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## STATUTORY INSTRUMENTS

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# 2011 No. 99

## The Electronic Money Regulations 2011

### PART 3

#### PRUDENTIAL SUPERVISION AND PASSPORTING

##### *Capital requirements*

##### **Capital requirements**

**19.**—(1) An authorised electronic money institution must maintain at all times own funds equal to or in excess of—

- (a) 350,000 euro; or
- (b) the amount of the own funds requirement calculated in accordance with paragraph 13 of Schedule 2 subject to any adjustment directed by the Authority under paragraph 15 of that Schedule,

whichever is the greater.

(2) Where the business activities of a small electronic money institution generate average outstanding electronic money of 500,000 euro or more, it must maintain at all times own funds equal to or in excess of the amount of the own funds requirement calculated in accordance with paragraph 14 of Schedule 2, subject to any adjustment directed by the Authority under paragraph 16 of that Schedule.

(3) Where a small electronic money institution has not completed a sufficiently long period of business to calculate the amount of average outstanding electronic money for the purposes of paragraph (2), it must make an estimate on the basis of projected outstanding electronic money as evidenced by its business plan, subject to any adjustments to that plan which are, or have been, required by the Authority.

##### *Safeguarding*

##### **Safeguarding requirements**

**20.**—(1) Electronic money institutions must safeguard funds that have been received in exchange for electronic money that has been issued (referred to in this regulation and regulations 21 and 22 as “relevant funds”).

(2) Relevant funds must be safeguarded in accordance with either regulation 21 or regulation 22.

[<sup>F1</sup>(2A) An electronic money institution may safeguard certain relevant funds in accordance with regulation 21 and the remaining relevant funds in accordance with regulation 22.]

(3) Where—

- (a) only a proportion of the funds that have been received are to be used for the execution of a payment transaction (with the remainder being used for non-payment services); and

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- (b) the precise portion attributable to the execution of the payment transaction is variable or unknown in advance,

the relevant funds are such amount as may be reasonably estimated, on the basis of historical data and to the satisfaction of the Authority, to be representative of the portion attributable to the execution of the payment transaction.

(4) Funds received in the form of payment by payment instrument need not be safeguarded until they—

(a) are credited to the electronic money institution's payment account; or

(b) are otherwise made available to the electronic money institution,

provided that such funds must be safeguarded by the end of five business days after the date on which the electronic money has been issued.

(5) In paragraphs (1) to (4) and in regulations 21 to 24 references to an electronic money institution include references to a credit union.

(6) [F<sup>2</sup>Regulation 23 of the Payment Services Regulations 2017] applies in relation to funds received by electronic money institutions and credit unions for the execution of payment transactions that are not related to the issuance of electronic money with the following modifications—

(a) references to an “authorised payment institution” are to be treated as references to an authorised electronic money institution;

(b) references to a “small payment institution” are to be treated as references to—

(i) a small electronic money institution; and

(ii) a credit union; and

(c) references to a “payment transaction” are to be treated as references to a payment transaction that is not related to the issuance of electronic money.

#### Textual Amendments

**F1** Reg. 20(2A) inserted (13.8.2017 for specified purposes, 13.10.2017 for specified purposes, 13.1.2018 in so far as not already in force) by [The Payment Services Regulations 2017 \(S.I. 2017/752\)](#), reg. 1(2)(c)(iii)(3)(f)(i)(6), **Sch. 8 para. 5(13)(a)** (with reg. 3)

**F2** Words in reg. 20(6) substituted (13.8.2017 for specified purposes, 13.10.2017 for specified purposes, 13.1.2018 in so far as not already in force) by [The Payment Services Regulations 2017 \(S.I. 2017/752\)](#), reg. 1(2)(c)(iii)(3)(f)(i)(6), **Sch. 8 para. 5(13)(b)** (with reg. 3)

#### Safeguarding option 1

**21.—(1)** An electronic money institution must keep relevant funds segregated from any other funds that it holds.

(2) Where the institution continues to hold the relevant funds at the end of the business day following the day on which they were received it must—

(a) place them in a separate account that it holds with an authorised credit institution [F<sup>3</sup>or the Bank of England]; or

(b) invest the relevant funds in secure, liquid, low-risk assets (“relevant assets”) and place those assets in a separate account with an authorised custodian.

(3) An account in which relevant funds or relevant assets are placed under paragraph (2) must—

(a) be designated in such a way as to show that it is an account which is held for the purpose of safeguarding relevant funds or relevant assets in accordance with this regulation; and

(b) be used only for holding those funds or assets.

