

*Draft Regulations laid before Parliament under paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.*

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DRAFT STATUTORY INSTRUMENTS

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**2018 No.**

**EXITING THE EUROPEAN UNION  
FINANCIAL SERVICES AND MARKETS**

**The Electronic Money, Payment Services and  
Payment Systems (Amendment and Transitional  
Provisions) (EU Exit) Regulations 2018**

*Made - - - - - \*\*\*  
Coming into force in accordance with regulation 1(2)  
and (3)*

The Treasury make these Regulations in exercise of the powers conferred by section 8(1) of the European Union (Withdrawal) Act 2018(1).

In accordance with paragraph 1(1) of Schedule 7 to that Act a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

**Citation and commencement**

1.—(1) These Regulations may be cited as the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018.

(2) Except as provided by paragraph (3), these regulations come into force on the day after the day on which they are made.

(3) Regulations 2 and 3(1) and Schedules 1 and 2 come into force on exit day.

**Amendments of primary legislation**

2. Schedule 1 contains amendments of primary legislation.

**Amendments of subordinate legislation and related transitional provisions**

3.—(1) Schedule 2 contains amendments of subordinate legislation.

(2) Schedule 3 contains transitional provisions related to those amendments.

**Saving provision relating to tax**

4. For the purposes of an enactment relating to taxation—
- (a) the provision made by these Regulations is to be treated as not having been made, and
  - (b) where, by virtue of these Regulations, a person ceases to be a person of a particular description, the person is to be treated as continuing to be a person of that description.

Date

*Name*  
*Name*  
Two of the Lords Commissioners of Her  
Majesty's Treasury

## SCHEDULE 1

Regulation 2

### Amendments of primary legislation

1. In section 204 of the Banking Act 2009<sup>(2)</sup> (information), omit subsection (4)(d).
- 2.—(1) The Financial Services (Banking Reform) Act 2013<sup>(3)</sup> is amended as follows.
  - (2) In section 100 (power of Bank of England to require Payment Systems Regulator to refrain from specified action), in subsection (7), omit “EU obligation or any other”.
  - (3) In section 101 (power of FCA to require Payment Systems Regulator to refrain from specified action), in subsection (7), omit “EU obligation or any other”.
  - (4) In section 102 (power of PRA to require Payment Systems Regulator to refrain from specified action), in subsection (7), omit “EU obligation or any other”.

## SCHEDULE 2

Regulation 3(1)

### Amendments of subordinate legislation

## PART 1

### Amendments of Electronic Money Regulations 2011

1. The Electronic Money Regulations 2011<sup>(4)</sup> are amended as follows.
- 2.—(1) Regulation 2 (interpretation) is amended as follows.
  - (2) In paragraph (1)—
    - (a) omit the definition of “the capital requirements directive”;
    - (b) in the definition of “credit institution”—
      - (i) for “within the EEA” substitute “in the United Kingdom”;
      - (ii) for the words from “outside the EEA” to the end substitute “outside the United Kingdom”;
    - (c) omit the definitions of—
      - “the EEA”;
      - “EEA agent”;
      - “EEA authorised electronic money institution”;
      - “EEA branch”;
    - (d) omit the definition of “the electronic money directive”;
    - (e) in the definition of “electronic money issuer”—
      - (i) omit paragraph (c);
      - (ii) for paragraph (f) substitute—

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(2) 2009 c. 1.  
(3) 2013 c. 33.  
(4) S.I. 2011/99.

- “(f) the Bank of England, when not acting in its capacity as a monetary authority or other public authority;”;
- (f) omit the definitions of—
- “European Banking Authority”;
  - “home state competent authority”;
  - “host state competent authority”;
- (g) omit the definition of “the money laundering directive”;
- (h) omit the definition of “passport right”;
- (i) omit the definition of “the payment services directive”;
- (j) in the definition of “payment transaction”, for “Article 4(5) of the payment services directive” substitute “regulation 2(1) of the Payment Services Regulations 2017(5)”.
- (3) Omit paragraph (3).
- 3.** In regulation 3 (electronic money: exclusions), in paragraph (a)(iv), for “a single EEA State” substitute “the United Kingdom”.
- 4.**—(1) Regulation 4 (the register of certain electronic money issuers) is amended as follows.
- (2) In paragraph (1)(a), omit “and their EEA branches”.
  - (3) In paragraph (2), omit “(c),”.
  - (4) Omit paragraph (7).
- 5.**—(1) Regulation 6 (conditions for authorisation) is amended as follows.
- (2) In paragraph (4)(b), for “EEA” substituted “United Kingdom”.
  - (3) In paragraph (8)(b), for “not an EEA state” substitute “outside the United Kingdom”.
- 6.** In the heading to Part 3, omit “and Passporting”.
- 7.**—(1) Regulation 21 (safeguarding option 1) is amended as follows.
- (2) In paragraph (7)—
    - (a) in the definition of “authorised credit institution”, for the words from “or otherwise authorised” to “other than” substitute “or an approved foreign credit institution (see paragraph (8)), but does not include”;
    - (b) in the definition of “authorised custodian”, omit the words from “or authorised” to the end.
  - (3) After paragraph (7) insert—
    - “(8) In paragraph (7), “approved foreign credit institution” means—
      - (a) the central bank of a State that is a member of the Organisation for Economic Co-operation and Development (“an OECD state”),
      - (b) a credit institution that is supervised by the central bank or other banking regulator of an OECD state,
      - (c) any credit institution that—
        - (i) is subject to regulation by the banking regulator of a State that is not an OECD state,
        - (ii) is required by the law of the country or territory in which it is established to provide audited accounts,

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(5) [S.I. 2017/752](#).

- (iii) has minimum net assets of £5 million (or its equivalent in any other currency at the relevant time),
- (iv) has a surplus of revenue over expenditure for the last two financial years, and
- (v) has an annual report which is not materially qualified.”

**8.** In regulation 22 (safeguarding option 2), in paragraph (3), in the definition of “authorised insurer”, omit the words from “or otherwise authorised” to “that Directive”.

**9.—**(1) Regulation 25 (accounting and statutory audit) is amended as follows.

(2) In paragraph (2), for the words from “statutory auditors” to the end substitute “statutory auditor”.

(3) In paragraph (3), omit “or audit firm”.

(4) At the end insert—

“(6) In this regulation “statutory auditor” has the same meaning as in Part 42 of the Companies Act 2006<sup>(6)</sup> (see section 1210 of that Act).”

**10.** Omit regulation 28 (notice of intention), regulation 29 (decision following notice of intention), regulation 29A (notice of intention from an EEA authorised payment institution) and regulation 30 (supervision of firms exercising passport rights).

**11.—**(1) Regulation 32 (additional activities) is amended as follows.

(2) In paragraph (1)(d), omit “European Union or”.

(3) In paragraph (4), for “EEA” substitute “United Kingdom”.

**12.** In regulation 33 (use of distributors and agents), omit paragraph (3).

**13.—**(1) Regulation 34 (requirement for agents to be registered) is amended as follows.

(2) Omit paragraph (2).

(3) In paragraph (3)(a)—

(a) in paragraph (ii), for the words from “by the agent” to the end substitute “by the agent to comply with the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017<sup>(7)</sup>”;

(b) in paragraph (iii), omit “or an EEA authorised electronic money institution”.

(4) Omit paragraph (5A).

(5) In paragraph (6)(c)(i), for the words from “money laundering directive” to “Regulations 2017” substitute “Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017”.

(6) Omit paragraph (10A).

(7) In paragraph (10B), for the words from “and (10A)” to the end substitute “within a period of two months beginning on the date on which the Authority received the completed application”.

(8) Omit paragraph (12A).

**14.** In regulation 37 (duty to notify change in circumstance), in paragraph (1)(a), for the words from “institution” to the end substitute “institution, its fulfilment of any of the conditions set out in regulation 6(4) to (8) or the requirement in regulation 19(1) to maintain own funds”.

