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FINANCIAL SERVICES AND MARKETS

The Electronic Money Regulations 2011

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The Treasury are a government department designated^(a) for the purposes of section 2(2) of the European Communities Act 1972^(b) in relation to payment services and measures relating to payment systems;

The Treasury, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972, make the following Regulations:

PART 1

INTRODUCTORY PROVISIONS

Citation and commencement

- 1.—(1) These Regulations may be cited as the Electronic Money Regulations 2011.
- (2) These Regulations come into force on—
- (a) 9th February 2011 for the purposes of—
- (i) enabling applications to become an authorised electronic money institution and for the variation of an authorisation to be made under regulation 5 and the Authority to determine such applications in accordance with regulations 6 to 9;
 - (ii) enabling applications for registration as a small electronic money institution and the variation of a registration to be made under regulation 12 and the Authority to determine such applications in accordance with regulation 13 and regulations 7 to 9 (as applied by regulation 15);
 - (iii) enabling applications for an agent to be included on the register under regulation 34 and the Authority to determine such applications in accordance with that regulation;
 - (iv) enabling the Authority to give directions as to the manner in which an application under regulation 5(1) or (2), 12(1) or (2) or 34(3) is to be made and enabling the Authority to require the applicant to provide further information in accordance with regulation 5(4), 12(4) or 34(3)(a)(iv), as the case may be;
 - (v) enabling the Authority to cancel an authorisation or registration or vary an authorisation or registration on its own initiative in accordance with regulation 10 or 11 (as applied, in the case of registration, by regulation 15);
 - (vi) requiring a person who has made an application under regulation 5(1) or (2) or 12(1) or (2) to provide information to the Authority in accordance with regulation 17 and enabling the Authority to give directions under that regulation;

(a) The European Communities (Designation) (No.3) Order 1998 (S.I. 1998/2793) and the European Communities (Designation) (No.2) Order 2008 (S.I. 2008/1792).

(b) 1972 c.68; section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c.51) and the European Union (Amendment) Act 2008 (c.7), Schedule 1, Part 1. By virtue of the amendment of section 1(2) made by section 1 of the European Economic Area Act 1993 (c.51) regulations may be made under section 2(2) to implement obligations of the United Kingdom created by or arising under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073, OJ No L 1, 3.11.1994, p. 3) and the Protocol adjusting that Agreement signed at Brussels on 17th March 1993 (Cm 2183, OJ No L 1, 3.1.1994, p.572). Council Directive 2007/64/EC was extended to the EEA by Decision No. 114/2008 of the EEA Joint Committee of 7th November 2008, OJ No. L 339, 18.12.2008, p.103.

- (vii) enabling a person to make a reference to the Upper Tribunal under regulation 9(8), 10(6), 11(5), 29(4) or 34(11);
- (viii) enabling an applicant for authorisation as an electronic money institution to give the Authority a notice of intention under regulation 28(2) and the Authority to give directions as to the manner in which such a notice is to be given and to inform the host state competent authority in accordance with regulation 28(3);
- (ix) enabling the Authority to decide whether to register an EEA branch or to cancel such a registration under regulation 29(1);
- (x) enabling the Authority to give directions under regulation 49 to a person whose application under regulation 5(1) or 12(1) has been granted before 30th April 2011 in respect of—
 - (aa) its provision as from that date of electronic money issuance or payment services; and
 - (bb) its compliance as from that date with requirements imposed by or under Parts 2 to 5 of these Regulations;
- (xi) enabling the Authority to give directions under paragraph 8, 10, 13(a), 15 or 16 of Schedule 2 to a person whose application under regulation 5(1) or 12(1) has been granted before 30th April 2011;
- (xii) requiring a person whose application under regulation 5(1), 12(1) or 34(3) has been granted before 30th April 2011 to provide information to the Authority in accordance with regulation 37 and enabling the Authority to give directions under that regulation;
- (xiii) regulations 30, 47, 59 to 61, 66 to 71, 74 and 78;
- (xiv) regulation 62 in respect of paragraphs 2, 6 and 8 to 11 of Schedule 3;
- (xv) regulation 79 in respect of paragraphs 2, 18 and 19(g) of Schedule 4; and
- (b) 30th April 2011 for all other purposes.

