
Status: Point in time view as at 31/12/2020.

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STATUTORY INSTRUMENTS

2017 No. 752

The Payment Services Regulations 2017

PART 2

Registration

Authorisation as a payment institution

Application for authorisation as a payment institution or variation of an existing authorisation

5.—(1) An application for authorisation as a payment institution must contain or be accompanied by the information specified in Schedule 2 (information to be included in or with an application for authorisation).

(2) An application for the variation of an authorisation as a payment institution must—

- (a) contain a statement of the proposed variation;
- (b) contain a statement of the payment services which the applicant proposes to carry on if the authorisation is varied; and
- (c) contain, or be accompanied by, such other information as the FCA may reasonably require.

(3) An application under paragraph (1) or (2) must be made in such manner as the FCA may direct.

(4) At any time after receiving an application and before determining it, the FCA may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application.

(5) Different directions may be given, and different requirements imposed, in relation to different applications or categories of application.

Conditions for authorisation as a payment institution

6.—(1) The FCA may refuse to grant all or part of an application for authorisation as a payment institution only if any of the conditions set out in paragraphs (2) to (9) is not met.

(2) The application must comply with the requirements of, and any requirements imposed under, regulations 5 (application for authorisation) and 20 (duty to notify changes).

(3) The applicant must immediately before the time of authorisation hold the amount of initial capital specified in Part 1 of Schedule 3 (capital requirements).

(4) The applicant must be a body corporate constituted under the law of a part of the United Kingdom having—

- (a) its head office, and
- (b) if it has a registered office, that office,

in the United Kingdom.

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(5) The applicant carries on, or will carry on, at least part of its payment service business in the United Kingdom.

(6) The applicant must satisfy the FCA that, taking into account the need to ensure the sound and prudent conduct of the affairs of the institution, it has—

- (a) robust governance arrangements for its payment service business, including a clear organisational structure with well-defined, transparent and consistent lines of responsibility;
- (b) effective procedures to identify, manage, monitor and report any risks to which it might be exposed;
- (c) adequate internal control mechanisms, including sound administrative, risk management and accounting procedures,

which are comprehensive and proportionate to the nature, scale and complexity of the payment services to be provided by the institution.

(7) The applicant must satisfy the FCA that—

- (a) any persons having a qualifying holding in it are fit and proper persons having regard to the need to ensure the sound and prudent conduct of the affairs of an authorised payment institution;
- (b) the directors and persons responsible for the management of the institution and, where relevant, the persons responsible for the management of payment services, are of good repute and possess appropriate knowledge and experience to provide payment services;
- (c) it has a business plan (including, for the first three years, a forecast budget calculation) under which appropriate and proportionate systems, resources and procedures will be employed by the institution to operate soundly;
- (d) it has taken adequate measures for the purpose of safeguarding payment service users' funds in accordance with regulation 23 (safeguarding requirements);
- (e) in the case of an applicant which proposes to carry on payment initiation services, it holds professional indemnity insurance or a comparable guarantee, which covers—
 - (i) the territories in which the applicant proposes to offer payment initiation services; and
 - (ii) the applicant's potential liability under regulations 76 (payment service provider's liability for unauthorised payment transactions) and 91 to 95 (non-execution or defective or late execution of transactions, liability for charges and interest and right of recourse), up to such amount as the FCA may direct; and
- (f) in the case of an applicant which proposes to carry on account information services, it holds professional indemnity insurance or a comparable guarantee, which covers—
 - (i) the territories in which the applicant proposes to offer account information services; and
 - (ii) the applicant's potential liability to account servicing payment service providers and payment service users resulting from unauthorised or fraudulent access to, or use of, payment account information, up to such amount as the FCA may direct.

(8) The applicant must comply with a requirement of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017^{M1} to be included in a register maintained under those Regulations where such a requirement applies to the applicant.

(9) If the applicant has close links with another person (“CL”) the applicant must satisfy the FCA—

- (a) that those links are not likely to prevent the FCA's effective supervision of the applicant; and
 - (b) if it appears to the FCA that CL is subject to the laws, regulations or administrative provisions of a territory [^{F1}outside the United Kingdom] (“the foreign provisions”), that neither the foreign provisions, nor any deficiency in their enforcement, would prevent the FCA's effective supervision of the applicant.
- (10) For the purposes of paragraph (9), an applicant has close links with CL if--
- (a) CL is a parent undertaking of the applicant;
 - (b) CL is a subsidiary undertaking of the applicant;
 - (c) CL is a parent undertaking of a subsidiary undertaking of the applicant;
 - (d) CL is a subsidiary undertaking of a parent undertaking of the applicant;
 - (e) CL owns or controls 20% or more of the voting rights or capital of the applicant; or
 - (f) the applicant owns or controls 20% or more of the voting rights or capital of CL.