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<sup>(6)</sup> 2006 c. 46.

<sup>(7)</sup> S.I. 2017/692.

- 15.** Omit regulation 59A (credit agreements).
- 16.** In regulation 63 (prohibition on issuing electronic money by persons other than electronic money issuers), in paragraph (1)—
- (a) omit sub-paragraph (c);
  - (b) in sub-paragraph (d), omit the words from “or exercising” to “EEA firms”;
  - (c) in sub-paragraph (f), omit the words from “the European” to the end.
- 17.—**(1) Regulation 71 (duty to co-operate and exchange information) is amended as follows.
- (2) In paragraph (1)—
- (a) omit sub-paragraph (a);
  - (b) for sub-paragraphs (b) to (d) substitute—
    - “(b) the Bank of England; and
    - (c) any other public authorities which exercise functions that are relevant to electronic money issuers,”;
  - (c) for the words from “under the electronic” to the end substitute “under these Regulations and other relevant legislation”.
- (3) In paragraph (2)—
- (a) in sub-paragraph (a), for “(1)(a), (c) and (d)” substitute “(1)(c)”;
  - (b) for sub-paragraph (b) substitute—
    - “(b) the Bank of England when acting in its capacity as monetary and oversight authority,”;
  - (c) for the words from “under the electronic” to the end substitute “under these Regulations and other relevant legislation”.
- (4) Omit paragraph (3).
- 18.** Omit regulations 74 to 78A (transitional provisions).
- 19.** In Schedule 1 (information to be included in or with an application for authorisation), in paragraph 5E(b)(iii), omit the words from “taking into” to the end.
- 20.** Omit Schedule 2A (credit agreements).
- 21.—**(1) Schedule 3 (application and modification of legislation) is amended as follows.
- (2) In paragraph 2A (Authority rules), in sub-paragraph (1)—
- (a) in paragraph (a), for “, small electronic money institutions and EEA authorised electronic money institutions” substitute “and small electronic money institutions”;
  - (b) omit paragraph (c).
- (3) In paragraph 3 (information gathering and investigations)—
- (a) in paragraphs (a)(i), (b)(i), (ba), (c)(i)(bb) and (cc) and (ii)(aa), (bb) and (cc), in each of the modifications of sections 165, 166, 166A and 167 of the Financial Services and Markets Act 2000<sup>(8)</sup> referring to the definition of “electronic money issuer” in regulation 2(1) of the Electronic Money Regulations 2011, omit “(c),”;
  - (b) in paragraph (d), in the modification of section 168(1) of the Financial Services and Markets Act 2000, omit paragraphs (ac) and (ad);

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(8) 2000 c. 8.

(c) in paragraph (k), in the modification of section 176(3)(a) of the Financial Services and Markets Act 2000, omit “(c).”.

(4) Omit paragraph 4A (incoming firms: intervention by the Authority).

**22.**—(1) Schedule 5 (Gibraltar) is amended as follows.

(2) In the heading before paragraph 1, for “deemed passport rights” substitute “market access rights”.

(3) In paragraph 1—

(a) in sub-paragraph (1)(b), after “in accordance with” insert “Gibraltar legislation which implemented”;

(b) after sub-paragraph (1) insert—

“(1A) Such a firm is referred to in the following provisions of this Schedule as a Gibraltar-based firm.”;

(c) for sub-paragraphs (2) and (3) substitute—

“(2) A Gibraltar-based firm is to be treated as having an entitlement, corresponding to the passport right deriving from the electronic money directive that such a firm had immediately before exit day, to establish a branch or provide services in the United Kingdom.

(2A) Despite their amendment or revocation by the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018, the provisions of these Regulations listed in sub-paragraph (2B), as they had effect immediately before exit day, continue to apply for the purposes of this paragraph.

(2B) The provisions referred to in sub-paragraph (2A) are as follows—

(a) in regulation 2 (interpretation), in paragraph (1), paragraph (c) of the definition of “electronic money issuer”;

(b) in regulation 4 (the register of electronic money issuers), in paragraph (2), the reference to paragraph (c) of the definition of electronic money issuer;

(d) in regulation 21 (safeguarding option 1), paragraph (7);

(e) in regulation 22 (safeguarding option 2), paragraph (3);

(f) regulation 25 (accounting and statutory audit);

(g) regulations 29A and 30 (passporting);

(h) in regulation 34 (requirement for agents to be registered), paragraph (3)(a)(iii);

(i) regulation 59A and Schedule 2A (credit agreements);

(j) regulation 63 (prohibition on issuing electronic money by persons other than electronic money issuers);

(k) in regulation 71 (duty to co-operate and exchange information), paragraph (1);

(l) in Schedule 3 (application and modification of legislation), paragraphs 2A and 3.

(3) In those provisions as applying for the purposes of this paragraph—

(a) references to an “EEA authorised money institution” are to be read as references to the firm;

(b) references to the home state competent authority are to be read as references to the Gibraltar Financial Services Commission;

*Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: The Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018 No. 1201*

- (c) references to a “passport right” are to be read as references to the entitlement mentioned in sub-paragraph (2);
  - (d) references to the authorisation of any person as a credit institution, custodian or insurer in accordance with a directive are to be read as a reference to authorisation in accordance with Gibraltar legislation which implemented the directive;
  - (e) references to a person’s rights or entitlements are to be read as references to the rights or entitlements the person would have, if the person’s rights or entitlements were being determined immediately before exit day.
- (4) In the heading before paragraph 2, for “deemed passport rights” substitute “market access rights.”
- (4) In paragraph 2—
- (a) in sub-paragraph (1) for “its passport right,” substitute “the passport right that such a firm had immediately before exit day,”;
  - (b) after sub-paragraph (1) insert—
    - “(1A) Despite their amendment or revocation by the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018, the provisions of these Regulations listed in sub-paragraph (1B), as they had effect immediately before exit day, continue to apply for the purposes of this paragraph.
    - (1B) The provisions referred to in sub-paragraph (1A) are as follows—
      - (a) regulations 28 to 30 (passporting);
      - (b) in regulation 33 (use of distributors and agents), paragraph (3);
      - (c) in regulation 34 (requirement for agents to be registered), paragraphs (2), (3), (5A), (10A), (10B) and (12A);
      - (d) in regulation 37 (duty to notify change in circumstance), paragraph (1)(a);
      - (e) regulation 71 (duty to co-operate).”;
  - (c) for sub-paragraph (2) substitute—
    - “(2) In relation to an authorised electronic money institution which establishes a branch or provides services in Gibraltar, those provisions are to be read as if—
      - (a) references to an “EEA branch” were references to such a branch;
      - (b) references to an “EEA State” were references to Gibraltar;
      - (c) references to the host state competent authority were references to the Gibraltar Financial Services Commission; and
      - (e) references to a “passport right” were references to the entitlement mentioned in sub-paragraph (1).”
- (5) After paragraph 2 insert—

**“References to Gibraltar regulator**

**2A.—**(1) The Treasury may by regulations made by statutory instrument make such amendments of the references in paragraphs 1 and 2 to the Gibraltar Financial Services Commission, or any references previously substituted for those references, as appear to the Treasury to be appropriate in order to take account of any change in the law of Gibraltar.

(2) A statutory instrument containing regulations under sub-paragraph (1) is subject to annulment in pursuance of a resolution of either House of Parliament.”



- (6) Omit paragraph 3.

## PART 2

### Amendments of Payment Services Regulations 2017

**23.** The Payment Services Regulations 2017(9) are amended as follows.

**24.** In regulation 1 (citation, commencement and extent), in paragraph (5), for the words from “eighteen months” to the end substitute “on 14th September 2019”.

