STATUTORY INSTRUMENTS

2017 No. 1167

BANKS AND BANKING

The Banking Act 2009 (Service Providers to Payment Systems) Order 2017

Made - - - - 29th November 2017

Coming into force in accordance with article 1

The Treasury make this Order in exercise of the powers conferred by paragraph 3(2)(a) of Schedule 7 to the Bank of England Act 1998 [F1], sections 142D and 142E of the Financial Services and Markets Act 2000 [F2], sections 206A(1) and 259(1) of the Banking Act 2009 [F3] and section 145(1) of the Financial Services (Banking Reform) Act 2013 [F4].

Before making this Order the Treasury consulted the Bank of England in accordance with paragraph 3(4) of Schedule 7 to the Bank of England Act 1998, and consulted the Bank of England, the Financial Conduct Authority, the Prudential Regulation Authority and such other persons as the Treasury consider appropriate in accordance with section 206A(6) of the Banking Act 2009.

A draft of this Order has been laid before and approved by resolution of each House of Parliament, in accordance with section 40(2) of the Bank of England Act 1998 [F5], section 142Z of the Financial Services and Markets Act 2000, section 206A(8)(b) of the Banking Act 2009 and section 143(3) of the Financial Services (Banking Reform) Act 2013.

F1 1998 c. 11. There have been amendments to paragraph 3 but none is relevant here.

F2 2000 c. 8. Sections 142D, 142E and 142Z, together with the rest of Part 9B, were inserted by section 4 of the Financial Services (Banking Reform) Act 2013 (c. 33).

F3 2009 c. 1. Section 206A was inserted by section 20 of the Financial Services Act 2010 (c. 28), and amended by section 104 of the Financial Services Act 2012 (c. 21) and paragraph 28 of Schedule 9 to the Digital Economy Act 2017 (c. 30).

F4 2013 c. 33.

F5 There have been amendments to section 40 but none is relevant here.

PART 1

Introductory provision

Citation and commencement

1.—(1) This Order may be cited as the Banking Act 2009 (Service Providers to Payment Systems) Order 2017.

(2) Parts 1, 2 and 4 come into force on 30th November 2017.

(3) Part 3 comes into force on 13th January 2018.

PART 2

Service Providers to Payment Systems

Amendment of the Banking Act 2009

2.—(1) The Banking Act 2009 is amended as follows.

(2) In section 181 (overview of Part 5) [F6], at the end insert " and certain persons who provide services in relation to such systems ".

(3) In section 183 (interpretation: other expressions) [F7]—

(a) after paragraph (b) insert—

"(ba) a reference to a "service provider" is to be construed in accordance with section 206A(2),";

(b) omit "and" after paragraph (h);

(c) after paragraph (i) insert—

"(j) "the Payment Systems Regulator" means the Payment Systems Regulator established under section 40 of the Financial Services (Banking Reform) Act 2013, and

(k) in sections 188 to 199 (regulation and enforcement), references to the provision of services by a service provider to a payment system include references to—

(i) services provided by the service provider which form part of the arrangements constituting the system, and

(ii) the service provider's arrangements for governance or risk management, or for any other matters which may affect the provision of the services by the service provider.".

(4) In section 184 (recognition order) [F8], after subsection (3) insert—

"(4) See section 206A for the power to specify in a recognition order a person as a person who provides services that form part of the arrangements constituting the recognised system.".

(5) In section 186(1) (procedure) [F9]—

(a) in paragraph (a) after "Bank of England" insert " and the Payment Systems Regulator ";

(b) at the end insert—

"(See section 206A(4) for the procedure to be followed before specifying a person under section 206A(2)(b) (service providers in relation to recognised payment systems) in a recognition order.)".

(6) In section 186A (amendment of recognition order) [F10]—

(a) in subsection (2)—

(i) in paragraph (a) at the end insert " and the Payment Systems Regulator ";

(ii) at the end insert—

"(See section 206A(4) for the procedure to be followed before amending a recognition order so as to specify a person under section 206A(2)(b) (service providers in relation to recognised payment systems) in the order.)";

(b) after subsection (2) insert—

"(2A) Before amending a recognition order so as to revoke or amend the specification of a person under section 206A(2)(b), the Treasury must also—

(a) consult the FCA and the PRA,

(b) notify the specified person, and

(c) consider any representations made.";

(c) in subsection (4), at the end insert " or any request by a service provider in relation to such a system for the amendment or revocation of its specification ".

(7) In section 187(3)(a) (de-recognition) [F11], at the end insert " and the Payment Systems Regulator ".

(8) In section 188(1) (principles) [F12], at the end insert " and principles to which service providers are to have regard in the provision of services to such systems ".

(9) In section 189 (codes of practice) [F13], at the end insert " and the provision of services by service providers to such systems ".

(10) In section 190(1)(a) (system rules) [F14], at the end insert " including the operation of services that form part of the arrangements constituting the system and are provided by a service provider ".