Interpretation

2.—(1) In these Regulations—

“the 2000 Act” means the Financial Services and Markets Act 2000(a);

“agent” means a person who provides payment services on behalf of an electronic money institution;

“authorised electronic money institution” means—

- (a) a person included by the Authority in the register as an authorised electronic money institution pursuant to regulation 4(1)(a); or
- (b) a person deemed to have been granted authorisation by the Authority by virtue of regulation 74;

“the Authority” means the Financial Services Authority;

“average outstanding electronic money” means the average total amount of financial liabilities related to electronic money in issue at the end of each calendar day over the preceding six calendar months, calculated on the first calendar day of each calendar month and applied for that calendar month;

“the banking consolidation directive” means Directive 2006/48/EC of the European Parliament and of the Council of 14th June 2006 relating to the taking up and pursuit of the business of credit institutions(b);

“consumer” means an individual who is acting for purposes other than a trade, business or profession;

(a) 2000 c.8.

(b) OJ No L 177, 30.6.2006, p.1, as last amended by Directive 2009/111/EC.

“credit institution” has the meaning given in Article 4(1) of the banking consolidation directive and includes a branch of the credit institution within the meaning of Article 4(3) of that directive which is situated within the EEA and which has its head office in a territory that is outside the EEA in accordance with Article 38 of that directive;

“credit union” means a credit union within the meaning of—

- (a) the Credit Unions Act 1979(a); or
- (b) the Credit Unions (Northern Ireland) Order 1985(b);

“decision notice” and “warning notice” have the same meaning as in the 2000 Act;

“distributor” means a person who distributes or redeems electronic money on behalf of an electronic money institution but who does not provide payment services on its behalf;

“the EEA” means the European Economic Area;

“EEA agent” means an agent through which an authorised electronic money institution, in exercise of its passport rights, provides payment services in an EEA state other than the United Kingdom;

“EEA authorised electronic money institution” means a person authorised in an EEA state other than the United Kingdom to issue electronic money and provide payment services in accordance with the electronic money directive;

“EEA branch” means a branch established by an authorised electronic money institution, in the exercise of its passport rights, to issue electronic money, provide payment services, distribute or redeem electronic money or carry out other activities in accordance with these Regulations in an EEA state other than the United Kingdom;

“electronic money” means electronically (including magnetically) stored monetary value as represented by a claim on the electronic money issuer which—

- (a) is issued on receipt of funds for the purpose of making payment transactions;
- (b) is accepted by a person other than the electronic money issuer; and
- (c) is not excluded by regulation 3;

“the electronic money directive” means Directive 2009/110/EC(c) 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 amending Directives 2005/60/EC(d) and 2006/48/EC and repealing Directive 2000/46/EC(e);

“electronic money institution” means an authorised electronic money institution or a small electronic money institution;

“electronic money issuer” means any of the following persons when they issue electronic money—

- (a) authorised electronic money institutions;
- (b) small electronic money institutions;
- (c) EEA authorised electronic money institutions;
- (d) credit institutions;
- (e) the Post Office Limited;
- (f) the Bank of England, the European Central Bank and the national central banks of EEA states other than the United Kingdom, when not acting in their capacity as a monetary authority or other public authority;
- (g) government departments and local authorities when acting in their capacity as public authorities;

(a) 1979 c.34.

(b) S.I. 1985/1205 (N.I. 12).

(c) OJ No L 267, 10.10.2009, p.7.

(d) OJ No L 309, 25.11.2005, p.15.

(e) OJ No L 275, 27.10.2000, p.39.

