

SCHEDULE 2

Regulation 3(1)

Amendments of subordinate legislation

PART 1

Amendments of Electronic Money Regulations 2011

1. The Electronic Money Regulations 2011(1) 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—
 - “(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(2)”.
- (3) Omit paragraph (3).

3. In regulation 3 (electronic money: exclusions), in paragraph (a)(iv), for “a single EEA State” substitute “the United Kingdom”.

(1) S.I. 2011/99.
(2) S.I. 2017/752.

- 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,
 - (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(3) (see section 1210 of that Act).”

(3) 2006 c. 46.

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(4)”;

(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”.

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⁽⁵⁾ 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);
 - (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—

(5) 2000 c. 8.

“(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;
- (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—

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*

“(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);
- (c) 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(6) 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”—

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

- (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;”;
- (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(7)”.

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—

- (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.”

(7) S.I. 2013/3115.

- 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⁽⁸⁾, 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—
 - (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).

⁽⁸⁾ S.I. 2018/***.

(3) In paragraph (5), for “that Act” substitute “the Small Business, Enterprise and Employment Act 2015(9)”.

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—

“(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”;

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*

- (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.