

SCHEDULE 1

Regulation 5(1)

Information to be included in or with an application for authorisation

1. A programme of operations, setting out, in particular, the type of electronic money issuance and payment services which are envisaged.

2. A business plan including a forecast budget calculation for the first three financial years which demonstrates that the applicant is able to employ appropriate and proportionate systems, resources and procedures to operate soundly.

3. Evidence that the applicant holds initial capital for the purposes of regulation 6(3).

4. A description of the measures taken for safeguarding the electronic money holders' and payment service users' funds in accordance with regulation 20.

5. A description of the applicant's governance arrangements and internal control mechanisms including administrative risk management and accounting procedures, which demonstrates that such arrangements, mechanisms and procedures are proportionate, appropriate, sound and adequate.

[^{F1}5A. A description of the applicant's procedure for monitoring, handling and following up security incidents and security-related customer complaints, including where appropriate an incidents reporting mechanism which takes account of the notification obligations under regulation 99 of the Payment Services Regulations 2017.]

Textual Amendments

F1 Sch. 1 paras. 5A-5E 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(29)(a)** (with reg. 3)

[^{F1}5B. A description of the applicant's process for filing, monitoring, tracking and restricting access to sensitive payment data.]

Textual Amendments

F1 Sch. 1 paras. 5A-5E 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(29)(a)** (with reg. 3)

[^{F1}5C. A description of the applicant's business continuity arrangements, including a clear identification of the critical operations, effective contingency plans, and a procedure for regular testing and reviewing of the adequacy and efficiency of such plans.]

Textual Amendments

F1 Sch. 1 paras. 5A-5E 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(29)(a)** (with reg. 3)

[^{F1}5D. A description of the principles and definitions used by the applicant in collecting statistical data on performance, transactions and fraud.]

Status: Point in time view as at 10/01/2020.

Changes to legislation: The Electronic Money Regulations 2011 is up to date with all changes known to be in force on or before 21 June 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)

Textual Amendments

F1 Sch. 1 paras. 5A-5E 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(29)(a)** (with reg. 3)

[^{F1}**5E.** A statement of the applicant's security policy, including—

- (a) a detailed risk assessment in relation to the payment services to be provided, including risks of fraud and illegal use of sensitive and personal data, and
- (b) a description of—
 - (i) the applicant's security control and mitigation measures to provide adequate protection to users against the risks identified,
 - (ii) how such measures ensure a high level of technical security and data protection, including such security and protection for the software and IT systems used by the applicant and any undertakings to which the applicant outsources any part of its operations, and
 - (iii) where appropriate, the applicant's measures to comply with regulation 98(1) of the Payment Services Regulations 2017, taking into account any guidelines issued by the European Banking Authority under Article 95(3) of the payment services directive.]

Textual Amendments

F1 Sch. 1 paras. 5A-5E 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(29)(a)** (with reg. 3)

6. A description of the internal control mechanisms which the applicant has established in order to comply with [^{F2}the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017] and [^{F3}Regulation 2015/847/EU of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds]^{M1}.

Textual Amendments

F2 Words in Sch. 1 para. 6 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(8)(a)** (with regs. 8, 15)

F3 Words in Sch. 1 para. 6 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(8)(b)** (with regs. 8, 15)

Marginal Citations

M1 OJ No L 345, 8.12.2006, p.1.

7. A description of the applicant's structural organisation, including, where applicable, a description of the intended use of agents and branches and [^{F4}the off-site and on-site checks that the applicant undertakes to perform on them at least annually,] a description of outsourcing arrangements, and of its participation in a national and international payment system.

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Textual Amendments

F4 Words in Sch. 1 para. 7 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(29)(b)** (with reg. 3)

8. In relation to each person holding, directly or indirectly, a qualifying holding in the applicant—

- (a) the size and nature of their qualifying holding; and
- (b) evidence of their suitability taking into account the need to ensure the sound and prudent management of an electronic money institution.

9.—(1) The identity of directors and persons who are or will be responsible for the management of the applicant and, where relevant, persons who are or will be responsible for the management of the electronic money issuance and payment services activities of the applicant.

(2) Evidence that the persons described in sub-paragraph (1) are of good repute and that they possess appropriate knowledge and experience to issue electronic money and perform payment services.

10. The identity of the auditors of the applicant, if any.

11.—(1) The legal status of the applicant and, where the applicant is a limited company, its articles.

(2) In this paragraph “articles” has the meaning given in section 18 of the Companies Act 2006 (articles of association).

12. The address of the head office of the applicant.

13. For the purposes of paragraphs 4, 5 [^{F5}, 5A] and 7, a description of—

- (a) the audit arrangements of the applicant; and
- (b) the organisational arrangements that the applicant has set up,

with a view to the applicant taking all reasonable steps to protect the interests of its electronic money holders and payment service users and to ensuring continuity and reliability in the performance of the issuance of electronic money and payment services activities.

Textual Amendments

F5 Words in Sch. 1 para. 13 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(29)(c)** (with reg. 3)

[^{F6}**14.** In the case of an applicant which proposes to provide payment initiation services or account information services, the professional indemnity insurance or comparable guarantee which it holds in relation to such services.]

Textual Amendments

F6 Sch. 1 para. 14 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(29)(d)** (with reg. 3)

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SCHEDULE 2

Regulations 6, 13 and 19

Capital Requirements

PART 1

Initial capital

1. For the purposes of these Regulations “initial capital” comprises [^{F7}one or more of the items specified in Article 26(1)(a) to (e) of the capital requirements regulation].

Textual Amendments

F7 Words in Sch. 2 para. 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(30)(a)** (with reg. 3)

2. An applicant for authorisation as an electronic money institution must hold an amount of initial capital of at least 350,000 euro.

3.—(1) Where the business activities of an applicant for registration as a small electronic money institution generate average outstanding electronic money of 500,000 euro or more it must hold an amount of initial capital at least equal to 2% of the average outstanding electronic money of the institution.

(2) Where the applicant has not completed a sufficiently long period of business to calculate the amount of average outstanding electronic money for the purposes of sub-paragraph (1), the applicant 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.

PART 2

Own funds

Qualifying items

4. For the purposes of these Regulations “own funds” means [^{F8}own funds as defined in Article 4(1)(18) of the capital requirements regulation, and are to be calculated in accordance with paragraphs 9 to 12.]

Textual Amendments

F8 Words in Sch. 2 para. 4 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(30)(b)** (with reg. 3)

^{F9}5.

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Textual Amendments

F9 Sch. 2 paras. 5-8 and heading omitted (13.8.2017 for specified purposes, 13.10.2017 for specified purposes, 13.1.2018 in so far as not already in force) 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(30)(c)** (with reg. 3)

F96.

Textual Amendments

F9 Sch. 2 paras. 5-8 and heading omitted (13.8.2017 for specified purposes, 13.10.2017 for specified purposes, 13.1.2018 in so far as not already in force) 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(30)(c)** (with reg. 3)

F9 ...

F97.

F98.

Limits on qualifying items

[**F10**9. For the purposes of calculating own funds—

- (a) the amount of Tier 2 capital must be equal to or less than one third of the amount of Tier 1 capital;
- (b) at least 75% of the amount of Tier 1 capital must be in the form of Common Equity Tier 1 capital.]

Textual Amendments

F10 Sch. 2 para. 9 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(30)(d)** (with reg. 3)

10. The Authority may in temporary and exceptional circumstances direct that an electronic money institution may exceed one or more of the limits described in paragraph 9(1).

11. An electronic money institution must not include in its own funds calculation—

- (a) any item used in an equivalent calculation of own funds by an electronic money institution, authorised payment institution, credit institution, investment firm, asset management company or insurance undertaking in the same group; or
- (b) in the case of an electronic money institution which carries on activities other than electronic money issuance or the provision of payment services, any item included in an own funds calculation required by or under any other enactment.

12. An authorised electronic money institution that carries on activities other than the issuance of electronic money and the provision of payment services related to the issuance of electronic money must not use—

- (a) in its calculation of own funds in accordance with Method A, B or C, any qualifying item included in its calculation of own funds in accordance with Method D;

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- (b) in its calculation of own funds in accordance with Method D, any qualifying item included in its calculation of own funds in accordance with Method A, B or C.

Own funds requirement

- 13.** An authorised electronic money institution must calculate its own funds requirement—
- (a) in accordance with such of Method A, Method B or Method C as the Authority may direct in respect of any activities carried on by the authorised electronic money institution consisting of payment services ^[F11]specified in paragraph 1(a) to (f) of Schedule 1 of the Payment Services Regulations 2017] that are not related to the issuance of electronic money; and
 - (b) in accordance with Method D in respect of any activities carried on by the authorised electronic money institution that consist of the issuance of electronic money and payment services that are related to the issuance of electronic money.

Textual Amendments

- F11** Words in Sch. 2 para. 13(a) 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\(30\)\(e\)](#) (with reg. 3)

- 14.** Where a small electronic money institution is required by regulation 19(2) to maintain own funds, it must calculate its own funds requirement as an amount equal to 2% of the average outstanding electronic money of the institution.

Adjustment by the Authority

- 15.** The Authority may direct in respect of an authorised electronic money institution that—
- (a) an amount of own funds resulting from a calculation made in accordance with paragraph 13(a) is to be up to 20% higher or up to 20% lower;
 - (b) an amount of own funds resulting from a calculation made in accordance with paragraph 13(b) is to be up to 20% higher or up to 20% lower; or
 - (c) the sum of the amounts of own funds resulting from calculations made in accordance with paragraph 13(a) and (b) is to be up to 20% higher or up to 20% lower.
- 16.** The Authority may direct in respect of a small electronic money institution that an amount of own funds resulting from a calculation made in accordance with paragraph 14 is to be up to 20% higher or up to 20% lower.
- 17.** A direction made under paragraph 15 or 16 must be on the basis of an evaluation of the relevant electronic money institution including, if available, and where the Authority considers it appropriate, any risk-management processes, risk loss database or internal control mechanisms of the electronic money institution.
- 18.** The Authority may make a reasonable charge for making an evaluation required under paragraph 17.

Provision for start-up electronic money institutions

- 19.** If an electronic money institution has not completed a full financial year's business, references to a figure for the preceding financial year are to be read as the equivalent figure projected in

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the business plan provided in the electronic money institution's application for authorisation or registration, subject to any adjustment to that plan required by the Authority.