(4) No person other than the electronic money institution may have any interest in or right over the relevant funds or the relevant assets placed in an account in accordance with paragraph (2)(a) or (b) except as provided by this regulation.

[<sup>F4</sup>(4A) Notwithstanding paragraphs (1), (2), (3)(b) and (4), where an electronic money institution is a participant in a designated system and the institution holds an account at the Bank of England for the purposes of completing the settlement of transfer orders that have been entered into the designated system on behalf of electronic money holders—

- (a) funds held in the account pending settlement in accordance with the rules or default arrangements of the designated system, in respect of transfer orders that have been entered into the designated system on behalf of electronic money holders, may continue to be held in the account with relevant funds;
- (b) the account, or a specified amount of funds in the account, may be subject to an interest or right in favour of the Bank of England in order to ensure the availability of funds to complete the settlement of transfer orders in accordance with the rules or default arrangements of the designated system;
- (c) subject to paragraph (4B), funds received into the account by the electronic money institution upon settlement are to be considered as having been appropriately safeguarded in accordance with this regulation from the time of receipt in the designated system until the time of receipt into the account.

(4B) The Authority may direct that paragraph (4A)(c) does not apply in relation to a designated system if, in the Authority's view, the rules and default arrangements of that system do not adequately insulate the funds of electronic money holders from the claims of other creditors of electronic money institutions which are participants in the system.]

(5) The institution must keep a record of—

- (a) any relevant funds segregated in accordance with paragraph (1);
- (b) any relevant funds placed in an account in accordance with paragraph (2)(a); <sup>F5</sup>...
- (c) any relevant assets placed in an account in accordance with paragraph (2)(b);

[<sup>F6</sup>(d) any funds held in an account as permitted by paragraph (4A)(a);

- (e) any funds expected to be received into an account as described in paragraph (4A)(c) in respect of transfer orders that have been entered into the designated system; and
- (f) any funds received into an account as described in paragraph (4A)(c).]

(6) For the purposes of this regulation—

(a) assets are both “secure” and “low risk” if they are—

[<sup>F7</sup>(i) asset items falling into one of the categories set out in Article 336(1) of the capital requirements regulation, for which the specific risk capital charge is no higher than 1.6% but excluding other qualifying items as defined in Article 336(4); or]

(ii) units in an undertaking for collective investment in transferable securities which invests solely in the assets mentioned in paragraph (i); and

(b) assets are “liquid” if they are approved as such by the Authority.

(7) In this regulation—

“authorised credit institution” means a person authorised for the purposes of the 2000 Act to accept deposits or otherwise authorised as a credit institution in accordance with [<sup>F8</sup>Article 8 of the capital requirements directive] other than a person in the same group as the electronic money institution;

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“authorised custodian” means a person authorised for the purposes of the 2000 Act to safeguard and administer investments or authorised as an investment firm under Article 5 of [F9 Directive 2014/65/EU] of 12th April 2004 on markets in financial instruments M1 which holds those investments under regulatory standards at least equivalent to those set out under [F10 Article 16] of that directive;

[F11 “default arrangements”, “designated system”, “rules”, “settlement”, “system” and “transfer order” have the same meanings as in the Financial Markets and Insolvency (Settlement Finality) Regulations 1999.]

