

SCHEDULE 1

Regulation 2(1)

Payment Services

PART 1

Payment services

1. Subject to Part 2, the following, when carried out as a regular occupation or business activity, are payment services—
 - (a) services enabling cash to be placed on a payment account and all of the operations required for operating a payment account;
 - (b) services enabling cash withdrawals from a payment account and all of the operations required for operating a payment account;
 - (c) the execution of payment transactions, including transfers of funds on a payment account with the user's payment service provider or with another payment service provider—
 - (i) execution of direct debits, including one-off direct debits;
 - (ii) execution of payment transactions through a payment card or a similar device;
 - (iii) execution of credit transfers, including standing orders;
 - (d) the execution of payment transactions where the funds are covered by a credit line for a payment service user—
 - (i) execution of direct debits, including one-off direct debits;
 - (ii) execution of payment transactions through a payment card or a similar device;
 - (iii) execution of credit transfers, including standing orders;
 - (e) issuing payment instruments or acquiring payment transactions;
 - (f) money remittance;
 - (g) payment initiation services;
 - (h) account information services.

PART 2

Activities which do not constitute payment services

2. The following do not constitute payment services—
 - (a) payment transactions executed wholly in cash and directly between the payer and the payee, without any intermediary intervention;
 - (b) payment transactions between the payer and the payee through a commercial agent authorised in an agreement to negotiate or conclude the sale or purchase of goods or services on behalf of either the payer or the payee but not both the payer and the payee;
 - (c) the professional physical transport of banknotes and coins, including their collection, processing and delivery;
 - (d) payment transactions consisting of non-professional cash collection and delivery as part of a not-for-profit or charitable activity;

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- (e) services where cash is provided by the payee to the payer as part of a payment transaction for the purchase of goods or services following an explicit request by the payer immediately before the execution of the payment transaction;
- (f) cash-to-cash currency exchange operations where the funds are not held on a payment account;
- (g) payment transactions based on any of the following documents drawn on the payment service provider with a view to placing funds at the disposal of the payee—
 - (i) paper cheques of any kind, including traveller's cheques;
 - (ii) bankers' drafts;
 - (iii) paper-based vouchers;
 - (iv) paper postal orders;
- (h) payment transactions carried out within a payment or securities settlement system between payment service providers and settlement agents, central counterparties, clearing houses, ^[F]central securities depositories,] central banks or other participants in the system;
- (i) payment transactions related to securities asset servicing, including dividends, income or other distributions, or redemption or sale, carried out by persons referred to in sub-paragraph (h) or by investment firms, credit institutions, collective investment undertakings or asset management companies providing investment services or by any other entities allowed to have the custody of financial instruments;
- (j) services provided by technical service providers, which support the provision of payment services, without the provider entering at any time into possession of the funds to be transferred, excluding payment initiation services or account information services but including—
 - (i) the processing and storage of data;
 - (ii) trust and privacy protection services;
 - (iii) data and entity authentication;
 - (iv) information technology;
 - (v) communication network provision; and
 - (vi) the provision and maintenance of terminals and devices used for payment services;
- (k) services based on specific payment instruments that can be used only in a limited way and meet one of the following conditions—
 - (i) allow the holder to acquire goods or services only in the issuer's premises;
 - (ii) are issued by a professional issuer and allow the holder to acquire goods or services only within a limited network of service providers which have direct commercial agreements with the issuer;
 - (iii) may be used only to acquire a very limited range of goods or services; or
 - (iv) are valid only in a single EEA State, are provided at the request of an undertaking or a public sector entity, and are regulated by a national or regional public authority for specific social or tax purposes to acquire specific goods or services from suppliers which have a commercial agreement with the issuer.
- (l) payment transactions resulting from services provided by a provider of electronic communications networks or services, including transactions between persons other than that provider and a subscriber, where those services are provided in addition to electronic communications services for a subscriber to the network or service, and where the additional service is—

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- (i) for purchase of digital content and voice-based services, regardless of the device used for the purchase or consumption of the digital content, and charged to the related bill; or
 - (ii) performed from or via an electronic device and charged to the related bill for the purchase of tickets or for donations to organisations which are registered or recognised as charities by public authorities, whether in the United Kingdom or elsewhere,
- provided that the value of any single payment transaction does not exceed £40, and the cumulative value of payment transactions for an individual subscriber in a month does not exceed £240;
- (m) payment transactions carried out between payment service providers, or their agents or branches, for their own account;
 - (n) payment transactions and related services between a parent undertaking and its subsidiary or between subsidiaries of the same parent undertaking, without any intermediary intervention by a payment service provider other than an undertaking belonging to the same group;
 - (o) cash withdrawal services provided through automatic teller machines, where the provider—
 - (i) is acting on behalf of one or more card issuers;
 - (ii) is not party to the framework contract with the customer withdrawing money from a payment account; and
 - (iii) does not conduct any other payment service.

Textual Amendments

- F1** Words in Sch. 1 para. 2(h) inserted (28.11.2017) by [The Central Securities Depositories Regulations 2017 \(S.I. 2017/1064\)](#), reg. 1, **Sch. para. 45** (with regs. 7(4), 9(1))

SCHEDULE 2

Regulation 5(1)

Information to be included in or with an application for authorisation

1. A programme of operations setting out, in particular, the type of payment services envisaged.
2. A business plan including a forecast budget calculation for the first three financial years which demonstrates that the applicant is able to employ appropriate and proportionate systems, resources and procedures to operate soundly.
3. Evidence that the applicant holds initial capital for the purposes of regulation 6(3).
4. Where regulation 23 (safeguarding requirements) applies, a description of the measures taken for safeguarding payment service users' funds in accordance with that regulation.
5. A description of the applicant's governance arrangements and internal control mechanisms, including administrative risk management and accounting procedures, which demonstrates that such arrangements, mechanisms and procedures are proportionate, appropriate, sound and adequate.
6. A description of the applicant's procedure for monitoring, handling and following up security incidents and security-related customer complaints, including an incidents reporting mechanism which takes account of the notification obligations under regulation 99 (incident reporting).

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7. A description of the applicant's process for filing, monitoring, tracking and restricting access to sensitive payment data.

8. A description of the applicant's business continuity arrangements, including a clear identification of the critical operations, effective contingency plans, and a procedure for regular testing and reviewing of the adequacy and efficiency of such plans.

9. A description of the principles and definitions used by the applicant in collecting statistical data on performance, transactions and fraud.

10. A statement of the applicant's security policy, including—

- (a) a detailed risk assessment in relation to the payment services to be provided, including risks of fraud and illegal use of sensitive and personal data, and
- (b) a description of—
 - (i) the applicant's security control and mitigation measures to provide adequate protection to users against the risks identified,
 - (ii) how such measures ensure a high level of technical security and data protection, including such security and protection for the software and IT systems used by the applicant and any undertakings to which the applicant outsources any part of its operations, and
 - (iii) the applicant's measures to comply with regulation 98(1) (management of operational and security risks), taking into account any guidelines issued by the European Banking Authority under Article 95(3) of the payment services directive.

11. For an applicant subject to the obligations in relation to money laundering and terrorist financing under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 and Regulation 2015/847/EU of the European Parliament and of the Council of 20th May 2015 on information accompanying transfers of funds^{M1}, a description of the internal control mechanisms which the applicant has established in order to comply with those obligations.

Marginal Citations

M1 OJ L 141, 05.06.2015, p.1.

12. A description of the applicant's structural organisation, including, where applicable, a description of the intended use of agents and branches and the off-site and on-site checks that the applicant undertakes to perform on them at least annually, a description of outsourcing arrangements, and a description of its participation in any national or international payment system.

13. In relation to each person holding, directly or indirectly, a qualifying holding in the applicant—

- (a) the size and nature of their qualifying holding; and
- (b) evidence of their suitability taking into account the need to ensure the sound and prudent management of a payment institution.

14.—(1) The identity of directors and persons who are or will be responsible for the management of the applicant and, where relevant, persons who are or will be responsible for the management of the payment services activities of the applicant.

(2) Evidence that the persons described in sub-paragraph (1) are of good repute and that they possess appropriate knowledge and experience to perform payment services.

15. The identity of the auditors of the applicant, if any.

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16.—(1) The legal status of the applicant and, where the applicant is a limited company, its articles.

(2) In this paragraph “articles” has the meaning given in section 18 of the Companies Act 2006 (articles of association) ^{M2}.

Marginal Citations

M2 2006 c. 46.

17. The address of the head office of the applicant.

18. For the purposes of paragraphs 4, 5, 6 and 12, a description of the audit arrangements of the applicant and of the organisational arrangements the applicant has set up with a view to taking all reasonable steps to protect the interests of its payment service users and to ensure continuity and reliability in the performance of payment services.

19. In the case of an applicant which proposes to provide payment initiation services or account information services, the professional indemnity insurance or comparable guarantee which it holds in relation to such services.

SCHEDULE 3

Regulations 6(3) and 22(1)

Capital requirements

Modifications etc. (not altering text)

C1 Sch. 3 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\(1\)\(c\)](#) (with reg. 4)

PART 1

Initial capital

1. For the purposes of this Part, “initial capital” comprises one or more of the items specified in Article 26(1)(a) to (e) of the capital requirements regulation.

2.—(1) The amount of initial capital referred to in regulations 6(3) (conditions for authorisation) and 22(1)(a) (capital requirements) is the amount specified in the second column of the table, corresponding to the payment services provided or to be provided as specified in the first column.

(2) Where payment services in more than one row of the table are provided or to be provided, the amount of initial capital is the greater of the corresponding amounts in the second column.

<i>Payment services</i>	<i>Initial capital requirement (euros)</i>
Services specified in paragraph 1(h) of Schedule 1	None
Services specified in paragraph 1(f) of Schedule 1 (money remittance)	20,000

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Services specified in paragraph 1(g) of Schedule 1 50,000
(payment initiation services)

Services specified in paragraph 1(a) to (e) of Schedule 1 125,000

PART 2

Own funds

Own funds requirement

3. The amount of own funds referred to in regulation 22(1)(b) is to be calculated in accordance with such of Method A, Method B or Method C (set out in paragraphs 8 to 10) as the FCA may direct.

Adjustment by the FCA

4. The FCA may direct that an authorised payment institution must hold own funds up to 20% higher, or up to 20% lower, than the amount which would result from paragraph 3.

5. A direction made under paragraph 4 must be on the basis of an evaluation of the relevant authorised payment institution including, if available and where the FCA considers it appropriate, any risk-management processes, risk loss database or internal control mechanisms of the authorised payment institution.

6. The FCA may make a reasonable charge for making an evaluation required under paragraph 5.

Provision for start-up payment institutions

7. If an authorised payment institution has not completed a full financial year's business, references to a figure for the preceding financial year are to be read as the equivalent figure projected in the business plan provided in the payment institution's application for authorisation, subject to any adjustment to that plan required by the FCA.

Method A

8.—(1) “Method A” means the calculation method set out in this paragraph.

(2) The own funds requirement is 10% of the authorised payment institution's fixed overheads for the preceding financial year.

(3) If a material change has occurred in an authorised payment institution's business since the preceding financial year, the FCA may direct that the own funds requirement is to be a higher or lower amount than that calculated in accordance with sub-paragraph (2).

Method B

9.—(1) “Method B” means the calculation method set out in this paragraph.

(2) The own funds requirement is the sum of the following elements multiplied by the scaling factor—

- (a) 4% of the first 5,000,000 euros of payment volume;
- (b) 2.5% of the next 5,000,000 euros of payment volume;
- (c) 1% of the next 90,000,000 euros of payment volume;

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- (d) 0.5% of the next 150,000,000 euros of payment volume; and
 - (e) 0.25% of any remaining payment volume.
- (3) “Payment volume” means the total amount of payment transactions executed by the authorised payment institution in the preceding financial year divided by the number of months in that year.
- (4) The “scaling factor” is—
- (a) 0.5 for a payment institution that is authorised to provide only the payment service specified in paragraph 1(f) of Schedule 1 (money remittance); and
 - (b) 1 for a payment institution that is authorised to provide any other payment service specified in paragraph 1(a) to (e) of Schedule 1.

Method C

- 10.**—(1) “Method C” means the calculation method set out in this paragraph.
- (2) The own funds requirement is the relevant indicator multiplied by—
- (a) the multiplication factor; and
 - (b) the scaling factor;
- subject to the proviso in sub-paragraph (7).
- (3) The “relevant indicator” is the sum of the following elements—
- (a) interest income;
 - (b) interest expenses;
 - (c) gross commissions and fees received; and
 - (d) gross other operating income.
- (4) For the purpose of calculating the relevant indicator—
- (a) each element must be included in the sum with its positive or negative sign;
 - (b) income from extraordinary or irregular items must not be used;
 - (c) expenditure on the outsourcing of services rendered by third parties may reduce the relevant indicator if the expenditure is incurred from a payment service provider;
 - (d) the relevant indicator is calculated on the basis of the twelve-monthly observation at the end of the previous financial year;
 - (e) the relevant indicator must be calculated over the previous financial year; and
 - (f) audited figures must be used unless they are not available in which case business estimates may be used.
- (5) The “multiplication factor” is the sum of—
- (a) 10% of the first 2,500,000 euros of the relevant indicator;
 - (b) 8% of the next 2,500,000 euros of the relevant indicator;
 - (c) 6% of the next 20,000,000 euros of the relevant indicator;
 - (d) 3% of the next 25,000,000 euros of the relevant indicator; and
 - (e) 1.5% of any remaining amount of the relevant indicator.
- (6) “Scaling factor” has the meaning given in paragraph 9(4).
- (7) The proviso is that the own funds requirement must not be less than 80% of the average of the previous three financial years for the relevant indicator.