**25.—**(1) Regulation 2 (interpretation) is amended as follows.

(2) In paragraph (1)—

(a) in the definition of “branch”—

(i) at the end of paragraph (b) insert “or”;

(ii) omit paragraphs (d) and (e);

(iii) omit the words from “and, for the purposes of these Regulations” to the end;

(b) omit the definition of “the capital requirements directive”;

(c) omit the definitions of—

“the EEA”;

“EEA agent”;

“EEA authorised payment institution”;

“EEA branch”;

“EEA registered account information service provider”;

(d) for the definitions of “electronic communications network” and “electronic communications service” substitute—

““electronic communications network” means transmission systems and, where applicable, switching or routing equipment and other resources which permit the conveyance of signals by wire, by radio, by optical or by other electromagnetic means, including satellite networks, fixed (circuit- and packet-switched, including Internet) and mobile terrestrial networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed;

“electronic communications service” means a service normally provided for remuneration which consists wholly or mainly in the conveyance of signals on electronic communications networks, including telecommunications services and transmission services in networks used for broadcasting, but exclude services providing, or exercising editorial control over, content transmitted using electronic communications networks and services; it does not include information society services, as defined in Article 1 of Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services, which do not consist wholly or mainly in the conveyance of signals on electronic communications networks;”;

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(9) [S.I. 2017/752](#).

- (e) in the definition of “electronic money”, for “Article 2(2) of the electronic money directive” substitute “regulation 2(1) of the Electronic Money Regulations 2011”;
- (f) omit the definition of “the electronic money directive”;
- (g) in the definition of “electronic money institution”, for “Article 2(1) of the electronic money directive” substitute “regulation 2(1) of the Electronic Money Regulations 2011”;
- (h) omit the definition of “European Banking Authority”;
- (i) omit the definitions of “home state competent authority” and “host state competent authority”;
- (j) omit the definition of “the money laundering directive”;
- (k) omit the definition of “passport right”;
- (l) in the definition of “payment service provider”—
  - (i) omit paragraphs (d) and (e);
  - (ii) in paragraphs (f) and (g), for “EEA”, in each place, substitute “United Kingdom”;
  - (iii) in paragraph (i), for the words from “the European” to “their” substitute “other than when acting in its”;
- (m) after the definition of “sensitive payment data” insert—

““the SEPA regulation” means Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009;”.

(3) Omit paragraph (3).

**26.**—(1) Regulation 4 (register of certain payment service providers) is amended as follows.

(2) In paragraph (1)(a), omit “and their EEA branches”.

(3) In paragraph (2), for “(d)” substitute “(f)”.

(4) Omit paragraph (6).

**27.** In regulation 6 (conditions for authorisation as a payment institution), in paragraph (9)(b) for “which is not an EEA State” substitute “outside the United Kingdom”.

**28.** In regulation 22 (capital requirements), in paragraph (2)(b)(i), for “pursuant to the capital requirements directive” substitute “under Part 6 of the Capital Requirements Regulations 2013(10)”.

**29.**—(1) Regulation 23 (safeguarding requirements) is amended as follows.

(2) In paragraph (18)—

- (a) in the definition of “authorised insurer”, omit the words from “or otherwise authorised” to “of that Directive”;
- (b) in the definition of “authorised credit institution”, for the words from “or otherwise authorised” to “other than” substitute “or an approved foreign credit institution (see paragraph (19)), but does not include”;
- (c) in the definition of “authorised custodian” omit the words from “or authorised” to “that Directive”.

(3) After paragraph (18) insert—

“(19) In paragraph (18), “approved foreign credit institution” means—

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(10) S.I. 2013/3115.

- (a) the central bank of a State that is a member of the Organisation for Economic Co-operation and Development (“an OECD state”),
- (b) a credit institution that is supervised by the central bank or other banking regulator of an OECD state,
- (c) any credit institution that—
  - (i) is subject to regulation by the banking regulator of a State that is not an OECD state,
  - (ii) is required by the law of the country or territory in which it is based to provide audited accounts, and
  - (iii) has minimum net assets of £5 million (or its equivalent in any other currency at the relevant time),
  - (iv) has a surplus of revenue over expenditure for the last two financial years, and
  - (v) has an annual report which is not materially qualified.”

**30.**—(1) Regulation 24 (accounting and statutory audit) is amended as follows.

(2) In paragraph (2), for the words from “statutory auditors” to the end substitute “statutory auditor”.

(3) In paragraph (3), omit “or audit firm”.

(4) At the end insert—

“(6) In this regulation “statutory auditor” has the same meaning as in Part 42 of the Companies Act 2006 (see section 1210 of that Act).”

**31.** Omit regulations 26 to 30 (which relate to the exercise of passport rights in EEA States).

**32.**—(1) Regulation 32 (additional activities) is amended as follows.

(2) In paragraph (1)(c), leave out “EU or”.

(3) In paragraph (2)—

(a) at the end of sub-paragraph (b) insert “and”;

(b) omit sub-paragraph (c) and the “and” immediately following it.

**33.**—(1) Regulation 34 (use of agents) is amended as follows.

(2) Omit paragraph (2).

(3) In paragraph (3)(a)(ii), for the words from “money laundering directive” to the end substitute “Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017”.

(4) Omit paragraph (6).

(5) In paragraph (7)(c)(i), for the words from “money laundering directive” to “2017” substitute “Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017”.

(6) Omit paragraph (10).

(7) For paragraph (11) substitute—

“(11) The FCA must give any notice required by paragraph (9) within a period of two months beginning on the date on which the FCA received the completed application.”

(8) Omit paragraph (14).

- 34.** In regulation 37 (duty to notify change in circumstance), omit paragraph (1)(a)(ii).
- 35.**—(1) Regulation 40 (application of Part 6) is amended as follows.
- (2) In paragraph (1)(b)—
- (a) in paragraph (i)—
- (i) for “the EEA” substitute “the United Kingdom”;
- (ii) for “the currency of an EEA State” substitute “sterling”;
- (b) after paragraph (i) insert—
- “(ia) the payment service providers of both the payer and the payee are located within the qualifying area and the service relates to a transaction in euro executed under a payment scheme which operates across the qualifying area.”,
- (c) in paragraph (ii)—
- (i) for “the EEA” substitute “the United Kingdom”;
- (ii) for “the currency of an EEA State” substitute “sterling or euro”;
- (d) in paragraph (iii), for “EEA” substitute “United Kingdom and the case does not fall within paragraph (ia)”.
- (3) After paragraph (1) insert—
- “(1A) In paragraph (1)(b)(ia)—
- (a) “payment service provider” includes any person who is a PSP as defined in Article 2(8B) of the SEPA regulation;
- (b) “the qualifying area” means the area of the United Kingdom and the EEA States.”
- (4) In paragraphs (2)(a) and (3)(a), for “EEA” substitute “United Kingdom”.
- (5) In paragraph (4), omit “or EEA registered account information service providers”.
- 36.** In regulation 60 (information requirements for account information service providers), omit “or EEA registered account information service provider”.
- 37.**—(1) Regulation 62 (provision of information leaflet) is amended as follows.
- (2) Before paragraph (1) insert—
- “(A1) The FCA must—
- (a) produce a user-friendly electronic document listing in a clear and easily comprehensible manner the rights of consumers under these Regulations,
- (b) make the document available in an easily accessible manner on its website, and
- (c) inform associations of payment service providers and associations of consumers of its publication.”
- (3) In paragraph (1), for the words from “European” to “directive” substitute “FCA under paragraph (A1)”.
- (4) Omit paragraph (2).
- 38.**—(1) Regulation 63 (application of Part 7) is amended as follows.
- (2) In paragraph (1)(b)—
- (a) in paragraph (i)—
- (i) for “the EEA” substitute “the United Kingdom”;
- (ii) for “the currency of an EEA State” substitute “sterling”;