- (h) credit unions;
- (i) municipal banks;
- (j) the National Savings Bank;

“home state competent authority” means the competent authority designated in accordance with Article 3 of the electronic money directive as being responsible for the authorisation and prudential supervision of an EEA authorised electronic money institution which is exercising (or intends to exercise) its passport rights in the United Kingdom;

“host state competent authority” means the competent authority designated in accordance with Article 3 of the electronic money directive in an EEA state in which an authorised electronic money institution exercises (or intends to exercise) its passport rights;

“initial capital” has the meaning given by paragraph 1 of Schedule 2;

“the money laundering directive” means Directive 2005/60/EC of the European Parliament and of the Council of 26th October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing(a);

“municipal bank” means a company which, immediately before 1st December 2001, fell within the definition in section 103 of the Banking Act 1987(b);

“own funds” has the meaning given by paragraph 4 of Schedule 2;

“parent undertaking” has the same meaning as in the Companies Acts (see section 1162 of, and Schedule 7 to, the Companies Act 2006(c));

“passport right” means the entitlement of a person to establish a branch or provide services in an EEA state other than that in which they are authorised to provide electronic money issuance services—

(a) in accordance with the Treaty on the Functioning of the European Union as applied in the EEA; and

(b) subject to the conditions of the electronic money directive;

“payment account” means an account held in the name of one or more payment service users which is used for the execution of payment transactions;

“payment instrument” means any—

(a) personalised device; or

(b) personalised set of procedures agreed between the payment service user and the payment service provider;

“payment services” has the same meaning as in the Payment Services Regulations 2009(d);

“payment service user” means a person when making use of a payment service in the capacity of a payer or payee, or both;

“the payment services directive” means Directive 2007/64/EC of the European Parliament and of the Council of 13th November 2007 on payment services in the internal market(e);

“payment system” means a funds transfer system with formal and standardised arrangements and common rules for processing, clearing and settlement of payment transactions;

“payment transaction” has the meaning given in Article 4(5) of the payment services directive;

“qualifying holding” has the meaning given in Article 4(11) of the banking consolidation directive;

“the register” means the register maintained by the Authority under regulation 4;

(a) OJ No L 309, 25.11.2005, p. 15.

(b) 1987 c.22; repealed by S.I. 2001/3649, article 3(1)(d).

(c) 2006 c.46.

(d) S.I. 2009/209; amended by S.I. 2009/2475.

(e) OJ No L 319, 5.12.2007, p.1.

“small electronic money institution” means a person included by the Authority in the register pursuant to regulation 4(1)(b);

“subsidiary undertaking” has the same meaning as in the Companies Acts (see section 1162 of, and Schedule 7 to, the Companies Act 2006).

(2) In these Regulations references to amounts in euro include references to equivalent amounts in another currency.

(3) Unless otherwise defined, expressions used in these Regulations which are also used in the electronic money directive have the same meaning as in that directive.

(4) Expressions used in a modification to a provision in primary or secondary legislation applied by these Regulations have the same meaning as in these Regulations.

Electronic money: exclusions

3. For the purposes of these Regulations electronic money does not include—

- (a) monetary value stored on instruments that can be used to acquire goods or services only—
 - (i) in or on the electronic money issuer’s premises; or
 - (ii) under a commercial agreement with the electronic money issuer, either within a limited network of service providers or for a limited range of goods or services;
- (b) monetary value that is used to make payment transactions executed by means of any telecommunication, digital or IT device, where the goods or services purchased are delivered to and are to be used through a telecommunication, digital or IT device, provided that the telecommunication, digital or IT operator does not act only as an intermediary between the payment service user and the supplier of the goods and services.

PART 2

REGISTRATION

The register

The register of certain electronic money issuers

4.—(1) The Authority must maintain a register of—

- (a) authorised electronic money institutions and their EEA branches;
- (b) small electronic money institutions;
- (c) agents of electronic money institutions required to be registered under regulation 34; and
- (d) the National Savings Bank where it issues electronic money.