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Application of accounting standards

11. Except where this Schedule provides for a different method of recognition, measurement or valuation, whenever a provision in this Schedule refers to an asset, liability, equity or income statement item, an authorised payment institution must, for the purpose of that provision, recognise the asset, liability, equity or income statement item and measure its value in accordance with whichever of the following are applicable for the purpose of the institution's external financial reporting—

- (a) Financial Reporting Standards and Statements of Standard Accounting Practice issued or adopted by the Financial Reporting Council Limited;
- (b) Statements of Recommended Practice, issued by industry or sectoral bodies recognised for this purpose by the Financial Reporting Council Limited;
- (c) International Financial Reporting Standards and International Accounting Standards issued or adopted by the International Accounting Standards Board;
- (d) International Standards on Auditing (United Kingdom and Ireland) issued by the Financial Reporting Council Limited or a predecessor body;
- (e) the Companies Act 2006.

SCHEDULE 4

Regulations 43(2) and 48

Prior general information for framework contracts

1. The following information about the payment service provider—
 - (a) the name of the payment service provider;
 - (b) the address and contact details of the payment service provider's head office;
 - (c) if different from the information under sub-paragraph (b), the address and contact details of the branch or agent from which the payment service is being provided;
 - (d) details of the payment service provider's regulators, including any reference or registration number of the payment service provider.
2. The following information about the payment service—
 - (a) a description of the main characteristics of the payment service to be provided;
 - (b) the information or unique identifier that must be provided by the payment service user in order for a payment order to be properly initiated or executed;
 - (c) the form and procedure for giving consent to the initiation of a payment order or execution of a payment transaction and for the withdrawal of consent in accordance with regulation 67 (consent and withdrawal of consent);
 - (d) a reference to the time of receipt of a payment order, in accordance with regulation 81 (receipt of payment orders), and the cut-off time, if any, established by the payment service provider;
 - (e) the maximum execution time for the payment services to be provided;
 - (f) whether spending limits for the use of a payment instrument may be agreed in accordance with regulation 71(1) (limits on the use of payment instruments);
 - (g) in the case of co-badged card-based payment instruments, the payment services user's rights under Article 8 of the interchange fee regulation.
3. The following information about charges, interest and exchange rates—

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- (a) details of all charges payable by the payment service user to the payment service provider, including those connected to the manner in and frequency with which information is provided or made available and, where applicable, a breakdown of the amounts of any charges;
 - (b) where relevant, details of the interest and exchange rates to be applied or, if reference interest and exchange rates are to be used, the method of calculating the actual interest and the relevant date and index or base for determining such reference interest or exchange rates;
 - (c) where relevant and if agreed, the immediate application of changes in reference interest or exchange rates and information requirements relating to the changes in accordance with regulation 50(4) (changes in contractual information).
4. The following information about communication—
- (a) the means of communication agreed between the parties for the transmission of information or notifications under these Regulations including, where relevant, any technical requirements for the payment service user's equipment and software for receipt of the information or notifications;
 - (b) the manner in which and frequency with which information under these Regulations is to be provided or made available;
 - (c) the language or languages in which the framework contract will be concluded and in which any information or notifications under these Regulations will be communicated;
 - (d) the payment service user's right to receive the terms of the framework contract and information in accordance with regulation 49 (information during period of contract).
5. The following information about safeguards and corrective measures—
- (a) where relevant, a description of the steps that the payment service user is to take in order to keep safe a payment instrument and how to notify the payment service provider for the purposes of regulation 72(1)(b) (obligations of the payment service user in relation to payment instruments and personalised security credentials);
 - (b) the secure procedure by which the payment service provider will contact the payment service user in the event of suspected or actual fraud or security threats;
 - (c) where relevant, the conditions under which the payment service provider proposes to reserve the right to stop or prevent the use of a payment instrument in accordance with regulation 71(2) to (6);
 - (d) the payer's liability under regulation 77 (payer or payee's liability for unauthorised payment transactions), including details of any limits on such liability;
 - (e) how and within what period of time the payment service user is to notify the payment service provider of any unauthorised or incorrectly initiated or executed payment transaction under regulation 74 (notification and rectification of unauthorised or incorrectly executed payment transactions), and the payment service provider's liability for unauthorised payment transactions under regulation 76 (payment service provider's liability for unauthorised payment transactions) or, as the case may be, section 83 of the Consumer Credit Act 1974^{M3} (liability for misuse of credit facilities);
 - (f) the payment service provider's liability for the initiation or execution of payment transactions under regulation 91 or 92 (non-execution or defective or late execution of payment transactions);
 - (g) the conditions for the payment of any refund under regulation 79 (refunds for payment transactions initiated by or through a payee).

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Marginal Citations

M3 1974 c. 39.

6. The following information about changes to and termination of the framework contract—
 - (a) where relevant, the proposed terms under which the payment service user will be deemed to have accepted changes to the framework contract in accordance with regulation 50(2) (changes in contractual information), unless they notify the payment service provider that they do not accept such changes before the proposed date of their entry into force;
 - (b) the duration of the framework contract;
 - (c) where relevant, the right of the payment service user to terminate the framework contract and any agreements relating to termination in accordance with regulation 51 (termination of framework contract).
7. The following information about redress—
 - (a) any contractual clause on—
 - (i) the law applicable to the framework contract;
 - (ii) the competent courts;
 - (b) the availability of alternative dispute resolution procedures for the payment service user and the methods for having access to them.

SCHEDULE 5

Regulation 119

Credit agreements

PART 1

Prohibitions and restrictions

Power to prohibit the entry into credit agreements

1.—(1) If it appears to the FCA that sub-paragraph (4) has been, or is likely to be, contravened as respects an EEA authorised payment institution exercising passport rights in the United Kingdom, it may by notice given to the institution in accordance with Part 2 of this Schedule impose on the institution a credit prohibition.

(2) If it appears to the FCA that a restriction imposed under paragraph 2 on an EEA authorised payment institution exercising passport rights in the United Kingdom has not been complied with, it may by notice given to the institution in accordance with Part 2 of this Schedule impose on the institution a credit prohibition.

(3) “A credit prohibition” means a prohibition on carrying on, or purporting to carry on, in the United Kingdom any business which consists of or includes carrying on an activity—

- (a) of the kind specified by article 36A, 36H, 39D, 39E, 39F, 39G, 60B, 60N, 89A or 89B of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 ^{M4} (activities relating to credit); and
- (b) listed in Annex I to the payment services directive or which the institution is entitled to carry on in accordance with Article 18 of that directive.

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(4) This sub-paragraph is contravened as respects an EEA authorised payment institution exercising passport rights in the United Kingdom if—

- (a) the institution or any of its employees, agents or associates (whether past or present), or
- (b) where the institution is a body corporate, any controller of the institution or an associate of any such controller,

does any of the things specified in sub-paragraph (5).

(5) A person does a thing specified in this sub-paragraph if the person—

- (a) commits any offence involving fraud or other dishonesty or violence;
- (b) contravenes any provision made by or under—
 - (i) the Consumer Credit Act 1974;
 - (ii) the 2000 Act, to the extent that that Act relates to any activity of the kind specified by article 36A, 36H, 39D, 39E, 39F, 39G, 60B, 60N, 89A or 89B of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;
 - (iii) any other enactment regulating the provision of credit to individuals or other transactions with individuals;
- (c) contravenes any provision in force in an EEA State which corresponds to a provision of the kind mentioned in paragraph (b);
- (d) practices discrimination on grounds of sex, colour, race or ethnic or national origins in, or in connection with, the carrying on of any business;
- (e) engages in business practices appearing to the FCA to be deceitful or oppressive or otherwise unfair or improper (including practices that appear to the FCA to involve irresponsible lending).

(6) A credit prohibition may be absolute or may be imposed—

- (a) for such period,
- (b) until the occurrence of such event, or
- (c) until such conditions are complied with,

as may be specified in the notice given under sub-paragraph (1) or (2).

(7) Any period, event or condition so specified may be varied by the FCA on the application of the institution concerned (for which, see paragraph 5).

(8) A credit prohibition may be withdrawn in whole or in part—

- (a) on the initiative of the FCA, by notice served by the FCA on the institution concerned, and any such notice takes effect on such date as is specified in the notice;
- (b) on an application submitted by the institution concerned (for which, see paragraph 5).

(9) Where the FCA withdraws a credit prohibition and imposes a restriction under paragraph 2, the FCA may specify that the withdrawal of the credit prohibition only takes effect when the imposition of the restriction is no longer open to review.

(10) For the purposes of sub-paragraph (9), whether the imposition of a restriction is open to review is to be determined in accordance with section 391(8) of the 2000 Act (publication) as if the imposition of the restriction were a matter to which a supervisory notice (within the meaning of that section) relates.

(11) An institution contravening a prohibition imposed under this paragraph is guilty of an offence and liable—

- (a) on summary conviction to a fine, which in Scotland or Northern Ireland may not exceed the statutory maximum;

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(b) on conviction on indictment, to a fine.

(12) In this paragraph—

“associate” has the same meaning as in article 60L of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (interpretation of Chapter 14A)^{M5};

“controller” has the meaning given by section 422 of the 2000 Act (controller)^{M6}.

(13) If a credit prohibition is in effect in relation to an institution, article 60JA of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (payment institutions)^{M7} does not apply in relation to that institution.

Marginal Citations

M4 S.I. 2001/544. Articles 36A, 36H, 39D, 39F, 39G, 60B, 60N, 89A and 89B were inserted by S.I. 2013/1881 and amended by S.I. 2014/366, 1448 and 1850, 2015/853 and 2016/392.

M5 S.I. 2001/544. Article 60L was inserted by S.I. 2013/1881. There are amendments to article 60L but none is relevant here.

M6 Section 422 was substituted by S.I. 2009/534 and amended by S.I. 2013/3115.

M7 S.I. 2001/544. Article 60JA was inserted by S.I. 2014/366.

Power to restrict the entry into credit agreements and to withdraw or vary a restriction

2.—(1) In this paragraph, “restriction” means a direction that an EEA authorised payment institution exercising passport rights in the United Kingdom may not carry on in the United Kingdom, otherwise than in accordance with such conditions as may be specified in the direction, any business which consists of or includes carrying on an activity—

- (a) of the kind specified in article 36A, 36H, 39D, 39E, 39F, 39G, 60B, 60N, 89A or 89B of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;
- (b) listed in Annex I to the payment services directive or which the institution is entitled to carry on in accordance with Article 18 of that directive; and
- (c) specified in the direction.

(2) If it appears to the FCA that the situation as respects an EEA authorised payment institution exercising passport rights in the United Kingdom is such that the powers conferred by paragraph 1 are exercisable, the FCA may, instead of imposing a credit prohibition—

- (a) impose by notice given in accordance with Part 2 of this Schedule such restriction as appears to it desirable;
- (b) where it has already imposed a restriction, vary the restriction on the FCA's own initiative by notice given in accordance with Part 2 of this Schedule.

(3) The FCA may also impose a restriction by notice given in accordance with Part 2 of this Schedule if it withdraws a credit prohibition.

(4) A restriction may be—

- (a) withdrawn on the initiative of the FCA, by notice served by the FCA on the institution concerned, and any such notice takes effect on such date as is specified in the notice;
- (b) withdrawn or varied on an application submitted by the institution concerned (for which, see paragraph 5).

(5) An institution contravening a restriction is guilty of an offence and liable—

- (a) on summary conviction to a fine, which in Scotland or Northern Ireland may not exceed the statutory maximum;

- (b) on conviction on indictment, to a fine.

PART 2

Procedure and appeals

Interpretation

3. In this Part—

“prohibition” means a credit prohibition imposed under paragraph 1(1) or (2) of Part 1 of this Schedule; and

“restriction” means a restriction imposed under paragraph 2(2) or (3) of Part 1 of this Schedule.

Notice of prohibition or restriction

4.—(1) A prohibition or restriction takes effect—

- (a) immediately, if the relevant notice 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.

(2) An institution which is aggrieved by the imposition of a prohibition or a restriction by a notice given under this paragraph may refer the matter to the Upper Tribunal.

(3) A prohibition or restriction 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 imposing the prohibition or restriction, reasonably considers that it is necessary for the prohibition or restriction to take effect immediately (or on that date).

(4) The notice must—

- (a) give details of the prohibition or restriction,
- (b) state the FCA's reasons for the prohibition or restriction,
- (c) inform the institution that it may make representations to the FCA within such period as is specified in the notice (whether or not the institution has referred the matter to the Upper Tribunal),
- (d) inform the institution of when the prohibition or restriction takes effect, and
- (e) inform the institution of its right to refer the matter to the Upper Tribunal.

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

(6) If, having considered any representations made by the institution, the FCA decides--

- (a) to impose the proposed prohibition or restriction, or
- (b) if the prohibition or restriction has already taken effect, not to withdraw the prohibition or restriction,

it must give the institution a notice.

(7) If, having considered any representations made by the institution, the FCA decides—

- (a) not to impose the proposed prohibition or restriction,
- (b) to impose a different prohibition or restriction, or
- (c) if the prohibition or restriction has already taken effect, to withdraw the prohibition or restriction,

Status: Point in time view as at 14/09/2019.

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it must give the institution a notice.

(8) A notice under sub-paragraph (6) must inform the institution of its right to refer the matter to the Upper Tribunal.

(9) A notice under sub-paragraph (7)(b) must comply with sub-paragraph (4).

(10) If a notice under this paragraph informs an institution of its right to refer a matter to the Upper Tribunal, it must give an indication of the procedure on such a reference.

(11) For the purposes of sub-paragraph (1)(c)—

(a) whether a matter is open to review is to be determined in accordance with section 391(8) of the 2000 Act (publication);

(b) the notice to which the matter relates is to be treated as a supervisory notice for the purposes of that section.

(12) References in this paragraph to the imposition of a restriction include references to the variation of a restriction on the initiative of the FCA.

Application to withdraw or vary prohibition or restriction

5.—(1) An application under Part 1 of this Schedule must—

(a) be made in such manner as the FCA may direct, and

(b) contain, or be accompanied by, such other information as the FCA may reasonably require.

(2) At any time after the application is received and before it is determined, 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.

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

(4) The FCA may require an applicant to provide information required under this paragraph in such form, or to verify it in such a way, as the FCA may direct.

(5) If the FCA decides to grant an application, it must give the applicant a notice.

(6) If the FCA proposes to refuse an application, or to take an action different from or in addition to the one applied for (including a proposal to impose a restriction when withdrawing a prohibition on an application under paragraph 1(8)(b)), it must give the applicant a warning notice.