### Textual Amendments

- F3** Words in [reg. 21\(2\)\(a\)](#) inserted (13.8.2017 for specified purposes) by [The Payment Services Regulations 2017 \(S.I. 2017/752\)](#), [reg. 1\(2\)\(c\)\(iii\)\(3\)\(f\)\(i\)\(6\)](#), [Sch. 8 para. 5\(14\)\(a\)](#) (with [reg. 3](#))
- F4** [Reg. 21\(4A\)\(4B\)](#) inserted (13.8.2017 for specified purposes) by [The Payment Services Regulations 2017 \(S.I. 2017/752\)](#), [reg. 1\(2\)\(c\)\(iii\)\(3\)\(f\)\(i\)\(6\)](#), [Sch. 8 para. 5\(14\)\(b\)](#) (with [reg. 3](#))
- F5** Word in [reg. 21\(5\)](#) omitted (13.8.2017 for specified purposes) by virtue of [The Payment Services Regulations 2017 \(S.I. 2017/752\)](#), [reg. 1\(2\)\(c\)\(iii\)\(3\)\(f\)\(i\)\(6\)](#), [Sch. 8 para. 5\(14\)\(c\)\(i\)](#) (with [reg. 3](#))
- F6** [Reg. 21\(5\)\(d\)-\(f\)](#) inserted (13.8.2017 for specified purposes) by [The Payment Services Regulations 2017 \(S.I. 2017/752\)](#), [reg. 1\(2\)\(c\)\(iii\)\(3\)\(f\)\(i\)\(6\)](#), [Sch. 8 para. 5\(14\)\(c\)\(ii\)](#) (with [reg. 3](#))
- F7** [Reg. 21\(6\)\(a\)\(i\)](#) substituted (1.1.2014) by [The Capital Requirements Regulations 2013 \(S.I. 2013/3115\)](#), [reg. 1\(2\)](#), [Sch. 2 para. 75\(3\)\(a\)](#)
- F8** Words in [reg. 21\(7\)](#) substituted (1.1.2014) by [The Capital Requirements Regulations 2013 \(S.I. 2013/3115\)](#), [reg. 1\(2\)](#), [Sch. 2 para. 75\(3\)\(b\)](#)
- F9** Words in [reg. 21\(7\)](#) substituted (29.6.2017 for specified purposes, 3.7.2017 for specified purposes, 31.7.2017 for specified purposes) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2017 \(S.I. 2017/701\)](#), [reg. 1\(2\)\(3\)\(4\)\(6\)](#), [Sch. 5 para. 13\(a\)](#) (with [reg. 7](#))
- F10** Words in [reg. 21\(7\)](#) substituted (29.6.2017 for specified purposes, 3.7.2017 for specified purposes, 31.7.2017 for specified purposes) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2017 \(S.I. 2017/701\)](#), [reg. 1\(2\)\(3\)\(4\)\(6\)](#), [Sch. 5 para. 13\(b\)](#) (with [reg. 7](#))
- F11** Words in [reg. 21\(7\)](#) inserted (13.8.2017 for specified purposes) by [The Payment Services Regulations 2017 \(S.I. 2017/752\)](#), [reg. 1\(2\)\(c\)\(iii\)\(3\)\(f\)\(i\)\(6\)](#), [Sch. 8 para. 5\(14\)\(d\)](#) (with [reg. 3](#))

### Marginal Citations

- M1** OJ No L 145, 30.4.2004, p.1.

## Safeguarding option 2

- 22.—**(1) An electronic money institution must ensure that—
- (a) any relevant funds are covered by—
    - (i) an insurance policy with an authorised insurer;
    - (ii) a [F12 comparable] guarantee from an authorised insurer; or
    - (iii) a [F13 comparable] guarantee from an authorised credit institution; and
  - (b) the proceeds of any such insurance policy or guarantee are payable upon an insolvency event into a separate account held by the electronic money institution which must—
    - (i) be designated in such a way as to show that it is an account which is held for the purpose of safeguarding relevant funds in accordance with this regulation; and
    - (ii) be used only for holding such proceeds.

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(2) No person other than the electronic money institution may have any interest or right over the proceeds placed in an account in accordance with paragraph (1)(b) except as provided by this regulation.

(3) In this regulation—

“authorised credit institution” has the same meaning as in regulation 21;

“authorised insurer” means a person authorised for the purposes of the 2000 Act to effect and carry out a contract of general insurance as principal or otherwise authorised in accordance with [F14 Article 14 of Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) to carry out non-life insurance activities within the meaning of Article 2(2) of that Directive], other than a person in the same group as the electronic money institution;

“insolvency event” means any of the following procedures in relation to an electronic money institution—

- (a) the making of a winding-up order;
- (b) the passing of a resolution for voluntary winding-up;
- (c) the entry of the institution into administration;
- (d) the appointment of a receiver or manager of the institution's property;
- (e) the approval of a proposed voluntary arrangement (being a composition in satisfaction of debts or a scheme of arrangement);
- (f) the making of a bankruptcy order;
- (g) in Scotland, the award of sequestration;
- (h) the making of any deed of arrangement for the benefit of creditors or, in Scotland, the execution of a trust deed for creditors;
- (i) the conclusion of any composition contract with creditors;
- (j) the making of an insolvency administration order or, in Scotland, the execution of a trust deed for creditors;
- (k) the conclusion of any composition contract with creditors; or
- (l) the making of an insolvency administration order or, in Scotland, sequestration, in respect of the estate of a deceased person.