- (b) after paragraph (i) insert—
    - “(ia) the payment service providers of both the payer and the payee are located within the qualifying area and the service relates to a transaction in euro executed under a payment scheme which operates across the qualifying area,”
  - (c) in paragraph (ii)—
    - (i) for “the EEA” substitute “the United Kingdom”;
    - (ii) for “the currency of an EEA State” substitute “sterling or euro”;
  - (d) in paragraph (iii), for “EEA” substitute “United Kingdom and the case does not fall within paragraph (ia)”.
- (3) After paragraph (1) insert—
- “(1A) In paragraph (1)(b)(ia)—
    - (a) “payment service provider” includes any person who is a PSP as defined in Article 2(8B) of the SEPA regulation;
    - (b) “the qualifying area” means the area of the United Kingdom and the EEA States.”
- (4) In paragraphs (2)(a) and (3)(a), for “EEA” substitute “United Kingdom”.
- (5) In paragraph (4), omit “or EEA registered account information service providers”.
- 39.**—(1) Regulation 66 (charges) is amended as follows.
- (2) In paragraph (2), for “EEA” substitute “United Kingdom”.
- (3) After paragraph (2) insert—
- “(2A) Where, in respect of payment transaction in euro executed under a payment scheme which operates across the qualifying area, both the payer’s and the payee’s payment service providers are, or the only payment service provider is, in the United Kingdom the respective payment service providers must ensure that—
    - (a) the payee pays any charges levied by the payee’s payment service provider; and
    - (b) the payer pays any charges levied by the payer’s payment service provider.”
- (4) After paragraph (3) insert—
- “(4) In paragraph (2A)—
    - (a) “payment service provider” includes any person who is a PSP as defined in Article 2(8B) of the SEPA regulation;
    - (b) “the qualifying area” means the area of the United Kingdom and the EEA States.”
- 40.** In regulation 68 (confirmation of availability of funds for card-based payment transactions), in paragraph (3)(c), for “regulatory technical standards adopted under Article 98 of the payment services directive” substitute “technical standards made under regulation 106A”.
- 41.** In regulation 69 (access to payment accounts for payment initiation services), in paragraphs (2)(a) and (3)(d), for “regulatory technical standards adopted under Article 98 of the payment services directive” substitute “technical standards made under regulation 106A”.
- 42.** In regulation 70 (access to payment accounts for account information services), in paragraphs (2)(a) and (3)(c), for “regulatory technical standards adopted under Article 98 of the payment services directive” substitute “technical standards made under regulation 106A”.
- 43.**—(1) Regulation 85 (application of regulations 86 to 88) is amended as follows.
- (2) In paragraph (1)—
- (a) for sub-paragraph (a) substitute—

- “(a) executed wholly within the qualifying area in euro under a payment scheme which operates across the qualifying area”;
- (b) at the beginning of sub-paragraph (c) insert “executed wholly under a payment scheme which operates across the qualifying area and”.
- (3) After paragraph (2) insert—
  - “(3) In paragraph (1), “the qualifying area” means the area of the United Kingdom and the EEA States.”
- 44. In regulation 86 (payment transactions to a payment account), in paragraph (3)(b), for “EEA” substitute “United Kingdom”.
- 45. In regulation 89 (value date and availability of funds), in paragraph (2)(b), omit the words from “or another” to “currencies”.
- 46. In regulation 96 (force majeure), in paragraph (2), omit “EU or”.
- 47.—(1) Regulation 99 (incident reporting) is amended as follows.
  - (2) In paragraph (4), for the words from “must” to the end substitute “must notify any other relevant authorities in the United Kingdom”.
  - (3) Omit paragraph (5).
- 48. In regulation 100 (authentication), in paragraph (5), for “regulatory technical standards adopted under Article 98 of the payment services directive” substitute “technical standards made under regulation 106A”.
- 49. In regulation 101 (dispute resolution), omit paragraph (3).
- 50.—(1) Regulation 106 (functions of the FCA) is amended as follows.
  - (2) In paragraph (1), omit the words from “is designated” to “paragraph (2), and”.
  - (3) Omit paragraph (2).
  - (4) In paragraph (3), omit the words from “, and to the extent” to “paragraph (1),”.
- 51. After regulation 106 insert—

**“Technical standards**

- 106A.—(1) The FCA may make technical standards specifying—
  - (a) requirements that must be met by the strong customer authentication referred to in regulation 100(1) and (2);
  - (b) exemptions from the application of regulation 100(1), (2) and (3), based on the criteria specified in paragraph (3) of this regulation;
  - (c) the requirements with which security measures have to comply, in accordance with regulation 100(3), in order to protect the confidentiality and integrity of the payment service users’ personalised security credentials;
  - (d) the requirements for common and secure open standards of communication for the purpose of identification, authentication, notification and information, as well as for the implementation of security measures, between account servicing payment service providers, payment initiation service providers, account information service providers, payers, payees and other payment service providers.
- (2) In making technical standards under this regulation, the FCA must have regard to the need to—

- (a) ensure an appropriate level of security for payment service users and payment service providers through the adoption of effective and risk-based requirements;
  - (b) ensure the safety of payment service users' funds and personal data;
  - (c) secure and maintain fair competition among all payment service providers;
  - (d) ensure technology and business-model neutrality;
  - (e) allow for the development of user-friendly, accessible and innovative means of payment.
- (3) The exemptions referred to in paragraph (1)(b) must be based on—
- (a) the level of risk involved in the service provided;
  - (b) the amount of the transaction, its recurrence, or both;
  - (c) the payment channel used for the execution of the transaction.
- (4) The FCA must review and, if appropriate, update the technical standards on a regular basis in order (among other things) to take account of innovation and technological developments.
- (5) Section 138P of the 2000 Act contains provision about the making of technical standards by the FCA.”

**52.**—(1) Regulation 107 (application of Part 9 to requirements of directly applicable EU regulations and FCA rules) is amended as follows.

(2) In the heading, for “directly applicable EU regulations” substitute “retained direct EU legislation”.

(3) In sub-paragraph (c), for “directly applicable EU regulations” substitute “retained direct EU legislation”.

**53.** In regulation 109 (reporting requirements), omit paragraph (6).

**54.** Omit regulation 119 (credit agreements).

**55.** In regulation 123 (interpretation of Part 10)—

- (a) in the definition of “compliance failure”, in paragraph (a), for “directive” substitute “qualifying”;
- (b) omit the definition of “directive requirement”;
- (c) after the definition of “general guidance” insert—

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

- (d) in the definition of “regulated person”, for “directive” substitute “qualifying”.

**56.**—(1) Regulation 124 (functions of the Payment Systems Regulator) is amended as follows.

(2) In paragraph (1), for the words from “is designated” to the end substitute “has the functions and powers conferred on it by these Regulations”.

(3) In paragraph (2), omit the words from “, and to the extent” to “paragraph (1),”.

(4) In paragraph (3), for “directive”, in both places, substitute “qualifying”.

**57.** In regulation 125 (directions), in paragraph (2), for “directive”, in each place, substitute “qualifying”.

**58.** In regulation 133 (complaints), in paragraph (1), for “directive” substitute “qualifying”.

59. In regulation 134 (guidance), in paragraph (1)(a), for “directive” substitute “qualifying”.

60. In regulation 135 (information and investigation), in paragraph (1)(e), for “directive” substitute “qualifying”.

61. In regulation 138 (prohibition on provision of payment services by persons other than payment service providers), in paragraph (1)—

- (a) omit sub-paragraph (d);
- (b) in sub-paragraph (e) omit the words from “or exercising” to the end;
- (c) in sub-paragraph (f), omit paragraph (ii) and the “or” immediately before it;
- (d) in sub-paragraph (h), omit the words from “the European” to the end.

62.—(1) Regulation 147 (duty to co-operate and exchange of information) is amended as follows.