(7) If the FCA decides to refuse an application, or to take an action different from or in addition to the one applied for (including a decision to impose a restriction when withdrawing a prohibition on an application under paragraph 1(8)(b)), it must give the applicant a decision notice.

(8) An applicant who is aggrieved by a decision notice given under this paragraph may refer the matter to the Upper Tribunal.

Notice to the home state competent authority

6. If the FCA sends a notice to an institution under this Schedule which imposes, varies or withdraws a prohibition or restriction, it must send a copy of the notice to the institution's home state competent authority.

SCHEDULE 6

Regulation 122

Application and modification of legislation

PART 1

Application and modification of the 2000 Act

Disciplinary powers

1. Sections 66 (disciplinary powers) to 70 (statements of policy: procedure) of the 2000 Act ^{M8} apply but as if for section 66A (misconduct: action by the FCA) there were substituted—

(1) For the purposes of action by the FCA, a person is guilty of misconduct if, while a relevant person, the person has been knowingly concerned in a contravention of the Payment Services Regulations 2017 by a payment service provider.

(2) “Relevant person” means any person responsible for the management of the payment service provider or, where relevant, any person responsible for the management of the payment service provider's payment services activities.”.

Marginal Citations

M8 2000 c. 8. Section 66 was amended by section 12 of, and paragraph 8 of Schedule 2 to, the [Financial Services Act 2010 \(c. 28\)](#), [paragraph 14](#) of Schedule 5 to the [Financial Services Act 2012 \(c. 21\)](#), [sections 28](#) and 32 of, and paragraph 5 of Schedule 3 to, the [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#). Sections 66A and 66B were inserted by section 32 of the [Financial Services \(Banking Reform\) Act 2013](#) and amended by section 25 of, and paragraphs 16 and 17 of Schedule 4 to, the [Bank of England and Financial Services Act 2016 \(c. 14\)](#), and by [S.I. 1015/1864](#) and [2016/225](#) and [627](#). Sections 67 to 70 were amended by paragraphs 9 and 10 of Schedule 2 to the [Financial Services Act 2010](#), paragraphs 15 to 18 of Schedule 5 to the [Financial Services Act 2012](#), paragraphs 6 and 7 of Schedule 3 to the [Financial Services \(Banking Reform\) Act 2013](#).

The Upper Tribunal

2. Part 9 of the 2000 Act (hearings and appeals) ^{M9} applies in respect of references to the Upper Tribunal made under these Regulations as it applies in respect of references made to the Upper Tribunal under that Act, with the following modifications—

(a) section 133 (proceedings before Tribunal: general provision) is to be read as if for subsection (7A) there were substituted—

“(7A) A reference is a “disciplinary reference” for the purposes of this section if it is in respect of any of the following decisions under the Payment Services Regulations 2017—

(a) a decision to publish a statement under regulation 110;

(b) a decision to impose a penalty under regulation 111.”;

(b) subsection (1) of section 133A (proceedings before Tribunal: decision and supervisory notices, etc.) is to be read as if “, as a result of section 388(2)” were omitted; and

(c) section 133A is to be read as if subsection (5) were omitted.

Status: Point in time view as at 14/09/2019.

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Marginal Citations

M9 Part 9 was amended by section 23 of the Financial Services Act 2012, paragraph 83 of Schedule 9 to the Crime and Courts Act 2013 (c. 22) and section 4 of the Financial Services (Banking Reform) Act 2013, and by S.I. 2010/22, 2013/1388, 2014/3329 and 2016/680.

FCA rules

- 3.—(1) Section 137A of the 2000 Act (the FCA's general rules) ^{M10} applies as if—
- (a) references to authorised persons were references to authorised payment institutions, small payment institutions, registered account information service providers, EEA authorised payment institutions, EEA registered account information service providers and electronic money institutions;
 - (b) in subsection (1)—
 - (i) the reference in paragraph (a) to the carrying on of regulated activities were to the provision of payment services, and
 - (ii) the reference in paragraph (b) to the carrying on of activities which are not regulated activities were to the carrying on of activities in connection with the provision of payment services;
 - (c) in subsection (5)—
 - (i) references to an EEA firm were to an EEA authorised payment institution or EEA registered account information service provider;
 - (ii) in paragraph (a), reference to permission conferred by Part 2 of Schedule 3 to FSMA were to permission conferred by regulation 29(2) of these Regulations;
 - (iii) in paragraph (b), reference to any of the single market directives or the emission allowance auctioning regulation were to the payment services directive;
 - (d) after subsection (5) there were inserted—
 - “(6) The FCA may make a rule pursuant to paragraph (1) only if the FCA is also making, or has made, a rule under this section or section 137R (financial promotion rules) ^{M11} concerning the same matter which applies to authorised persons in connection with the provision of payment services.”
- (2) Sections 137T (general supplementary powers) and 141A (power to make consequential amendments of references to rules) and Chapter 2 of Part 9A (rules: modification, waiver, contravention and procedural provisions) of the 2000 Act ^{M12} apply in relation to rules made pursuant to sub-paragraph (1) as they do in relation to other rules made by the FCA under section 137A of the 2000 Act, subject to sub-paragraph (3).
- (3) Section 138D (actions for damages) applies as if in that section subsection (6) were omitted and “private person” had the meaning given in regulation 148(3) of these Regulations (actions for breach of requirements).

Marginal Citations

M10 Part 9A was substituted by section 24 of the Financial Services Act 2012.

M11 Section 137R was amended by S.I. 2015/910.

M12 Chapter 2 was amended by paragraphs 8 and 9 of Schedule 3 to the Financial Services (Banking Reform) Act 2013, paragraph 69 of Schedule 4 to the Co-operative and Community Benefit Societies Act 2014 (c. 14), paragraphs 7 and 8 of Schedule 3 to the Pension Schemes Act 2015 (c. 8), sections 29, 33 and

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35 of, and paragraph 35 of Schedule 2 to, the Bank of England and Financial Services Act 2016, [S.I. 2013/1388](#).

Information gathering and investigations

4. Part 11 of the 2000 Act (information gathering and investigations) ^{M13} applies with the following modifications—

- (a) section 165 (regulators' power to require information) is to be read as if—
 - (i) references to an authorised person were references to a payment service provider;
 - (ii) in subsection (4), for “this Act” there were substituted “ the Payment Services Regulations 2017 ”; and
 - (iii) in subsection (7), paragraphs (b) to (e) were omitted;
- (b) section 166 (reports by skilled persons) is to be read as if—
 - (i) references to an authorised person were references to a payment service provider; and
 - (ii) subsections (10) and (11) were omitted;
- (c) section 166A (appointment of skilled person to collect and update information) is to be read as if references to an authorised person were to a payment service provider;
- (d) section 167 (appointment of persons to carry out general investigations) is to be read as if—
 - (i) references to a recognised investment exchange, an authorised person or an appointed representative were references to a payment service provider;
 - (ii) in subsection (4), references to a former authorised person or appointed representative were to a former payment service provider;
 - (iii) in subsection (5) for “regulated activities” there were substituted “ payment services ”; and
 - (iv) for subsection (5A) there were substituted—
 - “(5A) “Investigating authority” means the FCA.”;
 - (v) subsection (6) were omitted;
- (e) section 168 (appointment of persons to carry out investigations in particular cases) is to be read as if—
 - (i) in subsection (1)—
 - (aa) after paragraph (b) there were inserted—
 - “(c) a person may have contravened any requirement of or imposed under the Payment Services Regulations 2017;
 - (d) an EEA authorised payment institution exercising passport rights in the United Kingdom may have contravened, or may be likely to contravene, a prohibition or restriction within the meaning of paragraph 3 (interpretation) of Schedule 5 to the Payment Services Regulations 2017 (credit agreements);
 - (e) paragraph 1(4) of that Schedule 5 (power to prohibit the entry into credit agreements) may have been contravened, or may be likely to be contravened, as respects an EEA authorised payment institution exercising passport rights in the United Kingdom.”;

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- (bb) in paragraph (b) for “191F” to the end there were substituted “ or under regulation 138, 139, 141 or 142 of the Payment Services Regulations 2017”;
- (ii) for subsection (2) there were substituted—
 - “(2) Subsection (3) also applies if it appears to an investigating authority that there are circumstances suggesting that a person may be guilty of an offence under, or has contravened a requirement of, the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017^{M14}”;
- (iii) subsections (4) and (5) were omitted; and
- (iv) for subsection (6) there were substituted—
 - “(6) “Investigating Authority” means the FCA.”;
- (f) section 169 (investigations etc in support of overseas regulator) is to be read as if—
 - (i) in subsection (8) for “Part XXIII” there were substituted “ sections 348, 349 and 352, as applied with modifications by the Payment Services Regulations 2017 ”; and
 - (ii) in subsection (13) for “has the same meaning as in section 195” there were substituted “ means a competent authority in another EEA State designated in accordance with Article 22 of the payment services directive ”;
- (g) section 170 (investigations: general) is to be read as if—
 - (i) in subsection (1) “or (5)” were omitted;
 - (ii) in subsection (3)(a) “or (4)” were omitted; and
 - (iii) for subsection (10) there were substituted—
 - “(10) “Investigating authority” in relation to an investigator means the FCA.”;
- (h) section 171 (powers of persons appointed under section 167) is to be read as if subsections (3A) and (7) were omitted;
- (i) section 172(4) (additional power of persons appointed as a result of section 168(1) or (4)) is to be read as if “or (4)” were omitted;
- (j) section 174 (admissibility of statements made to investigators) is to be read as if—
 - (i) in subsection (2) “or in proceedings in relation to action to be taken against that person under section 123 to which this section applies” were omitted;
 - (ii) in subsection (3)(a) for “398” there were substituted “ regulation 142 of the Payment Services Regulations 2017 ”;
 - (iii) subsection (3A) were omitted; and
 - (iv) in subsection (4) “or (5)” were omitted;
- (k) section 175(8) (information and documents: supplemental provisions) is to be read as if “or (5)” were omitted;
- (l) section 176 (entry of premises under warrant) is to be read as if—
 - (i) in subsection (3)(a) for “an authorised person or an appointed representative” there were substituted “ a payment service provider ”;
 - (ii) in subsection (10) “or (5)” were omitted;
 - (iii) for subsection (11)(a) there were substituted—
 - “(a) by the FCA under section 165 or 175; or”;
- (m) 177(5)(a) (offences) is to be read as if for “six months” there were substituted “ three months ”.

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Marginal Citations

M13 Part 11 was amended by paragraph 54 of Schedule 26 to the [Criminal Justice Act 2003 \(c. 44\)](#), [paragraph 33](#) of Schedule 7 to the Counter-Terrorism Act 2008, section 18 of, and paragraphs 15 to 17 of Schedule 2 to, the Financial Services Act 2010, paragraphs 1 to 14 of Schedule 12 and paragraph 8 of Schedule 18 to the Financial Services Act 2012, paragraph 11 of Schedule 3 to the Pension Schemes Act 2015, paragraphs 36 and 37 of Schedule 2 to the Bank of England and Financial Services Act 2016 and paragraph 9 of Schedule 2 to the [Investigatory Powers Act 2016 \(c.25\)](#), and by [S.I. 2001/1090](#), 2005/1433, 2007/126, 2011/1043, 2012/2554, 2013/1773, 2015/575 and 2016/225 and 680

M14 [S.I. 2017/692](#).

Control over payment institutions

5. Part 12 of the 2000 Act (control over authorised persons) ^{M15} applies with the following modifications—

- (a) references to a UK authorised person are to be read as references to an authorised payment institution or small payment institution other than one included in the register pursuant to regulation 153(1) (transitional provisions);
- (b) section 178 (obligation to notify the appropriate regulator) is to be read as if for subsection (2A) there were substituted—

“(2A) In this Part, “the appropriate regulator” means the FCA.”;
- (c) section 187(2)(b) (approval with conditions) is to be read as if “section 187A(3)(b) or” were omitted;
- (d) section 187A (assessment: consultation by PRA with FCA) is to be disregarded;
- (e) section 187C (variation etc of conditions) is to be read as if subsection (1) were omitted;
- (f) section 188(1), (2) and (3) (assessment: consultation with EC competent authorities) are to be read as if after “home state regulator” there were inserted “ or home state competent authority ”;
- (g) section 191A (objection by the appropriate regulator) is to be read as if subsection (4A) were omitted;
- (h) section 191B (restriction notices) is to be read as if—
 - (i) subsection (2A) were omitted;
 - (ii) after subsection (2B) there were inserted—

“(2C) In a restriction notice, the FCA must direct that voting power to which the notice relates is, until further notice, not to be exercisable.”;
 - (iii) for subsection (3)(b) there were substituted—

“(b) voting power that has been exercised as a result of the acquisition is void.”;
- (i) section 191C (orders for sale of shares) is to be read as if subsection (2A) were omitted;
- (j) section 191D (obligation to notify the appropriate regulator: dispositions of control) is to be read as if subsection (1A) were omitted;
- (k) section 191F (offences) is to be read as if in subsections (8)(a) and (9)(a), for “to a fine not exceeding the statutory maximum” there were substituted in each case “ to a fine, which in Scotland or Northern Ireland may not exceed the statutory maximum ”;
- (l) section 191G (interpretation) is to be read as if, in subsection (1), the definition of “UK authorised person” were omitted; and

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(m) section 192 (power to change definitions of control etc) is to be disregarded.

Modifications etc. (not altering text)

C2 Sch. 6 para. 5 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\(1\)\(f\)](#) (with reg. 4)

Marginal Citations

M15 Part 12 was amended by section 26 of the Financial Services Act 2012 and paragraphs 38 to 40 of Schedule 2 to the Bank of England and Financial Services Act 2016, and by [S.I. 2009/534](#), 2011/1043 and 1613, 2013/3115, 2014/3329, 2015/534, 575 and 1755 and 2016/1239.

Incoming firms: interventions by the FCA

6.—(1) Part 13 of the 2000 Act (incoming firms: intervention by FCA or PRA)^{M16} applies with the following modifications.

(2) References to—

- (a) “the regulator” or “the appropriate regulator” are to be read as references to the FCA;
- (b) requirements imposed by or under the 2000 Act are to be read as references to requirements imposed by or under these Regulations.