Method A

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

(2) The own funds requirement is 10% of the authorised electronic money institution's fixed overheads for the preceding financial year.

(3) If a material change has occurred in an authorised electronic money institution's business since the preceding financial year, the Authority may direct that the own funds requirement is to be a higher or lower amount than that calculated in accordance with sub-paragraph (2).

Method B

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

(2) The own funds requirement is the sum of the following elements multiplied by the scaling factor—

- (a) 4% of the first 5,000,000 euro of payment volume;
- (b) 2.5% of the next 5,000,000 euro of payment volume;
- (c) 1% of the next 90,000,000 euro of payment volume;
- (d) 0.5% of the next 150,000,000 euro of payment volume; and
- (e) 0.25% of any remaining payment volume.

(3) “Payment volume” means the total amount of payment transactions that are not related to the issuance of electronic money executed by the authorised electronic money institution in the preceding financial year divided by the number of months in that year.

(4) The “scaling factor” is—

- (a) 0.5 for an authorised electronic money institution providing a payment service specified in paragraph 1(f) of Schedule 1 to the Payment Services Regulations [^{F12}2017];
- ^{F13}(b)
- (c) 1 for an authorised electronic money institution providing any other payment service [^{F14}specified in paragraph 1(a) to (e) of Schedule 1 to those Regulations].

Textual Amendments

- F12** Word in Sch. 2 para. 21(4)(a) 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(30)(f)(i)** (with reg. 3)
- F13** Sch. 2 para. 21(4)(b) omitted (13.8.2017 for specified purposes, 13.10.2017 for specified purposes, 13.1.2018 in so far as not already in force) 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(30)(f)(ii)** (with reg. 3)
- F14** Words in Sch. 2 para. 21(4)(c) 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(30)(f)(iii)** (with reg. 3)

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Method C

- 22.**—(1) “Method C” means the calculation method set out in this paragraph.
- (2) The own funds requirement is the relevant indicator multiplied by—
- (a) the multiplication factor; and
 - (b) the scaling factor;
- subject to the proviso in sub-paragraph (7).
- (3) The “relevant indicator” is the sum of the following elements—
- (a) interest income;
 - (b) interest expenses;
 - (c) gross commissions and fees received; and
 - (d) gross other operating income.
- (4) For the purpose of calculating the relevant indicator—
- (a) each element must be included in the sum with its positive or negative sign;
 - (b) income from extraordinary or irregular items may not be used;
 - (c) expenditure on the outsourcing of services rendered by third parties may reduce the relevant indicator if the expenditure is incurred from a payment service provider;
 - (d) the relevant indicator is calculated on the basis of the twelve-monthly observation at the end of the previous financial year;
 - (e) the relevant indicator must be calculated over the previous financial year; and
 - (f) audited figures must be used unless they are not available in which case business estimates may be used.
- (5) The “multiplication factor” is the sum of—
- (a) 10% of the first 2,500,000 euro of the relevant indicator;
 - (b) 8% of the next 2,500,000 euro of the relevant indicator;
 - (c) 6% of the next 20,000,000 euro of the relevant indicator;
 - (d) 3% of the next 25,000,000 euro of the relevant indicator; and
 - (e) 1.5% of any remaining amount of the relevant indicator.
- (6) “Scaling factor” has the meaning given in paragraph 21(4).
- (7) The proviso is that the own funds requirement must not be less than 80% of the average of the previous three financial years for the relevant indicator.

23.—(1) “Method D” means the calculation method set out in this paragraph.

(2) The own funds requirement in respect of the activity of issuing electronic money and providing payment services that are related to the issuance of electronic money is an amount equal to 2% of the average outstanding electronic money of the authorised electronic money institution.

24.—(1) Where—

- (a) an electronic money institution provides payment services that are not related to the issuance of electronic money or carries out any of the activities referred to in regulation 32(1)(b) to (d) and (2); and
- (b) the amount of outstanding electronic money is unknown in advance,

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the institution may calculate its own funds requirement on the basis of a representative portion assumed to be used for the issuance of electronic money and payment services related to the issuance of electronic money, provided that such representative portion can be reasonably estimated on the basis of historical data and to the satisfaction of the Authority.

(2) Where an electronic money institution has not completed a sufficiently long period of business to compile historical data adequate to make the calculation under sub-paragraph (1), 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.

Application of accounting standards

25. Except where this Schedule provides for a different method of recognition, measurement or valuation, whenever a provision in this Schedule refers to an asset, liability, equity or income statement item, an electronic money institution must, for the purpose of that provision, recognise the asset, liability, equity or income statement item and measure its value in accordance with whichever of the following are applicable for the purpose of the institution's external financial reporting—

- (a) Financial Reporting Standards and Statements of Standard Accounting Practice issued or adopted by [^{F15}the Financial Reporting Council Limited];
- (b) Statements of Recommended Practice, issued by industry or sectoral bodies recognised for this purpose by [^{F15}the Financial Reporting Council Limited];
- (c) International Financial Reporting Standards and International Accounting Standards issued or adopted by the International Accounting Standards Board;
- (d) International Standards on Auditing (United Kingdom and Ireland) issued by the [^{F16}Financial Reporting Council Limited or a predecessor body]; and
- (e) the Companies Act 2006.

Textual Amendments

- F15** Words in Sch. 2 para. 25(a)(b) substituted (2.7.2012) by [The Statutory Auditors \(Amendment of Companies Act 2006 and Delegation of Functions etc\) Order 2012 \(S.I. 2012/1741\)](#), art. 1(2), **Sch. para. 12**
- F16** Words in Sch. 2 para. 25(d) substituted (1.8.2012) by [The Payment Services Regulations 2012 \(S.I. 2012/1791\)](#), regs. 1(2)(a), **4**

[^{F17}SCHEDULE 2A

Regulation 59A

Credit agreements

Textual Amendments

- F17** Sch. 2A inserted (14.2.2014 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2014 \(S.I. 2014/366\)](#), arts. 1(3)(4), **18(3)**

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PART 1

Prohibitions and restrictions

Power to prohibit the entry into credit agreements

1.—(1) If it appears to the Authority that sub-paragraph (4) has been, or is likely to be, contravened as respects an EEA authorised electronic money institution exercising passport rights in the United Kingdom, it may by notice given to the institution in accordance with Part 2 of this Schedule impose on the institution a credit prohibition.

(2) If it appears to the Authority that a restriction imposed under paragraph 2 on an EEA authorised electronic money institution exercising passport rights in the United Kingdom has not been complied with, it may by notice given to the institution in accordance with Part 2 of this Schedule impose on the institution a credit prohibition.

(3) “A credit prohibition” means a prohibition on carrying on, or purporting to carry on, in the United Kingdom any business which consists of or includes carrying on an activity—

- (a) of the kind specified by article 36A, 36H, 39D, 39E, 39F, 39G, 60B, 60N, 89A or 89B of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, and
- (b) listed in the Annex to the payment services directive or which the institution is entitled to carry on in accordance with Article 16 of that directive as applied by Article 6 of the electronic money directive.

(4) This sub-paragraph is contravened as respects an EEA authorised electronic money institution exercising passport rights in the United Kingdom if—

- (a) the institution or any of its employees, agents or associates (whether past or present), or
- (b) where the institution is a body corporate, any controller of the institution or an associate of any such controller,

does any of the things specified in sub-paragraph (5).

(5) A person does a thing specified in this sub-paragraph if the person—

- (a) commits any offence involving fraud or other dishonesty or violence;
- (b) contravenes any provision made by or under—
 - (i) the Consumer Credit Act 1974;
 - (ii) the 2000 Act, to the extent that that Act relates to any activity of the kind specified by article 36A, 36H, 39D, 39E, 39F, 39G, 60B, 60N, 89A or 89B of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;
 - (iii) any other enactment regulating the provision of credit to individuals or other transactions with individuals;
- (c) contravenes any provision in force in an EEA State which corresponds to a provision of the kind mentioned in paragraph (b);
- (d) practices discrimination on grounds of sex, colour, race or ethnic or national origins in, or in connection with, the carrying on of any business;
- (e) engages in business practices appearing to the Authority to be deceitful or oppressive or otherwise unfair or improper (including practices that appear to the Authority to involve irresponsible lending).

(6) A credit prohibition may be absolute or may be imposed—

- (a) for such period,
- (b) until the occurrence of such event, or

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- (c) until such conditions are complied with,
as may be specified in the notice given under sub-paragraph (1) or (2).
- (7) Any period, event or condition so specified may be varied by the Authority on the application of the institution concerned (for which, see paragraph 5).
- (8) A credit prohibition may be withdrawn in whole or in part—
- (a) on the initiative of the Authority, by notice served by the Authority on the institution concerned, and any such notice takes effect on such date as is specified in the notice;
 - (b) on an application submitted by the institution concerned (for which, see paragraph 5).
- (9) Where the Authority withdraws a credit prohibition and imposes a restriction under paragraph (2), the Authority may specify that the withdrawal of the credit prohibition only takes effect when the imposition of the restriction is no longer subject to review (within the meaning of section 391(8) of the 2000 Act).
- (10) For the purposes of sub-paragraph (9), whether the imposition of a restriction is open to review is to be determined in accordance with section 391(8) of the 2000 Act as if the imposition of the restriction were a matter to which a supervisory notice (within the meaning of that section) relates.
- (11) An institution contravening a prohibition imposed under this paragraph is guilty of an offence and liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to a fine.
- (12) In this paragraph—
- “associate” has the same meaning as in article 60L of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;
 - “controller” has the meaning given by section 422 of the 2000 Act.
- (13) If a credit prohibition is in effect in relation to an institution, article 60JB of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 does not apply in relation to that institution.