Textual Amendments

- F1** Words in [reg. 6\(9\)\(b\)](#) substituted (31.12.2020) by [The Electronic Money, Payment Services and Payment Systems \(Amendment and Transitional Provisions\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1201\)](#), [reg. 1\(3\)](#), [Sch. 2 para. 27](#) (with [reg. 4](#), [Sch. 3 Pt. 2](#)) (as amended by [S.I. 2020/56](#), [regs. 1, 8](#)); [2020 c. 1](#), [Sch. 5 para. 1\(1\)](#)

Modifications etc. (not altering text)

- C1** [Reg. 6](#) excluded (20.11.2018) by [The Electronic Money, Payment Services and Payment Systems \(Amendment and Transitional Provisions\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1201\)](#), [reg. 1\(2\)](#), [Sch. 3 para. 19\(2\)](#) (with [reg. 4](#))

Marginal Citations

- M1** [S.I. 2017/692](#).

Imposition of requirements

- 7.—(1) The FCA may include in an authorisation such requirements as it considers appropriate.
- (2) A requirement may, in particular, be imposed so as to require the person concerned to—
- (a) take a specified action;
 - (b) refrain from taking a specified action.
- (3) A requirement may be imposed by reference to the person's relationship with its group or other members of its group.
- (4) Where—
- (a) an applicant for authorisation as a payment institution intends to carry on business activities other than the provision of payment services; and
 - (b) the FCA considers that the carrying on of such other business activities will impair, or is likely to impair—
 - (i) the financial soundness of the applicant, or
 - (ii) the FCA's effective supervision of the applicant,

the FCA may require the applicant to establish a separate body corporate to carry on the payment service business.

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(5) A requirement expires at the end of such period as the FCA may specify in the authorisation.

(6) Paragraph (5) does not affect the FCA's powers under regulation 8 or 12 (variation of authorisation).

Variation etc. at request of authorised payment institution

8. The FCA may, on the application of an authorised payment institution, vary that person's authorisation by—

- (a) adding a payment service to those for which it has granted authorisation;
- (b) removing a payment service from those for which it has granted authorisation;
- (c) imposing a requirement such as may, under regulation 7 (imposition of requirements), be included in an authorisation;
- (d) cancelling a requirement included in the authorisation or previously imposed under paragraph (c); or
- (e) varying such a requirement,

provided that the FCA is satisfied that the conditions set out in regulation 6(4) to (9) (conditions for authorisation) and, if applicable, the requirement in regulation 22(1) (capital requirements) to maintain own funds, are being or are likely to be met.

Determination of application for authorisation or variation of authorisation

9.—(1) The FCA must determine an application for authorisation or the variation of an authorisation before the end of the period of three months beginning with the date on which it received the completed application.

(2) The FCA may determine an incomplete application if it considers it appropriate to do so, and it must in any event determine any such application within 12 months beginning with the date on which it received the application.

(3) The applicant may withdraw its application, by giving the FCA notice, at any time before the FCA determines it.

(4) The FCA may grant authorisation to carry out the payment services to which the application relates or such of them as may be specified in the grant of the authorisation.

(5) If the FCA decides to grant an application for authorisation, or for the variation of an authorisation, it must give the applicant notice of its decision specifying—

- (a) the payment services for which authorisation has been granted; or
- (b) the variation granted,

described in such manner as the FCA considers appropriate.

(6) The notice must state the date on which the authorisation or variation takes effect.

(7) If the FCA proposes to refuse an application or to impose a requirement it must give the applicant a warning notice.

(8) The FCA must, having considered any representations made in response to the warning notice—

- (a) if it decides to refuse the application or to impose a requirement, give the applicant a decision notice; or
- (b) if it grants the application without imposing a requirement, give the applicant notice of its decision, stating the date on which the authorisation or variation takes effect.

(9) If the FCA decides to refuse the application or to impose a requirement the applicant may refer the matter to the Upper Tribunal.

(10) If the FCA decides to authorise the applicant, or vary its authorisation, it must update the register as soon as practicable.

Cancellation of authorisation

10.—(1) The FCA may cancel a person's authorisation and enter such cancellation in the register where—

- (a) the person does not provide payment services within 12 months beginning with the date on which the authorisation took effect;
- (b) the person requests, or consents to, the cancellation of the authorisation;
- (c) the person ceases to engage in business activity for more than six months;
- (d) the person has obtained authorisation through false statements or any other irregular means;
- (e) the person no longer meets, or is unlikely to continue to meet, any of the conditions set out in regulation 6(4) to (9) (conditions for authorisation) or, if applicable, the requirement in regulation 22(1) (capital requirements) to maintain own funds, or does not inform the FCA of a major change in circumstances which is relevant to its meeting those conditions or that requirement, as required by regulation 37 (duty to notify change in circumstance);
- (f) the person has provided payment services other than in accordance with the authorisation granted to it;
- (g) the person would constitute a threat to the stability of, or trust in, a payment system by continuing its payment services business;
- (h) the cancellation is desirable in order to protect the interests of consumers; or
- (i) the person's provision of payment services is otherwise unlawful, including where such provision of services is unlawful because the person's registration in a register maintained under regulation 54 or 55 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (duty and power to maintain registers) has been cancelled under regulation 60 of those Regulations (cancellation and suspension of registration).

