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STATUTORY INSTRUMENTS

2011 No. 99

FINANCIAL SERVICES AND MARKETS

The Electronic Money Regulations 2011

Made - - - - 18th January 2011

Laid before Parliament 19th January 2011

*Coming into force in accordance with
regulation 1(2)*

THE ELECTRONIC MONEY REGULATIONS 2011

PART 1

INTRODUCTORY PROVISIONS

1. Citation and commencement
2. Interpretation
3. Electronic money: exclusions
- 3A Notification of use of limited network exclusion
- 3B Notification of use of electronic communications exclusion

PART 2

REGISTRATION

The register

4. The register of certain electronic money issuers

Authorisation

5. Application to become an authorised electronic money institution or variation of an existing authorisation
6. Conditions for authorisation
7. Imposition of requirements
8. Variation etc at request of an authorised electronic money institution
9. Determination of application for authorisation or variation of authorisation
10. Cancellation of authorisation
11. Variation of authorisation on Authority's own initiative

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Registration as a small electronic money institution

12. Application for registration as a small electronic money institution or variation of an existing registration
13. Conditions for registration
14. Average outstanding electronic money
15. Supplementary provisions
16. Application for authorisation if requirements cease to be met

Common provisions

17. Duty to notify changes
18. Electronic money institutions acting without permission

PART 3

PRUDENTIAL SUPERVISION AND PASSPORTING

Capital requirements

19. Capital requirements

Safeguarding

20. Safeguarding requirements
21. Safeguarding option 1
22. Safeguarding option 2
23. Power of the Authority to exclude assets
24. Insolvency events
25. Accounting and statutory audit
26. Outsourcing
27. Record keeping

Exercise of passport rights

28. Notice of intention
29. Decision following notice of intention
- 29A. Notice of intention from an EEA authorised payment institution
30. Supervision of firms exercising passport rights
31. Carrying on of Consumer Credit Act business by an EEA authorised electronic money institution

PART 4

ADDITIONAL ACTIVITIES AND USE OF DISTRIBUTORS AND AGENTS

- 31A. Record keeping
32. Additional activities
33. Use of distributors and agents
34. Requirement for agents to be registered
35. Removal of agents from the register
36. Reliance
37. Duty to notify change in circumstance

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PART 5

ISSUANCE AND REDEEMABILITY OF ELECTRONIC MONEY

38. Application of Part 5
39. Issuance and redeemability
40. Conditions of redemption
41. Fees for redemption
42. Amount of redemption
43. Requests for redemption
44. Redemption rights of persons other than consumers
45. Prohibition of interest
46. Termination of a contract

PART 6

THE AUTHORITY

The functions of the Authority

47. Functions of the Authority

Supervision and enforcement

48. Monitoring and enforcement
49. Reporting requirements
50. Public censure
51. Financial penalties
52. Suspending authorisation etc
53. Proposal to take disciplinary measures
54. Injunctions
55. Power of Authority to require restitution
56. Proposal to require restitution
57. Restitution orders
58. Complaints

Miscellaneous

59. Costs of supervision
- 59A. Credit agreements
60. Guidance
61. Authority's exemption from liability in damages
62. Application and modification of primary and secondary legislation

PART 7

GENERAL

Offences

63. Prohibition on issuing electronic money by persons other than electronic money issuers
64. False claims to be an electronic money issuer
65. Defences
66. Misleading the authority
67. Restriction on penalties
68. Liability of officers of bodies corporate etc

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- 69. Prosecution
- 70. Proceedings against unincorporated bodies

Duties of the Authority and the Commissioners to co-operate

- 71. Duty to co-operate and exchange information

Actions for breach of requirements

- 72. Right to bring actions
- 73. Prohibition on contracting-out

Transitional provisions

- 74. Persons with a Part 4 permission
- 75. EEA firms
- 76. Certified persons
- 77. Existing fixed term contracts
- 78. Amendments to the banking consolidation directive
- 78A Transitional arrangements for existing electronic money institutions on the implementation of the second payment services directive

Amendments to legislation

- 79. Amendments to primary and secondary legislation

Gibraltar

- 80. Application to Gibraltar
Signature

SCHEDULE 1 — Information to be included in or with an application for authorisation

- 1. A programme of operations, setting out, in particular, the type...
- 2. A business plan including a forecast budget calculation for the...
- 3. Evidence that the applicant holds initial capital for the purposes...
- 4. A description of the measures taken for safeguarding the electronic...
- 5. A description of the applicant's governance arrangements and internal control...
- 5A A description of the applicant's procedure for monitoring, handling and...
- 5B A description of the applicant's process for filing, monitoring, tracking...
- 5C A description of the applicant's business continuity arrangements, including a...
- 5D A description of the principles and definitions used by the...
- 5E A statement of the applicant's security policy, including—
- 6. A description of the internal control mechanisms which the applicant...
- 7. A description of the applicant's structural organisation, including, where applicable,...
- 8. In relation to each person holding, directly or indirectly, a...
- 9. (1) The identity of directors and persons who are or...
- 10. The identity of the auditors of the applicant, if any...
- 11. (1) The legal status of the applicant and, where the...
- 12. The address of the head office of the applicant.
- 13. For the purposes of paragraphs 4, 5 , 5A and...