(3) Section 193 (interpretation) is to be read as if—

- (a) in subsection (1), for the definition of “incoming firm” there were substituted—
““incoming firm” means an EEA authorised payment institution or EEA registered account information service provider which is exercising, or has exercised, its right to provide payment services in the United Kingdom in accordance with the Payment Services Regulations 2017;”,
- (b) subsection (1A) were omitted; and
- (c) for subsection (2) there were substituted—

“(2) Expressions used in this Part and in the Payment Services Regulations 2017 have the same meaning in this Part as they have in those Regulations.”.

(4) Section 194 (general grounds on which power of intervention is exercisable) is to be read as if subsections (1)(c)(ii) and (1AA) to (5) were omitted.

(5) Sections 194A to 194C, 195A, 195B, 198 to 199A and 201 are to be disregarded.

(6) Section 195 (exercise of power in support of overseas regulator) is to be read as if—

- (a) subsection (2A) were omitted; and
- (b) in subsection (5)(b), the reference to an EEA firm's EEA authorisation were a reference to an EEA authorised payment institution's authorisation under the payment services directive.

(7) Section 196 (the power of intervention) is to be read as if—

(a) in subsection (1), for paragraphs (a) and (b) there were substituted—

- “(a) the firm were an authorised payment institution; and
- (b) the FCA were entitled to exercise its power under regulation 12 of the Payment Services Regulations 2017 (variation of authorisation on FCA's own initiative) by imposing a requirement such as may, under regulation 7 of those Regulations

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(imposition of requirements), be included in an authorisation under those Regulations.”; and

(b) subsection (3) were omitted.

(8) Section 202 (contravention of requirement) is to be read as if for subsection (2) there were substituted—

“(2) Regulation 148 of the Payment Services Regulations 2017 (actions for breach of requirements) applies to the contravention as if it were a contravention of Part 6 or 7 of those Regulations.”.

Modifications etc. (not altering text)

C3 Sch. 6 para. 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\(1\)\(f\)](#) (with reg. 4)

Marginal Citations

M16 Part 13 was amended by section 3 of the Financial Services Act 2010 and paragraphs 30 to 43 of Schedule 4 to the Financial Services Act 2012, and by [S.I. 2007/126](#), 2194 and 3253, 2011/1043 and 1613, 2012/916 and 2015, 2013/1773, 1797, 1881 and 3115, 2015/575, 910 and 1882.

Auditors and actuaries

7. Sections 341 (access to books etc) to 346 (provision of false or misleading information to auditor or actuary) of the 2000 Act ^{M17} apply with the following modifications—

- (a) references to a regulator are to be read as references to the FCA and references to the PRA are to be disregarded;
- (b) references to an authorised person are to be read as an authorised payment institution or a person required by regulation 39 to provide an audit opinion to the FCA;
- (c) section 344 (duty of auditor or actuary resigning etc. to give notice) is to be read as if for subsection (4) there were substituted—

“(4) In this section “the appropriate regulator” means the FCA.”.

Marginal Citations

M17 Sections 341 to 346 were amended by paragraphs 4 to 7 of Schedule 13 to the Financial Services Act 2012 and paragraph 44 of Schedule 2 to the Bank of England and Financial Services Act 2016, and by [S.I. 2013/3115](#).

Restriction on disclosure of information

8.—(1) Sections 348 (restrictions on disclosure of confidential information by FCA, PRA etc) ^{M18}, 349 (exceptions from section 348) ^{M19} and 352 (offences) ^{M20} of the 2000 Act apply with the following modifications—

- (a) section 348 is to be read as if—
 - (i) in subsection (2)(b) for the words from “, the PRA” to the end there were substituted “ under the Payment Services Regulations 2017 ”;
 - (ii) in subsection (3)(a) for “this Act” there were substituted “ the Payments Services Regulations 2017 ”;

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- (iii) in subsection (5)—
 - (aa) for “this Part”, there were substituted “ the Payment Services Regulations 2017 ”;
 - (bb) paragraphs (aa), (c) and (zd) were omitted;
 - (cc) in paragraph (e) for “paragraphs (a) to (c)” there were substituted “ paragraph (a) ”;
 - (iv) for subsection (6) there were substituted—
 - “(6) In subsection (5)(f), “expert” includes any body or person appointed under regulation 108 of the Payment Services Regulations 2017 to perform a function on behalf of the FCA.”;
 - (v) subsection (8) were omitted.
- (b) section 349 is to be read as if subsections (3A) and (3B) were omitted.

Marginal Citations

- M18** Section 348 was amended by paragraph 26 of Schedule 2 to the Financial Services Act 2010, paragraph 18 of Schedule 12 to the Financial Services Act 2012, paragraph 5 of Schedule 8 to the Financial Services (Banking Reform) Act 2013 and paragraph 45 of Schedule 2 to the Bank of England and Financial Services Act 2016, and by [S.I. 2016/1239](#).
- M19** Section 349 was amended by section 964 of the [Companies Act 2006 \(c. 46\)](#) and paragraph 19 of Schedule 12 to the Financial Services Act 2012, and by [S.I. 2006/1183](#), 2007/1093 and 2011/1043.
- M20** Section 352 was amended by paragraph 54 of Schedule 26 to the Criminal Justice Act 2003.

Insolvency

9. Sections 359 (administration order) ^{M21}, 367 (winding-up petitions) and 368 (winding-up petitions: EEA and Treaty firms) ^{M22} of the 2000 Act apply with the following modifications—
- (a) references to an authorised person are to be read as references to an authorised payment institution or an EEA authorised payment institution;
 - (b) section 359 is to be read as if—
 - (i) subsections (1)(b), (1A), (3)(b) and (c) and (5) were omitted;
 - (ii) for subsection (1)(c) there were substituted—
 - “(c) is providing or has provided payment services in contravention of regulation 138(1) of the Payment Services Regulations 2017.”;
 - (iii) in subsection (3)(a) there were omitted “or partnership” and for “an agreement” there were substituted “ a contract for payment services ”; and
 - (iv) in subsection (4) the definitions of “agreement”, “authorised deposit taker”, “authorised reclaim fund” and “relevant deposit” were omitted;
 - (c) section 367 is to be read as if—
 - (i) subsections (1)(b), (1A), (2), (5), (6) and (7) were omitted;
 - (ii) for subsection (1)(c) there were substituted—
 - “(c) is providing or has provided payment services in contravention of regulation 138(1) of the Payment Services Regulations 2017.”; and
 - (iii) in subsection (4) for “an agreement” there were substituted “ a contract for payment services ”; and

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- (d) section 368 is to be read as if—
 - (i) in subsection (1) for the words from “winding up” to the end substitute “winding up of an EEA authorised payment institution unless it has been asked to do so by the home state competent authority.”; and
 - (ii) subsection (2) were omitted.

Marginal Citations

M21 Section 359 was substituted by paragraph 55 of Schedule 17 to the Enterprise Act 2002 (c. 40) and amended by paragraph 6 of Schedule 2 to the Dormant Bank and Building Society Accounts Act 2008 (c. 31) and paragraph 6 of Schedule 14 to the Financial Services Act 2012, and by S.I. 2005/1455.

M22 Sections 367 and 368 were amended by paragraphs 14 and 15 of Schedule 14 to the Financial Services Act 2012, and by S.I. 2005/575

Warning notices and decision notices

10. Part 26 of the 2000 Act (notices) ^{M23} applies with the following modifications—
- (a) section 388 (decision notices) is to be read as if subsection (2) were omitted;
 - (b) section 390 (final notices) is to be read as if the reference in subsection (6) to section 384(5) were a reference to regulation 114(2) of these Regulations;
 - (c) subsection 391 (publication) is to be read as if—
 - (i) for subsection (1ZB) there were substituted—

“(1ZB) A warning notice falls within this subsection if it is given under regulation 112 of the Payment Services Regulations 2017.”;
 - (ii) in subsection (10), for “has the same meaning as in section 395” there were substituted “means a notice given under regulation 12(6), (9) or (10)(b) (including as applied by regulation 15 or 19) of, or paragraph 4 of Schedule 5 to, the Payment Services Regulations 2017) ”;
 - (d) section 392 (application of sections 393 and 394) is to be read as if for paragraphs (a) and (b) there were substituted—
 - (a) a warning notice given in accordance with regulations 10(2) (including as applied by regulation 15 or 19), 28(1) (in relation to the cancellation of a registration), 35(2), 112(1) or 115(1) of the Payment Services Regulations 2017;
 - (b) a decision notice given in accordance with regulations 10(3)(a) (including as applied by regulation 15 or 19), 28(2)(a)(i) (in relation to the cancellation of a registration), 35(3)(a), 112(3) or 115(3) of the Payment Services Regulations 2017.”; and
 - (e) section 395 (the FCA's and PRA's procedures) is to be read as if in subsection (13) for “in accordance with” to the end there were substituted “under regulation 12(6), (9) or (10) (b) (including as applied by regulation 15 or 19) of, or paragraph 4 of Schedule 5 to, the Payment Services Regulations 2017 ”.

Marginal Citations

M23 Part 26 was amended by paragraph 11 of Schedule 4 to the Regulation of Investigatory Powers Act 2000 (c. 23), section 13 of, and paragraphs 28 and 29 of Schedule 2 to, the Financial Services Act 2010, sections 17 to 19 and 24 of, and paragraph 37 of Schedule 8, paragraphs 26 to 35 of Schedule 9 and paragraph 8 of Schedule 13 to, the Financial Services Act 2012, section 4 of, and paragraphs 12 to 14 of

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Schedule 3 to, the Financial Services (Banking Reform) Act 2013, and paragraph 43 of Schedule 10 to the [Investigatory Powers Act 2016 \(c. 25\)](#), and by [S.I. 2006/381](#) and 1433, 2007/126 and 1973, 2009/534, 2010/22, 2012/916, 2013/1388 and 3115, 2014/2879, 2015/1755 and 2016/225, 680, 715 and 1239.

Limitation on power to require documents

11. Section 413 of the 2000 Act (protected items) applies for the purposes of these Regulations as it applies for the purposes of that Act.

PART 2

Application and modification of secondary legislation

The Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001

12. The Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001 ^{M24} apply to any notice, direction or document of any kind given by or to the FCA under these Regulations as it applies to any notice, direction or document of any kind under the 2000 Act.

Marginal Citations

M24 [S.I. 2001/1420](#), amended by [S.I. 2005/274](#), 2010/1193, 2013/472 and 2014/549.

The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001

13. The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 ^{M25} apply with the following modifications—

(a) regulation 2 (interpretation) is to be read as if—

- (i) in the definition of “EEA competent authority” after “single market directives” there were inserted “, the payment services directive, Regulation (EU) 2015/751 of the European Parliament and of the Council of 29th April 2015 on interchange fees for card-based payment transactions ^{M26}”;
- (ii) in paragraph (a) of the definition of “overseas regulatory authority” after “of the Act” there were inserted “ or any function conferred under national legislation in implementation of the payment services directive ”; and
- (iii) after the definition of “overseas regulatory authority” there were inserted—
 - ““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](#)^{M27};
 - “payment services directive information” means confidential information received by the FCA in the course of discharging its functions as the competent authority under the payment services directive;”;
- (iv) in the definition of “single market restrictions” after paragraph (o) there were inserted—
 - “(p) article 24 of the payment services directive;”;

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- (b) regulation 5(4)(a) (disclosure for the purposes of certain other proceedings) is to be read as if for “an authorised person, former authorised person or former regulated person” there were substituted “ a payment service provider, former payment service provider, excluded provider or former excluded provider ”;
- (c) regulation 5(6)(e) is to be read as if for “an authorised person, former authorised person or former regulated person” there were substituted “ a payment service provider, former payment service provider, excluded provider or former excluded provider ”;
- (d) regulation 8 (application of Part 3) is to be read as if after sub-paragraph (f) there were inserted—
 - “(g) payment services directive information.”;
- (e) regulation 9 (disclosure by regulators or regulator workers to certain other persons) is to be read as if—
 - (i) in paragraph (1) after “paragraphs” there were inserted “ (1B) ”; and
 - (ii) after paragraph (1A) there were inserted—
 - “(1B) Paragraph (1) does not permit disclosure to the persons specified in the first column in Part 4A of Schedule 1 unless the disclosure is of payment services directive information.”;
- (f) regulation 11 (application of Part 4) is to be read as if after sub-paragraph (h) there were inserted—
 - “(i) payment services directive information.”;
- (g) Part 1 of Schedule 1 (disclosure of confidential information whether or not subject to single market restrictions) is to be read as if, in the second column, in the list of functions beside—
 - (i) “An official receiver appointed under section 399 of the Insolvency Act 1986, or an official receiver for Northern Ireland appointed under article 355 of the Insolvency (Northern Ireland) Order 1989”, after paragraph (ii) there were inserted—
 - “or
 - (iv) payment service providers, former payment service providers, excluded providers or former excluded providers”;
 - (ii) “The Department of Enterprise, Trade and Investment in Northern Ireland”, after paragraph (c)(ii) there were inserted—
 - “or
 - (iii) payment service providers, former payment service providers, excluded providers or former excluded providers”;
 - (iii) “The Pensions Regulator”, after paragraph (ii) there were inserted—
 - “or
 - (iii) payment service providers, former payment service providers, excluded providers or former excluded providers”;
 - (iv) “The Charity Commissioners for England and Wales”, after paragraph (ii) there were inserted—
 - “or
 - (iii) payment service providers, former payment service providers, excluded providers or former excluded providers”;
- (h) Schedule 1 is to be read as if after Part 4 there were inserted—

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“PART 4A

<i>Person</i>	<i>Functions</i> >
The Commissioners for Her Majesty's Revenue and Customs	Their functions under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017”.

Marginal Citations

M25 S.I. 2001/2188, amended by S.I. 2001/3437 and 3624, 2002/1775, 2003/693, 2066, 2174 and 2817, 2004/1862 and 3379, 2005/3071, 2006/3413, 2007/3255, 2009/2877, 2010/2628, 2011/1043, 1265, 1613 and 2085, 2012/725, 916, 2554 and 3019, 2013/472, 504, 1162, 1773, 2329 and 3115, 2014/549, 883, 2879 and 3348, 2015/575 and 910, and 2016/225, 680 and 715.