#### Textual Amendments

- F12** Word in reg. 22(1)(a)(ii) inserted (13.8.2017 for specified purposes, 13.10.2017 for specified purposes, 13.1.2018 in so far as not already in force) by [The Payment Services Regulations 2017 \(S.I. 2017/752\)](#), reg. 1(2)(c)(iii)(3)(f)(i)(6), [Sch. 8 para. 5\(15\)](#) (with reg. 3)
- F13** Word in reg. 22(1)(a)(iii) inserted (13.8.2017 for specified purposes, 13.10.2017 for specified purposes, 13.1.2018 in so far as not already in force) by [The Payment Services Regulations 2017 \(S.I. 2017/752\)](#), reg. 1(2)(c)(iii)(3)(f)(i)(6), [Sch. 8 para. 5\(15\)](#) (with reg. 3)
- F14** Words in reg. 22(3) substituted (1.1.2016) by [The Solvency 2 Regulations 2015 \(S.I. 2015/575\)](#), reg. 1(2), [Sch. 2 para. 34\(2\)](#)

#### Power of the Authority to exclude assets

**23.** In exceptional circumstances the Authority may determine that an asset that would otherwise be secure and low-risk for the purposes of paragraph (2) of regulation 21 by virtue of paragraph (6) of that regulation is not such an asset provided that—

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- (a) the determination is based on an evaluation of the risks associated with the asset, including any risk arising from the security, maturity or value of the asset; and
- (b) there is adequate justification for the determination.

### Insolvency events

24.—(1) Subject to paragraph (2), where there is an insolvency event—

- (a) the claims of electronic money holders are to be paid from the asset pool in priority to all other creditors; and
- (b) until all the claims of electronic money holders have been paid, no right of set-off or security right may be exercised in respect of the asset pool except to the extent that the right of set-off relates to fees and expenses in relation to operating an account held in accordance with regulation 21(2)(a) or (b) [<sup>F15</sup>or (4A),] or 22(1)(b).

(2) The claims referred to in paragraph (1)(a) shall not be subject to the priority of expenses of an insolvency proceeding except in respect of the costs of distributing the asset pool.

(3) An electronic money institution must maintain organisational arrangements sufficient to minimise the risk of the loss or diminution of relevant funds or relevant assets through fraud, misuse, negligence or poor administration.

(4) In this regulation—

“asset pool” means—

- (a) any relevant funds segregated in accordance with regulation 21(1);
- (b) any relevant funds held in an account in accordance with regulation 21(2)(a);
- (ba) [<sup>F16</sup>where regulation 21(4A) applies, any funds that are received into the account held at the Bank of England upon settlement in respect of transfer orders that have been entered into the designated system on behalf of electronic money holders, whether settlement occurs before or after the insolvency event;]
- (c) any relevant assets held in an account in accordance with regulation 21(2)(b);
- (d) any proceeds of an insurance policy or guarantee held in an account in accordance with regulation 22(1)(b);

“insolvency event” has the same meaning as in regulation 22;

“insolvency proceeding” means—

- (a) winding-up, administration, receivership, bankruptcy or, in Scotland, sequestration;
- (b) a voluntary arrangement, deed of arrangement or trust deed for the benefit of creditors; or
- (c) the administration of the insolvent estate of a deceased person;

“security right” means—

- (a) security for a debt owed by an electronic money institution and includes any charge, lien, mortgage or other security over the asset pool or any part of the asset pool; and
- (b) any charge arising in respect of the expenses of a voluntary arrangement.

[<sup>F17</sup>(5) In paragraph (4) “designated system”, “settlement” and “transfer order” have the same meanings as in the Financial Markets and Insolvency (Settlement Finality) Regulations 1999.]

### Textual Amendments

- F15** Words in reg. 24(1)(b) inserted (13.8.2017 for specified purposes, 13.10.2017 for specified purposes, 13.1.2018 in so far as not already in force) by [The Payment Services Regulations 2017 \(S.I. 2017/752\)](#), reg. 1(2)(c)(iii)(3)(f)(i)(6), [Sch. 8 para. 5\(16\)\(a\)](#) (with reg. 3)
- F16** Words in reg. 24(4) inserted (13.8.2017 for specified purposes, 13.10.2017 for specified purposes, 13.1.2018 in so far as not already in force) by [The Payment Services Regulations 2017 \(S.I. 2017/752\)](#), reg. 1(2)(c)(iii)(3)(f)(i)(6), [Sch. 8 para. 5\(16\)\(b\)](#) (with reg. 3)
- F17** Reg. 24(5) inserted (13.8.2017 for specified purposes, 13.10.2017 for specified purposes, 13.1.2018 in so far as not already in force) by [The Payment Services Regulations 2017 \(S.I. 2017/752\)](#), reg. 1(2)(c)(iii)(3)(f)(i)(6), [Sch. 8 para. 5\(16\)\(c\)](#) (with reg. 3)

### Accounting and statutory audit

**25.—**(1) An electronic money institution which carries on activities other than the issuance of electronic money and the provision of payment services, must provide to the Authority separate accounting information in respect of its issuance of electronic money and provision of payment services.