(2) The Authority may include on the register any of the persons mentioned in paragraphs (c), (e), (f) and (g) of the definition of electronic money issuer in regulation 2(1) where such persons issue electronic money.

(3) Where a person mentioned in paragraph (e), (f), (g) or (j) of the definition of an electronic money issuer in regulation 2(1)—

- (a) is not included on the register; and
- (b) issues, or proposes to issue, electronic money,

the person must give notice to the Authority.

(4) A notice under paragraph (3) must be given in such manner as the Authority may direct.

(5) The Authority may—

- (a) keep the register in any form it thinks fit;
 - (b) include on the register such information as the Authority considers appropriate, provided that the register identifies the electronic money issuance for which the institution is authorised or registered under this Part; and
 - (c) exploit commercially the information contained in the register, or any part of that information.
- (6) The Authority must—
- (a) publish the register online and make it available for public inspection;
 - (b) update the register on a regular basis; and
 - (c) provide a certified copy of the register, or any part of it, to any person who asks for it—
 - (i) on payment of the fee (if any) fixed by the Authority; and
 - (ii) in a form (either written or electronic) in which it is legible to the person asking for it.

Authorisation

Application to become an authorised electronic money institution or variation of an existing authorisation

5.—(1) An application to become an authorised electronic money institution must contain or be accompanied by the information specified in Schedule 1.

- (2) An application for the variation of an authorisation must—
- (a) contain a statement of the proposed variation;
 - (b) contain a statement of the electronic money issuance and payment services business which the applicant proposes to carry on if the authorisation is varied; and
 - (c) contain, or be accompanied by, such other information as the Authority may reasonably require.

(3) An application under paragraph (1) or (2) must be made in such manner as the Authority may direct.

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

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

Conditions for authorisation

6.—(1) The Authority may refuse to grant an application for authorisation only if any of the conditions set out in paragraphs (2) to (8) is not met.

(2) The application must comply with the requirements of, and any requirements imposed under, regulation 5.

(3) The applicant must immediately before the time of authorisation hold the amount of initial capital required in accordance with Part 1 of Schedule 2.

- (4) The applicant must be either—
- (a) a body corporate constituted under the law of a part of the United Kingdom having—
 - (i) its head office; and
 - (ii) if it has a registered office, that office, in the United Kingdom; or
 - (b) a body corporate which has a branch that is located in the United Kingdom and whose head office is situated in a territory that is outside the EEA.

(5) The applicant must satisfy the Authority that, taking into account the need to ensure the sound and prudent conduct of the affairs of the institution, it has—

- (a) robust governance arrangements for its electronic money issuance and payment service business, including a clear organisational structure with well-defined, transparent and consistent lines of responsibility;
- (b) effective procedures to identify, manage, monitor and report any risks to which it might be exposed; and
- (c) adequate internal control mechanisms, including sound administrative, risk management and accounting procedures,

which are comprehensive and proportionate to the nature, scale and complexity of electronic money to be issued and payment services to be provided by the institution.

(6) The applicant must satisfy the Authority that—

- (a) having regard to the need to ensure the sound and prudent conduct of the affairs of an authorised electronic money institution, any persons having a qualifying holding in the institution are fit and proper persons;
- (b) the directors and persons responsible for the management of its electronic money and payment services business are of good repute and possess appropriate knowledge and experience to issue electronic money and provide payment services;
- (c) it has a business plan (including for the first three years, a forecast budget calculation) under which appropriate and proportionate systems, resources and procedures will be employed by the institution to operate soundly;
- (d) it has taken adequate measures for the purpose of safeguarding electronic money holders' funds in accordance with regulation 20.

(7) The applicant must comply with a requirement of the Money Laundering Regulations 2007^(a) to be included in a register maintained under those Regulations where such a requirement applies to the applicant.