M26 OJ L 123, 19.5.2015, p.1.

M27 OJ L 337 23.12.2015, p.35.

SCHEDULE 7

Regulation 155

Gibraltar

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” or “EEA registered account information service provider” 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 subparagraph (2).

Exercise by authorised payment institutions of deemed passport rights in Gibraltar

2.—(1) For the purposes of these Regulations, an authorised payment institution or registered account information service provider 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—

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- (a) “EEA branch” are to be treated as including a reference to such a branch;
- (b) “EEA State” are to be treated as including references to Gibraltar;
- (c) “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; and
- (d) “passport rights” are to be treated as including references to the entitlement mentioned in sub-paragraph (1).

Modification of legislation

3.—(1) Section 138L(1) of the 2000 Act (consultation: general exemptions) ^{M28} 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: the scheme operator's rules) ^{M29} 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.”.

Marginal Citations

M28 Section 138L was substituted by section 24 of the Financial Services Act 2012.

M29 Paragraph 14 was amended by paragraph 25 of Schedule 11 to the Financial Services Act 2012 and by S.I. 2015/542.

SCHEDULE 8

Regulation 156

Amendments to legislation

PART 1

Amendments to primary legislation

Consumer Credit Act 1974

1. In the Consumer Credit Act 1974 ^{M30}—

- (a) in section 78 (duty to give information to debtor under running-account credit agreement), after subsection (1) insert—

“(1A) Where a request under subsection (1) also amounts to a request under regulation 49 of the Payment Services Regulations 2017 (information during period of contract), subsection (1) applies as if the words “and payment of a fee of £1” were omitted.”;

- (b) in section 84 (misuse of credit-tokens), in subsection (1) for “£50” substitute “ £35 ”.

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Marginal Citations

M30 1973 c. 39. Section 78 was amended by section 7 of the [Consumer Credit Act 2006 \(c. 14\)](#) and by [S.I. 1998/997](#) and [2008/1277](#). Section 84 was amended by [S.I. 1998/997](#), [2000/2334](#) and [2004/2095](#).

Financial Services and Markets Act 2000

- 2.—(1) The 2000 Act ^{M31} is amended as follows.
- (2) In section 1H (further interpretative provisions for sections 1B to 1G) ^{M32}, in subsection (8)—
- (a) in the definition of “payment services” for “2009” substitute “ 2017 ”;
 - (b) in the definition of “payment service provider”—
 - (i) for “2009” substitute “ 2017 ”;
 - (ii) for “(g) or (h)” substitute “ (i) or (j) ”.
- (3) In section 206A (suspending permission to carry on regulated activities etc.) ^{M33}, in subsection (1A)(a) for “2009” substitute “ 2017 ”.
- (4) In section 226 (compulsory jurisdiction) ^{M34}—
- (a) in subsection (2)(b) for “2009” substitute “ 2017 ”;
 - (b) after subsection (5) insert—

“(5A) If the FCA specifies activities which are account information services provided by authorised payment institutions or EEA authorised payment institutions, the FCA must specify to the same extent account information services provided by registered account information service providers or, as the case may be, EEA registered account information service providers.

(5B) Expressions used in subsection (5A) and in the Payments Services Regulations 2017 have the same meaning in that subsection as they do in those Regulations.”.
- (5) In section 234 (industry funding) ^{M35}, in subsection (1) for “2009” substitute “ 2017 ”.
- (6) In section 379A(2)(a) (power to apply settlement finality regime to payment institutions) ^{M36} for “2009 (S.I. 2009/209)” substitute “ 2017 ”.
- (7) In section 404E (meaning of consumers) ^{M37}, in subsection (6)—
- (a) in the definition of “payment services” for “2009” substitute “ 2017 ”;
 - (b) in the definition of “payment service provider” for “(e)” substitute “ (g) ”.
- (8) In section 404F (other definitions etc.) ^{M38}, in subsection (8)(b)—
- (a) for “11” substitute “ 12 ”;
 - (b) for “2009” substitute “ 2017 ”.
- (9) In Schedule 1A (further provision about the Consumer Financial Education Body) ^{M39}, in paragraph 12(5)—
- (a) for “2009” substitute “ 2017 ”; and
 - (b) for “(f)” substitute “ (h) ”.
- (10) In Schedule 17 (the ombudsman scheme) ^{M40}, in paragraph 13(4) for “2009” substitute “ 2017 ”.
- (11) Any reference, in an amendment to the 2000 Act made by an Act passed in the Session in which these Regulations are made, to a person who is a payment service provider for the purposes

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of the Payment Services Regulations 2009 as a result of falling within any of paragraphs (a) to (f) of the definition in regulation 2(1) of those Regulations is to be read as a reference to a person who is a payment service provider for the purposes of these Regulations as a result of falling within any of paragraphs (a) to (h) of the definition in regulation 2(1) of these Regulations.

Marginal Citations

- M31** 2000 c. 8.
- M32** Section 1H was substituted (with the rest of Part 1A) for Part 1 by section 6 of the Financial Services Act 2012 and amended by S.I. 2013/655, 1881 and 3115.
- M33** Section 206A was inserted by section 9 of the Financial Services Act 2010. Subsection (1A) was inserted by paragraph 13 of Schedule 9 to the Financial Services Act 2012.
- M34** Subsection (2) was amended by S.I. 2009/209 and 2011/99.
- M35** Subsection (1) was amended by paragraph 10 of Schedule 11 to the Financial Services Act 2012, S.I. 2009/209 and 2011/99.
- M36** Section 379A was inserted by section 112 of the Digital Economy Act 2017 (c. 30).
- M37** Section 404E was substituted, with other sections, for section 404 by section 14 of the Financial Services Act 2010. Subsection (6) was amended by S.I. 2011/99 and 2013/1881.
- M38** Section 404F was substituted, with other sections, for section 404 by section 14 of the Financial Services Act 2010. Subsection (6) was amended by paragraph 20 of Schedule 18 to the Financial Services Act 2012 and by S.I. 2011/99.
- M39** Schedule 1A was inserted by paragraph 1 of Schedule 1 to the Financial Services Act 2010. Paragraph 12 was amended by paragraph 13 of Schedule 15 to the Financial Services Act 2012 and by S.I. 2011/99.
- M40** Paragraph 13 was amended by paragraph 24 of Schedule 11 to the Financial Services Act 2012, and by S.I. 2009/209, 2011/99 and 2015/542.

Enterprise Act 2002

3. In the Enterprise Act 2002 ^{M41}—
- (a) in Schedule 13 (listed Directives and Regulations), after paragraph 15 insert—
- “16. In Article 62 of 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, paragraphs 4 and 5 and the second sentence of paragraph 3.”;
- (b) in Schedule 15 (enactments conferring functions)—
- (i) after “Postal Services Act 2011.” insert—
- “Electronic Money Regulations 2011.”;
- (ii) after “Civil Aviation Act 2012.” insert—
- “Consumer Rights (Payment Surcharges) Regulations 2012.”;
- (iii) at the end insert—
- “Payment Services Regulations 2017.”.

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Marginal Citations

M41 2002 c. 40. Schedule 13 was amended by [S.I. 2006/3363](#), 2015/2911 and other instruments which are not relevant to these Regulations. There are amendments to Schedule 15 but none is relevant to these Regulations.

Financial Services (Banking Reform) Act 2013

4. In section 108 of the Financial Services (Banking Reform) Act 2013 (relationship with Part 8 of the Payment Services Regulations 2009) ^{M42}—

- (a) in the heading, for “2009” substitute “ 2017 ”;
- (b) in subsection (1), for the words from “relevant person” to the end substitute “ person to obtain or maintain access to, or participation in, a payment system in circumstances in which regulation 103 (prohibition on restrictive rules on access to payment systems) or 104 (indirect access to designated payment systems) of the Payment Services Regulations 2017 applies in relation to access to, or participation in, the payment system by the person.”; and
- (c) omit subsection (2).

Marginal Citations

M42 2013 c. 33. Section 108 was amended by section 14 of the [Small Business, Enterprise and Employment Act 2015 \(c. 26\)](#).

PART 2

Amendments to the Electronic Money Regulations 2011

Electronic Money Regulations 2011

5.—(1) The Electronic Money Regulations 2011 ^{M43} are amended as follows.

(2) In regulation 2(1) (interpretation)—

(a) in the appropriate places insert—

““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;”;

““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) ^{M44};”;

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““payment initiation service” means a 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 service provider” has the meaning given in regulation 2(1) of the Payment Services Regulations 2017;”;

““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;”;

(b) for the definition of “own funds” substitute—

““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;”;

(c) in the definition of “payment services” for “2009” substitute “ 2017 ”;

(d) for the definition of “the payment services directive” substitute—

““the 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;”.

(3) In regulation 3 (exclusions), for paragraphs (a) and (b) substitute—

“(a) monetary value stored on specific payment instruments that can be used only in a limited way and meet one of the following conditions—

- (i) allow the holder to acquire goods or services only in the issuer's premises;
- (ii) are issued by a professional issuer and allow the holder to acquire goods or services only within a limited network of service providers which have direct commercial agreements with the issuer;
- (iii) may be used only to acquire a very limited range of goods or services; or
- (iv) are valid only in a single EEA State, are provided at the request of an undertaking or a public sector entity, and are regulated by a national or regional public authority for specific social or tax purposes to acquire specific goods or services from suppliers which have a commercial agreement with the issuer;

(b) monetary value that is used to make payment transactions resulting from services provided by a provider of electronic communications networks or services, including transactions between persons other than that provider and a subscriber, where those services are provided in addition to electronic communications services for a subscriber to the network or service, and where the additional service is—

- (i) for purchase of digital content and voice-based services, regardless of the device used for the purchase or consumption of the digital content, and charged to the related bill; or
- (ii) performed from or via an electronic device and charged to the related bill for the purchase of tickets or for donations to organisations which are registered or recognised as charities by public authorities, whether in the United Kingdom or elsewhere,

provided that the value of any single payment transaction does not exceed £40, and the cumulative value of payment transactions for an individual subscriber in a month does not exceed £240.”.

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(4) After regulation 3 (electronic money: exclusions) insert—

“Notification of use of limited network exclusion

3A.—(1) If, in any period of 12 months, the total value of payment transactions made with monetary value falling within regulation 3(a)(i) to (iii) issued by a person (“issuer”) exceeds 1 million euros, the issuer must notify the Authority.

(2) The period of 12 months referred to in paragraph (1) does not include any period in respect of which a notification has already been made under paragraph (1).

(3) A notification under paragraph (1) must—

- (a) include a description of the transactions made; and
- (b) specify the exclusion by virtue of which the monetary value is not electronic money.

(4) Notifications and information provided to the Authority under this regulation must be given—

- (a) within such time as the Authority may direct after the end of the period of 12 months referred to in paragraph (1); and
- (b) in such form or verified in such manner as the Authority may direct,

and different directions may be given in relation to different notifications or information or categories of notification or information.

(5) When the Authority receives a notification under this regulation, the Authority must assess whether the notified monetary value falls within regulation 3(a)(i) to (iii).

(6) If the Authority considers that any part of the notified monetary value does not fall within regulation 3(a)(i) to (iii)—

- (a) the Authority must notify the issuer, and
- (b) the issuer may refer the matter to the Upper Tribunal.

Notification of use of electronic communications exclusion

3B.—(1) If a person (“issuer”) issues, or intends to issue, monetary value falling within regulation 3(b), the service provider must—

- (a) notify the Authority, and
- (b) include with such notification a description of the transactions for which the monetary value is intended to be used.

(2) The issuer must provide a notification under paragraph (1)—

- (a) if the issuer started to issue the monetary value before 13th January 2018, on or before that date, or
- (b) otherwise, before the issuer starts to issue the monetary value.

(3) The issuer must also provide to the Authority, at such times as the Authority may direct, an annual audit opinion testifying that the transactions for which the monetary value is used comply with the limits mentioned in regulation 3(b).

(4) Information provided to the Authority under this regulation must be in such form or verified in such manner as the Authority may direct.

(5) Different directions may be given under paragraph (3) and (4) in relation to different issuers or different categories of issuers.”