(2) Such accounting information must be subject, where relevant, to an auditor's report prepared by the institution's statutory auditors or an audit firm (within the meaning of Directive [2006/43/EC](#) of the European Parliament and of the Council of 17th May 2006 on statutory audits of annual accounts and consolidated accounts <sup>M2</sup>).

(3) A statutory auditor or audit firm (“the auditor”) must, in any of the circumstances referred to in paragraph (4), communicate to the Authority information on, or its opinion on, matters—

- (a) of which it has become aware in its capacity as an auditor of an electronic money institution or of a person with close links to an electronic money institution; and
- (b) which relate to the electronic money issued and payment services provided by that institution.

(4) The circumstances are that—

- (a) the auditor reasonably believes that—
  - (i) there is or has been, or may be or may have been, a contravention of any requirement imposed on the electronic money institution by or under these Regulations; and
  - (ii) the contravention may be of material significance to the Authority in determining whether to exercise, in relation to that institution, any functions conferred on the Authority by these Regulations;
- (b) the auditor reasonably believes that the information on, or the auditor's opinion on, those matters may be of material significance to the Authority in determining whether the institution meets or will continue to meet—
  - (i) in the case of an authorised electronic money institution, the conditions set out in regulation 6(4) to (8) or the requirement in regulation 19(1) to maintain own funds; or
  - (ii) in the case of a small electronic money institution, the conditions set out in regulation 13(6) to (10) or the requirement in regulation 19(2) to maintain own funds;
- (c) the auditor reasonably believes that the institution is not, may not be or may cease to be, a going concern;
- (d) the auditor is precluded from stating in the auditor's report that the annual accounts have been properly prepared in accordance with the Companies Act 2006;

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- (e) the auditor is precluded from stating in the auditor's report, where applicable, that the annual accounts give a true and fair view of the matters referred to in section 495 of the Companies Act 2006 (auditor's report on company's annual accounts) including as that section is applied and modified by regulation 39 of the Limited Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008 <sup>M3</sup> (“the LLP Regulations”); or
  - (f) the auditor is required to state in the auditor's report in relation to the person concerned any of the facts referred to in subsection (2), (3) or (5) of section 498 <sup>M4</sup> of the Companies Act 2006 (duties of auditor) or, in the case of limited liability partnerships, subsection (2), (3) or (4) of section 498 as applied and modified by regulation 40 of the LLP Regulations.
- (5) In this regulation a person has close links with an authorised electronic money institution (“A”) if that person is—
- (a) a parent undertaking of A;
  - (b) a subsidiary undertaking of A;
  - (c) a parent undertaking of a subsidiary undertaking of A; or
  - (d) a subsidiary undertaking of a parent undertaking of A.

#### Marginal Citations

**M2** OJ No L 157, 9.6.2006, p.87.

**M3** [S.I. 2008/1911](#).

**M4** Section 498(5) was substituted by [S.I. 2008/393](#).

## Outsourcing

**26.**—(1) An authorised electronic money institution must notify the Authority of its intention to enter into a contract with another person under which that person will carry out any operational function relating to the issuance, distribution or redemption of electronic money or the provision of payment services (“outsourcing”).

(2) Where the institution intends to outsource any important operational function<sup>[F18]</sup>, including provision of an information technology system], all of the following conditions must be met—

- (a) the outsourcing is not undertaken in such a way as to impair—
  - (i) the quality of the institution's internal control; or
  - (ii) the ability of the Authority to monitor <sup>[F19]</sup>and retrace] the authorised electronic money institution's compliance with these Regulations or the Payment Services Regulations <sup>[F20]</sup>2017];
- (b) the outsourcing does not result in any delegation by the senior management of the institution of responsibility for complying with the requirements imposed by or under these Regulations or the Payment Services Regulations <sup>[F21]</sup>2017];
- (c) the relationship and obligations of the institution towards its electronic money holders under these Regulations or the Payment Services Regulations <sup>[F22]</sup>2017] is not substantially altered;
- (d) compliance with the conditions which the institution must observe in order to become an authorised electronic money institution and remain so is not adversely affected; and
- (e) none of the conditions of the institution's authorisation requires removal or variation.