(2) In paragraph (1)—

- (a) omit sub-paragraph (a);
- (b) for sub-paragraphs (b) to (d) substitute—
  - “(b) the Bank of England; and
  - (c) any other public authority exercising functions in the United Kingdom in relation to payment service providers,”;
- (c) in the words following sub-paragraph (d), for “under the payment services directive and other relevant EU or national legislation” substitute “under these Regulations and other relevant legislation”.

(3) In paragraph (2)—

- (a) in sub-paragraph (a), for “(1)(a), (c) and (d)” substitute “(1)(c)”;
- (b) for sub-paragraph (b) substitute—
  - “(b) the Bank of England when acting in its capacity as a monetary and oversight authority,”;
- (c) in the words following sub-paragraph (c), for “the payment services directive and other relevant EU or national legislation” substitute “these Regulations and other relevant legislation”.

63. After regulation 148 insert—

**“Single Euro Payments Area**

**148A.**—(1) If the SEPA Regulation is revoked under regulation 15 of the Credit Transfers and Direct Debits in Euro (Amendment) (EU Exit) Regulations 2018<sup>(11)</sup>, the Treasury may by regulations make such amendments of regulations 40, 63, 66 and 85 of these Regulations as appear to them to be appropriate in connection with the revocation.

(2) Regulations under this regulation may contain transitional and consequential provisions and savings.

(3) A statutory instrument containing regulations under paragraph (1) is subject to annulment in pursuance of a resolution of either House of Parliament.”

64.—(1) Regulation 150 (transitional and saving provisions: authorised payment institutions) is amended as follows.

(2) In paragraph (1), omit—

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(11) S.I. 2018/\*\*\*.



- (a) the words from “, or the national law” to “first payment services directive,”;
- (b) the words from “or (in the case” to the end.
- (3) Omit paragraph (5).
- 65.** In regulation 152 (transitional provisions: payments through network operators), omit paragraphs (4) to (7).
- 66.** In regulation 153 (transitional and saving provisions: general), omit paragraph (2)(b) and (c).
- 67.** In regulation 154 (transitional provisions: account information services and payment initiation services), in paragraph (3), for sub-paragraph (a) substitute—
  - “(a) 14th September 2019; or”.
- 68.**—(1) Regulation 158 (review) is amended as follows.
  - (2) Omit paragraph (4).
  - (3) In paragraph (5), for “that Act” substitute “the Small Business, Enterprise and Employment Act 2015(12)”.
- 69.** In Schedule 1 (payment services), in paragraph 2(k)(iv), for “a single EEA State” substitute “the United Kingdom”.
- 70.** In Schedule 2 (information to be included in or with an application for authorisation), in paragraph 10(b)(iii), omit the words from “taking into” to the end.
- 71.** Omit Schedule 5 (credit agreements).
- 72.**—(1) Schedule 6 (application and modification of legislation) is amended as follows.
  - (2) In paragraph 3 (FCA rules)—
    - (a) in sub-paragraph (1)—
      - (i) in paragraph (a), omit “, EEA authorised payment institutions, EEA registered account information service providers”;
      - (ii) omit paragraph (c).
    - (3) In paragraph 4 (information gathering and investigations)—
      - (a) in sub-paragraph (e)(i)(aa), in the modification of section 168(1) of the Financial Services and Markets Act 2000, omit paragraphs (d) and (e);
      - (b) for sub-paragraph (f) substitute—
        - “(f) section 169 (investigations etc in support of overseas regulator) is to be disregarded;”.
    - (4) Omit paragraph 6 (incoming firms: intervention by the FCA).
  - 73.**—(1) Schedule 7 (Gibraltar) is amended as follows.
    - (2) In the heading before paragraph 1, for “deemed passport rights” substitute “market access rights”.
    - (3) In paragraph 1—
      - (a) after sub-paragraph (1) insert—
        - “(1A) Such a firm is referred to in the following provisions of this Schedule as a Gibraltar-based firm.”;
      - (b) for sub-paragraphs (2) and (3) substitute—

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(12) 2015 c. 26.

*Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: The Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018 No. 1201*

“(2) A Gibraltar-based firm is to be treated as having an entitlement, corresponding to the passport right deriving from the payment services directive that such a firm had immediately before exit day, to establish a branch or provide services in the United Kingdom.

(2A) Despite their amendment or revocation by the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018, the provisions of these Regulations listed in sub-paragraph (2B) continue to apply, as they had effect immediately before exit day, for the purposes of this paragraph.

(2B) The provisions referred to in sub-paragraph (2A) are as follows—

- (a) in regulation 2 (interpretation), in paragraph (1)—
  - (i) paragraphs (d) and (e) of the definition of “branch”, and
  - (ii) paragraph (d) and (e) of the definition of “payment service provider”;
- (b) in regulation 4 (register of certain payment service providers), paragraph (2);
- (c) regulations 29 and 30 (passporting);
- (d) regulation 119 and Schedule 5 (credit agreements);
- (e) regulation 138 (prohibition on provision of payment services by persons other than payment service providers);
- (f) regulation 147 (duty to co-operate and exchange of information);
- (g) in regulation 152 (transitional provisions: payment through network operators), paragraphs (4) to (7);
- (h) in Schedule 6 (application and modification of legislation), paragraphs 3 and 4.

(3) In those provisions as applying for the purposes of this paragraph—

- (a) references to an “EEA authorised payment institution” or “EEA registered account information service provider” are to be read as references to the Gibraltar-based firm,
- (b) references to a “home state competent authority” are to be read as references to the Gibraltar Financial Services Commission,
- (c) references to “passport rights” are to be read as references to the entitlement mentioned in sub-paragraph (2),
- (d) references to the authorisation of any person as a credit institution, custodian or insurer in accordance with a directive are to be read as references to authorisation in accordance with Gibraltar legislation which implemented the directive,
- (e) references to a person’s rights or entitlements are to be read as references to the rights or entitlements the person would have, if the person’s rights or entitlements were being determined immediately before exit day.”

(4) In the heading before paragraph 2, for “deemed passport rights” substitute “market access rights”.

(5) In paragraph 2—

- (a) in sub-paragraph (1) for “its passport right,” substitute “the passport right that such a firm had immediately before exit day,”;
- (b) after sub-paragraph (1) insert—

“(1A) Despite their amendment or revocation by the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018, the provisions of these Regulations listed in sub-paragraph (1B)

continue to apply, as they had effect immediately before exit day, for the purposes of this paragraph.

(1B) The provisions referred to in sub-paragraph (1A) are as follows—

- (a) in regulation 4 (register of certain payment service providers), paragraph (1)(a);
- (b) regulations 27 and 28 (notice of intention);
- (c) regulation 30 (supervision of firms exercising passport rights);
- (d) in regulation 32 (additional activities), paragraph (2)(c);
- (e) in regulation 34 (use of agents), paragraphs (2), (6), (7), (10), (11) and (14);
- (f) in regulation 147 (duty to co-operate and exchange information), paragraph (1);
- (g) in regulation 153 (transitional and saving provisions), paragraph (2).”;

(c) for sub-paragraph (2) substitute—

“(2) In relation to an authorised payment institution or registered account information service provider which establishes a branch or provides services in Gibraltar, those provisions are to be read as if—

- (a) references to an “EEA branch” were references to such a branch;
- (b) references to an “EEA State” were references to Gibraltar;
- (c) references to a “host state competent authority” were references to the Gibraltar Financial Services Commission; and
- (d) references to “passport rights” were references to the entitlement mentioned in sub-paragraph (1).”

(6) After paragraph 2 insert—

**“References to Gibraltar regulator**

**2A.—**(1) The Treasury may by regulations made by statutory instrument make such amendments of the references in paragraphs 1 and 2 to the Gibraltar Financial Services Commission, or any references previously substituted for those references, as appear to the Treasury to be appropriate in order to take account of any change in the law of Gibraltar.