Power to restrict the entry into credit agreements

- 2.—(1) In this paragraph, “restriction” means a direction that an EEA authorised electronic money institution exercising passport rights in the United Kingdom may not carry on in the United Kingdom, otherwise than in accordance with such conditions as may be specified in the direction, any business which consists of or includes carrying on an activity—
- (a) of the kind specified in article 36A, 36H, 39D, 39E, 39F, 39G, 60B, 60N, 89A or 89B of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;
 - (b) listed in the Annex to the payment services directive or which the institution is entitled to carry on in accordance with Article 16 of that directive as applied by Article 6 of the electronic money directive; and
 - (c) specified in the direction.
- (2) If it appears to the Authority that the situation as respects an EEA authorised electronic money institution exercising passport rights in the United Kingdom is such that the powers conferred by paragraph 1 are exercisable, the Authority may, instead of imposing a credit prohibition impose—
- (a) by notice given in accordance with Part 2 of this Schedule such restriction as appears to it desirable;

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- (b) where it has already imposed a restriction, vary the restriction on the Authority's own initiative by notice given in accordance with Part 2 of this Schedule.
- (3) The Authority may also impose a restriction by notice given in accordance with Part 2 of this Schedule if it withdraws a credit prohibition.
- (4) A restriction may be—
 - (a) withdrawn on the initiative of the Authority, by notice served by the Authority on the institution concerned, and any such notice takes effect on such date as is specified in the notice;
 - (b) withdrawn or varied on an application submitted by the institution concerned (for which, see paragraph 5).
- (5) An institution contravening a restriction is guilty of an offence and liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to a fine.

PART 2

Procedure and appeals

Interpretation

3. In this Part—

“prohibition” means a credit prohibition imposed under paragraph 1(1) or (2) of Part 1 of this Schedule;

“restriction” means a restriction imposed under paragraph 2(2) or (3) of Part 1 of this Schedule;

“the Tribunal” means the Upper Tribunal.

Notice of prohibition or restriction

4.—(1) A prohibition or restriction takes effect—

- (a) immediately, if the relevant notice states that that is the case,
- (b) on such date as may be specified in the notice, or
- (c) if no date is specified in the notice, when the matter to which the notice relates is no longer open to review.

(2) An institution which is aggrieved by the imposition of a prohibition or a restriction by a notice given under this paragraph may refer the matter to the Tribunal.

(3) A prohibition or restriction may be expressed to take effect immediately (or on a specified date) only if the Authority, having regard to the ground on which it is imposing the prohibition or restriction, reasonably considers that it is necessary for the prohibition or restriction to take effect immediately (or on that date).

(4) The notice must—

- (a) give details of the prohibition or restriction,
- (b) state the Authority's reasons for the prohibition or restriction,
- (c) inform the institution that it may make representations to the Authority within such period as is specified in the notice (whether or not the institution has referred the matter to the Tribunal),

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- (d) inform the institution of when the prohibition or restriction takes effect, and
 - (e) inform the institution of its right to refer the matter to the Tribunal.
- (5) The Authority may extend the period allowed under the notice for making representations.
- (6) If, having considered any representations made by the institution, the Authority decides—
- (a) to impose the proposed prohibition or restriction, or
 - (b) if the prohibition or restriction has taken effect, not to withdraw the prohibition or restriction,
- it must give the institution a notice.
- (7) If, having considered any representations made by the institution, the Authority decides—
- (a) not to impose the proposed prohibition or restriction,
 - (b) to impose a different prohibition or restriction, or
 - (c) if the prohibition or restriction has already taken effect, to withdraw the prohibition or restriction,
- it must give the institution a notice.
- (7) A notice under sub-paragraph (6) must inform the institution of its right to refer the matter to the Tribunal.
- (8) A notice under sub-paragraph (7)(b) must comply with sub-paragraph (4).
- (9) If a notice under this paragraph informs an institution of its right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.
- (10) For the purposes of sub-paragraph (1)(c)—
- (a) whether a matter is open to review is to be determined in accordance with section 391(8) of the 2000 Act;
 - (b) the notice to which the matter relates is to be treated as a supervisory notice for the purposes of that section.
- (11) References in this paragraph to the imposition of a restriction include references to the variation of a restriction on the initiative of the Authority.

Application to revoke or vary prohibition or restriction

- 5.—**(1) An application under Part 1 of this Schedule must—
- (a) be made in such manner as the Authority may direct, and
 - (b) contain, or be accompanied by, such other information as the Authority may reasonably require.
- (2) At any time after the application is received and before it is determined, 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.
- (3) Different directions may be given, and different requirements imposed, in relation to different applications or categories of application.
- (4) The Authority may require an applicant to provide information required under this paragraph in such form, or to verify it in such a way, as the Authority may direct.
- (5) If the Authority decides to grant an application, it must give the applicant a notice.
- (6) If the Authority proposes to refuse an application, or to take an action different from or in addition to the one applied for (including a proposal to impose a restriction when withdrawing a prohibition on an application under paragraph 1(8)(b)), it must give the applicant a warning notice.

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(7) If the Authority decides to refuse an application, or to take an action different from or in addition to the one applied for (including a decision to impose a restriction when withdrawing a prohibition on an application under paragraph 1(8)(b)), it must give the applicant a decision notice.

(8) An applicant who is aggrieved by a decision notice given under this paragraph may refer the matter to the Tribunal.

Notice to the home state competent authority

6. If the Authority sends a notice to an institution under this Schedule which imposes, varies or withdraws a prohibition or restriction, it must send a copy of the notice to the institution's home state competent authority]

SCHEDULE 3

Regulation 62

Application and modification of legislation

PART 1

Application and modification of the 2000 Act

Disciplinary powers

[^{F18}1. Sections 66 (disciplinary powers) to 70 (statements of policy: procedure) of the 2000 Act apply with the following modifications—

- (a) in section 66 omit subsections (3)(aa) to (ac), (3A) to (3D), (5A), (8) and (9); and
- (b) for section 66A substitute—

“**66A.**—(1) For the purpose of action by the FCA, a person is guilty of misconduct if, while a relevant person, the person has been knowingly concerned in a contravention of the Electronic Money Regulations 2011 by an electronic money issuer which is an electronic money institution, credit institution, credit union or municipal bank.

(2) “Relevant person” means any person responsible for the management of the electronic money issuer or, where relevant, any person responsible for the management of electronic money issuance by the electronic money issuer.”; and

- (c) in section 67—
 - (i) omit subsections (2A), (2B), (5A), (5B), (8) and (9);
 - (ii) in subsection (1) omit the words from “; and if it proposes” to the end;
 - (iii) in subsection (4) omit the words from “and if it decides” to the end; and
 - (iv) in subsection (7) omit the words “and if the regulator decides” to the end.]

Textual Amendments

F18 Sch. 3 para. 1 substituted (7.3.2016) by [The Financial Services \(Banking Reform\) Act 2013 \(Consequential Amendments\) Order 2016 \(S.I. 2016/163\)](#), arts. 1, 4

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The Tribunal

2. ^{M2}Part 9 of the 2000 Act (hearings and appeals) applies in respect of references to the Upper Tribunal made under these Regulations as it applies in respect of references to the Upper Tribunal made under that Act, with the following modifications—

- (a) in section 133 ^{M3} (proceedings before Tribunal: general provision)—
 - (i) omit subsection (1)(b) and (c);
 - (ii) in subsection (2) in the definition of “relevant decision” omit “, (b) or (c)”;
- [^{F19}(ia) for subsection (7A) substitute—
 - “(7A) A reference is a “disciplinary reference” for the purposes of this section if it is in respect of any of the following decisions—
 - (a) a decision to publish a statement under regulation 50 of the Electronic Money Regulations 2011;
 - (b) a decision to impose a penalty under regulation 51 of those Regulations;
 - (c) a decision to suspend or impose a restriction on authorisation under regulation 52 of those Regulations;
 - (d) a decision to take action under section 66 of the 2000 Act as applied by those Regulations;
 - (e) a decision to take action under section 345 of the 2000 Act as applied by those Regulations.”;]
- (b) in section 133A (decision and supervisory notices, etc)—
 - (i) in subsection (1) omit “, as a result of section 388(2),”; and
 - ^{F20}(ii)
- (c) in section 133B (offences)—
 - (i) omit subsection (1)(b) and (c); and
 - (ii) in subsection (4)(a) for “the statutory maximum” substitute “ level 5 on the standard scale ”.

Textual Amendments

F19 Sch. 3 para. 2(a)(ia) inserted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), **Sch. 2 para. 196(5)(b)**

F20 Sch. 3 para. 2(b)(ii) omitted (14.2.2014 for specified purposes, 1.4.2014 in so far as not already in force) by virtue of [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2014 \(S.I. 2014/366\)](#), arts. 1(3)(4), **18(4)(a)**

Marginal Citations

M2 Sections 132 and 137 were repealed by [S.I. 2010/22](#).

M3 Substituted, together with sections 133A and 133B, by [S.I. 2010/22](#).

[^{F21}Authority rules

2A.—(1) Section 137A of the 2000 Act applies for the purposes of these Regulations as if—

- (a) references to authorised persons were references to authorised electronic money institutions, small electronic money institutions and EEA authorised electronic money institutions;

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- (b) in subsection (1)—
 - (i) the reference in paragraph (a) to the carrying on of regulated activities were to the issuance of electronic money, and
 - (ii) the reference in paragraph (b) to the carrying on of activities which are not regulated activities were to the carrying on of activities in connection with the issuance of electronic money;
- (c) in subsection (5)—
 - (i) references to EEA firms were to EEA authorised issuance of electronic money institutions;
 - (ii) in paragraph (a), reference to permission conferred by Part 2 of Schedule 3 to the 2000 Act were to permission conferred by regulation 29A(2) of these Regulations;
 - (iii) in paragraph (b), reference to any of the single market directives or the emission allowance auctioning regulation were to the electronic money directive;
- (c) after subsection (5) there were inserted—
 - “(6) The FCA may make a rule pursuant to paragraph (1) only if the FCA is also making, or has made, a rule under this section or section 137R concerning the same matter which applies to authorised persons in connection with the issuance of electronic money.”.

(2) Sections 137T (general supplementary powers) and 141A (power to make consequential amendments of references to rules) and Chapter 2 of Part 9A (rules: modification, waiver, contravention and procedural provisions) of the 2000 Act apply in relation to rules made pursuant to paragraph (1) as they do in relation to other rules made by the FCA under section 137A of the 2000 Act, subject to sub-paragraph (3).

(3) Section 138D (actions for damages) applies as if in that section subsection (6) were omitted and “private person” had the meaning given in regulation 72(3) of these Regulations.]