(8) If the applicant has close links with another person (“CL”) the applicant must satisfy the Authority—

- (a) that those links are not likely to prevent the Authority's effective supervision of the applicant; and
- (b) if it appears to the Authority that CL is subject to the laws, regulations or administrative provisions of a territory which is not an EEA state (“the foreign provisions”), that neither the foreign provisions, nor any deficiency in their enforcement, would prevent the Authority's effective supervision of the applicant.

(9) For the purposes of paragraph (8), an applicant has close links with CL if—

- (a) CL is a parent undertaking of the applicant;
- (b) CL is a subsidiary undertaking of the applicant;
- (c) CL is a parent undertaking of a subsidiary undertaking of the applicant;
- (d) CL is a subsidiary undertaking of a parent undertaking of the applicant;
- (e) CL owns or controls 20% or more of the voting rights or capital of the applicant; or
- (f) the applicant owns or controls 20% or more of the voting rights or capital of CL.

Imposition of requirements

7.—(1) The Authority may include in an authorisation such requirements as it considers appropriate.

(2) A requirement may, in particular, be imposed so as to require the person concerned to—

(a) S.I. 2007/2157; amended by S.I. 2007/3299.

- (a) take a specified action;
 - (b) refrain from taking a specified action.
- (3) A requirement may be imposed by reference to the person's relationship with its group or other members of its group.
- (4) Where—
- (a) an applicant intends to carry on business activities other than the issuance of electronic money and provision of payment services; and
 - (b) the Authority considers that the carrying on of such other business activities will impair, or is likely to impair—
 - (i) the financial soundness of the applicant; or
 - (ii) the Authority's effective supervision of the applicant,
- the Authority may require the applicant to establish a separate body corporate to carry on the issuance of electronic money and provision of payment services.
- (5) A requirement expires at the end of such period as the Authority may specify in the authorisation.
- (6) Paragraph (5) does not affect the Authority's powers under regulation 8 or 11.

Variation etc at request of an authorised electronic money institution

8. The Authority may, on the application of an authorised electronic money institution, vary the person's authorisation by—

- (a) imposing a requirement such as may, under regulation 7, be included in an authorisation;
- (b) cancelling a requirement included in the authorisation or previously imposed under paragraph (a); or
- (c) varying such a requirement,

provided that the conditions set out in regulation 6(4) to (8), and the requirement in regulation 19(1) to maintain own funds, will continue to be met.

Determination of application for authorisation or variation of authorisation

9.—(1) The Authority must determine an application for authorisation or for variation of an authorisation within three months beginning with the date on which it received the completed application.

(2) The Authority may determine an incomplete application if it considers it appropriate to do so, and it must in any event determine any such application within 12 months beginning with the date on which it received the application.

(3) The applicant may withdraw its application, by giving the Authority notice, at any time before the Authority determines it.

(4) If the Authority decides to grant an application for authorisation, or for variation of an authorisation, it must give the applicant notice of its decision stating—

- (a) that authorisation has been granted to carry out electronic money issuance; or
- (b) that the variation has been granted,

described in such manner as the Authority considers appropriate.

(5) The notice must state the date on which the authorisation or variation takes effect.

(6) If the Authority proposes to refuse an application or to impose a requirement it must give the applicant a warning notice.

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

- (a) if it decides to refuse the application or to impose a requirement, give the applicant a decision notice; or
- (b) if it grants the application without imposing a requirement, give the applicant notice of its decision, stating the date on which the authorisation or variation takes effect.

(8) If the Authority decides to refuse the application or to impose a requirement the applicant may refer the matter to the Upper Tribunal.

(9) If the Authority decides to authorise the applicant, or vary its authorisation, it must update the register as soon as practicable.