(2) A statutory instrument containing regulations under sub-paragraph (1) is subject to annulment in pursuance of a resolution of either House of Parliament.”

(7) Omit paragraph 3.

SCHEDULE 3

Regulation 3(2)

Transitional Provisions

PART 1

Transitional provisions relating to Electronic Money Regulations 2011

**Interpretation**

1. In this Part of this Schedule—

**Draft Legislation:** This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: *The Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018 No. 1201*

- (a) “EMR 2011” means the Electronic Money Regulations 2011(13),
- (b) “the 2000 Act” means the Financial Services and Markets Act 2000(14),
- (c) “the FCA” means the Financial Conduct Authority, and
- (d) “EEA authorised electronic money institution”, “home state competent authority”, “passport right”, “the electronic money directive”, “the money laundering directive” and “the payment services directive” each has the meaning given by EMR 2011 as those Regulations have effect before the amendments made by Schedule 2.

### **Transitional authorisation for EEA authorised electronic money institutions**

2.—(1) This paragraph applies to a person who—

- (a) immediately before exit day is entitled to provide electronic money issuance, redemption, distribution or payment services in the United Kingdom in the exercise of a passport right as an EEA authorised electronic money institution,
- (b) would (apart from this Part of this Schedule) cease from exit day to be entitled to provide those services in the United Kingdom, and
- (c) has notified the FCA in accordance with paragraph 3 that the person wishes this paragraph to apply in the person’s case.

(2) During the transition period defined in paragraph 10—

- (a) the person is to be taken to be an authorised electronic money institution whose authorisation under regulation 9 of EMR 2011 relates to the services mentioned in sub-paragraph (1)(a) and (b), and
- (b) accordingly, references in EMR 2011 to an authorised electronic money institution are to be read as including a person to whom this paragraph applies.

(3) Sub-paragraph (2) is subject to paragraphs 7 and 8.

(4) In the following provisions of this Part of this Schedule, “transitional authorisation” means authorisation by virtue of this paragraph as an authorised electronic money institution.

### **Requirements to be met by notification**

3.—(1) A notification for the purposes of paragraph 2(1)(c) must—

- (a) be made in such manner as the FCA may direct, and
- (b) be made during the 3 months ending with the day preceding the day on which exit day falls.

(2) The notification must—

- (a) state the name and address of the person making the notification and any authorisation or reference number,
- (b) specify the person’s home state competent authority,
- (c) specify a postal address in the United Kingdom to be used for correspondence,
- (d) identify the electronic money issuance, redemption, distribution or payment services which the person is entitled to provide in the United Kingdom by virtue of being an EEA authorised electronic money institution for the purposes of EMR 2011,
- (e) if, for the provision of the services in the United Kingdom, the person uses an agent who is registered with the home state competent authority, include the information referred to in regulation 34(3)(a) of EMR 2011,

(13) S.I. 2011/99.

(14) 2000 c. 8.

- (f) if the person uses or intends to use a branch in the United Kingdom to provide the services, state the names of those responsible for the management of the branch and details of its organisational structure,
- (g) identify the distributors, if any, whom the person has engaged or intends to engage to distribute or redeem electronic money in exercise of the person's rights by virtue of the person's transitional authorisation,
- (h) specify any restrictions or conditions that have been imposed on the person by its home state competent authority, and
- (i) specify any precautionary measures taken by the FCA under regulation 30(8) of EMR 2011 that are in force.

### **Registration of agents**

4.—(1) If a notification for the purposes of paragraph 2(1)(c) includes the information required by paragraph 3(2)(e) in relation to an agent, the FCA must, with effect from exit day or as soon as practicable after that time, include the agent on the register maintained under regulation 4 of EMR 2011.

(2) A person to whom paragraph 2 applies may apply to the FCA under regulation 34 of EMR 2011 before exit day for the registration at any time after exit day of an agent not falling within subparagraph (1).

### **Requirements imposed by FCA**

5.—(1) This paragraph applies in relation to a person to whom paragraph 2 applies.

(2) Any requirement which—

(a) was imposed on the person—

(i) as a precautionary measure under regulation 30(8) of EMR 2011, or

(ii) under section 196 of the 2000 Act as applied by paragraph 4A of Schedule 3 to EMR 2011, and

(b) has effect immediately before exit day,

is to continue to have effect at and after that time as if it were imposed by the FCA under regulation 7 of EMR 2011.

(3) The FCA may exercise its powers under regulation 7 of EMR 2011 in relation to the person if it appears to the FCA that, immediately before exit day, the condition in section 194(1)(a) or (b) of the 2000 Act, as applied by paragraph 4A of Schedule 3 to EMR 2011, was met.

### **Duties of person relying on transitional authorisation**

6.—(1) This paragraph applies, during the transition period defined in paragraph 10, to any person in relation to whom paragraph 2 applies.

(2) The person must notify the FCA of—

(a) any material change affecting any matter dealt with in the information contained in or accompanying the notification for the purposes of paragraph 2(1)(c),

(b) the cancellation or variation by the person's home state competent authority of the person's authorisation to issue electronic money and provide payment services in accordance with the electronic money directive,

(c) any regulatory action taken against the person by the person's home state competent authority,

- (d) any adverse judgments made against the person by the person's home state competent authority in pursuance of the money laundering directive, or
- (e) the person's intention to engage a distributor through whom electronic money is to be distributed or redeemed.

(3) The person must when required by the FCA provide the FCA with such evidence as the FCA may reasonably require to demonstrate the person's compliance with the law of the person's home state implementing Article 7 of the electronic money directive (safeguarding).

### **Exclusion of certain provisions of Electronic Money Regulations 2011**

7.—(1) The following provisions of EMR 2011 do not apply in relation to a person while the person is an authorised electronic money institution by virtue of paragraph 2—

- (a) regulation 10(1) (cancellation of authorisation);
- (b) regulation 17 (duty to notify changes);
- (c) regulation 19 (capital requirements);
- (d) in regulation 24 (insolvency events), paragraphs (1), (2), (4) and (5);
- (e) regulation 25 (accounting and statutory audit);
- (f) in Schedule 3 (application and modification of legislation), paragraph 4 (control over electronic money institutions).

(2) Regulation 6 (conditions for authorisation) does not apply in relation to a person by virtue of the person's transitional authorisation, but applies in relation to any application for authorisation made by the person during transition period defined in paragraph 10.

### **Power of FCA to cancel transitional authorisation**

8.—(1) The FCA may cancel a person's transitional authorisation and remove the person from the register where—

- (a) the person's authorisation by the person's home state competent authority is cancelled,
- (b) the person has failed to comply with the terms of the person's authorisation by the person's home state competent authority,
- (c) the person does not issue electronic money in the United Kingdom during the 12 months beginning with exit day,
- (d) the person ceases to engage in business activity in the United Kingdom for more than 6 months,
- (e) the person's notification for the purposes of paragraph 2(1)(c) contains false statements,
- (f) the person lacks one or more of the following—
  - (i) robust governance arrangements for its electronic money issuance and payment service business, including a clear organisational structure with well-defined, transparent and consistent lines of responsibility,
  - (ii) effective procedures to identify, manage, monitor and report any risks to which the person might be exposed, and
  - (iii) adequate internal control mechanisms, including sound administrative, risk management and accounting procedures,
- (g) any of the directors, or other persons responsible for the management of the person's electronic money and payment services business, is not of good repute,

- (h) the person does not have a business plan under which appropriate and proportionate systems, resources and procedures will be employed by the person to operate soundly,
  - (i) the person has not taken adequate measures for the purposes of safeguarding electronic money holders' funds in accordance with regulation 20 of EMR 2011,
  - (j) in the case of a person carrying on payment initiation services, the person does not hold professional indemnity insurance, or a comparable guarantee, of the kind mentioned in regulation 6(6)(e) of EMR 2011,
  - (k) the person would constitute a threat to the stability of, or trust in, a payment system by continuing the person's electronic money or payment services business,
  - (l) the cancellation is desirable in order to protect the interests of consumers, or
  - (m) the person's issuance of electronic money or provision of payment services is otherwise unlawful, including where such provision of services is unlawful because the person's registration in a register maintained under regulation 54 or 55 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017(15) has been cancelled under regulation 60 of those Regulations.
- (2) Regulation 10(4) to (7) of EMR 2011 apply in relation to cancellation under sub-paragraph (1) of this paragraph as they apply in relation to cancellation under regulation 10(1) of those Regulations.

