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STATUTORY INSTRUMENTS

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**2017 No. 752**

**The Payment Services Regulations 2017**

**PART 10**

**The Payment Systems Regulator**

**Interpretation of Part 10**

**123.** In this Part—

“the 2013 Act” means the Financial Services (Banking Reform) Act 2013(1);

“compliance failure” means a failure by a regulated person to comply with—

- (a) a directive requirement; or
- (b) a direction given under regulation 125;

“directive requirement” means an obligation, prohibition or restriction imposed by regulation 61 (information on ATM withdrawal charges) or Part 8 (access to payment systems and bank accounts), with the exception of the obligation imposed on the FCA by regulation 105(5) (access to bank accounts);

“general direction” has the meaning given in regulation 125(5);

“general guidance” has the meaning given in regulation 134(2);

“regulated person” means a person on whom a directive requirement is imposed.

**Functions of the Payment Systems Regulator**

**124.—**(1) The Payment Systems Regulator is designated as the competent authority for the purposes of the following provision of the payment services directive—

- (a) the condition in Article 3(o) (transposed in regulation 61) (information on ATM withdrawal charges);
- (b) Article 35 (transposed in regulations 102 to 104) (access to payment systems);
- (c) Article 36 (transposed in regulation 105) (access to bank accounts), together with the FCA,

and has the functions and powers conferred on it by these Regulations.

(2) In determining the general policy and principles by reference to which it performs particular functions under these Regulations, and to the extent appropriate taking into account the Payment Systems Regulator’s designation under paragraph (1), the Payment Systems Regulator must have regard to the matters to which the FCA is required to have regard by regulation 106(3), and for that purpose references to the FCA in regulation 106(3)(f) to (h) are to be read as references to the Payment Systems Regulator.

(3) The Payment Systems Regulator must maintain arrangements designed to enable it to determine whether regulated persons are complying with directive requirements, and for enforcing directive requirements.

### **Directions**

**125.**—(1) The Payment Systems Regulator may give a direction in writing to any regulated person.

(2) A direction may be given for the purpose of—

(a) obtaining information about—

(i) compliance with a directive requirement; or

(ii) the application of a directive requirement to a person;

(b) remedying a failure to comply with a directive requirement; or

(c) preventing a failure to comply, or continued non-compliance, with a directive requirement.

(3) A direction may require or prohibit the taking of specified action.

(4) A direction may apply—

(a) in relation to all regulated persons or in relation to every regulated person of a specified description; or

(b) in relation to a specified regulated person or specified regulated persons.

(5) A direction that applies as mentioned in paragraph (4)(a) is referred to in this Part as a “general direction”.

(6) A direction requiring the provision of information must specify the purpose for which the information is required, as appropriate, and the time within which the information is to be given.

(7) The Payment Systems Regulator must publish any general direction.

### **Publication of compliance failures and penalties**

**126.** The Payment Systems Regulator may publish details of—

(a) a compliance failure by a regulated person; or

(b) a penalty imposed under regulation 127.

### **Penalties**

**127.**—(1) The Payment Systems Regulator may require a regulated person to pay a penalty in respect of a compliance failure.

(2) A penalty—

(a) must be paid to the Payment Systems Regulator; and

(b) may be enforced by the Payment Systems Regulator as a debt.

(3) The Payment Systems Regulator 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 Payment Systems Regulator must—

(a) publish the statement on its website;

(b) send a copy to the Treasury;

- (c) review the statement from time to time and revise it if necessary (and sub-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 compliance failure occurred.

### **Notice of publication of a compliance failure or of imposition of a penalty**

**128.** Before publishing details of a compliance failure by a regulated person under regulation 126(a) or imposing a penalty on a regulated person under regulation 127, the Payment Systems Regulator must—

- (a) give the person notice in writing of the proposed publication or penalty and reasons for the proposed publication or penalty;
- (b) give the person at least 21 days to make representations;
- (c) consider any representations made; and
- (d) as soon as is reasonably practicable, give the person a notice in writing stating whether or not it intends to publish the details or impose the penalty.

### **Injunctions**

**129.**—(1) If, on the application of the Payment Systems Regulator, the court is satisfied—

- (a) that there is a reasonable likelihood that there will be a compliance failure, or
- (b) that there has been a compliance failure and there is a reasonable likelihood that it will continue or be repeated,

the court may make an order restraining the conduct constituting the failure.

(2) If, on the application of the Payment Systems Regulator, the court is satisfied—

- (a) that there has been a compliance failure by a regulated person; and
- (b) that there are steps which could be taken for remedying the failure,

the court may make an order requiring the regulated person, and anyone else who appears to have been knowingly concerned in the failure, 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 this regulation—

- (a) references to an order restraining anything are, in Scotland, to be read as references to an interdict prohibiting that thing; and
- (b) references to remedying a failure include mitigating its effect.