Cancellation of authorisation

10.—(1) The Authority may cancel a person’s authorisation and remove the person from the register where—

- (a) the person does not issue electronic money within 12 months beginning with the date on which the authorisation took effect;
- (b) the person requests, or consents to, the cancellation of the authorisation;
- (c) the person ceases to engage in business activity for more than six months;
- (d) the person has obtained authorisation through false statements or any other irregular means;
- (e) the person no longer meets, or is unlikely to meet, any of the conditions set out in regulation 6(4) to (8) or the requirement in regulation 19(1) to maintain own funds;
- (f) the person has issued electronic money or provided payment services other than in accordance with the authorisation granted to it;
- (g) the person would constitute a threat to the stability of a payment system by continuing its electronic money or payment services business;
- (h) the cancellation is desirable in order to protect the interests of consumers; or
- (i) the person’s issuance of electronic money or provision of payment services is otherwise unlawful.

(2) A request for cancellation of a person’s authorisation under paragraph (1)(b) must be made in such manner as the Authority may direct.

(3) At any time after receiving a request under paragraph (1)(b) and before determining it, the Authority may require the person making the request to provide it with such further information as it reasonably considers necessary to enable it to determine the request.

(4) Where the Authority proposes to cancel a person’s authorisation, other than at the person’s request, it must give the person a warning notice.

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

- (a) if it decides to cancel the authorisation, give the person a decision notice; or
- (b) if it decides not to cancel the authorisation, give the person notice of its decision.

(6) If the Authority decides to cancel the authorisation, other than at the person’s request, the person may refer the matter to the Upper Tribunal.

(7) Where the period for a reference to the Upper Tribunal has expired without a reference being made, the Authority must as soon as practicable update the register accordingly.

Variation of authorisation on Authority’s own initiative

11.—(1) The Authority may vary a person’s authorisation in any of the ways mentioned in regulation 8 if it appears to the Authority that—

- (a) the person no longer meets, or is unlikely to continue to meet, any of the conditions set out in regulation 6(4) to (8) or the requirement in regulation 19(1) to maintain own funds;

- (b) the person has issued electronic money or provided a payment service other than in accordance with the authorisation granted to it;
 - (c) the person would constitute a threat to the stability of a payment system by continuing to issue electronic money or provide payment services;
 - (d) the variation is desirable in order to protect the interests of consumers; or
 - (e) the person's issuance of electronic money or provision of payment services is otherwise unlawful.
- (2) A variation under this regulation takes effect—
- (a) immediately, if the notice given under paragraph (6) states that this 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 (see paragraph 13).
- (3) A variation 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 exercising the power under paragraph (1), reasonably considers that it is necessary for the variation to take effect immediately or, as the case may be, on that date.
- (4) The Authority must as soon as practicable after the variation takes effect update the register accordingly.
- (5) A person who is aggrieved by the variation of their authorisation under this regulation may refer the matter to the Upper Tribunal.
- (6) Where the Authority proposes to vary a person's authorisation under this regulation, it must give the person notice.
- (7) The notice must—
- (a) give details of the variation;
 - (b) state the Authority's reasons for the variation and its determination as to when the variation takes effect;
 - (c) inform the person that they may make representations to the Authority within such period as may be specified in the notice (whether or not the person has referred the matter to the Upper Tribunal);
 - (d) inform the person of the date on which the variation takes effect; and
 - (e) inform the person of their right to refer the matter to the Upper Tribunal and the procedure for such a reference.
- (8) The Authority may extend the period allowed under the notice for making representations.
- (9) If, having considered any representations made by the person, the Authority decides—
- (a) to vary the authorisation in the way proposed; or
 - (b) if the authorisation has been varied, not to rescind the variation,
- it must give the person notice.
- (10) If, having considered any representations made by the person, the Authority decides—
- (a) not to vary the authorisation in the way proposed;
 - (b) to vary the authorisation in a different way; or
 - (c) to rescind a variation which has taken effect,
- it must give the person notice.
- (11) A notice given under paragraph (9) must inform the person of their right to refer the matter to the Upper Tribunal and the procedure for such a reference.
- (12) A notice under paragraph (10)(b) must comply with paragraph (7).
- (13) For the purposes of paragraph (2)(c), paragraphs (a) to (d) of section 391(8) of the 2000 Act (publication) apply to determine whether a matter is open to review.