(5) In regulation 4 (the register of certain electronic money issuers)—

- (a) in paragraph (1) after sub-paragraph (b) insert—

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- “(ba) persons who have notified the Authority in accordance with regulation 3A or 3B.”;
- (b) in paragraph (6) after sub-paragraph (a) insert—
 - “(aa) enter in the register any cancellation of an authorisation or registration;
 - (ab) enter in the register a description of the service provided by a person included on the register by virtue of paragraph (1)(ba).”;
- (c) after paragraph (6) insert—
 - “(7) The Authority must, without delay, notify the European Banking Authority of—
 - (a) the information entered in the register;
 - (b) any changes to the information in the register;
 - (c) the reasons for the cancellation of any authorisation or registration; and
 - (d) where a person is included on the register by virtue of paragraph (1)(ba), the particular exclusion which applies to the person.”.
- (6) In regulation 6 (conditions for authorisation)—
 - (a) in paragraph (2) for “regulation 5” substitute “ regulations 5 and 20 ”;
 - (b) after paragraph (4) insert—
 - “(4A) The applicant carries on, or will carry on, at least part of its electronic money and payment service business in the United Kingdom.”;
 - (c) in paragraph (6), after sub-paragraph (d) insert—
 - “(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 and 91 to 95 of the Payment Services Regulations 2017, up to such amount as the Authority 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 Authority may direct.”.
- (7) In regulation 8 (variation at request of an authorised electronic money institution), in the wording after paragraph (c)—
 - (a) after “provided that” insert “ the Authority is satisfied that ”;
 - (b) for “will continue to be met” substitute “ are being or are likely to be met ”.
- (8) In regulation 10(1) (cancellation of authorisation)—
 - (a) in sub-paragraph (e) after “own funds” insert “ , or does not inform the Authority of a major change in circumstances which is relevant to its meeting those conditions or that requirement, as required by regulation 37 ”;

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- (b) in sub-paragraph (g) after “stability of” insert “ , or trust in, ”;
 - (c) in paragraph (i) after “unlawful” insert “ , 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 has been cancelled under regulation 60 of those Regulations ”.
- (9) In regulation 11(1) (variation of authorisation on Authority's own initiative)—
- (a) in sub-paragraph (a) after “own funds” insert “ , or does not inform the Authority of a major change in circumstances which is relevant to its meeting those conditions or that requirement, as required by regulation 37 ”;
 - (b) in sub-paragraph (c) after “stability of” insert “ , or trust in, ”;
 - (c) in sub-paragraph (e) after “unlawful” insert “ , 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 has been cancelled under regulation 60 of those Regulations ”.
- (10) In regulation 13 (conditions for registration)—
- (a) in paragraph (2) for “regulation 12” substitute “ regulations 12 and 20 ”;
 - (b) after paragraph (4) insert—
 - “(4A) The business to which the application relates must not include the provision of account information services or payment initiation services.”;
 - (c) in paragraph (8)(e) for “2009” substitute “ 2017 ”.
- (11) In regulation 15 (supplementary provisions)—
- (a) in paragraph (b), in the modified version of regulation 8—
 - (i) in paragraph (1), in the wording after sub-paragraph (c)—
 - (aa) after “provided that” insert “ the Authority is satisfied that ”;
 - (bb) for “continue to be met” substitute “ are being or are likely to be met ”;
 - (ii) in paragraph (2) omit “that must continue to be met”;
 - (b) in paragraph (c), in the modified version of regulation 10(1)(e), after “(d)” insert “ , or does not inform the Authority of a major change in circumstances which is relevant to its meeting those conditions, as required by regulation 37 ”.
- (12) In regulation 16 (application to become an authorised electronic money institution where a financial limit is exceeded)—
- (a) for the heading substitute “ application for authorisation if requirements cease to be met ”;
 - (b) for “referred to in regulation 8(2)(c) or (d) (as applied by regulation 15)”, substitute “ in regulation 13(3), (4), (8) or (9) ”.
- (13) In regulation 20 (safeguarding requirements)—
- (a) after paragraph (2) insert—
 - “(2A) An electronic money institution may safeguard certain relevant funds in accordance with regulation 21 and the remaining relevant funds in accordance with regulation 22.”;
 - (b) in paragraph (6) for “Regulation 19 of the Payment Services Regulations 2009” substitute “ Regulation 23 of the Payment Services Regulations 2017 ”.
- (14) In regulation 21 (safeguarding option 1)—
- (a) in paragraph (2)(a) after “authorised credit institution” insert “ or the Bank of England ”;
 - (b) after paragraph (4) insert—

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“(4A) Notwithstanding paragraphs (1), (2), (3)(b) and (4), where an electronic money institution is a participant in a designated system and the institution holds an account at the Bank of England for the purposes of completing the settlement of transfer orders that have been entered into the designated system on behalf of electronic money holders—

- (a) funds held in the account pending settlement in accordance with the rules or default arrangements of the designated system, in respect of transfer orders that have been entered into the designated system on behalf of electronic money holders, may continue to be held in the account with relevant funds;
- (b) the account, or a specified amount of funds in the account, may be subject to an interest or right in favour of the Bank of England in order to ensure the availability of funds to complete the settlement of transfer orders in accordance with the rules or default arrangements of the designated system;
- (c) subject to paragraph (4B), funds received into the account by the electronic money institution upon settlement are to be considered as having been appropriately safeguarded in accordance with this regulation from the time of receipt in the designated system until the time of receipt into the account.

(4B) The Authority may direct that paragraph (4A)(c) does not apply in relation to a designated system if, in the Authority's view, the rules and default arrangements of that system do not adequately insulate the funds of electronic money holders from the claims of other creditors of electronic money institutions which are participants in the system.”;

(c) in paragraph (5)—

- (i) omit “and” after sub-paragraph (b);
- (ii) after sub-paragraph (c) insert—

“(d) any funds held in an account as permitted by paragraph (4A)(a);

(e) any funds expected to be received into an account as described in paragraph (4A)(c) in respect of transfer orders that have been entered into the designated system; and

(f) any funds received into an account as described in paragraph (4A)(c).”;

(d) in paragraph (7) after the definition of “authorised custodian” insert—

““default arrangements”, “designated system”, “rules”, “settlement”, “system” and “transfer order” have the same meanings as in the Financial Markets and Insolvency (Settlement Finality) Regulations 1999^{M45}.”.

(15) In regulation 22 (safeguarding option 2), in paragraph (1)(a)(ii) and (iii) after “a” insert “comparable”.

(16) In regulation 24 (insolvency events)—

(a) in paragraph (1)(b) after “21(2)(a) or (b)” insert “ or (4A), ”;

(b) in paragraph (4), in the definition of “asset pool”, after paragraph (b) insert—

“(ba) where regulation 21(4A) applies, any funds that are received into the account held at the Bank of England upon settlement in respect of transfer orders that have been entered into the designated system on behalf of electronic money holders, whether settlement occurs before or after the insolvency event;”;

(c) after paragraph (4) insert—

“(5) In paragraph (4) “designated system”, “settlement” and “transfer order” have the same meanings as in the Financial Markets and Insolvency (Settlement Finality) Regulations 1999.”.

(17) In regulation 26 (outsourcing)—

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- (a) in paragraph (2)—
 - (i) after “important operational function” insert “, including provision of an information technology system ”;
 - (ii) in sub-paragraph (a)(ii) after “monitor” insert “ and retrace ”;
 - (b) in paragraphs 2(a)(ii), (b) and (c) and (3)(a) for “2009” substitute “ 2017 ”;
 - (c) after paragraph (3) insert—
 - “(4) An authorised electronic money institution must notify the Authority without undue delay of any change in outsourced functions or the persons to which functions are outsourced.”.
- (18) In regulation 28 (notice of intention)—
- (a) in paragraph (2), for sub-paragraphs (a) to (d) substitute—
 - “(a) states the name and address of the institution, and any authorisation or reference number;
 - (b) identifies the EEA States in which it intends to operate;
 - (c) identifies the electronic money issuance, redemption, distribution or payment services which it seeks to carry on in those States;
 - (d) if the institution intends to use an agent to provide the services in any of those States, includes the information referred to in regulation 34(3) (requirement for agents to be registered);
 - (e) if the institution intends to use an EEA branch to provide the services in any of those States, includes—
 - (i) the information referred to in paragraphs 2 and 5 of Schedule 1 in relation to the services to be provided through each EEA branch;
 - (ii) the names of those responsible for the management of each proposed EEA branch; and
 - (iii) details of the organisational structure of each proposed EEA branch;
 - (f) if the authorised payment institution intends to enter into a contract with a person in another EEA State under which that person will carry out any operational function relating to the issuance, distribution or issuance of electronic money or the provision of payment services in that EEA State, includes notification of that intention; and
 - (g) identifies the distributors, if any, whom the institution intends to engage to distribute or redeem electronic money in exercise of its passport rights in that State.”;
 - (b) for paragraphs (3) and (4) substitute—
 - “(3) If any of the information provided by an authorised electronic money institution in a notice of intention changes, including by the addition of a further branch, the institution must give the Authority notice of such changes in a further notice of intention.
 - (4) The Authority must, within one month beginning with the date on which it receives a complete notice of intention, inform the host state competent authority of the information contained in the notice of intention.”.
- (19) For regulation 29 (registration of EEA branch) substitute—

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“Decision following notice of intention

29.—(1) If the Authority, taking into account any information received from the host state competent authority, proposes to determine that an authorised electronic money institution is not permitted to exercise passport rights in an EEA State as notified in a notice of intention, the Authority must give the relevant institution a warning notice.

(2) The Authority must, within the period of three months beginning with the date on which it receives a notice of intention and having considered any representations made in response to the warning notice—

- (a) if it decides
 - (i) that the authorised electronic money institution is not permitted to exercise passport rights in the EEA State, not to register an EEA branch, or to cancel the registration of an EEA branch, give the institution a decision notice; or
 - (ii) that the authorised electronic money institution is permitted to exercise passport rights in the EEA State, to register an EEA branch, or not to cancel the registration of an EEA branch, give the institution notice of its decision; and
- (b) notify the host state competent authority of its decision, providing reasons for that decision if the Authority does not agree with the assessment of the host state competent authority.

(3) If the Authority decides that the authorised electronic money institution is not permitted to exercise passport rights in the EEA State, not to register an EEA branch, or to cancel the registration of an EEA branch, the institution may refer the matter to the Upper Tribunal.

(4) If the Authority decides to register an EEA branch, it must update the register as soon as practicable.

(5) If the Authority decides to cancel the registration of an EEA branch, the Authority must, where the period for a reference to the Upper Tribunal has expired without a reference being made, as soon as practicable update the register accordingly.

(6) The authorised electronic money institution may commence activities as notified in its notice of intention only after the Authority has notified the institution of its decision under paragraph (2)(a)(ii) and, in the case of services to be provided through an EEA branch, after entry of the branch on the register.

(7) After registration, the authorised electronic money institution must notify the Authority of the date on which it starts to provide payment services in the other EEA State through the EEA branch, and the Authority must notify such date to the host state competent authority.

Notice of intention from an EEA authorised payment institution

29A.—(1) If a home state competent authority sends information to the Authority about an EEA authorised electronic money institution which intends to provide services in the United Kingdom, the Authority must, before the end of the period of one month beginning on the day which the Authority receives all the required information—

- (a) assess the information; and
- (b) provide relevant information to the home state competent authority in connection with the intended provision of payment services in the United Kingdom, including in particular any reasonable grounds for concern with regard to money laundering or terrorist financing within the meaning of the money laundering directive in connection with the intended appointment of an agent or establishment of a branch in the United Kingdom.

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(2) The EEA authorised electronic money institution may provide services in the United Kingdom in accordance with the information it has provided to the home state competent authority upon entry of the branch or agent in the register maintained by the home state competent authority.”.

(20) In regulation 30 (supervision of firms exercising passport rights)—

(a) in paragraph (2)(b)(ii) after “information” insert “ , including on compliance with the conditions at regulation 6(4)(a) and (4A) ”;

(b) for paragraph (4) substitute—

“(4) The Authority may direct that an EEA authorised electronic money institution exercising its passport rights to services in the United Kingdom through a branch or an agent in the United Kingdom must report to the Authority on such activities, for information and statistical purposes and, where the institution has exercised its right of establishment in the United Kingdom, to monitor compliance with Part 5 of these Regulations.

(5) Reports required under paragraph (4) must be given at such times and in such form, and verified in such manner, as the Authority may direct.

(6) An agent in the United Kingdom appointed by an EEA authorised electronic money institution or a branch of an EEA authorised electronic money institution in the United Kingdom must maintain the confidentiality of any confidential information provided to the Authority under paragraph (4).

(7) If a host state competent authority informs the Authority that an authorised electronic money institution providing services through an EEA branch or an EEA agent does not comply with a provision of the payment services directive, the Authority must—

(a) exercise its powers as appropriate without undue delay, to ensure that the authorised payment institution complies with the relevant provisions; and

(b) inform the host state competent authority and the competent authority of any other relevant EEA State of the measures taken without delay.

(8) Where immediate action is necessary to address a serious risk to the collective interests of electronic money holders or payment service users in the United Kingdom, the Authority may, in addition to providing information under paragraph (2), take precautionary measures in relation to an EEA authorised electronic money institution pending action by the home state competent authority.

(9) Any measures taken under paragraph (8) must be temporary and must end when the risk identified has been addressed.

(10) If the Authority decides to take measures under paragraph (8), it must inform the home state competent authority, the competent authority of any other relevant EEA State, and the European Banking Authority of the measures to be taken and the reason that immediate action is necessary—

(a) in advance of taking the measures, if that is compatible with the need for immediate action; and

(b) in any event without undue delay.

(12) In paragraphs (7)(b) and (10) “competent authority of any other relevant EEA State” means a competent authority designated in accordance with the electronic money directive in an EEA State which the Authority considers to have an interest in the measures taken, or to be taken, by the Authority.”.

(21) Before regulation 32 (additional activities) insert—

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“Record keeping

31A.—(1) An electronic money institution must maintain relevant records and keep them for at least five years from the date on which the record was created.

(2) For the purposes of paragraph (1), records are relevant where they relate to compliance with obligations imposed by or under Parts 2 to 4 and, in particular, would enable the Authority to supervise effectively such compliance.”.

(22) In regulation 32(2) for “regulation 27(2) of the Payment Services Regulations 2009” substitute “ regulation 32(2) of the Payment Services Regulations 2017 ”.

(23) In regulation 34 (requirement for agents to be registered)—

(a) in paragraph (3)(a)—

(i) in paragraph (iii) after “the agent and” insert “ , if the agent is not an electronic money institution or an EEA authorised electronic money institution, or a payment service provider within the meaning of the Payment Services Regulations 2017, ”;

(ii) omit “and” after paragraph (iii)

(iii) after paragraph (iii) insert—

“(iiiia) the services for which the agent is appointed;

(iiiib) the unique identification code or number of the agent, if any; and”;

(b) after paragraph (5) insert—

“(5A) Where the application relates to the provision of services in exercise of passport rights through an EEA agent, the Authority must, within one month beginning with the date on which it received the completed application, inform the host state competent authority of the information provided under paragraph (3) or (5).”;

(c) omit paragraphs (7) and (8);

(d) after paragraph (10) insert—

“(10A) Where the application relates to the provision of services in exercise of passport rights through an EEA agent, the Authority must—

(a) take into account any information received from the host state competent authority in making its decision; and

(b) notify the host state competent authority of its decision, providing reasons for that decision if the Authority does not agree with the assessment of the host state competent authority.

(10B) The Authority must give notice under paragraph (10) and (10A)—

(a) where the application relates to the provision of services in the United Kingdom, within a period of two months beginning on the date on which the Authority received the completed application;

(b) where the application relates to the provision of services in the exercise of passport rights through an EEA agent, within a period of three months beginning on the date on which the Authority received the completed application.”;

(e) after paragraph (12) insert—

“(12A) An authorised electronic money institution must notify the Authority of the date on which it starts to provide services in another EEA State through a registered EEA agent, and the FCA must notify such date to the host state competent authority.”;

(f) after paragraph (14) insert—

“(15) An authorised electronic money institution must notify the Authority without undue delay if there is any change in the information notified under paragraph (3) or (5).”.