### **Appeals: general**

**130.**—(1) A person who is affected by a decision to give a direction under regulation 125 (directions) other than a general direction or a decision to publish details under regulation 126(a) (publication of compliance failures) may appeal against the decision to the Competition Appeal Tribunal in accordance with regulation 131.

(2) A person who is affected by a decision to impose a penalty under regulation 127 (penalties) may appeal against the decision to the Competition Appeal Tribunal in accordance with regulation 132.

### **Appeals against directions and publication of compliance failures**

**131.**—(1) This regulation applies where a person is appealing to the Competition Appeal Tribunal against a decision to give a direction under regulation 125 (directions) or to publish details under regulation 126(a) (publication of compliance failures).

(2) The means of making an appeal is by sending the Competition Appeal Tribunal a notice of appeal in accordance with Tribunal rules.

(3) The notice of appeal must be sent within the period specified, in relation to the decision appealed against, in those rules.

(4) In determining an appeal made in accordance with this regulation, the Competition Appeal Tribunal must apply the same principles as would be applied by a court on an application for judicial review.

(5) The Competition Appeal Tribunal must either—

(a) dismiss the appeal; or

(b) quash the whole or part of the decision to which the appeal relates.

(6) If the Competition Appeal Tribunal quashes the whole or part of a decision, it may refer the matter back to the Payment Systems Regulator with a direction to reconsider and make a new decision in accordance with its ruling.

(7) The Competition Appeal Tribunal may not direct the Payment Systems Regulator to take any action which it would not otherwise have the power to take in relation to the decision.

(8) In this regulation and regulation 132 “Tribunal rules” means rules under section 15 of the Enterprise Act 2002(2).

### **Appeals in relation to penalties**

**132.**—(1) This regulation applies where a person is appealing to the Competition Appeal Tribunal against a decision to impose a penalty under regulation 127 (penalty).

(2) The person may appeal against—

(a) the imposition of the penalty;

(b) the amount of the penalty; or

(c) any date by which the penalty, or any part of it, is required to be paid.

(3) The means of making an appeal is by sending the Competition Appeal Tribunal a notice of appeal in accordance with Tribunal rules.

(4) The notice of appeal must be sent within the period specified, in relation to the decision appealed against, in those rules.

(5) The Competition Appeal Tribunal may do any of the following—

(a) uphold the penalty;

(b) set aside the penalty;

(c) substitute for the penalty a penalty of an amount decided by the Competition Appeal Tribunal;

(d) vary any date by which the penalty, or any part of it, is required to be paid.

(6) If an appeal is made in accordance with this regulation, the penalty is not required to be paid until the appeal has been determined.

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(2) 2002 c. 40. Section 15 was amended by paragraph 20 of Schedule 8 to the Consumer Rights Act 2015 (c. 15).

(7) Paragraphs (2), (5) and (6) do not restrict the power to make Tribunal rules; and those paragraphs are subject to Tribunal rules.

(8) Except as provided by this regulation, the validity of the penalty may not be questioned by any legal proceedings whatever.

(9) In the case of an appeal made in accordance with this regulation, a decision of the Competition Appeal Tribunal has the same effect as, and may be enforced in the same manner as, a decision of the Payment Systems Regulator.

### **Complaints**

**133.**—(1) The Payment Systems Regulator must maintain arrangements designed to enable persons to submit complaints to it that a directive requirement has been breached.

(2) Where it considers it appropriate, the Payment Systems Regulator must include in any reply to a complaint under paragraph (1) details of the ombudsman scheme established under Part 16 of the 2000 Act (the ombudsman scheme).

### **Guidance**

**134.**—(1) The Payment Systems Regulator may give guidance consisting of such information and advice as it considers appropriate in relation to—

- (a) the directive requirements;
- (b) its functions under these Regulations;
- (c) any related matters about which it appears to the Payment Systems Regulator to be desirable to give information or advice.

(2) In this Part “general guidance” means guidance given by the Payment Systems Regulator under this regulation which is—

- (a) given to persons generally or to a class of persons;
- (b) intended to have continuing effect; and
- (c) given in writing or other legible form.

(3) The Payment Systems Regulator may publish its guidance.

### **Information and investigation**

**135.**—(1) Sections 81 to 93 of the 2013 Act (information and investigation powers and disclosure of information) apply for the purposes of the Payment Systems Regulator’s functions under these Regulations as if—

- (a) references to Part 5 of the 2013 Act were references to these Regulations;
- (b) references to a participant in a regulated payment system were references to a regulated person;
- (c) references to a compliance failure were references to a compliance failure as defined in regulation 123 (interpretation of this Part);
- (d) in section 81 (power to obtain information or documents)—
  - (i) subsection (1)(a) were omitted
  - (ii) in subsection (1)(b), “otherwise” were omitted; and
  - (iii) after subsection (3) there were inserted—