Textual Amendments

F21 Sch. 3 para. 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\(31\)\(a\)](#) (with [reg. 3](#))

Information gathering and investigations

3. ^{M4}Part 11 of the 2000 Act (information gathering and investigations) applies with the following modifications—

- (a) in section 165 ([^{F22}Regulator’s] power to require information: authorised persons etc)—
 - (i) for references to “an authorised person” substitute “ a person mentioned in paragraph (a), (b), (c), (d), (h) or (i) of the definition of “electronic money issuer” in regulation 2(1) of the Electronic Money Regulations 2011 ”;
 - (ii) in subsection (4) for “this Act” substitute “ the Electronic Money Regulations 2011 ”; and
 - (iii) in subsection (7) omit paragraphs [^{F23}(b), (c) and (d)];
- [^{F24}(b) in section 166 (reports by skilled persons)—
 - (i) in subsection (2), for paragraph (a) substitute—

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- “(a) a person mentioned in paragraph (a), (b), (c), (d), (h) or (i) of the definition of “electronic money issuer” in regulation 2(1) of the Electronic Money Regulations 2011 (“A”);
- (ii) omit subsections (10) and (11);]
- [^{F25}(ba) in section 166A (appointment of skilled person to collect and update information), for each reference to an “authorised person” substitute “person mentioned in paragraph (a), (b), (c), (d), (h) or (i) of the definition of “electronic money issuer” in regulation 2(1) of the Electronic Money Regulations 2011;]
- (c) in section 167 ^{M5} (appointment of persons to carry out general investigations)—
 - (i) in subsection (1)—
 - ^{F26}(aa)
 - (bb) in paragraph (a) for “a recognised investment exchange or an authorised person or of an appointed representative” substitute “ a person mentioned in paragraph (a), (b), (c), (d), (h) or (i) of the definition of “electronic money issuer” in regulation 2(1) of the Electronic Money Regulations 2011 ”;
 - (cc) in paragraph (c) for “a recognised investment exchange or an authorised person” substitute “ a person mentioned in paragraph (a), (b), (c), (d), (h) or (i) of the definition of “electronic money issuer” in regulation 2(1) of the Electronic Money Regulations 2011 ”;
 - (ii) in subsection (4)—
 - (aa) for “in relation to a former authorised person (or appointed representative)” substitute “ in relation to a person who was formerly a person mentioned in paragraph (a), (b), (c), (d), (h) or (i) of the definition of “electronic money issuer” in regulation 2(1) of the Electronic Money Regulations 2011 ”;
 - (bb) in paragraph (a) for “he was an authorised person (or appointed representative)” substitute “ it was a person mentioned in paragraph (a), (b), (c), (d), (h) or (i) of the definition of “electronic money issuer” in regulation 2(1) of the Electronic Money Regulations 2011 ”; and
 - (cc) for paragraph (b) substitute—
 - “(b) the ownership or control of a person who was formerly a person mentioned in paragraph (a), (b), (c), (d), (h) or (i) of the definition of “electronic money issuer” in regulation 2(1) of the Electronic Money Regulations 2011 at any time when it was such a person.”;
 - (iii) in subsection (5) for “regulated activities” substitute “ the activity of issuing electronic money ”; ^{F27} ...
- [^{F28}(iiiia) for subsection (5A) substitute—
 - “(5A) “Investigating authority” means the FCA.”; and]
 - (iv) omit subsection (6) ^{M6};
- (d) ^{M7} in section 168 (appointment of persons to carry out investigations in particular cases)—
 - (i) in subsection (1)—
 - [^{F29}(aa) before paragraph (b) insert—
 - “(ab) a person may have contravened any requirement of or imposed under the Electronic Money Regulations 2011;
 - [^{F30}(ac) an EEA authorised electronic money institution exercising passport rights in the United Kingdom may have contravened, or may be

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likely to contravene, a restriction or prohibition within the meaning of paragraph 3 (interpretation) of Schedule 2A to the Electronic Money Regulations 2011 (credit agreements);

(ad) paragraph 1(4) of that Schedule 2A (power to prohibit the entry into credit agreements) may have been contravened, or may be likely to be contravened, as respects an EEA authorised electronic institution exercising passport rights in the United Kingdom”];

(bb) in paragraph (b) for “, [^{F31}191F],” to the end substitute “ or 191F or under regulation 63, 64 or 66 of the Electronic Money Regulations 2011. ”;

(ii) for subsection (2) substitute—

“(2) Subsection (3) also applies if it appears to an investigating authority that there are circumstances suggesting that a person may be guilty of an offence under, or has contravened a requirement of, [^{F32}the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017].”;

(iii) omit subsections (4) and (5); and

[^{F33}(iv) for subsection (6), substitute—

“(6) “Investigating authority” means the FCA.”;]

(e) in section 169 (investigations etc in support of overseas regulator)—

(i) in subsection (8) for “Part XXIII” substitute “ sections 348, 349^{F34}... and 352, as applied with modifications by the Electronic Money Regulations 2011 ”; and

(ii) in subsection (13) for “has the same meaning as in section 195” substitute “ means a competent authority designated in accordance with Article 3 of the electronic money directive ”;

(f) in section 170 (investigations: general)—

(i) in subsection (1) omit “or (5)”;

(ii) in subsection (3)(a) omit “or (4)”;

(iii) for subsection (10) substitute—

“(10) “Investigating authority”, in relation to an investigator, means [^{F35}the FCA].”;

(g) in section 171 ^{M8} (powers of persons appointed under section 167), omit subsections (3A) and (7);

(h) in subsection (4) of section 172 (additional power of persons appointed as a result of section 168(1) or (4)), omit “or (4)”;

(i) in section 174 (admissibility of statements made to investigators)—

(i) in subsection (2) omit “or in proceedings in relation to action to be taken against that person under section 123”;

(ii) in subsection (3)(a) for “398” substitute “ regulation 66 of the Electronic Money Regulations 2011 ”; and

(iii) in subsection (4) omit “or (5)”;

(j) in subsection (8) of section 175 (information and documents: supplemental provisions) omit “or (5)”;

(k) in section 176 ^{M9}(entry of premises under warrant)—

(i) in subsection (1)—

(aa) omit “the Secretary of State,”; and

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- (bb) for “the first, second or third” substitute “ the first or second ”;
- (ii) in subsection (3)(a) for “an authorised person or an appointed representative” substitute “ a person mentioned in paragraph (a), (b), (c), (d), (h) or (i) of the definition of “electronic money issuer” in regulation 2(1) of the Electronic Money Regulations 2011 ”;
- (iii) omit subsection (4);
- (iv) in subsection (10) omit “or (5)”;
- (v) in subsection (11)(a) omit “87C, 87J,”; and
- (l) in subsection (5)(a) of section 177 (offences)—
 - (i) for “six months” substitute “ three months ”; and
 - (ii) for “the statutory maximum” substitute “ level 5 on the standard scale ”.

Textual Amendments

- F22** Words in Sch. 3 para. 3(a) substituted (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 196(5)(c)(i)(aa)**
- F23** Words in Sch. 3 para. 3(a)(iii) substituted (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 196(5)(c)(i)(bb)**
- F24** Sch. 3 para. 3(b) substituted (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 196(5)(c)(ii)**
- F25** Sch. 3 para. 3(ba) inserted (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 196(5)(c)(iii)**
- F26** Sch. 3 para. 3(c)(i)(aa) omitted (1.4.2013) by virtue of The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 196(5)(c)(iv)(aa)**
- F27** Word in Sch. 3 para. 3(c)(iii) omitted (1.4.2013) by virtue of The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 196(5)(c)(iv)(bb)**,
- F28** Sch. 3 para. 3(c)(iia) inserted (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 196(5)(c)(iv)(cc)**
- F29** Sch. 3 para. 3(d)(i)(aa) substituted (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 196(5)(c)(v)(aa)**
- F30** Words in Sch. 3 para. 3(d)(i)(aa) inserted (14.2.2014 for specified purposes, 1.4.2014 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2014 (S.I. 2014/366), arts. 1(3)(4), **18(4)(b)**
- F31** Word in Sch. 3 para. 3(d)(i)(bb) substituted (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 196(5)(c)(v)(bb)**
- F32** Words in Sch. 3 para. 3(d)(ii) substituted (10.1.2020) by The Money Laundering and Terrorist Financing (Amendment) Regulations 2019 (S.I. 2019/1511), regs. 1(2), **19**
- F33** Sch. 3 para. 3(d)(iv) substituted (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 196(5)(c)(v)(cc)**
- F34** Word in Sch. 3 para. 3(e)(i) omitted (1.4.2013) by virtue of The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 196(5)(c)(vi)**
- F35** Words in Sch. 3 para. 3(f)(iii) substituted (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 196(5)(c)(vii)**

Marginal Citations

- M4** Part 11 was amended by section 18 of, and paragraphs 15, 16 and 17 of Schedule 2 to, the Financial Services Act 2010.

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- M5** Amended by [S.I. 2007/126](#).
- M6** Subsection (6) was inserted by [S.I. 2007/126](#).
- M7** Amended by [S.I. 2007/126](#).
- M8** Amended by [S.I.2007/126](#).
- M9** Amended by [S.I. 2005/1433](#).

Control over electronic money institutions

4. Part 12 ^{M10} of the 2000 Act (control over authorised persons) applies with the following modifications—

- (a) for references to “UK authorised person” substitute “ electronic money institution ”;
- [^{F36}(aa) in section 178 for subsection (2A) substitute—
 - “(2A) In this Part, “the appropriate regulator” means the FCA.”;
- (ab) in section 187(2)(b) omit “section 187A(3)(b) or”;
- (ac) omit section 187A;]
- (b) in section 188 (assessment: consultation with EC competent authorities)—
 - (i) in subsections (1) and (2) after “home state regulator” insert “ or home state competent authority ”; and
 - (ii) in subsection (3) after “host state regulator” insert “ or host state competent authority ”;
- [^{F37}(ba) in section 191A omit subsection (4A);]
- [^{F38}(c) in section 191B (restriction notices)—
 - (i) omit subsection (2A);
 - (ii) after subsection (2B) insert—
 - “(2C) In a restriction notice, the FCA must direct that voting power to which the notice relates is, until further notice, not to be exercisable.”;
 - (iii) for subsection (3)(b) substitute—
 - “(b) voting power that has been exercised as a result of the acquisition is void;”;
- [^{F39}(ca) in section 191C omit subsection (2A);
- (cb) in section 191D omit subsection (1A);]
- (d) after section 191E (requirements for notices under section 191D) insert—

“191EA Direction by [^{F40}the FCA]

191EA. [^{F40}The FCA] may direct that this Part does not apply in respect of an electronic money institution which carries on business activities other than the issuance of electronic money and payment services.”;

- (e) in section 191F (offences) in subsections (8)(a) and (9)(a), for “the statutory maximum” substitute in each case “ level 5 on the standard scale ”;
- (f) in section 191G (interpretation), in subsection (1), omit the definition of “UK authorised person”; and
- (g) omit section 192 (power to change definitions of control etc.).