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- (24) In regulation 36(1) (reliance) for “2009” substitute “ 2017 ”.
- (25) In regulation 49 (reporting requirements), after paragraph (2) insert—
 “(3) A direction under this regulation must specify the purpose for which the information is required, as appropriate, and the time within which the information is to be given.”.
- (26) In regulation 71 (duty to co-operate and exchange information)—
 (a) in paragraph (1)—
 (i) omit “and” after sub-paragraph (b);
 (ii) after sub-paragraph (c) insert—
 “; and
 (d) the European Banking Authority,”;
- (b) in paragraph (2)(a) for “and (c)” substitute “, (c) and (d) ”;
- (c) after paragraph (2) insert—
 “(3) If the European Banking Authority is assisting the Authority, or a competent authority in another EEA State, in relation to a disagreement between those authorities pursuant to Article 19 of Regulation (EU) 1093/2010 of the European Parliament and of the Council of 24th November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC^{M46}, the Authority must defer any decision in relation to the subject of the disagreement until the disagreement is resolved under that Article.”.
- (27) In regulation 73 (prohibition on contracting out) for “2009” substitute “ 2017 ”.
- (28) After regulation 78 (amendments to the banking consolidation directive) insert—

“Transitional arrangements for existing electronic money institutions on the implementation of the second payment services directive

78A.—(1) This regulation applies in relation to an authorised electronic money institution, EEA authorised electronic money institution or small electronic money institution which provides services before 13th January 2018 in accordance with these Regulations or the national law in another EEA State transposing the electronic money directive and, where relevant, the Payment Services Regulations 2009 or the national law in another EEA State transposing the first payment services directive.

(2) In the case of an authorised electronic money institution or small electronic money institution—

- (a) the institution may continue to provide the services provided before 13th January 2018 until the end of 12th July 2018 without further authorisation or registration under these Regulations;
- (b) the institution is to be treated as if on 13th January 2018 the Authority had imposed a requirement under regulation 7 (imposition of variations), including under that regulation as applied by regulation 15 (supplementary provisions), requiring the institution to refrain from providing account information services or payment initiation services for an indefinite period;
- (c) any other requirement imposed by the Authority under regulation 7 (imposition of variations), including under that regulation as applied by regulation 15 (supplementary provisions), applies in relation to services provided pursuant to sub-paragraph (a);
- (d) regulations 10 (cancellation of authorisation) and 11 (variation of authorisation on Authority's own initiative), including those regulations as applied by regulation 15,

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apply in relation to the institution as if references to authorisation or registration included references to entitlement to provide payment services pursuant to subparagraph (a); and

- (e) the institution may not apply for a variation under regulation 8 (variation etc. at request of authorised electronic money institution), including under that regulation as applied by regulation 15, before it complies with paragraph (4) or (5) of this regulation.

(3) An EEA authorised electronic money institution may continue to provide the services provided before 13th January 2018 until the end of 12th July 2018 without further authorisation or registration under the national law implementing the amendments to the electronic money directive made by Article 111 of the payment services directive.

(4) Where an authorised electronic money institution intends to provide services on or after 13th July 2018, the institution must before 13th April 2018—

- (a) provide to the Authority all information specified in Schedule 1 that the person has not previously provided to the Authority; or
- (b) notify the Authority that it has previously provided all such information to the Authority.

(5) Where a small electronic money institution intends to provide services as a small electronic money institution on or after 13th July 2018, the institution must before 13th April 2018 notify the Authority whether it continues to meet the requirements for registration as a small electronic money institution, together with any information relevant to that question which it has not previously provided to the Authority.

(6) On receipt of information or a notification pursuant to paragraph (4) or (5), the Authority must consider whether the institution's authorisation or registration should be continued on and after 13th July 2018.

(7) If the Authority does not decide to continue the institution's authorisation or registration under paragraph (6), the institution's authorisation or registration is to be treated as having been cancelled on 13th July 2018.

(8) The Authority must maintain in the register a person entitled to provide services pursuant to this regulation.

(9) In this regulation “first payment services directive” means Directive [2007/64/EC](#) of the European Parliament and of the Council of 13th November 2007 on payment services in the internal market amending Directives [97/7/EC](#), [2002/65/EC](#), [2005/60/EC](#) and [2006/48/EC](#) and repealing Directive [97/5/EC](#)^{M47}.”

(29) In Schedule 1 (information to be included in or with an application for authorisation)—

(a) after paragraph 5 insert—

5A. A description of the applicant's procedure for monitoring, handling and following up security incidents and security-related customer complaints, including where appropriate an incidents reporting mechanism which takes account of the notification obligations under regulation 99 of the Payment Services Regulations 2017.

5B. A description of the applicant's process for filing, monitoring, tracking and restricting access to sensitive payment data.

5C. A description of the applicant's business continuity arrangements, including a clear identification of the critical operations, effective contingency plans, and a procedure for regular testing and reviewing of the adequacy and efficiency of such plans.

5D. A description of the principles and definitions used by the applicant in collecting statistical data on performance, transactions and fraud.

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5E. A statement of the applicant's security policy, including—

- (a) a detailed risk assessment in relation to the payment services to be provided, including risks of fraud and illegal use of sensitive and personal data, and
- (b) a description of—
 - (i) the applicant's security control and mitigation measures to provide adequate protection to users against the risks identified,
 - (ii) how such measures ensure a high level of technical security and data protection, including such security and protection for the software and IT systems used by the applicant and any undertakings to which the applicant outsources any part of its operations, and
 - (iii) where appropriate, the applicant's measures to comply with regulation 98(1) of the Payment Services Regulations 2017, taking into account any guidelines issued by the European Banking Authority under Article 95(3) of the payment services directive.”;
- (b) in paragraph 7, after “branches and” insert “ the off-site and on-site checks that the applicant undertakes to perform on them at least annually, ”;
- (c) in paragraph 13, after “5” insert “ , 5A ”; and
- (d) after paragraph 13, insert—

“14. In the case of an applicant which proposes to provide payment initiation services or account information services, the professional indemnity insurance or comparable guarantee which it holds in relation to such services.”.

(30) In Schedule 2 (capital requirements)—

- (a) in paragraph 1 for “the items specified in paragraph 4(a), (b) and (c) of this Schedule” substitute “ one or more of the items specified in Article 26(1)(a) to (e) of the capital requirements regulation ”;
- (b) in paragraph 4 for “the following items” to the end substitute “ own funds as defined in Article 4(1)(18) of the capital requirements regulation, and are to be calculated in accordance with paragraphs 9 to 12. ”;
- (c) omit paragraphs 5 to 8 and the heading preceding paragraph 7;
- (d) for paragraph 9 substitute—

“9. For the purposes of calculating own funds—

 - (a) the amount of Tier 2 capital must be equal to or less than one third of the amount of Tier 1 capital;
 - (b) at least 75% of the amount of Tier 1 capital must be in the form of Common Equity Tier 1 capital.”;
- (e) in paragraph 13(a) after “payment services” insert “ specified in paragraph 1(a) to (f) of Schedule 1 of the Payment Services Regulations 2017. ”;
- (f) in paragraph 21(4)—
 - (i) in paragraph (a) for “2009” substitute “ 2017 ”;
 - (ii) omit paragraph (b);
 - (iii) in paragraph (c) after “payment service” insert “ specified in paragraph 1(a) to (e) of Schedule 1 to those Regulations ”.

(31) In Schedule 3 (application and modification of legislation)—

- (a) after paragraph 2 (the tribunal) insert—

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“Authority rules

2A.—(1) Section 137A of the 2000 Act applies for the purposes of these Regulations as if—

- (a) references to authorised persons were references to authorised electronic money institutions, small electronic money institutions and EEA authorised electronic money institutions;
- (b) in subsection (1)—
 - (i) the reference in paragraph (a) to the carrying on of regulated activities were to the issuance of electronic money, and
 - (ii) the reference in paragraph (b) to the carrying on of activities which are not regulated activities were to the carrying on of activities in connection with the issuance of electronic money;
- (c) in subsection (5)—
 - (i) references to EEA firms were to EEA authorised issuance of electronic money institutions;
 - (ii) in paragraph (a), reference to permission conferred by Part 2 of Schedule 3 to the 2000 Act were to permission conferred by regulation 29A(2) of these Regulations;
 - (iii) in paragraph (b), reference to any of the single market directives or the emission allowance auctioning regulation were to the electronic money directive;
- (c) after subsection (5) there were inserted—

“(6) The FCA may make a rule pursuant to paragraph (1) only if the FCA is also making, or has made, a rule under this section or section 137R concerning the same matter which applies to authorised persons in connection with the issuance of electronic money.”.

(2) Sections 137T (general supplementary powers) and 141A (power to make consequential amendments of references to rules) and Chapter 2 of Part 9A (rules: modification, waiver, contravention and procedural provisions) of the 2000 Act apply in relation to rules made pursuant to paragraph (1) as they do in relation to other rules made by the FCA under section 137A of the 2000 Act, subject to sub-paragraph (3).

(3) Section 138D (actions for damages) applies as if in that section subsection (6) were omitted and “private person” had the meaning given in regulation 72(3) of these Regulations.”.

(b) after paragraph 4 (control over electronic money institutions) insert—

“Incoming firms: interventions by the Authority

4A.—(1) Part 13 of the 2000 Act (incoming firms: intervention by FCA or PRA) applies with the following modifications.

- (2) References to—
 - (a) “the regulator” or “the appropriate regulator” are to be read as references to the Authority;
 - (b) requirements imposed by or under the 2000 Act are to be read as references to requirements imposed by or under these Regulations.

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- (3) Section 193 (interpretation) is to be read as if—
- (a) in subsection (1), for the definition of “incoming firm” there were substituted—
 - ““incoming firm” means an EEA authorised electronic money institution which is exercising, or has exercised, its right to provide services in the United Kingdom in accordance with the Electronic Money Regulations 2011;”,
 - (b) subsection (1A) were omitted; and
 - (c) for subsection (2) there were substituted—
 - “(2) Expressions used in this Part and in the Payment Services Regulations 2017 have the same meaning in this Part as they have in those Regulations.”.
- (4) Section 194 (general grounds on which power of intervention is exercisable) is to be read as if subsections (1)(c)(ii) and (1AA) to (5) were omitted.
- (5) Sections 194A to 194C, 195A, 195B, 198 to 199A and 201 are to be ignored.
- (6) Section 195 (exercise of power in support of overseas regulator) is to be read as if—
- (a) subsection (2A) were omitted; and
 - (b) in subsection (5)(b), the reference to an EEA firm's EEA authorisation were a reference to an EEA authorised electronic money institution's authorisation under the electronic money directive.
- (7) Section 196 (the power of intervention) is to be read as if—
- (a) in subsection (1), for paragraphs (a) and (b) there were substituted—
 - “(a) the firm were an authorised electronic money institution; and
 - (b) the FCA were entitled to exercise its power under regulation 12 of the Electronic Money Regulations 2011 (variation of authorisation on Authority's own initiative) by imposing a requirement such as may, under regulation 7 of those Regulations (imposition of requirements) be included in an authorisation under those Regulations.”; and
 - (b) subsection (3) were omitted.
- (8) Section 202 (contravention of requirement) is to be read as if for subsection (2) there were substituted—
- “(2) Regulation 72 of the Electronic Money Regulations 2011 (right to bring actions) applies to the contravention as if it were a contravention of Part 5 of those Regulations.”.

Marginal Citations

- M43** [S.I. 2011/99](#), amended by [S.I. 2011/2742](#), 2012/1791, 2013/429, 479, 1881 and 3115, 2014/366, 2015/575 and 2016/163 and 937.
- M44** OJ L 331, 15.12.2010, p.12.
- M45** [S.I. 1999/2979](#). The definitions of “default arrangements” and “transfer order” in regulation 2(1) were amended by [S.I. 2010/2993](#) and 2013/504.
- M46** OJ L 331, 15.12.2010, p.12.
- M47** OJ L 319 5.12.2007, p.1. The Directive is repealed with effect from 13 January 2018 by Directive 2015/2366/EU.

Status: Point in time view as at 14/09/2019.

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PART 3

Amendments to other secondary legislation

Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975

6. In the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 ^{M48}—
- (a) in article 2(1)—
 - (i) for “Payment Services Regulations 2009” in each place it appears substitute “ Payment Services Regulations 2017 ”;
 - (ii) in the appropriate place, insert—
 - ““registered account information service provider” has the meaning given by regulation 2(1) of the Payment Services Regulations 2017;”;
 - (b) in article 4(1)(d)(xv)—
 - (i) after “an authorised payment institution” insert “ , a registered account information service provider ”;
 - (ii) for “2009” substitute “ 2017 ”.

Marginal Citations

M48 [S.I. 1975/1023](#), as amended by [S.I. 2011/1800](#), 2013/472 and other instruments that are not relevant here.

Individual Savings Account Regulations 1998

7. In regulation 2(1)(b) of the Individual Savings Account Regulations 1998 (interpretation) ^{M49}, in the definition of “insolvency event” for “regulation 19(15) of the Payment Services Regulations 2009” substitute “ regulation 23(18) of the Payment Services Regulations 2017 ”.

Marginal Citations

M49 [S.I. 1998/1870](#), as amended by [S.I. 2011/1780](#) and other instruments that are not relevant here.

Financial Services and Markets Act 2000 (Regulated Activities) Order 2001

8. In the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 ^{M50}—
- (a) In article 9AB(2) (funds received for payment services) for “2009” substitute “ 2017 ”;
 - (b) in article 60JA (payment institutions)—
 - (i) in paragraph (1) for “16(3)” substitute “ 18(4) ”;
 - (ii) in paragraph (2) for “2009” substitute “ 2017 ”;
 - (c) in article 60JB (electronic money institutions), in paragraph (1) for “16(3)” substitute “ 18(4) ”.

