registrations).

(4) Regulations 27 (notice of intention) and 28 (decision following notice of intention) come into force on 13th December 2017 for the purposes of enabling the giving of notifications and enabling the FCA to take action in response to such notifications.

(5) Regulations 68(3)(c), 69(2)(a) and (3)(d), 70(2)(a) and (3)(c), 77(4)(c) and (6) and 100 (secure communication and authentication) come into force eighteen months after the date on which the regulatory technical standards adopted under Article 98 of the payment services directive come into force.

(6) Except as provided in paragraphs (2) to (5), these Regulations come into force on 13th January 2018.

(7) Paragraph 6 of Schedule 8 (amendment of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975) extends to England and Wales only.

#### Marginal Citations

**M1** [S.I. 2001/1420](#).

**M2** [2002 c. 40](#).

**M3** [S.I. 2011/99](#).

**M4** [S.I. 1975/1023](#).

#### Interpretation

2.—(1) In these Regulations—

“the 2000 Act” means the Financial Services and Markets Act 2000;

“account information service” means an online service to provide consolidated information on one or more payment accounts held by the payment service user with another payment service provider or with more than one payment service provider, and includes such a service whether information is provided—

(a) in its original form or after processing;

(b) only to the payment service user or to the payment service user and to another person in accordance with the payment service user's instructions;

“account information service provider” means a payment service provider which provides account information services;

“account servicing payment service provider” means a payment service provider providing and maintaining a payment account for a payer;

“acquiring of payment transactions” means a payment service provided by a payment service provider contracting with a payee to accept and process payment transactions which result in a transfer of funds to the payee;

“agent” means a person who acts on behalf of an [F<sup>1</sup> authorised payment institution, a small payment institution or a registered account information service provider] in the provision of payment services;

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“authentication” means a procedure which allows a payment service provider to verify the identity of a payment service user or the validity of the use of a specific payment instrument, including the use of the user's personalised security credentials;

“authorised payment institution” means—

- (a) a person authorised as a payment institution pursuant to regulation 6 (conditions for authorisation as a payment institution) and included by the FCA in the register as an authorised payment institution pursuant to regulation 4(1)(a) (the register of certain payment service providers); or
- (b) a person included by the FCA in the register pursuant to regulation 150 or 152, and regulation 153(1) (transitional provisions);

“the FCA” means the Financial Conduct Authority;

“branch” means a place of business, other than the head office, of—

- (a) an authorised payment institution;
- (b) a small payment institution;
- (c) a registered account information service provider;
- (d) an EEA authorised payment institution; or
- (e) an EEA registered account information service provider;

which forms a legally dependent part of such a payment service provider and which carries out directly all or some of the services inherent in the business of such a payment service provider; and, for the purposes of these Regulations, all places of business set up in the same EEA State other than the United Kingdom by an authorised payment institution are to be regarded as a single branch;

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

“the capital requirements directive” means Directive 2013/36/EU of the European Parliament and of the Council of 26th June 2013 relating to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive [2002/87/EC](#) and repealing Directives [2006/48/EC](#) and [2006/49/EC](#)<sup>M5</sup>;

“the capital requirements regulation” means Regulation (EU) 575/2013 of the European Parliament and of the Council of 26th June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012<sup>M6</sup>;

“charity”, in Parts 6 (information requirements for payment services) and 7 (rights and obligations in relation to the provision of payment services), means a body whose annual income is less than £1 million and is—

- (a) in England and Wales, a charity as defined by section 1(1) of the Charities Act 2011 (meaning of “charity”)<sup>M7</sup>;
- (b) in Scotland, a charity as defined by section 106 of the Charities and Trustee Investment (Scotland) Act 2005 (general interpretation)<sup>M8</sup>;
- (c) in Northern Ireland, a charity as defined by section 1(1) of the Charities Act (Northern Ireland) 2008 (meaning of “charity”)<sup>M9</sup>;

“co-badged”, in relation to a payment instrument, refers to an instrument on which is included two or more payment brands, or two or more payment applications of the same payment brand;

“the Commissioners” means the Commissioners for Her Majesty's Revenue and Customs;

“consumer” means an individual who, in contracts for payment services to which these Regulations apply, is acting for purposes other than a trade, business or profession;

“credit institution” has the meaning given in Article 4(1)(1) of the capital requirements regulation;

“credit transfer” means a payment service for crediting a payee's payment account with a payment transaction or a series of payment transactions from a payer's payment account by the payment service provider which holds the payer's payment account, based on an instruction given by the payer;

“designated system” has the meaning given in regulation 2(1) of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (interpretation)<sup>M10</sup>;