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Textual Amendments

- F36** Sch. 3 para. 4(aa)-(ac) inserted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), **Sch. 2 para. 196(5)(d)(i)**
- F37** Sch. 3 para. 4(ba) inserted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), **Sch. 2 para. 196(5)(d)(ii)**
- F38** Sch. 3 para. 4(c) substituted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), **Sch. 2 para. 196(5)(d)(iii)**
- F39** Sch. 3 para. 4(ca)(cb) inserted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), **Sch. 2 para. 196(5)(d)(iv)**
- F40** Words in Sch. 3 para. 4(d) substituted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), **Sch. 2 para. 196(5)(d)(v)**

Modifications etc. (not altering text)

- C1** Sch. 3 para. 4 excluded (20.11.2018) by [The Electronic Money, Payment Services and Payment Systems \(Amendment and Transitional Provisions\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1201\)](#), reg. 1(2), **Sch. 3 para. 7(1)(f)** (with reg. 4)

Marginal Citations

- M10** Sections 178 to 191G were substituted by [S.I. 2009/534](#).

[^{F41}Incoming firms: interventions by the Authority

4A.—(1) Part 13 of the 2000 Act (incoming firms: intervention by FCA or PRA) applies with the following modifications.

(2) References to—

- (a) “the regulator” or “the appropriate regulator” are to be read as references to the Authority;
- (b) requirements imposed by or under the 2000 Act are to be read as references to requirements imposed by or under these Regulations.

(3) Section 193 (interpretation) is to be read as if—

- (a) in subsection (1), for the definition of “incoming firm” there were substituted—
““incoming firm” means an EEA authorised electronic money institution which is exercising, or has exercised, its right to provide services in the United Kingdom in accordance with the Electronic Money Regulations 2011;”,
- (b) subsection (1A) were omitted; and
- (c) for subsection (2) there were substituted—

“(2) Expressions used in this Part and in the Payment Services Regulations 2017 have the same meaning in this Part as they have in those Regulations.”.

(4) Section 194 (general grounds on which power of intervention is exercisable) is to be read as if subsections (1)(c)(ii) and (1AA) to (5) were omitted.

(5) Sections 194A to 194C, 195A, 195B, 198 to 199A and 201 are to be ignored.

(6) Section 195 (exercise of power in support of overseas regulator) is to be read as if—

- (a) subsection (2A) were omitted; and
- (b) in subsection (5)(b), the reference to an EEA firm's EEA authorisation were a reference to an EEA authorised electronic money institution's authorisation under the electronic money directive.

(7) Section 196 (the power of intervention) is to be read as if—

Status: Point in time view as at 10/01/2020.

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- (a) in subsection (1), for paragraphs (a) and (b) there were substituted—
 - “(a) the firm were an authorised electronic money institution; and
 - (b) the FCA were entitled to exercise its power under regulation 12 of the Electronic Money Regulations 2011 (variation of authorisation on Authority’s own initiative) by imposing a requirement such as may, under regulation 7 of those Regulations (imposition of requirements) be included in an authorisation under those Regulations.”; and
- (b) subsection (3) were omitted.
- (8) Section 202 (contravention of requirement) is to be read as if for subsection (2) there were substituted—
 - “(2) Regulation 72 of the Electronic Money Regulations 2011 (right to bring actions) applies to the contravention as if it were a contravention of Part 5 of those Regulations.”.]

Textual Amendments

F41 Sch. 3 para. 4A 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\(31\)\(b\)](#) (with reg. 3)

Auditors and actuaries

- 5. Part 22 (auditors and actuaries) applies with the following modifications—
 - (a) for references to “authorised person” substitute “electronic money institution”; ^{F42}...
 - ^{F43}(aa) for references to “appropriate regulator” or “regulator” substitute “FCA”;
 - (ab) omit all references to “recognised investment exchange”;
 - (ac) in section 340 omit subsections (3A),(5A) and (8)(b);
 - (ad) in section 344 omit subsection (4);
 - (ae) in section 345—
 - (i) in subsection (2)(a) omit “or any particular class of authorised person;”;
 - (ii) omit subsection (2)(b);
 - (iii) in subsection (3)(a), for “FCA-authorised person” substitute “electronic money institution”;
 - (iv) omit subsection (3)(b), (c) and (d);
 - (v) omit subsection (4);
 - (af) omit section 345A;
 - (ag) in section 345B—
 - (i) in paragraph (1) omit “or the PRA proposes to act under section 345A(3)”;
 - (ii) in paragraphs (4) and (7) omit “or the PRA decides to act under section 345A(3)”;
 - (ah) in section 345C omit “or 345A(4)(b)”;
 - (ai) in section 345D omit subsections (2) and (9);]
 - (b) in subsection (1)(a) of section 346 (provision of false or misleading information)—
 - (i) for “six months” substitute “three months”; and
 - (ii) for “the statutory maximum” substitute “level 5 on the standard scale”.

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Textual Amendments

- F42** Word in Sch. 3 para. 5(a) omitted (1.4.2013) by virtue of [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), **Sch. 2 para. 196(5)(e)(i)**
- F43** Sch. 3 para. 5(aa)-(ai) inserted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), **Sch. 2 para. 196(5)(e)(ii)**

Restriction on disclosure of information

6. Sections 348 (restrictions on disclosure of confidential information by ^{F44}[FCA, PRA] etc), 349 (exceptions from section 348) ^{F45}... and 352 ^{M11} (offences) of the 2000 Act apply with the following modifications—

- (a) in section 348—
- ^{F46}(i) in subsection (2)(b) for the words from “, the PRA” to the end substitute “under the Electronic Money Regulations 2011; and]
 - (ii) in subsection (3)(a) for “this Act” substitute “ the Electronic Money Regulations 2011 ”;
 - (iii) in subsection (5)—
 - (aa) for “this Part”, substitute “ the Electronic Money Regulations 2011 ”;
 - (bb) omit paragraphs ^{F47}(aa) and (c)];
 - (cc) in paragraph (e) for “a person mentioned in paragraphs (a) to (c)” substitute “^{F48}the FCA”];
 - ^{F49}(dd) in paragraph (ea) for “a person mentioned in those paragraphs” substitute “the FCA”];
 - (ee) in paragraph (f) for “a person mentioned in those paragraphs” substitute “the FCA]
 - ^{F50}(iv) in subsection (6) for paragraphs (a) and (b) substitute “any body or person appointed under regulation 48 of the Electronic Money Regulations 2011”; and]
- ^{F51}(b) in section 349—
- (i) in subsection (2)(c) omit “or the PRA”;
 - (ii) omit subsections (3A) and (3B).]

Textual Amendments

- F44** Words in Sch. 3 para. 6 substituted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), **Sch. 2 para. 196(5)(f)(i)**
- F45** Words in Sch. 3 para. 6 omitted (1.4.2013) by virtue of [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), **Sch. 2 para. 196(5)(f)(ii)**
- F46** Sch. 3 para. 6(a)(i) substituted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), **Sch. 2 para. 196(5)(f)(iii)(aa)**
- F47** Words in Sch. 3 para. 6(a)(iii)(bb) substituted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), **Sch. 2 para. 196(5)(f)(iii)(bb)**
- F48** Words in Sch. 3 para. 6(a)(iii)(cc) substituted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), **Sch. 2 para. 196(5)(f)(iii)(cc)**

Status: Point in time view as at 10/01/2020.

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- F49** Sch. 3 para. 6(a)(iii)(dd)(ee) substituted for Sch. 3 para. 6(a)(iii)(dd) (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 196(5)(f)(iii)(dd)**
- F50** Sch. 3 para. 6(a)(iv) substituted (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 196(5)(f)(iii)(ee)**
- F51** Sch. 3 para. 6(b) substituted (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 196(5)(f)(iv)**

Marginal Citations

- M11** Section 352 was amended by section 208 of, and Schedule 26 to, the [Criminal Justice Act 2003 \(c.44\)](#).

Insolvency

7. Sections 359^{M12} (administration order), 367 (winding-up petitions) and 368 (winding-up petitions: EEA and Treaty firms) of the 2000 Act apply with the following modifications—

- (a) for references to “an authorised person” substitute “ an electronic money institution or an EEA electronic money institution ”;
- [^{F52}(aa) omit references to a recognised investment exchange;]
- (b) in section 359—
- (i) omit subsections (1)(b), (3)(b) and (c) ^{M13} and (5);
- (ii) for subsection (1)(c) substitute—
- “ (c) is issuing or has issued electronic money in contravention of regulation 63(1) of the Electronic Money Regulations 2011.”;
- (iii) in subsection (3)(a) omit “or partnership” and for “an agreement” substitute “ a contract for electronic issuance or payment services ”; and
- (iv) in subsection (4) omit the definitions of “agreement”, “authorised deposit taker”, “authorised reclaim fund”^{M14} and “relevant deposit”;
- (c) in section 367—
- (i) omit subsections (1)(b), (2), (5), (6) and (7);
- (ii) for subsection (1)(c) substitute—
- “ (c) is issuing or has issued electronic money in contravention of regulation 63(1) of the Electronic Money Regulations 2011.”; and
- (iii) in subsection (4) for “an agreement” substitute “ a contract for electronic money issuance or payment services ”; and
- [^{F53}(d) in section 368, for “a regulator” in each place it appears substitute “the FCA”];

Textual Amendments

- F52** Sch. 3 para. 7(aa) inserted (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 196(5)(g)(i)**
- F53** Sch. 3 para. 7(d) substituted (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 196(5)(g)(ii)**

Marginal Citations

- M12** Substituted by the Enterprise Act 2002, section 248(3), Schedule 17, paragraphs 53 and 55 and amended by [S.I. 2005/1455](#).