Marginal Citations

M50 [S.I. 2001/544](#). Article 9AB was inserted by [S.I. 2009/209](#) and amended by [S.I. 2011/99](#). Articles 60JA and 60JB were inserted by [S.I. 2014/366](#).

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Child Trust Funds Regulations 2004

9. In regulation 2(1)(c) of the Child Trust Funds Regulations 2004 (interpretation) ^{M51}, in the definition of “insolvency event” for “regulation 19(15) of the Payment Services Regulations 2009” substitute “ regulation 23(18) of the Payment Services Regulations 2017 ”.

Marginal Citations

M51 [S.I. 2004/1450](#), as amended by [S.I. 2010/582](#) and other instruments that are not relevant here.

Financial Services (Distance Marketing) Regulations 2004

10. In the Financial Services (Distance Marketing) Regulations 2004 ^{M52}—

(a) in regulation 7(1A) (information required prior to the conclusion of the contract) for “2009” substitute “ 2017 ”;

(b) in regulation 8(1A) (written and additional information) for “2009” substitute “ 2017 ”.

Marginal Citations

M52 [S.I. 2004/2095](#), as amended by [S.I. 2009/209](#) and other instruments that are not relevant here.

Investment Bank Special Administration Regulations 2011

11. In Schedule 6 to the Investment Bank Special Administration Regulations 2011 (modifications and consequential amendments) ^{M53}, in the entry for the Payment Services Regulations 2009 in the list after paragraph 1, for “2009” substitute “ 2017 ”.

Marginal Citations

M53 [S.I. 2011/245](#). There have been amendments but none is relevant here.

Consumer Rights (Payment Surcharges) Regulations 2012

12.—(1) The Consumer Rights (Payment Surcharges) Regulations 2012 ^{M54} are amended as follows.

- (2) In regulation 1 (citation and commencement)—
- (a) in paragraph (2) for “These Regulations apply” substitute “ Regulation 4 (fees a trader must not charge a consumer) applies ”;
- (b) after paragraph (2) insert—
- “(3) Regulation 6A applies in relation to contracts entered into after the date on which the Payment Services Regulations 2017 were made.”.
- (3) In regulation 3 (other definitions) after the definition of “goods” insert—
- ““payee”, “payer”, “payment instrument”, “payment service” and “payment service provider” have the meanings given in regulation 2(1) of the Payment Services Regulations 2017;”.
- (4) For the heading of regulation 4 (excessive charges prohibited) substitute “ Fees a trader must not charge a consumer ”.

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(5) In the heading of regulation 5 (contracts where prohibition applies) for “prohibition” substitute “regulation 4”.

(6) After regulation 6 (temporary exemption for micro-businesses and new businesses) insert—

“Fees any payee must not charge any payer

6A.—(1) A payee must not charge a payer any fee in respect of payment by means of—

(a) a payment instrument which—

(i) is a card-based payment instrument as defined in Article 2(20) of Regulation (EU) 2015/751 of the European Parliament and of the Council of 29th April 2015 on interchange fees for card-based payment transactions^{M55}; and

(ii) is not a commercial card as defined in Article 2(6) of that Regulation; or

(b) a payment instrument which—

(i) is not a card-based payment instrument as defined in Article 2(20) of that Regulation; and

(ii) would not fall within the definition of commercial card at Article 2(6) of that Regulation if, in that definition, the reference to any card-based payment instrument were to any payment instrument and the reference to such cards were to such payment instruments; or

(c) a payment service to which Regulation (EU) 260/2012 of the European Parliament and of the Council of 14th March 2012 establishing technical and business requirements for credit transfers and direct debits in euro^{M56} applies.

(2) A payee receiving a payment by means of a payment instrument must not charge the payer, in respect of such payment, a fee which exceeds the costs borne by the payee for the use of that specific payment instrument.

Application of regulation 6A

6B.—(1) Regulation 6A applies only if the payment service provider of the payer or the payment service provider of the payee is located in an EEA state.

(2) Where the payment service providers of both the payee and the payer are located in an EEA state, regulation 6A(1) and (2) apply.

(3) Where the payment service provider of either the payer or the payee, but not both, is located in an EEA state, regulation 6A(2) applies but regulation 6A(1) does not apply.”

(7) In regulations 7(1) and (4) (complaints), 8(1) and (2) (orders to secure compliance) and 9(a) (notification of undertakings and orders to the CMA) after “regulation 4” insert “ or 6A ”.

(8) In regulation 10 (consumer's right of redress)—

(a) in the heading for “Consumer's right” substitute “ Right ”;

(b) after “regulation 4” insert “ or any payee charges a fee in contravention of regulation 6A ”;

(c) in paragraph (a)—

(i) for “consumer to pay” substitute “ payment of ”;

(ii) for “of the excess charged” substitute “ that the charging of the fee contravenes regulation 4 or 6A ”;

(d) in paragraph (b) for “excess to be repaid to the consumer” substitute “ fee to be repaid to the extent that the charging of the fee contravenes regulation 4 or 6A ”.

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Marginal Citations

M54 [S.I. 2012/3110](#), amended by [S.I. 2013/761](#) and 3134 and 2014/549.

M55 OJ L 123, 19.5.2015, p.1.

M56 OJ L 94, 30.3.2012, p.22.

Postal Services Act 2011 (Disclosure of Information) Order 2012

13. In article 4 of the Postal Services Act 2011 (Disclosure of Information) Order 2012 ^{M57} (prescription of enactments), in the entry for the Payment Services Regulations 2009, for “2009” substitute “ 2017 ”.

Marginal Citations

M57 [S.I. 2012/1128](#). There have been amendments to article 4 but none is relevant here.

Payments in Euro (Credit Transfers and Direct Debits) Regulations 2012

14. In regulation 2(1) of the Payments in Euro (Credit Transfers and Direct Debits) Regulations 2012 ^{M58}, in the final definition (definition of “payment services”, “payment service provider”, “payment service user” and “payment system”) for “2009” substitute “ 2017 ”.

Marginal Citations

M58 [S.I. 2012/3122](#). Regulation 2(1) was amended by [S.I. 2013/472](#).

Payment to Treasury of Penalties (Enforcement Costs) Order 2013

15. In article 2(1) of the Payment to Treasury of Penalties (Enforcement Costs) Order 2013 (enforcement powers) ^{M59}, for sub-paragraph (g) substitute—

“(g) regulations 110, 111, 113, 114 and 116 of the Payment Services Regulations 2017.”.

Marginal Citations

M59 [S.I. 2013/418](#). There have been amendments to article 2 but none is relevant here.

Financial Services Act 2012 (Relevant Functions in relation to Complaints Scheme) Order 2014

16. In article 2(b) of the Financial Services Act 2012 (Relevant Functions in relation to Complaints Scheme) Order 2014 (relevant functions of the FCA) ^{M60}—

(a) for “2009” substitute “ 2017 ”; and

(b) for “regulation 93” substitute “ regulation 120 ”.

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Marginal Citations

M60 [S.I. 2014/1195](#).

Communications Act 2003 (Disclosure of Information) Order 2014

17. In article 3(e) of the Communications Act 2003 (Disclosure of Information) Order 2014 (specification of relevant functions) ^{M61} for “2009” substitute “ 2017 ”.

Marginal Citations

M61 [S.I. 2014/1825](#).

Financial Services and Markets Act 2000 (Excluded Activities and Prohibitions) Order 2014

18. In regulation 1(4) of the Financial Services and Markets Act 2000 (Excluded Activities and Prohibitions) Order 2014 ^{M62} (interpretation), in the definition of “payment services” for “2009” substitute “ 2017 ”.

Marginal Citations

M62 [S.I. 2014/2080](#). There are several amendments to regulation 1(4) but none is relevant here.

Public Interest Disclosure (Prescribed Persons) Order 2014

19. In the Schedule to the Public Interest Disclosure (Prescribed Persons) Order 2014 ^{M63}, in paragraph (e) of the entry for the Financial Conduct Authority for “payment services regulations 2009” substitute “ Payment Services Regulations 2017 ”.

Marginal Citations

M63 [S.I. 2014/2418](#).

Enterprise Act 2002 (Part 8 EU Infringements) Order 2014

20. In the Enterprise Act 2002 (Part 8 EU Infringements) Order 2014 ^{M64}—

- (a) in article 4 for “the listed Directive” substitute “ a Directive, or provisions of a Directive, listed in the Schedule ”;
- (b) in the Schedule (listed directive)—
 - (i) in the heading of the Schedule for “DIRECTIVE” substitute “ DIRECTIVES ”;
 - (ii) in the heading of the first column in the table for “Directive” substitute “ Directives ”;
 - (iii) in the first column of the table after “Directive [97/7/EC](#) of the European Parliament and the Council” insert—
“; and

Paragraphs 4 and 5 and the second sentence of paragraph 3 of Article 62 of 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](#),

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2009/110/EC and 2013/36/EU and Regulation (EU) No. 1093/2010, and repealing Directive 2007/64/EC^{M65}

(iv) in the second column of the table after “Regulations 4,” insert “ 6A, 6B, ”.

Marginal Citations

M64 S.I. 2014/2908.

M65 OJ L 337 23.12.2015, p.35.

Payment to Treasury of Penalties (Enforcement Costs of the Payment Systems Regulator) Order 2015

21. In the Payment to Treasury of Penalties (Enforcement Costs of the Payment Systems Regulator) Order 2015 ^{M66}—

- (a) in article 1(2) (citation, commencement and interpretation) omit the definition of “the 2009 Regulations”;
- (b) in article 2 (enforcement powers) omit paragraph (d);
- (c) in article 3 (relevant offences) omit paragraph (c).

Marginal Citations

M66 S.I. 2015/487.

Mortgage Credit Directive Order 2015

22. In article 26 of the Mortgage Credit Directive Order 2015 (extension of the compulsory jurisdiction of the Financial Ombudsman Scheme to registered consumer buy-to-let mortgage firms) ^{M67}, in paragraph (1)(a) for “2009” substitute “ 2017 ”.

Marginal Citations

M67 S.I. 2015/910.

Small and Medium Sized Business (Credit Information) Regulations 2015

23. In regulation 17 of the Small and Medium Sized Business (Credit Information) Regulations 2015 (extension of the jurisdiction of the Financial Ombudsman Scheme to designated credit reference agencies) ^{M68}, in paragraph (1)(a), (d) and (e) for “2009” substitute “ 2017 ”.

Marginal Citations

M68 S.I. 2015/1945.

Small and Medium Sized Business (Finance Platforms) Regulations 2015

24. In regulation 14 of the Small and Medium Sized Business (Finance Platforms) Regulations 2015 (extension of the jurisdiction of the Financial Ombudsman Scheme to designated finance platforms) ^{M69}, in paragraph (1)(a), (d) and (e) for “2009” substitute “ 2017 ”.

Marginal Citations

M69 [S.I. 2015/1946](#).

Payment Accounts Regulations 2015

- 25.** In the Payment Accounts Regulations 2015 ^{M70}—
- (a) in regulation 2(1) (interpretation), in the definition of “Payment Services Regulations” for “2009” substitute “ 2017 ”;
 - (b) in regulation 8 (fee information document), in paragraph (1)(a) for “Part 5 (information requirements for payment systems)” substitute “ Part 6 (information requirements for payment services) ”;
 - (c) in regulation 10 (statement of fees), in paragraph (1) for “Part 5” substitute “ Part 6 ”;
 - (d) in Schedule 3 (switching service)—
 - (i) in paragraph 4(1)(e) for “regulation 43” substitute “ regulation 51 ”;
 - (ii) in paragraph 5(3) for “regulation 56(2)” substitute “ regulation 71(2) ”;
 - (iii) in paragraph 6(3) for “regulation 43” substitute “ regulation 51 ”;
 - (e) in Schedule 5 (fees connected with alternative arrangements etc.), in paragraph 3(2) for “regulation 43” substitute “ regulation 51 ”.

Marginal Citations

M70 [S.I. 2015/2038](#)

Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017

- 26.** In the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 ^{M71}—
- (a) in regulation 3(1) (general interpretation), in the definitions of “payment services” and “payment service provider” for “2009” substitute “ 2017 ”;
 - (b) in regulation 53 (interpretation), in the definition of “telecommunication, digital and IT payment service provider” for the words from “falling within” to the end substitute “ consisting of the execution of payment transactions where the consent of the payer to execute a payment transaction is given by means of any telecommunication, digital or IT device and the payment is made to the telecommunication, IT system or network operator acting only as an intermediary between the payment service user and the supplier of the goods and services (and terms used in this definition which are defined in the Payment Services Regulations 2017 have the meanings given in those Regulations). ”;
 - (c) in regulation 60(5) (cancellation and suspension of registration)—
 - (i) in sub-paragraph (b) for “2009” substitute “ 2017 ”;
 - (ii) in sub-paragraph (c)(i)—
 - (aa) for “(c) to (h)” substitute “ (d) to (j) ”;
 - (bb) for “2009” substitute “ 2017 ”;
 - (iii) in sub-paragraph (c)(ii) for “121” substitute “ 154(2) ”;

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- (d) in regulation 62(1) (transfer of funds supervisory authorities), in sub-paragraphs (b) and (c) for “2009” substitute “ 2017 ”;
- (e) in regulation 77(2) (power to impose civil penalties: suspension and removal of authorisation), in paragraphs (a)(ii) and (iii) and (b)(ii) and (iii) for “2009” substitute “ 2017 ”;
- (f) in regulation 105 (disclosure by the Commissioners), in paragraphs (1) and (2)(c) for “2009” substitute “ 2017 ”.

Marginal Citations

M71 [S.I. 2017/692](#).

SCHEDULE 9

Regulation 157

Revocations

<i>Instrument revoked</i>	<i>Extent of revocation</i>
The Payment Services Regulations 2009 M72	All of the Regulations except regulation 126 and Schedule 6 (amendments to primary and secondary legislation)
The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2014 M73	Articles 12 (amendment of the Payment Services Regulations 2009), 13 (saving of section 51 of the Consumer Credit Act 1974) and 19(4) (amendment of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013)

Marginal Citations

M72 [S.I. 2009/209](#).

M73 [S.I. 2014/366](#).

Status:

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