“digital content” means goods or services which are produced and supplied in digital form, the use or consumption of which is restricted to a technical device and which do not include in any way the use or consumption of physical goods or services;

“direct debit” means a payment service for debiting the payer's payment account where a payment transaction is initiated by the payee on the basis of consent given by the payer to the payee, to the payee's payment service provider or to the payer's own payment service provider;

“durable medium” means any instrument which enables the payment service user to store information addressed personally to them in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored;

“the EEA” means the European Economic Area;

“EEA agent” means an agent through which an authorised payment institution, in the exercise of its passport rights, provides payment services in an EEA State other than the United Kingdom;

“EEA authorised payment institution” means a person authorised in an EEA State other than the United Kingdom to provide payment services in accordance with the payment services directive;

“EEA branch” means a branch established by an authorised payment institution, in the exercise of its passport rights, to carry out payment services in an EEA State other than the United Kingdom;

“EEA registered account information service provider” means a person that is registered as an account information service provider in an EEA State other than the United Kingdom under the payment services directive;

“electronic communications network” has the meaning given in Article 2(a) of Directive [2002/21/EC](#) of the European Parliament and of the Council of 7th March 2002 on a common regulatory framework for electronic communications networks and services<sup>M11</sup>;

“electronic communications service” has the meaning given in Article 2(c) of Directive [2002/21/EC](#) of the European Parliament and of the Council of 7th March 2002 on a common regulatory framework for electronic communications networks and services;

“electronic money” has the meaning given in Article 2(2) of the electronic money directive;

“the electronic money directive” means Directive [2009/110/EC](#) of the European Parliament and of the Council of 16th September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives [2005/60/EC](#) and [2006/48/EC](#) and repealing Directive [2000/46/EC](#)<sup>M12</sup>;

“electronic money institution” has the meaning given in Article 2(1) of the electronic money directive;

“European Banking Authority” means the European Banking Authority established by Regulation (EU) 1093/2010 of the European Parliament and of the Council of 24th November 2010 establishing a European Supervisory Authority (European Banking Authority)<sup>M13</sup>;

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“excluded provider” means a provider of services falling within paragraphs 2(k)(i) to (iii), (l) or (o) of Schedule 1 (limited network, electronic communications and cash withdrawal exclusions);

“framework contract” means a contract for payment services which governs the future execution of individual and successive payment transactions and which may contain the obligation and conditions for setting up a payment account;

“funds” means banknotes and coins, scriptural money and electronic money;

“group” means a group of—

- (a) undertakings linked to each other by a relationship referred to in Article 22(1), (2) or (7) of Directive 2013/34/EU of the European Parliament and of the Council of 26th June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC<sup>M14</sup>; or
- (b) undertakings as defined in Articles 4 to 7 of Commission Delegated Regulation (EU) No. 241/2014 of 7th January 2014 supplementing Regulation (EU) 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for Own Funds requirements for institutions<sup>M15</sup>, which are linked to each other by a relationship referred to in Article 10(1) or 113(6) or (7) of the capital requirements regulation;

“home state competent authority” means the competent authority designated in accordance with Article 22 of the payment services directive as being responsible for the authorisation and prudential supervision of an EEA authorised payment institution which is exercising (or intends to exercise) its passport rights in the United Kingdom;

“host state competent authority” means the competent authority designated in accordance with Article 22 of the payment services directive in an EEA State in which an authorised payment institution exercises (or intends to exercise) its passport rights;

“interchange fee regulation” means Regulation (EU) 2015/751 of the European Parliament and of the Council of 29th April 2015 on interchange fees for card-based payment transactions<sup>M16</sup>;

“issuing of payment instruments” means a payment service by a payment service provider contracting with a payer to provide a payment instrument to initiate payment orders and to process the payer's payment transactions;

“means of distance communication” means a method which, without the simultaneous physical presence of the payment service provider and the payment service user, may be used for the conclusion of a contract for payment services between those parties;

“micro-enterprise” means an enterprise which, at the time at which the contract for payment services is entered into, is an enterprise as defined in Article 1 and Article 2(1) and (3) of the Annex to Recommendation 2003/361/EC of 6th May 2003 concerning the definition of micro, small and medium-sized enterprises<sup>M17</sup>;

“the money laundering directive” means Directive 2015/849/EU of the European Parliament and of the Council of 20th May 2015 on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC<sup>M18</sup>;

“money remittance” means a service for the transmission of money (or any representation of monetary value), without any payment accounts being created in the name of the payer or the payee, where—

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(a) funds are received from a payer for the sole purpose of transferring a corresponding amount to a payee or to another payment service provider acting on behalf of the payee; or

(b) funds are received on behalf of, and made available to, the payee;

“notice” means a notice in writing;