Status: Point in time view as at 10/01/2020.

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M13 Subsection (3)(c) was inserted by the [Dormant Bank and Building Society Accounts Act 2008 \(c.31\), section 15, Schedule 2, paragraph 6.](#)

M14 Inserted by the Dormant Bank and Building Society Accounts Act 2008.

Warning notices and decision notices

8. Part 26 of the 2000 Act (notices) applies with the following modifications—

- [^{F54}(za) in section 387 (warning notices), omit subsections (1A) and (3A);]
- (a) in section 388 (decision notices), [^{F55}omit subsections (1A) and (2)];
- (b) in section 390 ^{M15} (final notices)—
- (i) omit subsections (6) and (10); and
- (ii) in subsection (8) omit “or (6)(c)”;
- (c) in section 391 (publication)—
- [^{F56}(iza) for subsection (1ZB) substitute—
- “(1ZB) A warning notice falls within this subsection if it is given under—
- (a) section 67;
- (b) section 345B;
- (c) regulation 10 of the Electronic Money Regulations 2011 (including regulation 10 as applied by regulation 15 of those Regulations);
- (d) regulation 29 of those Regulations;
- (e) regulation 35 of those Regulations;
- (f) regulation 53 of those Regulations; or
- (g) regulation 56 of those Regulations.”;
- (izb) omit subsection (6A);]
- (i) in subsection (10) for “has the same meaning as in section 395” substitute “ means a notice given under regulation 11(6), (9) or (10)(b) (including as applied by regulation 15) of [^{F57}, or paragraph 4 of Schedule 4A to,] the Electronic Money Regulations 2011 ”; and
- (ii) omit subsection (11).
- (d) for section 392 ^{M16} (application of sections 393 and 394) substitute—
- “**392.** Sections 393 and 394 apply to—
- (a) a warning notice given in accordance with regulations 10(4) (including as applied by regulation 15), 29(2) (in relation to the cancellation of a registration), 35(2), 53(1) or 56(1) of the Electronic Money Regulations 2011;
- (b) a decision notice given in accordance with regulations 10(5)(a) (including as applied by regulation 15), 29(3)(a) (in relation to the cancellation of a registration), 35(3)(a), 53(3) or 56(3) of the Electronic Money Regulations 2011.”; and
- (e) in section 395 [^{F58}(the FCA’s and PRA’s procedures)] in subsection (13) for “in accordance with” to the end substitute “ under regulation 11(6), (9) or (10)(b) (including as applied by regulation 15) of [^{F59}, or paragraph 4 of Schedule 2A to,] the Electronic Money Regulations 2011. ”.

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Textual Amendments

- F54** Sch. 3 para. 8(za) inserted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), **Sch. 2 para. 196(5)(h)(i)**
- F55** Words in Sch. 3 para. 8(a) substituted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), **Sch. 2 para. 196(5)(h)(ii)**
- F56** Sch. 3 para. 8(c)(iza)(izb) inserted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), **Sch. 2 para. 196(5)(h)(iii)(aa)**
- F57** Words in Sch. 3 para. 8(c)(i) inserted (14.2.2014 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2014 \(S.I. 2014/366\)](#), arts. 1(3)(4), **18(4)(c)(i)**
- F58** Words in Sch. 3 para. 8(e) substituted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), **Sch. 2 para. 196(5)(h)(iv)**
- F59** Words in Sch. 3 para. 8(e) inserted (14.2.2014 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2014 \(S.I. 2014/366\)](#), arts. 1(3)(4), **18(4)(c)(ii)**

Marginal Citations

- M15** Amended by [S.I. 2010/22](#).
- M16** Section 392 was amended by sections 24 and 29 of, and Schedule 2 to, the Financial Services Act 2010.

Limitation on powers to require documents

9. Section 413 of the 2000 Act (protected items) applies for the purposes of these Regulations as it applies for the purposes of that Act.

PART 2

Application and modification of secondary legislation

The Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001

10. The Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001 ^{M17} apply to any notice, direction or document of any kind given by or to the Authority under these Regulations as they apply to any notice, direction or document of any kind under the 2000 Act.

Marginal Citations

- M17** [S.I. 2001/1420](#); a relevant amending instrument is [S.I. 2005/274](#).

The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001

11. The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 ^{M18} apply with the following modifications—

(a) in regulation 2—

- (i) in the definition of “directive restrictions” for “and [^{F60} Article 13 of the insurance distribution directive]” substitute “, [^{F60} Article 13 of the insurance distribution

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- directive] and Article 3 of the electronic money directive insofar as it applies Article 22 of the payment services directive ”;
- (ii) after the definition of “EEA regulatory authority” insert—
- ““electronic money directive” means Directive 2009/110/EC of the European Parliament and of the Council of 16th September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions;
- “electronic money directive information” means confidential information received by the Authority in the course of discharging its functions as the competent authority under the electronic money directive;” and
- (iii) in paragraph (a) of the definition of “overseas regulatory authority” after “of the Act” insert “ or any function conferred under national legislation in implementation of the electronic money directive ”;
- (b) in regulation 5(4)(a) and (6)(d) and (e) for “an authorised person, former authorised person or former regulated person” substitute in each case “ an electronic money institution or former electronic money institution ”;
- (c) in regulation 8 after paragraph (b) insert—
- [^{F61}“(g) electronic money directive information.”;
- (d) for regulation 9(4) substitute—
- “(4) Paragraph (1) does not permit disclosure to the persons specified in the first column in Part 6 of Schedule 1 unless the disclosure is of electronic money directive information.”;
- (e) in regulation 11 after paragraph (d) insert—
- “(e) electronic money directive information.”;
- (f) in the second column in Part 1 of Schedule 1, in the list of functions beside—
- (i) “An official receiver appointed under section 399 of the Insolvency Act 1986, or an official receiver for Northern Ireland appointed under article 355 of the Insolvency (Northern Ireland) Order 1989”, after paragraph (ii) insert—
- “or
- (iii) electronic money issuers or former electronic money issuers”;
- (ii) “The Department of Enterprise, Trade and Investment in Northern Ireland”, after paragraph (c)(ii) insert—
- “or
- (iii) electronic money issuers or former electronic money issuers”;
- (iii) “The Pensions Regulator”, after paragraph (ii) insert—
- “or
- (iii) electronic money issuers or former electronic money issuers”;
- (iv) “The Charity Commissioners for England and Wales”, after paragraph (ii) insert—
- “or
- (iii) electronic money issuers or former electronic money issuers”; and
- (g) in Schedule 1, after Part 5 insert—

“PART 6

Person

Functions

Status: Point in time view as at 10/01/2020.

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The Commissioners for Her Majesty's Revenue and Customs Their functions under the Money Laundering and Customs Regulations 2007”

Textual Amendments

- F60** Words in Sch. 3 para. 11(a)(i) substituted (27.3.2019) by [The Public Record, Disclosure of Information and Co-operation \(Financial Services\) \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/681\)](#), regs. 1(2), **14(2)(a)**
- F61** Word in Sch. 3 para. 11(c) substituted (27.3.2019) by [The Public Record, Disclosure of Information and Co-operation \(Financial Services\) \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/681\)](#), regs. 1(2), **14(2)(b)**

Marginal Citations

- M18** [S.I. 2001/2188](#); relevant amending instruments are [S.I. 2003/1473](#), [2005/3071](#), [2006/3413](#) and [2010/2628](#).

SCHEDULE 4

Regulation 79

Amendments to primary and secondary legislation

PART 1

Amendments to primary legislation

Consumer Credit Act 1974

1. In section 25(1C) ^{M19} of the Consumer Credit Act 1974 ^{M20} (licensee to be a fit person), after “credit institutions” insert “ (as that Annex was last amended by Directive [2009/111/EC](#)) ”.

Marginal Citations

- M19** Section 25(1C) was inserted by [S.I. 2001/3649](#) and amended by [S.I. 2006/3221](#) and [2007/126](#).
- M20** [1974 c.39](#).

The 2000 Act

2.—(1) The 2000 Act is amended as follows.

(2) In Part 14 (disciplinary measures), in section 206A(2)(suspending permission to carry on regulated activities etc) in the definition of “relevant requirement” omit the word “or” before paragraph (b) and after that paragraph insert—

“(c) by the Payment Services Regulations 2009; or

(d) by the Electronic Money Regulations 2011. ”.

(3) In Part 16 (the ombudsman scheme)—

- (a) in section 226(2)(b) ^{M21} (compulsory jurisdiction), after “authorised person,” insert “ or an electronic money issuer within the meaning of the Electronic Money Regulations 2011 ”; and

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- (b) in section 234(1) ^{M22} (industry funding), after “class of authorised person” insert “, any electronic money issuer within the meaning of the Electronic Money Regulations 2011”.
- (4) In Part 28 (miscellaneous)—
- (a) in section 404(2)(consumer redress schemes) ^{M23}, as substituted by section 14 of the Financial Services Act 2010, omit the word “or” before paragraph (b) and at the end of that paragraph insert—
- “or
- (c) electronic money issuers.”;
- (b) in section 404E (meaning of “consumers”)—
- (i) in subsection (2) omit the word “or” before paragraph (f) and at the end of that paragraph insert—
- “or
- (g) electronic money issuers in issuing electronic money.”; and
- (ii) in subsection (6), after the definition of “engage in any investment activity” insert—
- ““electronic money” has the same meaning as in the Electronic Money Regulations 2011 and any reference to issuing electronic money must be read accordingly.”.
- (5) In section 404F (other definitions etc)—
- (i) after subsection (6) insert—
- “(6A) References in sections 404 and 404E to an “electronic money issuer” are references to a person mentioned in paragraph (a), (b), (c), (d), (h) or (i) of the definition of “electronic money issuer” in regulation 2(1) of the Electronic Money Regulations 2011.”; and
- (ii) in subsection (8), in paragraph (a) omit the word “or” before paragraph (b) and at the end of that paragraph insert—
- “or
- (c) the variation under regulation 8 or 11 of the Electronic Money Regulations 2011 of an authorisation under those regulations.”.
- (6) In paragraph 12 of Schedule 1A (further provision about the consumer financial education body) ^{M24}—
- (a) in the cross heading preceding paragraph 12 for “or payment service providers” substitute — “, payment service providers or electronic money issuers”;
- (b) in sub-paragraph (1)(a) after “authorised persons” insert “, electronic money issuers”;
- (c) in sub-paragraph (1)(b) after “authorised person” insert “, electronic money issuer”; and
- (d) after sub-paragraph (4) insert—
- “(4A) “Electronic money issuer” means a person who is an electronic money issuer for the purposes of the Electronic Money Regulations 2011 as a result of falling within any of paragraphs (a) to (e) and (h) to (j) of the definition in regulation 2(1).”.
- (7) In paragraph 8(6) of Schedule 11A (transferable securities) ^{M25} for “4(1)(a)” substitute “4(1)”.
- (8) In paragraph 13(4) of Schedule 17 (the ombudsman scheme) ^{M26}, after “an authorised person,” insert “an electronic money issuer within the meaning of the Electronic Money Regulations 2011”.