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14. In the case of an applicant which proposes to provide...

SCHEDULE 2 — Capital Requirements

PART 1 — Initial capital

1. For the purposes of these Regulations “initial capital” comprises one...
2. An applicant for authorisation as an electronic money institution must...
3. (1) Where the business activities of an applicant for registration...

PART 2 — Own funds

Qualifying items

4. For the purposes of these Regulations “own funds” means own...
 5. The items specified in paragraph 4(a) to (d) must be—...
 6. Own funds are not to include guarantees provided by the...
- ...
7. The deductions from own funds are— (a) own shares at...
 8. Where shares in another credit institution, financial institution, insurance undertaking,...

Limits on qualifying items

9. For the purposes of calculating own funds—
10. The Authority may in temporary and exceptional circumstances direct that...
11. An electronic money institution must not include in its own...
12. An authorised electronic money institution that carries on activities other...

Own funds requirement

13. An authorised electronic money institution must calculate its own funds...
14. Where a small electronic money institution is required by regulation...

Adjustment by the Authority

15. The Authority may direct in respect of an authorised electronic...
16. The Authority may direct in respect of a small electronic...
17. A direction made under paragraph 15 or 16 must be...
18. The Authority may make a reasonable charge for making an...

Provision for start-up electronic money institutions

19. If an electronic money institution has not completed a full...

Method A

20. (1) “Method A” means the calculation method set out in...

Method B

21. (1) “Method B” means the calculation method set out in...

Method C

22. (1) “Method C” means the calculation method set out in...
23. (1) “Method D” means the calculation method set out in...

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24. (1) Where— (a) an electronic money institution provides payment services...

Application of accounting standards

25. Except where this Schedule provides for a different method of...

SCHEDULE 2A — Credit agreements

PART 1 — Prohibitions and restrictions

1. Power to prohibit the entry into credit agreements
2. Power to restrict the entry into credit agreements

PART 2 — Procedure and appeals

3. Interpretation
4. Notice of prohibition or restriction
5. Application to revoke or vary prohibition or restriction
6. Notice to the home state competent authority

SCHEDULE 3 — Application and modification of legislation

PART 1 — Application and modification of the 2000 Act

1. Disciplinary powers
2. The Tribunal
- 2A Authority rules
3. Information gathering and investigations
4. Control over electronic money institutions
- 4A Incoming firms: interventions by the Authority
5. Auditors and actuaries
6. Restriction on disclosure of information
7. Insolvency
8. Warning notices and decision notices
9. Limitation on powers to require documents
- PART 2 — Application and modification of secondary legislation
10. The Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001
11. The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001

SCHEDULE 4 — Amendments to primary and secondary legislation

PART 1 — Amendments to primary legislation

1. Consumer Credit Act 1974
2. The 2000 Act
3. The Terrorism Act 2000
4. The Proceeds of Crime Act 2002
5. The Companies Act 2006
6. The Counter-Terrorism Act 2008
- PART 2 — Amendments to secondary legislation
7. The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975
8. The Financial Markets and Insolvency (Settlement Finality) Regulations 1999
9. The Competition Act 1998 (Small Agreements and Conduct of Minor Significance) Regulations 2000
10. The Competition Act 1998 (Determination of Turnover for Penalties) Order 2000

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11. The Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001
12. The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001
13. The Enterprise Act 2002 (Merger Fees and Determination of Turnover) Order 2003
14. The Conduct of Employment Agencies and Employment Business Regulations 2003
15. The Financial Services (Distance Marketing) Regulations 2004
16. The Credit Institutions (Reorganisation and Winding Up) Regulations 2004
17. The Building Societies Act 1986 (Modification of the Lending Limit and Funding Limit Calculations) Order 2004
18. The Pension Protection Fund (Entry Rules) Regulations 2005
19. The Money Laundering Regulations 2007
20. Limited Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008
21. The Payment Services Regulations 2009

SCHEDULE 5 — Gibraltar

1. Exercise of deemed passport rights by Gibraltar-based firms
2. Exercise by authorised electronic money institutions of deemed passport rights in Gibraltar
3. Modification of legislation
4. Firms which have taken action before 13th January 2018

Explanatory Note

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