#### Notice of intention

9.—(1) A person in relation to whom paragraph 2 applies must, before the end of the 12 months beginning with the day on which exit day falls, notify the FCA—

- (a) whether the person or a member of the person's immediate group, as defined by section 421ZA of the 2000 Act, intends to apply under regulation 5 of EMR 2011, and
- (b) whether the person intends to cease at or before the end of the transition period to provide in the United Kingdom the services to which the transitional authorisation relates.

(2) The person must notify the FCA within a reasonable time of any change in an intention previously notified.

#### Transition period

10.—(1) The transition period in relation to a person is a period beginning with exit day and ending with a day determined under this paragraph, or with any earlier day on which the cancellation under paragraph 8 of the person's transitional authorisation takes effect.

(2) In a case where a person has applied under regulation 5 of EMR 2011, on or after the date on which this regulation comes into force, to become an authorised electronic money institution and has not withdrawn the application—

- (a) if the application is granted, the person's transition period ends with the day before the day stated in accordance with regulation 9(5) of EMR 2011 as that on which the authorisation takes effect, and
- (b) if the application is refused, the decision notice under regulation 9(7) of EMR 2011 must state the date on which the person's transition period is to end.

(3) In any other case, the person's transition period ends at the end of the 3 years beginning with the day on which exit day falls.

(4) The person may give notice to the FCA specifying a date (earlier than that determined under sub-paragraph (2) or (3)) on which the person will cease to engage in new business covered by the person's transitional authorisation.

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(15) S.I. 2017/692.

(5) The FCA may by notice to the person require the person to specify a date under sub-paragraph (4) before the end of a period specified in the notice, and if the person does not do so the FCA may itself specify a date on which the person's transitional authorisation will cease to cover new business.

### **Power to extend period specified in paragraph 10(3)**

**11.**—(1) The Treasury may by regulations made by statutory instrument amend paragraph 10(3) so as to extend the period referred to in that provision, if the Treasury consider it necessary to do so.

(2) The Treasury may make regulations under sub-paragraph (1) only if, no later than 6 months before the end of the period to be extended, the FCA has submitted to the Treasury an assessment as to the effect of extending, or not extending, the period on persons (in general) to whom paragraph 2 applies.

(3) Regulations under sub-paragraph (1) may not extend the period for the time being by more than 12 months.

(4) A statutory instrument containing regulations under sub-paragraph (1) is subject to annulment in pursuance of a resolution of either House of Parliament.

### **Directions**

- 12.** The power of the FCA to give directions under this Part of this Schedule includes power—
- (a) to give different directions in relation to different notifications or categories of notification, and
  - (b) to vary or revoke a previous direction.

## **PART 2**

### **Transitional provisions relating to Payment Services Regulations 2017**

#### **Interpretation**

- 13.** In this Part of this Schedule—
- (a) “PSR 2017” means the Payment Services Regulations 2017,
  - (b) “the 2000 Act” means the Financial Services and Markets Act 2000,
  - (c) “the FCA” means the Financial Conduct Authority, and
  - (d) “EEA authorised payment institution”, “EEA registered account information service provider”, “home state competent authority”, “the money laundering directive”, “passport right”, and “the payment services directive” each has the meaning given by PSR 2017 as those Regulations have effect before the amendments made by Schedule 2.

#### **Transitional authorisation for EEA authorised payment institution etc**

- 14.**—(1) This paragraph applies to a person who—
- (a) immediately before exit day is entitled to provide payment services in the United Kingdom in the exercise of a passport right,
  - (b) would (apart from this Part of this Schedule) cease from exit day to be entitled to provide those services in the United Kingdom, and



- (c) has notified the FCA in accordance with paragraph 15 that the person wishes this paragraph to apply in the person's case.
- (2) During the transition period defined in paragraph 22—
  - (a) the person is to be taken—
    - (i) in case of a person who is an EEA authorised payment institution immediately before exit day, to be an authorised payment institution whose authorisation under PSR 2017 relates to the payment services mentioned in sub-paragraph (1)(a) and (b), or
    - (ii) in the case of a person who is an EEA registered account information service provider immediately before exit day, to be a registered account information service provider whose registration under PSR 2017 relates to those payment services, and
  - (b) accordingly, references in PSR 2017 to an authorised payment institution or a registered account information service provider are to be read as including a person who is taken by virtue of this paragraph to be an authorised payment institution or a registered account information service provider (as the case may be).
- (3) Sub-paragraph (2) is subject to paragraphs 19 and 20.
- (4) In the following provisions of this Part of this Schedule, “transitional authorisation” means authorisation by virtue of this paragraph as an authorised payment service provider or registration by virtue of this paragraph as a registered account information service provider.

#### **Requirements to be met by notification**

- 15.**—(1) A notification for the purposes of paragraph 14(1)(c) must—
- (a) be made in such manner as the FCA may direct, and
  - (b) be made during the 3 months ending with the day preceding the day on which exit day falls.
- (2) The notification must—
- (a) state the name and address of the person making the notification, and any authorisation or reference number,
  - (b) specify the person's home state competent authority,
  - (c) specify a postal address in the United Kingdom to be used for correspondence,
  - (d) identify the payment services which the person is entitled to provide in the United Kingdom by virtue of being an EEA authorised payment institution or an EEA registered account information service provider for the purposes of PSR 2017,
  - (e) if, for the provision of the services in the United Kingdom, the person uses an agent who is registered with the home state competent authority, include the information referred to in regulation 34(3)(a) of PSR 2017,
  - (f) if the person uses or intends to use a branch in the United Kingdom to provide the services, state the names of those responsible for the management of the branch and details of its organisational structure,
  - (g) if the person has entered into a contract with another person under which that other person carries out or will carry out any operational function relating to the person's provision of payment services in the United Kingdom, include such information about that other person as the FCA may direct,
  - (h) specify any restrictions or conditions that have been imposed on the person by the person's home state competent authority, and
  - (i) specify any precautionary measures taken by the FCA under regulation 30(9) of PSR 2017 that are in force.

### **Registration of agents**

16.—(1) If a notification for the purposes of paragraph 14(1)(c) includes the information required by paragraph 15(2)(e) in relation to an agent, the FCA must, with effect from exit day or as soon as practicable after that time, include the agent on the register maintained under regulation 4 of PSR 2017.

(2) A person to whom paragraph 14 applies may apply to the FCA under regulation 34 of PSR 2017 before exit day for the registration at any time after exit day of an agent not falling within subparagraph (1).

### **Requirements imposed by FCA**

17.—(1) This paragraph applies in relation to a person to whom paragraph 14 applies.

(2) Any requirement which—

(a) was imposed on the person—

(i) as a precautionary measure under regulation 30(9) of PSR 2017, or

(ii) under section 196 of the 2000 Act as applied by paragraph 6 of Schedule 6 to PSR 2017, and

(b) has effect immediately before exit day,

is to continue to have effect at and after that time as if it were imposed by the FCA under regulation 7 of PSR 2017.

(3) The FCA may exercise its powers under regulation 7 of PSR 2017 in relation to the person if it appears to the FCA that, immediately before exit day, the condition in section 194(1)(a) or (b) of the 2000 Act, as applied by paragraph 6 of Schedule 6 to PSR 2017, was met.