(11) In section 191 (directions) [F15]—

(a) in subsection (1), at the end insert " or a service provider in relation to such a system ";

(b) in subsection (2), in each of paragraphs (a) and (b) at the end insert " or the provision of services to the system ";

(c) in subsection (3)—

(i) after "operator" insert " or service provider ", and

(ii) for "its" substitute "the operator's or service provider's";

(d) in subsection (4)(b), after "operator" insert " or service provider ".

(12) In section 192 (role of the Financial Conduct Authority and Prudential Regulation Authority) [F16]—

(a) in subsection (2)—

(i) in paragraph (a) after "section 186(2)(a)" insert " , a service provider in relation to such a system or a service provider which itself satisfies section 186(2)(a) ";

(ii) in paragraph (b) at the end insert " , a service provider in relation to such a system or a service provider which itself satisfies section 186(2)(b) ";

(b) in subsection (3)—

(i) after "section 186(2)(a) or (b)" insert " , a service provider in relation to such a system or a service provider which itself satisfies section 186(2)(a) or (b) ";

(ii) after "under this Part in respect of the operator" insert " or service provider ".

(13) In section 193 (inspection) [F17]—

(a) in subsection (1), at the end insert " or the provision of services to such a system by a service provider ";

(b) in subsection (2)—

(i) in the opening words, after "system" insert " , or a service provider in relation to such a system, ";

(ii) in paragraph (a) after "operated" insert " or (as the case may be) premises on or from which any part of the services is provided ".

(14) In section 194 (inspection: warrant) [F18]—

(a) in subsection (1), for paragraph (a) substitute—

"(a) there is conducted on the premises any part of the management or operation of—

(i) a recognised payment system (whether by an operator of the system or by someone providing services used by an operator), or

(ii) a service provider in relation to a recognised payment system, and";

(b) in subsection (2)(a) and the opening words of subsection (3), after "system" insert " or the service provider ".

(15) In section 195 (independent report) [F19]—

(a) in subsection (1)—

(i) the words from "the operator" to the end become paragraph (a);

(ii) after that new paragraph (a) insert—

"; or

(b) a service provider in relation to a recognised payment system to appoint an expert to report on the provision of services to the system.";

(b) in subsection (2), in each of paragraphs (a) and (b), after "operator" insert " or service provider ".

(16) In section 196 (compliance failure) [F20], after "system" insert " , or a service provider in relation to such a system, ".

(17) In section 197(1) (publication) [F21], at the end insert " or a service provider in relation to such a system ".

(18) In section 198(1) (penalty) [F22], after "system" insert " , or a service provider in relation to such a system, ".

(19) In section 199 (closure) [F23]—

(a) in subsection (2)—

(i) after "concerned" insert " , or the service provider concerned, ";

(ii) after "the system" insert " or (as the case may be) providing services to a recognised payment system ";

(b) in subsection (3)—

(i) in paragraph (a), after "system" insert " or all services provided to a recognised payment system by the service provider ";

(ii) in paragraph (b), at the end insert " or specified services ";

(c) after subsection (3) insert—

"(3A) Before giving a closure order to a service provider, the Bank must have regard to the public interest in the continued operation of each recognised payment system in relation to which the service provider is specified under section 206A(2)(b).";

(d) in subsection (4), after "operator" insert " or service provider ".

(20) In section 200 (management disqualification) [F24]—

(a) in subsection (2), after "system" insert " or about the management of a service provider in relation to such a system ";

(b) after subsection (2) insert—

"(2A) Before making an order under subsection (2) in respect of a service provider, the Bank must have regard to the public interest in the continued operation of each recognised payment system in relation to which the service provider is specified under section 206A(2)(b).".

(21) In section 201 (warning) [F25]—

(a) in subsection (1)—

(i) in the opening words, after "system" insert " , on a service provider in relation to such a system ";

(ii) in each of paragraphs (a), (b) and (d), after "operator" insert " , service provider ";

(b) after subsection (1) insert—

"(1A) Before imposing a sanction on a person who is a service provider in relation to a recognised payment system the Bank must also—

(a) give the operator of the payment system a notice (a "warning notice"),

(b) give the operator at least 21 days to make representations,

(c) consider any representations made, and

(d) as soon as reasonably practicable, give the operator a notice stating whether the Bank intends to impose the sanction.";

(c) in each of subsections (2) and (3), for "subsection (1)" substitute " subsections (1) and (1A) ".

(22) In section 202 (appeal) [F26]—

(a) in subsection (1), after "201(1)(d)" insert " or (1A)(d) ";

(b) in subsection (2), after "the person" insert " and, if the person is a service provider in relation to a recognised payment system, the operator of the payment system, ".

(23) In section 202A (injunctions) [F27]—

(a) in each of subsections (2)(a) and (3)(a), after "system" insert " or a service provider in relation to such a system ";

(b) in subsection (2), in the words after paragraph (b), after "operator" insert " or service provider ";

(c) in subsection (3), in the words after paragraph (b), after "operator" in both places that it occurs insert " , service provider ".