

SCHEDULE 4

Regulation 16(1)

Designation of alternative arrangements etc.

Interpretation

1. In this Schedule—

“designation certificate” means a certificate issued by the Regulator pursuant to paragraph 3;

“the operator” means the operator of a switching service which has been designated as an alternative arrangement;

“the Regulator” means the Payment Systems Regulator.

Application for designation

2.—(1) Any person may apply to the Regulator for a certificate (“a designation certificate”) designating a switching service operated by that person as an alternative arrangement.

(2) Any such application—

(a) must be made in such manner as the Regulator may direct; and

(b) must be accompanied by such information as the Regulator may reasonably require for the purpose of determining the application.

(3) The directions and requirements given or imposed under sub-paragraph (2) may differ as between different applications.

(4) Any information to be furnished to the Regulator under this paragraph must be in such form and verified in such manner as it may specify.

(5) Every application must be accompanied by copies of the rules of the switching service to which the application relates, and any guidance relating to that switching service.

Issuing the designation certificate

3.—(1) Where—

(a) an application has been made under paragraph 2;

(b) the applicant has paid any fee charged by virtue of paragraph 4(1); and

(c) the Regulator is satisfied that the requirements of regulation 15(2) are met with respect to the switching service to which the application relates;

the Regulator may issue a designation certificate declaring the switching service to be an alternative arrangement (and identifying the operator of that switching service).

(2) A designation certificate must state the date on which it comes into effect.

(3) Where the Regulator refuses an application for a designation certificate, it must give the applicant a written notice to that effect stating the reasons for the refusal and the right of appeal provided for in paragraph 12.

Application fee

4.—(1) The Regulator may charge a fee to an applicant in respect of an application for a designation certificate.

(2) Fees chargeable by the Regulator under this paragraph must not exceed an amount which reasonably represents the amount of costs incurred or likely to be incurred in determining whether the designation certificate should be issued.

(3) If a charge imposed for making an application to the Regulator for a designation certificate is not paid, the Regulator may treat the application as not having been made.

Annual fee

5.—(1) The Regulator may charge an annual fee to the operator.

(2) The annual fee charged must not exceed the total of the costs incurred by the Regulator during the twelve month period to which the fee relates in exercising the functions under this Schedule in respect of the alternative arrangement to which the fee relates.

(3) Where the Regulator charges a fee in accordance with sub-paragraph (1), the operator must—

- (a) pay a first annual fee to the Regulator before the expiry of a twelve month period commencing on the date upon which the designation certificate was issued; and
- (b) pay an annual fee to the Regulator before each anniversary of the issue of the designation certificate.

(4) Sub-paragraph (3)(b) does not apply in relation to an anniversary of the issue of a designation certificate on or immediately before which the designation certificate ceases, by virtue of its terms, to have effect.

(5) If any fee required pursuant to this paragraph is not paid when it falls due, the Regulator may recover the amount of the payment as a debt.

Cancellation of designation

6.—(1) A designation certificate may be cancelled by the Regulator if at any time it appears to it that the switching service to which the certificate relates no longer meets the requirements of regulation 15(2).

(2) For the purpose of monitoring whether a switching service, following designation as an alternative arrangement, continues to meet the requirements of regulation 15(2), the Regulator may by notice in writing require any person to provide such information or documents as it may reasonably require.

(3) The Regulator may cancel a designation certificate, provided that it gives the operator notice in writing of the cancellation, and the reason for the cancellation, at least three months before the date upon which the cancellation takes effect.

(4) Any notice given pursuant to sub-paragraph (3) must notify the operator of the operator's right to appeal the Regulator's decision to the Tribunal pursuant to paragraph 12(1)(b).

(5) A designation certificate may be cancelled at any time at the request of the operator.

Provision of information in respect of alternative arrangements

7.—(1) The Regulator may by notice in writing require a person to provide information—

- (a) which the Regulator thinks will help it in determining whether to issue a designation certificate under paragraph 3(1); or
- (b) which the Regulator otherwise requires in connection with its functions under this Schedule.

(2) A notice under sub-paragraph (1)—

- (a) may require information to be provided—
 - (i) in a specified form or manner;
 - (ii) at a specified time;
 - (iii) in respect of a specified period; and

- (b) must inform the recipient of—
 - (i) the Regulator’s ability to apply to the court for an order pursuant to paragraph 11 for the purpose of securing the recipient’s compliance with the notice; and
 - (ii) where the recipient is an operator, the Regulator’s power pursuant to paragraph 9(1)
 - (a) to require the payment of a penalty in the event of the operator’s failure to comply with the notice.