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(3) For the purposes of paragraph (2), an operational function is important if a defect or failure in its performance would materially impair—

- (a) compliance by the institution with these Regulations or the Payment Services Regulations [F23]2017 and any requirement of its authorisation under these Regulations;
- (b) the financial performance of the institution; or
- (c) the soundness or continuity of the institution's electronic money issuance or provision of payment services.

[F24]4) An authorised electronic money institution must notify the Authority without undue delay of any change in outsourced functions or the persons to which functions are outsourced.]

#### Textual Amendments

- F18** Words in reg. 26(2) inserted (13.8.2017 for specified purposes) by [The Payment Services Regulations 2017 \(S.I. 2017/752\)](#), reg. 1(2)(c)(iii)(3)(f)(i)(6), **Sch. 8 para. 5(17)(a)(i)** (with reg. 3)
- F19** Words in reg. 26(2)(a)(ii) inserted (13.8.2017 for specified purposes) by [The Payment Services Regulations 2017 \(S.I. 2017/752\)](#), reg. 1(2)(c)(iii)(3)(f)(i)(6), **Sch. 8 para. 5(17)(a)(ii)** (with reg. 3)
- F20** Word in reg. 26(2)(a)(ii) substituted (13.8.2017 for specified purposes) by [The Payment Services Regulations 2017 \(S.I. 2017/752\)](#), reg. 1(2)(c)(iii)(3)(f)(i)(6), **Sch. 8 para. 5(17)(b)** (with reg. 3)
- F21** Word in reg. 26(2)(b) substituted (13.8.2017 for specified purposes) by [The Payment Services Regulations 2017 \(S.I. 2017/752\)](#), reg. 1(2)(c)(iii)(3)(f)(i)(6), **Sch. 8 para. 5(17)(b)** (with reg. 3)
- F22** Word in reg. 26(2)(c) substituted (13.8.2017 for specified purposes) by [The Payment Services Regulations 2017 \(S.I. 2017/752\)](#), reg. 1(2)(c)(iii)(3)(f)(i)(6), **Sch. 8 para. 5(17)(b)** (with reg. 3)
- F23** Word in reg. 26(3)(a) substituted (13.8.2017 for specified purposes) by [The Payment Services Regulations 2017 \(S.I. 2017/752\)](#), reg. 1(2)(c)(iii)(3)(f)(i)(6), **Sch. 8 para. 5(17)(b)** (with reg. 3)
- F24** Reg. 26(4) inserted (13.8.2017 for specified purposes) by [The Payment Services Regulations 2017 \(S.I. 2017/752\)](#), reg. 1(2)(c)(iii)(3)(f)(i)(6), **Sch. 8 para. 5(17)(c)** (with reg. 3)

#### Record keeping

27.—(1) Electronic money institutions must maintain relevant records and keep them for at least five years from the date on which the record was created.

(2) For the purposes of paragraph (1), records are relevant where they relate to the institution's compliance with this Part and, in particular, would enable the Authority to supervise effectively such compliance.

#### *Exercise of passport rights*

#### Notice of intention

28.—(1) An authorised electronic money institution (other than an institution mentioned in regulation 6(4)(b)) may exercise passport rights.

(2) Where an authorised electronic money institution intends to exercise its passport rights for the first time in a particular EEA state it must give the Authority, in such manner as the Authority may direct, notice of its intention to do so (“notice of intention”) which—

- [F25](a) states the name and address of the institution, and any authorisation or reference number;
- (b) identifies the EEA States in which it intends to operate;
- (c) identifies the electronic money issuance, redemption, distribution or payment services which it seeks to carry on in those States;

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- (d) if the institution intends to use an agent to provide the services in any of those States, includes the information referred to in regulation 34(3) (requirement for agents to be registered);
- (e) if the institution intends to use an EEA branch to provide the services in any of those States, includes—
  - (i) the information referred to in paragraphs 2 and 5 of Schedule 1 in relation to the services to be provided through each EEA branch;
  - (ii) the names of those responsible for the management of each proposed EEA branch; and
  - (iii) details of the organisational structure of each proposed EEA branch;
- (f) if the authorised payment institution intends to enter into a contract with a person in another EEA State under which that person will carry out any operational function relating to the issuance, distribution or issuance of electronic money or the provision of payment services in that EEA State, includes notification of that intention; and
- (g) identifies the distributors, if any, whom the institution intends to engage to distribute or redeem electronic money in exercise of its passport rights in that State.]