“own funds” means own funds as defined in Article 4(1)(118) of the capital requirements regulation, and “Common Equity Tier 1 capital”, “Tier 1 capital” and “Tier 2 capital” have the same meanings as in that regulation;

“parent undertaking” has the same meaning as in the Companies Acts, as defined by section 1162 of, and Schedule 7 to, the Companies Act 2006 (parent and subsidiary undertakings) <sup>M19</sup>;

“participant” has the meaning given in regulation 2(1) of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (interpretation) <sup>M20</sup>;

“passport right” means the entitlement of a person to establish or provide services in an EEA State other than that in which they are authorised to provide payment services—

(a) in accordance with the Treaty on the Functioning of the European Union as applied in the EEA; and

(b) subject to the conditions of the payment services directive;

“payee” means a person who is the intended recipient of funds which have been the subject of a payment transaction;

“payer” means—

(a) a person who holds a payment account and initiates, or consents to the initiation of, a payment order from that payment account; or

(b) where there is no payment account, a person who gives a payment order;

“payment account” means an account held in the name of one or more payment service users which is used for the execution of payment transactions;

“payment brand” means any material or digital name, term, sign or symbol, or combination of them, capable of denoting under which payment card scheme card-based payment transactions are carried out;

“payment initiation service” means an online service to initiate a payment order at the request of the payment service user with respect to a payment account held at another payment service provider;

“payment initiation service provider” means a payment service provider which provides payment initiation services;

“payment instrument” means any—

(a) personalised device; or

(b) personalised set of procedures agreed between the payment service user and the payment service provider,

used by the payment service user in order to initiate a payment order;

“payment order” means any instruction by a payer or a payee to their respective payment service provider requesting the execution of a payment transaction;

“payment service” means any of the activities specified in Part 1 of Schedule 1 (payment services) when carried out as a regular occupation or business activity, other than any of the activities specified in Part 2 of that Schedule (activities which do not constitute payment services);

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“payment services directive” means Directive 2015/2366/EU of the European Parliament and of the Council of 25th November 2015 on payment services in the internal market, amending Directives [2002/65/EC](#), [2009/110/EC](#) and [2013/36/EU](#) and Regulation (EU) No. 1093/2010, and repealing Directive [2007/64/EC](#)<sup>M21</sup>;

“payment service provider” means any of the following when they carry out payment services—

- (a) authorised payment institutions;
- (b) small payment institutions;
- (c) registered account information service providers;
- (d) EEA authorised payment institutions;
- (e) EEA registered account information service providers;
- (f) electronic money institutions, including branches located in the EEA of such institutions whose head office is outside the EEA, in so far as the payment services provided by those branches are linked to the issuance of electronic money;
- (g) credit institutions, including branches located in the EEA;
- (h) the Post Office Limited;
- (i) the Bank of England, the European Central Bank and the national central banks of EEA States other than the United Kingdom, other than when acting in their capacity as a monetary authority or carrying out other functions of a public nature; and
- (j) government departments and local authorities, other than when carrying out functions of a public nature,

and in Part 9 (the FCA) and Schedule 6 (application and modification of legislation), includes agents of payment service providers and excluded providers;

“payment service user” means a person when making use of a payment service in the capacity of payer, payee, or both;

“payment system” means a funds transfer system with formal and standardised arrangements and common rules for the processing, clearing and settlement of payment transactions;

“the Payment Systems Regulator” means the body established under section 40 of the Financial Services (Banking Reform) Act 2013 (the Payment Systems Regulator);

“payment transaction” means an act initiated by the payer or payee, or on behalf of the payer, of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the payer and payee;

“personalised security credentials” means personalised features provided by a payment service provider to a payment service user for the purposes of authentication;

“qualifying holding” has the meaning given in Article 4(1)(36) of the capital requirements regulation;

“reference exchange rate” means the exchange rate which is used as the basis to calculate any currency exchange and which is made available by the payment service provider or comes from a publicly available source;

“reference interest rate” means the interest rate which is used as the basis for calculating any interest to be applied and which comes from a publicly available source which can be verified by both parties to a contract for payment services;

“the register” means the register maintained by the FCA under regulation 4 (the register of certain payment service providers);

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“registered account information service provider” means an account information service provider registered pursuant to regulation 18 and included by the FCA on the register pursuant to regulation 4(1)(c) (the register of certain payment service providers);

“regulated agreement” has the meaning given by section 189(1) of the Consumer Credit Act 1974 (definitions) <sup>M22</sup>;

“remote payment transaction” means a payment transaction initiated through the internet or otherwise initiated through a device that can be used for distance communication;

“sensitive payment data” means information, including personalised security credentials, which could be used to carry out fraud; but in relation to account information services and payment initiation services does not include the name of an account holder or an account number;

