

STATUTORY INSTRUMENTS

2011 No. 99

The Electronic Money Regulations 2011

PART 4 U.K.

ADDITIONAL ACTIVITIES AND USE OF DISTRIBUTORS AND AGENTS

[^{F1}Record keeping U.K.]

31A.—(1) An electronic money institution 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 compliance with obligations imposed by or under Parts 2 to 4 and, in particular, would enable the Authority to supervise effectively such compliance.]

Textual Amendments

F1 Reg. 31A 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\(21\)](#) (with reg. 3)

Additional activities U.K.

32.—(1) Subject to paragraphs (2), (3) and (4), electronic money institutions may, in addition to issuing electronic money, engage in the following activities—

- (a) the provision of payment services;
- (b) the provision of operational and closely related ancillary services, including—
 - (i) ensuring the execution of payment transactions;
 - (ii) foreign exchange services;
 - (iii) safe-keeping activities; and
 - (iv) the storage and processing of data;
- (c) the operation of payment systems; and
- (d) business activities other than the issuance of electronic money, subject to any relevant European Union or national law.

(2) Electronic money institutions may grant credit subject to the same conditions as apply to authorised payment institutions by virtue of [^{F2}regulation 32(2) of the Payment Services Regulations 2017] provided that such credit is not granted from funds safeguarded in accordance with regulation 20.

(3) Any payment account held by an electronic money institution which is used for payment transactions which are not related to the issuance of electronic money must be used only in relation to such payment transactions.

Status: Point in time view as at 13/10/2017.

Changes to legislation: The Electronic Money Regulations 2011, PART 4 is up to date with all changes known to be in force on or before 12 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

(4) An authorised electronic money institution which has a branch which is located in the United Kingdom and whose head office is situated in a territory which is outside the EEA may only provide payment services if those services are related to the issuance of electronic money.

Textual Amendments

F2 Words in reg. 32(2) 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(22)** (with reg. 3)

Use of distributors and agents **U.K.**

33.—(1) An electronic money institution may distribute or redeem electronic money through a distributor or agent.

(2) An electronic money institution may not issue electronic money through a distributor, agent or any other entity acting on its behalf.

(3) An authorised electronic money institution may engage a distributor or an agent to distribute or redeem electronic money in the exercise of its passport rights.

Requirement for agents to be registered **U.K.**

34.—(1) An electronic money institution may provide payment services in the United Kingdom through an agent only if the agent is included on the register.

(2) An authorised electronic money institution may provide payment services in the exercise of its passport rights through an agent only if the agent is included on the register.

(3) An application for an agent to be included on the register must—

(a) contain, or be accompanied by, the following information—

(i) the name and address of the agent;

(ii) where relevant, a description of the internal control mechanisms that will be used by the agent—

(aa) in the case of an agent in the United Kingdom, to comply with [^{F3}the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017] ; and

(bb) in the case of an EEA agent, to comply with provisions of the money laundering directive; and

(iii) the identity of the directors and persons responsible for the management of the agent and [^{F4}, if the agent is not an electronic money institution or an EEA authorised electronic money institution, or a payment service provider within the meaning of the Payment Services Regulations 2017,] evidence that they are fit and proper persons;

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...

[^{F6}(iiiia) the services for which the agent is appointed;

(iiib) the unique identification code or number of the agent, if any; and]

(iv) such other information as the Authority may reasonably require; and

(b) be made in such manner as the Authority may direct.

(4) Different directions may be given, and different requirements imposed, in relation to different applications or categories of application.

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(5) At any time after receiving an application and before determining it, the Authority may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application.

[^{F7}(5A) Where the application relates to the provision of services in exercise of passport rights through an EEA agent, the Authority must, within one month beginning with the date on which it received the completed application, inform the host state competent authority of the information provided under paragraph (3) or (5).]

- (6) The Authority may refuse to include the agent on the register only if—
- (a) it has not received the information referred to in paragraph (3)(a), or is not satisfied that such information is correct;
 - (b) it is not satisfied that the directors and persons responsible for the management of the agent are fit and proper persons;
 - (c) it has reasonable grounds to suspect that, in connection with the provision of services through the agent—
 - (i) money laundering or terrorist financing within the meaning of the money laundering directive (or, in the United Kingdom, [^{F8}the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017]) is taking place, has taken place, or has been attempted; or
 - (ii) the risk of such activities taking place would be increased.

^{F9}(7)

^{F9}(8)

(9) If the Authority proposes to refuse to include the agent on the register, it must give the applicant a warning notice.

(10) The Authority must, having considered any representations made in response to the warning notice—

- (a) if it decides not to include the agent on the register, give the applicant a decision notice; or
- (b) if it decides to include the agent on the register, give the applicant notice of its decision, stating the date on which the registration takes effect.

[^{F10}(10A) Where the application relates to the provision of services in exercise of passport rights through an EEA agent, the Authority must—

- (a) take into account any information received from the host state competent authority in making its decision; and
- (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.

(10B) The Authority must give notice under paragraph (10) and (10A)—

- (a) where the application relates to the provision of services in the United Kingdom, within a period of two months beginning on the date on which the Authority received the completed application;
- (b) where the application relates to the provision of services in the exercise of passport rights through an EEA agent, within a period of three months beginning on the date on which the Authority received the completed application.]

(11) If the Authority decides not to include the agent on the register the applicant may refer the matter to the Upper Tribunal.