- “(4) A notice under subsection (1) requiring information must specify the purpose for which the information is required and the time within which the information is to be provided.”.
- (e) in section 82(1) (reports by skilled persons) the reference to participation in a payment system were a reference to compliance with the directive requirements;
  - (f) in section 83 (appointment of persons to conduct investigations), subsection (1) were omitted;
  - (g) in section 90 (enforcement of information and investigation powers)—
    - (i) in subsection (7)(a)(i) for “12 months (or 6 months, if the offence was committed before the commencement of section 154(1) of the Criminal Justice Act 2003)” there were substituted “3 months”;
    - (ii) in subsection (7)(a)(iii) for “6 months” there were substituted “3 months”; and
    - (iii) in subsection (8)(a) for “51 weeks (or 3 months, if the offence was committed before the commencement of section 280(2) of the Criminal Justice Act 2003)” there were substituted “3 months”;
  - (h) in section 91 (restrictions on disclosure of confidential information), subsection (6) were omitted; and
  - (i) in section 93 (offences relating to disclosure of confidential information), in subsection (4) (a) for “51 weeks (or 3 months, if the offence was committed before the commencement of section 280(2) of the Criminal Justice Act 2003)” there were substituted “3 months”.
- (2) The Financial Services (Banking Reform) Act 2013 (Disclosure of Confidential Information) Regulations 2014(3) (“the 2014 Regulations”) apply for the purposes of the Payment Systems Regulator’s functions under these Regulations as if—
- (a) the reference in regulation 5(3)(a) of the 2014 Regulations (disclosure for the purposes of certain other proceedings) to Part 5 of the 2013 Act were a reference to these Regulations; and
  - (b) the following entry were included in the table in the Schedule to the 2014 Regulations (persons and functions in respect of which disclosure is permitted)—

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“A general enforcer as defined in section 213(1) of the Enterprise Act 2002(4)	Its functions under Part 8 of the Enterprise Act 2002 in so far as they relate to the Consumer Rights (Payment Surcharges) Regulations 2012(5), and its functions under those Regulations.”.
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### **Application of other provisions of the 2013 Act**

**136.**—(1) For the purposes of these Regulations section 40(3) and (4) of the 2013 Act (Financial Conduct Authority to ensure capability of Payment Systems Regulator) applies as if the reference in section 40(3) of that Act to the functions referred to in section 40(1) included a reference to the functions of the Payment Systems Regulator under these Regulations.

(2) For the purposes of these Regulations section 104 of the 2013 Act (consultation in relation to generally applicable requirements) applies as if—

- (a) in subsection (1)—

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(3) [S.I. 2014/882](#).

(4) [2002 c. 40](#). Section 213(1) was amended by [S.I. 2014/892](#).

(5) [S.I. 2012/3110](#), amended by [S.I. 2013/761](#) and [3134](#) and [2014/549](#) and by paragraph 12 of Schedule 8 to these Regulations.

- (i) the reference in paragraph (a) to a general direction under section 54 of that Act were a reference to a general direction under regulation 125 (directions);
    - (ii) paragraph (b) were omitted;
  - (b) in subsection (3)(c), the reference to the Payment Systems Regulator's duties under section 49 were a reference to the Payment Systems Regulator's duties under regulation 124(2) and (3) (duties to maintain arrangements for monitoring and enforcement and to have regard to regulatory principles); and
  - (c) in subsection (10), the reference to regulated payment systems were a reference to regulated persons.
- (3) For the purposes of these Regulations paragraphs 5, 7 and 9 to 14 of Schedule 4 to the 2013 Act (the Payment Systems Regulator) apply as if—
- (a) references to the functions of the Payment Systems Regulator included references to the functions of the Payment Systems Regulator under the interchange fee regulation and these Regulations;
  - (b) in paragraph 5 of that Schedule (arrangements for discharging functions)—
    - (i) in sub-paragraph (3), the reference to general directions under section 54 of the 2013 Act included a reference to general directions under regulation 125;
    - (ii) in sub-paragraph (4), the reference to general guidance included a reference to general guidance under regulation 134 (guidance);
  - (c) in paragraph 9 (funding) of that Schedule, in sub-paragraph (1) the reference to participants in regulated payment systems included a reference to regulated persons;
  - (d) in paragraph 10 of that Schedule (penalty receipts)—
    - (i) references to penalties imposed under section 73 of the 2013 Act included references to penalties imposed under regulation 127 (penalties);
    - (ii) in sub-paragraph (4)—
      - (aa) in paragraph (a) the reference to the Payment Systems Regulator's powers under sections 72 to 75 of the 2013 Act included a reference to the Payment Systems Regulator's powers under regulations 126 to 129 (publication of compliance failures and penalties, penalties and injunctions);
      - (bb) in paragraphs (c) and (d) the reference to relevant offences included reference to offences under Part 5 of the 2013 Act as applied by regulation 135 and under these Regulations; and
  - (e) in paragraph 11 of that Schedule (penalty receipts)—
    - (i) in sub-paragraph (1), the reference to penalties imposed under section 73 of the 2013 Act included a reference to penalties imposed under regulation 127 (penalties); and
    - (ii) in sub-paragraphs (1) and (2), the references to participants in regulated payment systems included references to regulated persons.