“single payment service contract” means a contract for a single payment transaction not covered by a framework contract;

“small payment institution” means—

- (a) a person registered as a small payment institution pursuant to regulation 14 and included by the FCA in the register pursuant to regulation 4(1)(b) (the register of certain payment service providers); or
- (b) a person included by the FCA in the register pursuant to regulations 151 and 153(1) (transitional provisions);

“strong customer authentication” means authentication based on the use of two or more elements that are independent, in that the breach of one element does not compromise the reliability of any other element, and designed in such a way as to protect the confidentiality of the authentication data, with the elements falling into two or more of the following categories—

- (a) something known only by the payment service user (“knowledge”);
- (b) something held only by the payment service user (“possession”);
- (c) something inherent to the payment service user (“inherence”);

“subsidiary undertaking” has the same meaning as in the Companies Acts (see section 1162 of, and Schedule 7 to, the Companies Act 2006 (parent and subsidiary undertakings));

“transfer order” has the meaning given in regulation 2(1) of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (interpretation) <sup>M23</sup>;

“unique identifier” means a combination of letters, numbers or symbols specified to the payment service user by the payment service provider and to be provided by the payment service user in relation to a payment transaction in order to identify unambiguously one or both of—

- (a) another payment service user who is a party to the payment transaction;
- (b) the other payment service user's payment account;

“value date” means a reference time used by a payment service provider for the calculation of interest on the funds debited from or credited to a payment account.

(2) In these Regulations references to amounts in euros include references to equivalent amounts in pounds sterling.

(3) Unless otherwise defined, expressions used in these Regulations which are also used in the payment services directive have the same meaning as in that directive.

(4) Expressions used in a modification to a provision in primary or secondary legislation applied by these Regulations have the same meaning as in these Regulations.

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### Textual Amendments

- F1** Words in [reg. 2\(1\)](#) substituted (13.1.2018) by [The Payment Systems and Services and Electronic Money \(Miscellaneous Amendments\) Regulations 2017 \(S.I. 2017/1173\)](#), regs. 1(4), **7(a)**

### Marginal Citations

- M5** OJ L 176, 27.6.2013, p.338.  
**M6** OJ L 176, 27.6.2013, p.1.  
**M7** [2011 c. 25](#).  
**M8** [2005 asp 10](#). There are amendments to section 106 but none is relevant to these Regulations.  
**M9** [2008 c. 12](#).  
**M10** [S.I. 1999/2979](#). There are amendments to regulation 2, but none is relevant here.  
**M11** OJ L 108, 24.4.2002, p.33.  
**M12** OJ L 267, 10.10.2009, p.7.  
**M13** OJ L 331, 15.12.2010, p.12.  
**M14** OJ L 182, 29.6.2013, p.19.  
**M15** OJ L 74, 14.3.2014, p.8.  
**M16** OJ L 123, 19.5.2015, p.1.  
**M17** OJ L 124, 20.5.2003, p.36.  
**M18** OJ L 141, 5.6.2015, p.73.  
**M19** [2006 c. 46](#).  
**M20** [S.I. 1999/2979](#). The definition of “participant” in regulation 2(1) was amended by [S.I. 2010/2993](#).  
**M21** OJ L 337 23.12.2015, p.35.  
**M22** [1974 c. 39](#). The definition of “regulated agreement” was substituted by [S.I. 2013/1881](#).  
**M23** [S.I. 1999/2979](#). The definition of “transfer order” in regulation 2(1) was amended by [S.I. 2010/2993](#).

### Exemption for certain bodies

**3.—(1)** Subject to paragraph (2) and regulation 4(1)(f), these Regulations do not apply to the following persons—

- (a) credit unions;
- (b) municipal banks; and
- (c) the National Savings Bank.

(2) Where municipal banks provide or propose to provide payment services they must give notice to the FCA.

(3) In this regulation—

“credit union” means a credit union within the meaning of—

- (a) the Credit Unions Act 1979 <sup>M24</sup>;
- (b) the Credit Unions (Northern Ireland) Order 1985 <sup>M25</sup>;

“municipal bank” means a company which, immediately before 1st December 2001, fell within the definition of a municipal bank in section 103 of the Banking Act 1987 (municipal banks) <sup>M26</sup>.

### Marginal Citations

- M24** [1979 c.34](#). The definition of “credit union” in section 31(1) was substituted by paragraph 16 of Schedule 4 to the Co-operative and [Community Benefit Societies Act 2014 \(c. 14\)](#).  
**M25** [S.I. 1985/1205 \(N.I. 12\)](#).

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**M26** 1987 c. 22. The Act was repealed from 1st December 2001 by [S.I. 2001/3649](#).

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