[<sup>F26</sup>(3) If any of the information provided by an authorised electronic money institution in a notice of intention changes, including by the addition of a further branch, the institution must give the Authority notice of such changes in a further notice of intention.

(4) The Authority must, within one month beginning with the date on which it receives a complete notice of intention, inform the host state competent authority of the information contained in the notice of intention.]

#### Textual Amendments

- F25** Reg. 28(2)(a)-(g) substituted for reg. 28(2)(a)-(d) (13.8.2017 for specified purposes) by [The Payment Services Regulations 2017 \(S.I. 2017/752\)](#), reg. 1(2)(c)(iii)(3)(f)(i)(6), **Sch. 8 para. 5(18)(a)** (with reg. 3)
- F26** Reg. 28(3)(4) substituted (13.8.2017 for specified purposes) by [The Payment Services Regulations 2017 \(S.I. 2017/752\)](#), reg. 1(2)(c)(iii)(3)(f)(i)(6), **Sch. 8 para. 5(18)(b)** (with reg. 3)

#### [<sup>F27</sup>Decision following notice of intention

**29.—**(1) If the Authority, taking into account any information received from the host state competent authority, proposes to determine that an authorised electronic money institution is not permitted to exercise passport rights in an EEA State as notified in a notice of intention, the Authority must give the relevant institution a warning notice.

(2) The Authority must, within the period of three months beginning with the date on which it receives a notice of intention and having considered any representations made in response to the warning notice—

- (a) if it decides
  - (i) that the authorised electronic money institution is not permitted to exercise passport rights in the EEA State, not to register an EEA branch, or to cancel the registration of an EEA branch, give the institution a decision notice; or
  - (ii) that the authorised electronic money institution is permitted to exercise passport rights in the EEA State, to register an EEA branch, or not to cancel the registration of an EEA branch, give the institution notice of its decision; and

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- (b) notify the host state competent authority of its decision, providing reasons for that decision if the Authority does not agree with the assessment of the host state competent authority.
- (3) If the Authority decides that the authorised electronic money institution is not permitted to exercise passport rights in the EEA State, not to register an EEA branch, or to cancel the registration of an EEA branch, the institution may refer the matter to the Upper Tribunal.
- (4) If the Authority decides to register an EEA branch, it must update the register as soon as practicable.
- (5) If the Authority decides to cancel the registration of an EEA branch, the Authority must, where the period for a reference to the Upper Tribunal has expired without a reference being made, as soon as practicable update the register accordingly.
- (6) The authorised electronic money institution may commence activities as notified in its notice of intention only after the Authority has notified the institution of its decision under paragraph (2) (a)(ii) and, in the case of services to be provided through an EEA branch, after entry of the branch on the register.
- (7) After registration, the authorised electronic money institution must notify the Authority of the date on which it starts to provide payment services in the other EEA State through the EEA branch, and the Authority must notify such date to the host state competent authority.]

#### Textual Amendments

**F27** Regs. 29, 29A substituted for reg. 29 (13.8.2017 for specified purposes) by [The Payment Services Regulations 2017 \(S.I. 2017/752\)](#), reg. 1(2)(c)(iii)(3)(f)(i)(6), **Sch. 8 para. 5(19)** (with reg. 3)

#### [<sup>F27</sup> Notice of intention from an EEA authorised payment institution

**29A.**—(1) If a home state competent authority sends information to the Authority about an EEA authorised electronic money institution which intends to provide services in the United Kingdom, the Authority must, before the end of the period of one month beginning on the day which the Authority receives all the required information—

- (a) assess the information; and
- (b) provide relevant information to the home state competent authority in connection with the intended provision of payment services in the United Kingdom, including in particular any reasonable grounds for concern with regard to money laundering or terrorist financing within the meaning of the money laundering directive in connection with the intended appointment of an agent or establishment of a branch in the United Kingdom.

(2) The EEA authorised electronic money institution may provide services in the United Kingdom in accordance with the information it has provided to the home state competent authority upon entry of the branch or agent in the register maintained by the home state competent authority.]

#### Textual Amendments

**F27** Regs. 29, 29A substituted for reg. 29 (13.8.2017 for specified purposes) by [The Payment Services Regulations 2017 \(S.I. 2017/752\)](#), reg. 1(2)(c)(iii)(3)(f)(i)(6), **Sch. 8 para. 5(19)** (with reg. 3)

#### Supervision of firms exercising passport rights

**30.**—(1) Without prejudice to regulation 71, the Authority must co-operate with the relevant host state competent authority or home state competent authority, as the case may be, in relation

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to the exercise of passport rights by any authorised electronic money institution or EEA authorised electronic money institution.