Marginal Citations

M21 Section 226(2)(b) was amended by [S.I. 2009/209](#).

M22 Section 234(1) was amended by [S.I. 2009/209](#).

Status: Point in time view as at 10/01/2020.

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- M23** Section 404, together with sections 404A to 404G, was substituted by section 14 of the [Financial Services Act 2010 \(c.28\)](#).
- M24** Schedule 1A was inserted by Schedule 1 to the Financial Services Act 2010.
- M25** Schedule 11A was inserted by [S.I. 2005/1433](#).
- M26** Paragraph 13(4) of Schedule 17 was amended by [S.I. 2009/209](#).

The Terrorism Act 2000

3. In the Terrorism Act 2000 ^{M27}—
- (a) in Part 1 of Schedule 3A (regulated sector) ^{M28}—
- (i) in paragraph 1(1)(b), for “and 14” substitute “ , 14 and 15 ”;
- (ii) in paragraph 1(2)(a), for “Article 4(1)(a)” substitute “ Article 4(1) ”; and
- (iii) in paragraph 3(1), at the end of the definition of “Banking Consolidation Directive” insert “ as last amended by Directive [2009/111/EC](#) ”;
- (b) in paragraph 6(1) of Schedule 6 (financial information)—
- (i) in sub-paragraph (g), after “credit institutions” insert “ as last amended by Directive [2009/111/EC](#) ”;
- (ii) omit the word “and” at the end of sub-paragraph (h) and after that sub-paragraph insert—
- “(ha) an electronic money institution within the meaning of Directive [2009/110/EC](#) of the European Parliament and of the Council of 16th September 2009 relating to the taking up, pursuit and prudential supervision of the business of electronic money institutions, and”; and
- (iii) in sub-paragraph (h), for “and 14” substitute “ , 14 and 15 ”.

Marginal Citations

M27 [2000 c.11](#).

M28 Schedule 3A was inserted by the Anti-terrorism, [Crime and Security Act 2001 \(c.24\)](#), section 3, [Schedule 2](#), paragraphs 5 and 6.

The Proceeds of Crime Act 2002

4. In Part 1 of Schedule 9 to the Proceeds of Crime Act 2002 ^{M29} (regulated sector) —
- (a) in paragraph 1(1)(b), for “and 14” substitute “ , 14 and 15 ”;
- (b) in paragraph 1(2)(a), for “Article 4(1)(a)” substitute “ Article 4(1) ”; and
- (c) in paragraph 3(1), at the end of the definition of “the Banking Consolidation Directive” insert “ as last amended by Directive [2009/111/EC](#) ”.

Marginal Citations

M29 [2002 c.29](#). Part 1 of Schedule 9 was substituted by [S.I. 2007/3287](#).

The Companies Act 2006

5. In the Companies Act 2006 ^{M30}—

Status: Point in time view as at 10/01/2020.

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- (a) in section 1173(1) (minor definitions: general), in the definition of “credit institution”—
 - (i) for “Article 4.1(a)” substitute “ Article 4.1 ”; and
 - (ii) at the end insert “ as last amended by Directive [2009/111/EC](#) ”; and
- (b) in section 1210(3) (meaning of “statutory auditor” etc.), in paragraph (a) of the definition of “bank”—
 - (i) for “Article 4.1(a)” substitute “ Article 4.1 ”; and
 - (ii) at the end insert “ as last amended by Directive [2009/111/EC](#) ”.

Marginal Citations

M30 [2006 c.46](#).

The Counter-Terrorism Act 2008

6. In Part 2 of Schedule 7 to the Counter-Terrorism Act 2008 ^{M31} (terrorist financing and money laundering) —

- (a) in paragraph 5(1)(a), for “Article 4(1)(a)” substitute “ Article 4(1) ”;
- (b) in paragraph 5(2)(a), for “and 14” substitute “ , 14 and 15 ”; and
- (c) in paragraph 7, at the end of the definition of “the banking consolidation directive” insert “ as last amended by Directive [2009/111/EC](#) ”.

Marginal Citations

M31 [2008 c.28](#).

PART 2

Amendments to secondary legislation

The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975

7. The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 ^{M32} is amended as follows—

- (a) in article 2(1), after the definition of “director” insert—

““electronic money institution” has the meaning given by regulation 2(1) of the Electronic Money Regulations 2011;”;
- (b) in article 3(g), in the table, at the end insert—

“17	A director or manager responsible for the management of the electronic money or payment services business of an electronic money institution.	The Financial Services Authority.
18	A controller of an electronic money institution.	The Financial Services Authority.”;

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(c) omit the word “or” before sub-paragraph (xii) of article 4(d) and after that sub-paragraph insert—

“(xiii) to refuse an application for registration as an authorised electronic money institution or a small electronic money institution under the Electronic Money Regulations 2011, or

(xiv) to vary or cancel such registration (or to refuse to vary or cancel such registration) or to impose a requirement under regulation 7 of those Regulations.”.

Marginal Citations

M32 [S.I. 1975/1023](#); amended by [S.I. 1986/2268](#); [S.I. 2001/3816](#) and 2007/2149.

The Financial Markets and Insolvency (Settlement Finality) Regulations 1999

8. In regulation 2(1) of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 ^{M33} in the definition of “credit institution”—

(a) for “Article 4(1)(a)” substitute “ Article 4(1) ”; and

(b) after “business of credit institutions” insert “ (as last amended by Directive [2009/111/EC](#)) ”.

Marginal Citations

M33 [S.I. 1999/2979](#); a relevant amending instrument is [S.I.2006/3221](#).

The Competition Act 1998 (Small Agreements and Conduct of Minor Significance) Regulations 2000

9. In paragraph 1 of the Schedule to the Competition Act 1998 (Small Agreements and Conduct of Minor Significance) Regulations 2000 ^{M34}—

(a) in the definition of “credit institution”—

(i) for “Article 4(1)(a)” substitute “ Article 4(1) ”; and

(ii) at the end insert “ as last amended by Directive [2009/111/EC](#) ”; and

(b) in the definition of “financial institution” at the end insert “ as last amended by Directive [2009/111/EC](#) ”.

Marginal Citations

M34 [S.I. 2000/262](#); relevant amending instruments are [S.I. 2006/3221](#) and 2000/2952.

The Competition Act 1998 (Determination of Turnover for Penalties) Order 2000

10. In paragraph 1(1) of the Schedule to the Competition Act 1998 (Determination of Turnover for Penalties) Order 2000 ^{M35}—

(a) in the definition of “credit institution”—

(i) for “Article 4(1)(a)” substitute “ Article 4(1) ”; and

(ii) at the end insert “ as last amended by Directive [2009/111/EC](#) ”; and

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- (b) in the definition of “financial institution” at the end insert “ as last amended by Directive [2009/111/EC](#) ”.

Marginal Citations

M35 [S.I. 2000/309](#); relevant amending instruments are [S.I. 2006/3221](#) and 2000/952.

The Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001

11. The Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001 ^{M36} are amended as follows—

- (a) in regulation 1(2) omit the definition of “electronic money institution”;
- (b) in regulation 2(3)(d) omit “except where the firm is an electronic money institution,”; and
- (c) in regulation 2(4)(a)(ii) omit “(other than an electronic money institution)”.

Marginal Citations

M36 [S.I.2001/2511](#); a relevant amending instrument is [S.I. 2002/765](#).

The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001

12. The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 ^{M37} is amended as follows—

- (a) in article 3(1)—
- (i) in the definition of “credit institution” after “banking consolidation directive” insert “ (as last amended by Directive [2009/111/EC](#)) ”;
- (ii) for the definition of “electronic money” substitute—
- ““electronic money” has the meaning given by regulation 2(1) of the Electronic Money Regulations 2011;”;
- (b) in article 9AB—
- (i) in paragraph (1), for “or a small payment institution” substitute “ , a small payment institution, an electronic money institution or an EEA authorised electronic money institution ”; and
- (ii) in paragraph (2), at the end insert—
- “and “electronic money institution” and “EEA authorised electronic money institution” have the meanings given in the Electronic Money Regulations 2011.”
- (c) in article 9B after “money” insert—
- “by—
- (a) a credit institution, a credit union or a municipal bank; or
- (b) a person who is deemed to have been granted authorisation under regulation 74 of the Electronic Money Regulations 2011 or who falls within regulation 76(1) of those Regulations;”;
- (d) after 9B insert—
- “**9BA.** Articles 9C to 9I and 9K apply only in the case of a person falling within regulation 76(1) of the Electronic Money Regulations 2011.”;

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(e) omit article 9L.

Marginal Citations

M37 [S.I. 2001/544](#); relevant amending instruments are [S.I. 2002/682](#), 2002/1776 and 2009/209.

The Enterprise Act 2002 (Merger Fees and Determination of Turnover) Order 2003

13. In paragraph 1 of the Schedule to the Enterprise Act 2002 (Merger Fees and Determination of Turnover) Order 2003 ^{M38}—

- (a) at the end of the definition of “credit institution” insert “ as last amended by Directive [2009/111/EC](#) ”; and
- (b) at the end of the definition of “financial institution” insert “ as last amended by Directive [2009/111/EC](#) ”.