### **Duties of person relying on transitional authorisation**

18.—(1) This paragraph applies during the transition period defined in paragraph 22 to any person in relation to whom paragraph 14 applies.

(2) The person must notify the FCA of—

(a) any material change affecting any matter dealt with in the information contained in or accompanying the notification for the purposes of paragraph 14(1)(c),

(b) the cancellation or variation by the person's home state competent authority of the person's authorisation to provide payment services in accordance with the payment services directive,

(c) any regulatory action taken against the person by the person's home state competent authority, or

(d) any adverse judgments made against the person by the person's home state competent authority in pursuance of the money laundering directive.

(3) The person must when required by the FCA provide the FCA with such evidence as the FCA may reasonably require to demonstrate the person's compliance with the law of the person's home state implementing Article 10 of the payment services directive (safeguarding).

### **Exclusion of certain provisions of Payment Services Regulations 2017**

19.—(1) The following provisions of PSR 2017 do not apply in relation to a person while the person is by virtue of paragraph 14 an authorised payment institution or a registered account information service provider—

(a) regulation 10(1) (cancellation of authorisation);

- (b) regulation 20 (duty to notify changes);
- (c) regulation 22 and Schedule 3 (capital requirements);
- (d) in regulation 23 (safeguarding requirements), paragraphs (14) to (16);
- (e) regulation 24 (accounting and statutory audit);
- (f) in Schedule 6 (application and modification of legislation), paragraph 5 (control over payment institutions) and paragraph 6 (incoming firms: intervention by FCA).

(2) Regulation 6 (conditions for authorisation) does not apply in relation to a person by virtue of the person's transitional authorisation, but applies in relation to any application for authorisation made by the person during the transition period defined in paragraph 22.

### **Power of FCA to cancel transitional authorisation**

**20.**—(1) The FCA may cancel a person's transitional authorisation and remove the person from the register where—

- (a) the person's authorisation by the person's home state competent authority is cancelled,
- (b) the person has failed to comply with the terms of the person's authorisation by the person's home state competent authority,
- (c) the person does not provide payment services in the United Kingdom during the 12 months beginning with exit day,
- (d) the person ceases to engage in business activity in the United Kingdom for more than six months,
- (e) the person's notification for the purposes of paragraph 14(1)(c) contains false statements,
- (f) the person lacks one or more of the following—
  - (i) robust governance arrangements for its payment service business, including a clear organisational structure with well-defined, transparent and consistent lines of responsibility,
  - (ii) effective procedures to identify, manage, monitor and report any risks to which the person might be exposed, and
  - (iii) adequate internal control mechanisms, including sound administrative, risk management and accounting procedures,
- (g) any of the directors, or persons responsible for the management of the person's payment services, is not of good repute,
- (h) the person does not have a business plan under which appropriate and proportionate systems, resources and procedures will be employed by the person to operate soundly,
- (i) the person has not taken adequate measures for the purposes of safeguarding electronic money holders' funds in accordance with regulation 23 of PSR 2017,
- (j) in the case of a person carrying on payment initiation services, the person does not hold professional indemnity insurance, or a comparable guarantee, of the kind mentioned in regulation 6(7)(e) of PSR 2017,
- (k) the person would constitute a threat to the stability of, or trust in, a payment system by continuing the person's electronic money or payment services business,
- (l) the cancellation is desirable in order to protect the interests of consumers, or
- (m) the person's provision of payment services is otherwise unlawful, including where such provision of services is unlawful because the person's registration in a register maintained under regulation 54 or 55 of the Money Laundering, Terrorist Financing and Transfer of

Funds (Information on the Payer) Regulations 2017 has been cancelled under regulation 60 of those Regulations.

(2) Regulation 10(2) to (5) of PSR 2017 apply in relation to cancellation under sub-paragraph (1) of this paragraph as they apply in relation to cancellation under regulation 10(1) of those Regulations.

### **Notice of intention**

**21.**—(1) A person in relation to whom paragraph 14 applies must, before the end of the 12 months beginning with the day on which exit day falls, notify the FCA—

- (a) whether the person or a member of the person's immediate group, as defined by section 421ZA of the 2000 Act, intends to apply under regulation 5 or 17 of PSR 2017, and
- (b) whether the person intends to cease at or before the end of the transition period to provide in the United Kingdom the services to which the transitional authorisation relates.

(2) The person must notify the FCA within a reasonable time of any change in an intention previously notified.

### **Transition period**

**22.**—(1) The transition period in relation to a person is a period beginning with exit day and ending with a day determined under this paragraph, or with any earlier day on which the cancellation under paragraph 20 of the person's transitional authorisation takes effect.

(2) In a case where a person has applied under regulation 5 of PSR 2017, on or after the date on which this regulation comes into force, for authorisation as a payment institution and has not withdrawn the application—

- (a) if the application is granted, the person's transition period ends with the day before the day stated in accordance with regulation 9(6) of PSR 2017 as that on which the authorisation takes effect, and
- (b) if the application is refused, the decision notice under regulation 9(8) of PSR 2017 must state the date on which the person's transition period is to end.

(3) In a case where a person has applied under regulation 17 of PSR 2017, on or after the date on which this regulation comes into force, for registration as an account information service provider and has not withdrawn the application—

- (a) if the application is granted, the person's transition period ends with the day before the day stated in accordance with regulation 9(6) of PSR 2017 (as applied by regulation 15 of those Regulations) as that on which the authorisation takes effect, and
- (b) if the application is refused, the decision notice under regulation 9(8) of PSR 2017 (as so applied) must state the date on which the person's transition period is to end.

(4) In any other case, the person's transition period ends at the end of the 3 years beginning with the day on which exit day falls.

(5) The person may give notice to the FCA specifying a date (earlier than that determined under sub-paragraphs (2) to (4)) on which the person will cease to engage in new business covered by the person's transitional authorisation.

(6) The FCA may by notice to the person require the person to specify a date under sub-paragraph (5) before the end of a period specified in the notice, and if the person does not do so the FCA may itself specify a date on which the person's transitional authorisation will cease to cover new business.

### **Power to extend period specified in paragraph 22(4)**

**23.**—(1) The Treasury may by regulations made by statutory instrument amend paragraph 22(4) so as to extend the period referred to in that provision, if the Treasury consider it necessary to do so.

(2) The Treasury may make regulations under sub-paragraph (1) only if, no later than 6 months before the end of the period to be extended, the FCA has submitted to the Treasury an assessment as to the effect of extending, or not extending, the period on persons (in general) to whom paragraph 14 applies.

(3) Regulations under sub-paragraph (1) may not extend the period for the time being by more than 12 months.

(4) A statutory instrument containing regulations under sub-paragraph (1) is subject to annulment in pursuance of a resolution of either House of Parliament.

### **Directions**

**24.** The power of the FCA to give directions under this Part of this Schedule includes power—

- (a) to give different directions in relation to different notifications or categories of notification, and
- (b) to vary or revoke a previous direction.

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## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations are made in exercise of the powers in section 8(1) of the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular under paragraphs (a), (b), (c), (e), (f) and (g) of section 8(2)) arising from the withdrawal of the United Kingdom from the European Union.

Regulation 2 and Schedule 1 amend primary legislation relating to payment systems.

Regulation 3(1) and Schedule 2 amend subordinate legislation relating to electronic money and payment services.

Regulation 3(2) and Schedule 3 makes provision for persons who before exit day are authorised to issue electronic money or provide payment services in the United Kingdom to continue to do so during a transition period if they notify the Financial Conduct Authority of their intention to do so.

An impact assessment of the effect that this instrument, and certain other instruments made by HM Treasury under the European Union (Withdrawal) Act 2018, will have on the costs of business, the voluntary sector and the public sector is available from HM Treasury, 1 Horse Guards Road, London SW1A 2HQ and is published alongside this instrument at [www.legislation.gov.uk](http://www.legislation.gov.uk).