(2) The Authority must, in particular—

- (a) notify the host state competent authority, whenever it intends to carry out an on-site inspection in the host state competent authority's territory; and
- (b) provide the host state competent authority or home state competent authority, as the case may be—

- (i) on request, with all relevant information; and

- (ii) on its own initiative with all essential information<sup>[F28]</sup>, including on compliance with the conditions at regulation 6(4)(a) and (4A)],

relating to the exercise of the passport rights by an authorised electronic money institution or EEA authorised electronic money institution, including where there is an infringement or suspected infringement of these Regulations, or of the provisions of the electronic money directive, by a distributor, agent, branch or any other entity carrying out activities on behalf of such an institution.

(3) Where the Authority and the home state competent authority agree, the Authority may carry out on-site inspections on behalf of the home state competent authority in respect of electronic money issuance or payment services provided by an EEA authorised electronic money institution exercising passport rights.

<sup>[F29]</sup>(4) The Authority may direct that an EEA authorised electronic money institution exercising its passport rights to services in the United Kingdom through a branch or an agent in the United Kingdom must report to the Authority on such activities, for information and statistical purposes and, where the institution has exercised its right of establishment in the United Kingdom, to monitor compliance with Part 5 of these Regulations.

(5) Reports required under paragraph (4) must be given at such times and in such form, and verified in such manner, as the Authority may direct.

(6) An agent in the United Kingdom appointed by an EEA authorised electronic money institution or a branch of an EEA authorised electronic money institution in the United Kingdom must maintain the confidentiality of any confidential information provided to the Authority under paragraph (4).

(7) If a host state competent authority informs the Authority that an authorised electronic money institution providing services through an EEA branch or an EEA agent does not comply with a provision of the payment services directive, the Authority must—

- (a) exercise its powers as appropriate without undue delay, to ensure that the authorised payment institution complies with the relevant provisions; and
- (b) inform the host state competent authority and the competent authority of any other relevant EEA State of the measures taken without delay.

(8) Where immediate action is necessary to address a serious risk to the collective interests of electronic money holders or payment service users in the United Kingdom, the Authority may, in addition to providing information under paragraph (2), take precautionary measures in relation to an EEA authorised electronic money institution pending action by the home state competent authority.

(9) Any measures taken under paragraph (8) must be temporary and must end when the risk identified has been addressed.

(10) If the Authority decides to take measures under paragraph (8), it must inform the home state competent authority, the competent authority of any other relevant EEA State, and the European Banking Authority of the measures to be taken and the reason that immediate action is necessary—

- (a) in advance of taking the measures, if that is compatible with the need for immediate action; and

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(b) in any event without undue delay.

(12) In paragraphs (7)(b) and (10) “competent authority of any other relevant EEA State” means a competent authority designated in accordance with the electronic money directive in an EEA State which the Authority considers to have an interest in the measures taken, or to be taken, by the Authority.]

**Textual Amendments**

- F28** Words in reg. 30(2)(b)(ii) inserted (13.8.2017 for specified purposes, 13.10.2017 for specified purposes, 13.1.2018 in so far as not already in force) by [The Payment Services Regulations 2017 \(S.I. 2017/752\)](#), [reg. 1\(2\)\(c\)\(iii\)\(3\)\(f\)\(i\)\(6\)](#), [Sch. 8 para. 5\(20\)\(a\)](#) (with [reg. 3](#))
- F29** Reg. 30(4)-(12) substituted for reg. 30(4) (13.8.2017 for specified purposes, 13.10.2017 for specified purposes, 13.1.2018 in so far as not already in force) by [The Payment Services Regulations 2017 \(S.I. 2017/752\)](#), [reg. 1\(2\)\(c\)\(iii\)\(3\)\(f\)\(i\)\(6\)](#), [Sch. 8 para. 5\(20\)\(b\)](#) (with [reg. 3](#))

**Carrying on of Consumer Credit Act business by an EEA authorised electronic money institution**

<sup>F30</sup>**31.** .....

**Textual Amendments**

- F30** Reg. 31 omitted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by virtue of [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2013 \(S.I. 2013/1881\)](#), [art. 1\(2\)\(6\)](#), [Sch. para. 42](#)

**Status:**

Point in time view as at 13/08/2017.

**Changes to legislation:**

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