Marginal Citations

M38 [S.I. 2003/1370](#); a relevant amending instrument is [S.I. 2006/3221](#).

The Conduct of Employment Agencies and Employment Business Regulations 2003

14. In regulation 25(1) of the Conduct of Employment Agencies and Employment Business Regulations 2003 ^{M39}, in the definition of “credit institution”—

- (a) for “Article 4(1)(a)” substitute “ Article 4(1) ”; and
- (b) after “business of credit institutions” insert “ (as last amended by Directive [2009/111/EC](#)) ”.

Marginal Citations

M39 [S.I. 2003/3319](#); a relevant amending instrument is [S.I. 2006/3221](#).

The Financial Services (Distance Marketing) Regulations 2004

15. In regulation 17(2)(c) of the Financial Services (Distance Marketing) Regulations 2004 ^{M40} after “electronic money by” insert “ an electronic money institution within the meaning of the Electronic Money Regulations 2011 or ”.

Marginal Citations

M40 [S.I. 2004/2095](#).

The Credit Institutions (Reorganisation and Winding Up) Regulations 2004

16. In regulation 2(1) of the Credit Institutions (Reorganisation and Winding Up) Regulations 2004 ^{M41}, at the end of the definition of “banking consolidation directive” insert “ as last amended by Directive [2009/111/EC](#) ”.

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Marginal Citations

M41 [S.I. 2004/1045](#); a relevant amending instrument is [S.I. 2006/3221](#).

The Building Societies Act 1986 (Modification of the Lending Limit and Funding Limit Calculations) Order 2004

17. In article 2(1) of the Building Societies Act 1986 (Modification of the Lending Limit and Funding Limit Calculations) Order 2004 ^{M42}, in the definition of “credit institution”—

- (a) omit “the first sub-paragraph of”; and
- (b) for “as amended” substitute “ as last amended by Directive [2009/111/EC](#) ”.

Marginal Citations

M42 [S.I. 2004/3200](#); a relevant amending instrument is [S.I. 2006/3221](#).

The Pension Protection Fund (Entry Rules) Regulations 2005

18. In regulation 1 of the Pension Protection Fund (Entry Rules) Regulations 2005 ^{M43}, at the end insert—

“(6) Until 30th April 2011, amendments made to Directive [2006/48/EC](#) of the European Parliament and of the Council by Directive [2009/110/EC](#) of the European Parliament and of the Council shall be disregarded for the purposes of the definition of “EEA credit institution” in paragraph (3).”.

Marginal Citations

M43 [S.I. 2005/590](#); relevant amending instruments are [S.I. 2009/451](#) and 2010/2628.

The Money Laundering Regulations 2007

19. The Money Laundering Regulations 2007 are amended as follows—

- (a) in regulation 2(1) for the definition of “the electronic money directive” substitute the following definitions—
 - ““the electronic money directive” means Directive [2009/110/EC](#) of the European Parliament and of the Council of 16th September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions;”
 - ““electronic money institution” has the meaning given by regulation 2(1) of the Electronic Money Regulations 2011;”;
- (b) in regulation 3—
 - (i) in paragraph (2)(a) for “Article 4(1)(a)” substitute “ Article 4(1) ”; and
 - (ii) in paragraph (3)(a) for “and 14” substitute “ , 14 and 15 ”;
- (c) in regulation 13(7)(d)—
 - (i) in the opening words for “Article 1(3)(b)” substitute “ Article 2(2) ”;

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- (ii) in paragraph (i) for “150 euro” substitute “ 250 euro or, in the case of electronic money used to carry out payment transactions within the United Kingdom, 500 euro ”; and
- (iii) in paragraph (ii) for “by the bearer” to the end substitute—
“by the electronic money holder (within the meaning of Article 11 of the electronic money directive).”;
- (d) in regulation 17(5) ^{M44} after “those Regulations” insert—
“; and
- (c) any electronic money institution or EEA authorised electronic money institution (within the meaning of the Electronic Money Regulations 2011) which provides payment services mainly falling within paragraph 1(f) of Schedule 1 to the Payment Services Regulations 2009”;
- (e) in regulation 20 after paragraph (5) insert—
“(5A) A relevant person who is an issuer of electronic money must appoint an individual to monitor and manage compliance with, and the internal communication of, the policies and procedures relating to the matters referred to in paragraph (1)(a) to (e), and in particular to—
 - (a) identify any situations of higher risk of money laundering or terrorist financing;
 - (b) maintain a record of its policies and procedures, risk assessment and risk management including the application of such policies and procedures;
 - (c) apply measures to ensure that such policies and procedures are taken into account in all relevant functions including in the development of new products, dealing with new customers and in changes to business activities; and
 - (d) provide information to senior management about the operation and effectiveness of such policies and procedures at least annually.”;
- (f) in regulation 23(1)(a) after paragraph (iii) insert—
“(iv) electronic money institutions.”;
- (g) in regulation 49A(1) ^{M45}, after “Payment Services Regulations 2009” insert “ or the Electronic Money Regulations 2011 ”; and
- (h) in Schedule 1—
 - (i) in the heading, for “and 14” substitute “ , 14 and 15 ”; and
 - (ii) at the end insert—
“**15. Issuing electronic money.**”.

Marginal Citations

M44 Regulation 17(5) was substituted by [S.I. 2009/209](#).

M45 Regulation 49A was inserted by [S.I. 2009/209](#).

Limited Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008

20. In the Limited Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008 ^{M46}, in regulations 32 and 47, in the definitions of “e-money issuer” (in the modifications to the Companies Act 2006), after “a person” insert “ who is registered as an

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authorised electronic money institution or a small electronic money institution within the meaning of the Electronic Money Regulations 2011 or ”.

Marginal Citations

M46 [S.I. 2008/1911](#).

The Payment Services Regulations 2009

21. The Payment Services Regulations 2009 ^{M47} are amended as follows—

- (a) in regulation 2(1)—
 - (i) in the definition of “the banking consolidation directive”, at the end insert “ as last amended by Directive [2009/111/EC](#) ”;
 - (ii) in the definition of “credit institution”, for “Article 4(1)(a)” substitute “ Article 4(1) ”;
 - (iii) for the definition of “the electronic money directive” substitute—
““the electronic money directive” means Directive [2009/110/EC](#) of the European Parliament and of the Council of 16th September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions;”;
 - (iv) in the definition of “electronic money institution”, for “Article 1(3)(a)” substitute “ Article 2(1) ”; and
 - (v) in the definition of “funds”, for “Article 1(3)(b)” substitute “ Article 2(2) ”;
- (b) in regulation 13(4)(e), after “these Regulations” insert “ or the Electronic Money Regulations 2011 ”;
- (c) in regulation 53(3), for “Article 1(3)(b)” substitute “ Article 2(2) ”; and
- (d) in regulation 110(1) ^{M48}, for sub-paragraph (e) substitute—
 - “(e) an electronic money institution which for the purposes of the Electronic Money Regulations 2011 is—
 - (i) registered in the United Kingdom as an authorised electronic money institution or a small electronic money institution; or
 - (ii) an EEA authorised electronic money institution exercising passport rights in the United Kingdom or treated as such by virtue of regulation 75 of those Regulations;”.

Marginal Citations

M47 [S.I. 2009/209](#).

M48 Regulation 110 was amended by [S.I. 2009/2475](#).

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[^{F62}SCHEDULE 5

Regulation 80

Gibraltar

Textual Amendments

F62 Sch. 5 inserted (13.1.2018) by [The Payment Systems and Services and Electronic Money \(Miscellaneous Amendments\) Regulations 2017 \(S.I. 2017/1173\)](#), regs. 1(4), **5(d)**

Exercise of deemed passport rights by Gibraltar-based firms

1.—(1) These Regulations apply as set out in sub-paragraphs (2) and (3) in relation to a firm which—

- (a) has its head office in Gibraltar; and
- (b) is authorised in Gibraltar to issue electronic money and provide payment services in accordance with the electronic money directive.

(2) The firm is to be treated as having an entitlement, corresponding to its passport right deriving from the electronic money directive, to establish a branch or provide services in the United Kingdom.

(3) References in these Regulations to—

- (a) an “EEA authorised electronic money institution” are to be treated as references to the firm;
- (b) a “home state competent authority” are to be treated as references to the competent authority (within the meaning of the electronic money directive) in Gibraltar in relation to the firm; and
- (c) a “passport right” are to be treated as references to the entitlement mentioned in sub-paragraph (2).

Exercise by authorised electronic money institutions of deemed passport rights in Gibraltar

2.—(1) For the purposes of these Regulations, an authorised electronic money institution is to be treated as having an entitlement, corresponding to its passport right, to establish a branch or provide services in Gibraltar.

(2) In relation to an authorised electronic money institution which establishes a branch or provides services in Gibraltar, references in these Regulations to—

- (a) an “EEA branch” are to be treated as including references to such a branch;
- (b) an “EEA State” are to be treated as including references to Gibraltar;
- (c) a “host state competent authority” are to be treated as including references to the competent authority (within the meaning of the electronic money directive) in Gibraltar in relation to the institution; and
- (d) a “passport right” are to be treated as including references to the entitlement mentioned in sub-paragraph (1).

Modification of legislation

3.—(1) Section 138L(1) of the 2000 Act (consultation: general exemptions) has effect for the purposes of these Regulations as if modified by adding at the end “or if it is making rules for the purpose of extending rules that apply to EEA authorised electronic money institutions to Gibraltar-based firms”.

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(2) Paragraph 14 of Schedule 17 to the 2000 Act (the ombudsman scheme: the scheme operator's rules) has effect for the purposes of these Regulations as if modified by adding at the end—

“(8) Sub-paragraphs (4), (5) and (6) do not apply if the scheme operator is making rules for the purpose of extending rules that apply to EEA authorised electronic money institutions to Gibraltar-based firms.”.

Firms which have taken action before 13th January 2018

4. Where an authorised electronic money institution or the Authority has taken action before 13th January 2018 under regulation 28, 29 or 34 in respect of the provision of services, the use of an agent or the establishment of a branch in Gibraltar by that authorised electronic money institution, such action is to be treated as if it had been taken under such regulations as they apply by virtue of paragraph 2.]

Status:

Point in time view as at 10/01/2020.

Changes to legislation:

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