Application for registration as a small electronic money institution or variation of an existing registration

12.—(1) An application for registration as a small electronic money institution must contain, or be accompanied by, such information as the Authority may reasonably require.

(2) An application for the variation of a registration must—

- (a) contain a statement of the proposed variation;
- (b) contain a statement of the electronic money issuance and payment services business which the applicant proposes to carry on if the registration is varied; and
- (c) contain, or be accompanied by, such other information as the Authority may reasonably require.

(3) An application under paragraph (1) or (2) must be made in such manner as the Authority may direct.

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

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

Conditions for registration

13.—(1) The Authority may refuse to register an applicant as a small electronic money institution only if any of the conditions set out in paragraphs (2) to (10) is not met.

(2) The application must comply with the requirements of, and any requirements imposed under, regulation 12.

(3) The total business activities of the applicant immediately before the time of registration must not generate average outstanding electronic money that exceeds 5,000,000 euro.

(4) The monthly average over the period of 12 months preceding the application of the total amount of relevant payment transactions must not exceed 3,000,000 euro.

(5) The applicant must immediately before the time of registration hold such amount, if any, of initial capital as is required in accordance with Part 1 of Schedule 2.

(6) The applicant must satisfy the Authority that, taking into account the need to ensure the sound and prudent conduct of the affairs of the institution, it has—

- (a) robust governance arrangements for its electronic money and payment services business, including a clear organisational structure with well-defined, transparent and consistent lines of responsibility; and
- (b) effective procedures to identify, manage, monitor and report any risks to which it might be exposed,

which are comprehensive and proportionate to the nature, scale and complexity of electronic money to be issued and payment services to be provided by the institution.

(7) The applicant must satisfy the Authority that—

- (a) the directors and persons responsible for the management of its electronic money and payment services business are of good repute and possess appropriate knowledge and experience to issue electronic money and provide payment services;
- (b) it has a business plan (including for the first three years, a forecast budget calculation) under which appropriate and proportionate systems, resources and procedures will be employed by the institution to operate soundly; and

- (c) it has taken adequate measures for the purpose of safeguarding electronic money holders' funds in accordance with regulation 20.

(8) None of the individuals responsible for the management or operation of the business has been convicted of—

- (a) an offence under Part 7 of the Proceeds of Crime Act 2002 (money laundering)(**a**) or under the Money Laundering Regulations 2007;
- (b) an offence under section 15 (fund-raising), 16 (use and possession), 17 (funding arrangements), 18 (money laundering) or 63 (terrorist finance: jurisdiction) of the Terrorism Act 2000(**b**);
- (c) an offence under the 2000 Act;
- (d) an offence under the Terrorist Asset-Freezing etc. Act 2010(**c**) or the Al-Qaida and Taliban (Asset-Freezing) Regulations 2010(**d**);
- (e) an offence under these Regulations or the Payment Services Regulations 2009; or
- (f) any other financial crime.

(9) The applicant must be a body corporate whose head office is situated in the United Kingdom.

(10) The applicant must comply with a requirement of the Money Laundering Regulations 2007 to be included in a register maintained under those Regulations where such a requirement applies to the applicant.

(11) For the purposes of paragraph (4), where the applicant has yet to commence the provision of payment services which are not related to the issuance of electronic money, or has been providing such payment services for less than 12 months, the monthly average may be based on the projected total amount of relevant payment transactions over a 12 month period.

(12) In paragraph (4) “relevant payment transactions” in respect of a small electronic money institution means payment transactions which—

- (a) are not related to the issuance of electronic money; and
- (b) are executed by the institution, including any of its agents who are in the United Kingdom.

(13) In paragraph (8) “financial crime” includes any offence involving fraud or dishonesty and, for this purpose, “offence” includes any act or omission which would be an offence if it had taken place in the United Kingdom.