Directions

8.—(1) The Regulator may give directions in writing to the operator for the purpose of ensuring that the switching service continues to meet the requirements of regulation 15(2).

- (2) A direction may—
 - (a) require or prohibit the taking of specified action by the operator in the operation of the switching service;
 - (b) set standards to be met in the operation of the switching service.
- (3) A direction must inform the operator of—
 - (a) the date by which its terms must be complied with; and
 - (b) the Regulator’s power to—
 - (i) require the operator to pay a penalty pursuant to paragraph 9(1)(b) in the event of the operator’s failure to comply with the direction; and
 - (ii) apply to the court for an order pursuant to paragraph 11 for the purpose of securing the operator’s compliance with the direction.

Penalties

9.—(1) The Regulator may require the operator to pay a penalty where the operator has failed to comply—

- (a) with a notice to provide information issued under paragraph 7; or
- (b) a direction given under paragraph 8.
- (2) A penalty—
 - (a) must be paid to the Regulator, and
 - (b) may be enforced by the Regulator as a debt.
- (3) The Regulator must prepare a statement of principles which it must apply in determining—
 - (a) whether to impose a penalty, and
 - (b) the amount of the penalty.
- (4) The Regulator must—
 - (a) publish the statement on its website;
 - (b) send a copy to the Treasury;
 - (c) review the statement from time to time and revise it if necessary (and paragraphs (a) and (b) apply to any such revision), and
 - (d) when applying the statement, apply the version in force at the time when the failure to comply with the relevant requirements set out in sub-paragraph (1)(a) and (b) occurred.

Warning notices

10. Before it requires the payment of a penalty by the operator under paragraph 9 the Regulator must—

- (a) give the operator a notice in writing (a “warning notice”);
- (b) give the operator at least 21 days to make representations;
- (c) consider any representations made; and
- (d) as soon as is reasonably practicable, give the operator a notice in writing stating whether or not it intends to impose the penalty, and where a penalty is to be imposed, the amount of the penalty.

Injunctions

11.—(1) If, on the application of the Regulator, the court is reasonably satisfied that—

- (a) either—
 - (i) a person has failed to comply with a notice to provide information issued under paragraph 7; or
 - (ii) the operator of a designated alternative arrangement has failed to comply with a direction given under paragraph 8; and
 - (b) that there are steps that could be taken for remedying the failure,
the court may make an order requiring the person or operator to take such steps as the court may direct to remedy it.
- (2) In sub-paragraph (1), references to remedying a failure include mitigating its effect.
- (3) The jurisdiction conferred by this section is exercisable—
- (a) in England and Wales and Northern Ireland, by the High Court, and
 - (b) in Scotland, by the Court of Session.

Appeals against refusal or cancellation

12.—(1) Where the Regulator has—

- (a) refused an application for a designation certificate under paragraph 3(3);
- (b) notified an operator that it intends to cancel the designation certificate in accordance with paragraph 6(3); or
- (c) required the payment of a penalty under paragraph 9;

the applicant (in the case of the decision referred to in paragraph (a)) or the operator (in the case of a decision referred to in paragraph (b) or (c)) may appeal against the Regulator’s decision to the Tribunal.

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

Exemption from liability in damages

13.—(1) Neither the Regulator nor any person who is, or is acting as, a member, officer or member of staff of the Regulator shall be liable in damages for anything done or omitted in the discharge, or purported discharge, of the Regulator’s functions under these Regulations.

(2) Sub-paragraph (1) does not apply—

- (a) if the act or omission is shown to have been in bad faith; or

- (b) so as to prevent the award of damages made in respect of an act or omission on the ground that the act or omission was unlawful as a result of section 6(1) (acts of public authorities) of the Human Rights Act 1998⁽¹⁾.

Publication of information and advice

14. The Regulator may give guidance consisting of such information and advice as it considers appropriate, and in such form and manner as it considers appropriate, with regard to any matter dealt with in regulation 15(2) or this Schedule.

⁽¹⁾ 1998 c.42.

Changes to legislation:

There are currently no known outstanding effects for the The Payment Accounts Regulations 2015, SCHEDULE 4.