(12) If the Authority decides to include the agent on the register, it must update the register as soon as practicable.

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[^{F11}(12A) An authorised electronic money institution must notify the Authority of the date on which it starts to provide services in another EEA State through a registered EEA agent, and the FCA must notify such date to the host state competent authority.]

(13) An application under paragraph (3) may be combined with an application under regulation 5 or 12, in which case the application must be determined in the manner set out in regulation 9 (if relevant, as applied by regulation 15).

(14) An electronic money institution must ensure that an agent acting on its behalf informs payment service users of the agency arrangement.

[^{F12}(15) An authorised electronic money institution must notify the Authority without undue delay if there is any change in the information notified under paragraph (3) or (5).]

Textual Amendments

- F3** Words in reg. 34(3)(a)(ii)(aa) substituted (26.6.2017) by [The Money Laundering, Terrorist Financing and Transfer of Funds \(Information on the Payer\) Regulations 2017 \(S.I. 2017/692\)](#), reg. 1(2), **Sch. 7 para. 28(6)(a)** (with regs. 8, 15)
- F4** Words in reg. 34(3)(a)(iii) inserted (13.8.2017 for specified purposes, 13.10.2017 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(23)(a)(i)** (with reg. 3)
- F5** Word in reg. 34(3)(a) omitted (13.8.2017 for specified purposes, 13.10.2017 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(23)(a)(ii)** (with reg. 3)
- F6** Reg. 34(3)(a)(iiia)(iiib) inserted (13.8.2017 for specified purposes, 13.10.2017 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(23)(a)(iii)** (with reg. 3)
- F7** Reg. 34(5A) inserted (13.8.2017 for specified purposes, 13.10.2017 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(23)(b)** (with reg. 3)
- F8** Words in reg. 34(6)(c)(i) substituted (26.6.2017) by [The Money Laundering, Terrorist Financing and Transfer of Funds \(Information on the Payer\) Regulations 2017 \(S.I. 2017/692\)](#), reg. 1(2), **Sch. 7 para. 28(6)(b)** (with regs. 8, 15)
- F9** Reg. 34(7)(8) omitted (13.8.2017 for specified purposes, 13.10.2017 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(23)(c)** (with reg. 3)
- F10** Reg. 34(10A)(10B) inserted (13.8.2017 for specified purposes, 13.10.2017 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(23)(d)** (with reg. 3)
- F11** Reg. 34(12A) inserted (13.8.2017 for specified purposes, 13.10.2017 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(23)(e)** (with reg. 3)
- F12** Reg. 34(15) inserted (13.8.2017 for specified purposes, 13.10.2017 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(23)(f)** (with reg. 3)

Removal of agents from the register **U.K.**

35.—(1) The Authority may remove an agent of an electronic money institution from the register where—

- (a) the institution requests, or consents to, the agent's removal from the register;

- (b) the institution has obtained registration through false statements or any other irregular means;
 - (c) regulation 34(6)(b) or (c) applies;
 - (d) the removal is desirable in order to protect the interests of consumers; or
 - (e) the agent's provision of payment services is otherwise unlawful.
- (2) Where the Authority proposes to remove an agent from the register, other than at the request of the institution, it must give the institution a warning notice.
- (3) The Authority must, having considered any representations made in response to the warning notice—
- (a) if it decides to remove the agent, give the institution a decision notice; or
 - (b) if it decides not to remove the agent, give the institution notice of its decision.
- (4) If the Authority decides to remove the agent, other than at the request of the institution, the institution may refer the matter to the Upper Tribunal.
- (5) Where the period for a reference to the Upper Tribunal has expired without a reference being made, the Authority must as soon as practicable update the register accordingly.

Reliance **U.K.**

- 36.**—(1) Where an electronic money institution relies on a third party for the performance of operational functions it must take all reasonable steps to ensure that these Regulations and the Payment Services Regulations [^{F13}2017] are complied with.
- (2) Without prejudice to paragraph (1), an electronic money institution is responsible, to the same extent as if it had expressly permitted it, for anything done or omitted by any of its employees or by a distributor, agent, branch or any other entity issuing, distributing or redeeming electronic money, or providing payment services, on its behalf or to which activities are outsourced.

Textual Amendments

- F13** Word in reg. 36(1) 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\(24\)](#) (with reg. 3)

Duty to notify change in circumstance **U.K.**

- 37.**—(1) Where it becomes apparent to an electronic money institution that there is, or is likely to be, a significant change in circumstances which is relevant to—
- (a) in the case of an authorised electronic money institution—
 - (i) 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; or
 - (ii) the issuance, distribution or redemption of electronic money, or the payment services, which it seeks to carry on in exercise of its passport rights;
 - (b) in the case of a small electronic money institution, its fulfilment of any of the conditions set out in regulation 8(2) (as applied by regulation 15); or
 - (c) in the case of the use of an agent to provide payment services, the matters referred to in regulation 34(6)(b) and (c),

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it must provide the Authority with details of the change without undue delay, or, in the case of a substantial change in circumstance which has not yet taken place, details of the likely change a reasonable period before it takes place.

(2) An electronic money institution must inform the Authority of any material change in the measures that it has taken in accordance with regulation 21 or 22 to safeguard funds that have been received in exchange for electronic money.

(3) Any information to be provided to the Authority under this regulation must be in such form or verified in such manner as it may direct.

Status:

Point in time view as at 13/10/2017.

Changes to legislation:

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