(2) Where the FCA proposes to cancel a person's authorisation, other than at the person's request, it must give the person a warning notice.

(3) The FCA must, having considered any representations made in response to the warning notice—

- (a) if it decides to cancel the authorisation, give the person a decision notice; or
- (b) if it decides not to cancel the authorisation, give the person notice of its decision.

(4) If the FCA decides to cancel the authorisation, other than at the person's request, the person may refer the matter to the Upper Tribunal.

(5) Where the period for a reference to the Upper Tribunal has expired without a reference being made, the FCA must as soon as practicable update the register accordingly.

Modifications etc. (not altering text)

- C2** Reg. 10(1) excluded (20.11.2018) by [The Electronic Money, Payment Services and Payment Systems \(Amendment and Transitional Provisions\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1201\)](#), reg. 1(2), [Sch. 3 para. 19\(1\)\(a\)](#) (with reg. 4)

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- C3** Reg. 10(2)-(5) applied (20.11.2018) by [The Electronic Money, Payment Services and Payment Systems \(Amendment and Transitional Provisions\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1201\)](#), reg. 1(2), [Sch. 3 para. 20\(2\)](#) (with reg. 4)

Request for cancellation of authorisation

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

(2) At any time after receiving a request and before determining it, the FCA 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.

Variation of authorisation on FCA's own initiative

12.—(1) The FCA may vary a person's authorisation in any of the ways mentioned in regulation 8 if it appears to the FCA that—

- (a) the person no longer meets, or is unlikely to continue to meet, any of the conditions set out in regulation 6(4) to (9) (conditions for authorisation) or, if applicable, the requirement in regulation 22(1) (capital requirements) to maintain own funds, or does not inform the FCA of a major change in circumstances which is relevant to its meeting those conditions or that requirement, as required by regulation 37 (duty to notify change in circumstance);
- (b) the person has provided a particular payment service or payment services other than in accordance with the authorisation granted to it;
- (c) the person would constitute a threat to the stability of, or trust in, a payment system by continuing to provide a particular payment service or payment services;
- (d) the variation is desirable in order to protect the interests of consumers; or
- (e) the person's provision of a particular payment service or payment services is otherwise unlawful, including where such provision of services is unlawful because the person's registration in a register maintained under regulation 54 or 55 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (duty and power to maintain registers) has been cancelled under regulation 60 of those Regulations (cancellation and suspension of registration).

(2) A variation under this regulation takes effect—

- (a) immediately, if the notice given under paragraph (6) states that that is the case;
- (b) on such date as may be specified in the notice; or
- (c) if no date is specified in the notice, when the matter to which the notice relates is no longer open to review.

(3) A variation may be expressed to take effect immediately or on a specified date only if the FCA, having regard to the ground on which it is exercising the power under paragraph (1), reasonably considers that it is necessary for the variation to take effect immediately or, as the case may be, on that date.

(4) The FCA must as soon as practicable after the variation takes effect update the register accordingly.

(5) A person who is aggrieved by the variation of their authorisation under this regulation may refer the matter to the Upper Tribunal.

(6) Where the FCA proposes to vary a person's authorisation under this regulation, it must give the person notice.

(7) The notice must—

- (a) give details of the variation;
- (b) state the FCA's reasons for the variation and for its determination as to when the variation takes effect;
- (c) inform the person that they may make representations to the FCA within such period as may be specified in the notice (whether or not the person has referred the matter to the Upper Tribunal);
- (d) inform the person of the date on which the variation takes effect; and
- (e) inform the person of their right to refer the matter to the Upper Tribunal and the procedure for such a reference.

(8) The FCA may extend the period allowed under the notice for making representations.

(9) If, having considered any representations made by the person, the FCA decides—

- (a) to vary the authorisation in the way proposed, or
- (b) if the authorisation has been varied, not to rescind the variation,

it must give the person notice.

(10) If, having considered any representations made by the person, the FCA decides—

- (a) not to vary the authorisation in the way proposed,
- (b) to vary the authorisation in a different way, or
- (c) to rescind a variation which has taken effect,

it must give the person notice.

(11) A notice given under paragraph (9) must inform the person of their right to refer the matter to the Upper Tribunal and the procedure for such a reference.

(12) A notice under paragraph (10)(b) must comply with paragraph (7).

(13) For the purposes of paragraph (2)(c), paragraphs (a) to (d) of section 391(8) of the 2000 Act (publication) apply to determine whether a matter is open to review.

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