Average outstanding electronic money

14.—(1) Where—

- (a) an applicant 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,

the applicant may make an assessment for the purposes of regulation 13(3) on the basis of a representative portion assumed to be used for the issuance of electronic money, provided that the representative portion can be reasonably estimated on the basis of historical data and to the satisfaction of the Authority.

(2) Where an applicant has not completed a sufficiently long period of business to compile historical data adequate to make the assessment under paragraph (1), the applicant must make the

(a) 2002 c.29. Part 7 was amended by S.I. 2007/3398.
(b) 2000 c.11.
(c) 2010 c.38.
(d) S.I. 2010/1197.

assessment 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.

Supplementary provisions

15. Regulations 7 to 11 apply to registration as a small electronic money institution as they apply to authorisation as an authorised electronic money institution with the following modifications—

- (a) references to authorisation are to be treated as references to registration;
- (b) for regulation 8 substitute—

“**8.**—(1) The Authority may, on the application of a small electronic money institution, vary the person’s registration by—

- (a) imposing a requirement such as may, under regulation 7, be included in a registration;
- (b) cancelling a requirement included in the registration or previously imposed under paragraph (a); or
- (c) varying such a requirement,

provided that the conditions set out in paragraph (2) continue to be met.

(2) The conditions that must continue to be met are—

- (a) the conditions in regulation 13(6) to (10);
- (b) where applicable, compliance with the requirement in regulation 19(2) to maintain own funds;
- (c) the condition that the total business activities of the applicant generate average outstanding electronic money that does not exceed 5,000,000 euro; and
- (d) the condition that the monthly average over any period of 12 months of the total amount of relevant payment transactions does not exceed 3,000,000 euro.

(3) In paragraph (2)(d) “relevant payment transactions” has the same meaning as in regulation 13.”;

(c) in regulation 10 for paragraph (1)(e) substitute—

“(e) the person no longer complies with, or is unlikely to continue to comply with, any of the conditions mentioned in regulation 8(2)(a), (b), (c) and (d);”;

(d) in regulation 11 for paragraph (1)(a) substitute—

“(a) the person no longer complies with, or is unlikely to continue to comply with, any of the conditions mentioned in regulation 8(2)(a), (b), (c) and (d);”.

Application to become an authorised electronic money institution where a financial limit is exceeded

16. Where a small electronic money institution ceases to comply with a condition referred to in regulation 8(2)(c) or (d) (as applied by regulation 15), the institution concerned must, within 30 days of becoming aware of the change in circumstances, apply to become an authorised electronic money institution under regulation 5 if it intends to continue issuing electronic money in the United Kingdom.

Common provisions

Duty to notify changes

17.—(1) If at any time after an applicant has provided the Authority with any information under regulation 5(1), (2) or (4) or 12(1), (2) or (4) and before the Authority has determined the application—

- (a) there is, or is likely to be, a material change affecting any matter contained in that information; or
- (b) it becomes apparent to the applicant that the information is incomplete or contains a material inaccuracy,

the applicant must provide the Authority with details of the change, the complete information or a correction of the inaccuracy (as the case may be) without undue delay, or, in the case of a material change which has not yet taken place, the applicant must provide details of the likely change as soon as the applicant is aware of such change.

(2) The obligation in paragraph (1) also applies to material changes or significant inaccuracies affecting any matter contained in any supplementary information provided pursuant to that paragraph.

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

Electronic money institutions acting without permission

18. If an electronic money institution issues electronic money or carries on a payment service in the United Kingdom, or purports to do so, other than in accordance with an authorisation or registration granted to it by the Authority under these Regulations, or deemed to be so granted under regulation 74, it is to be taken to have contravened a requirement imposed on it under these Regulations.

PART 3

PRUDENTIAL SUPERVISION AND PASSPORTING

Capital requirements

Capital requirements

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

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

whichever is the greater.

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

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

Safeguarding

Safeguarding requirements

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

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

(3) Where—

- (a) only a proportion of the funds that have been received are to be used for the execution of a payment transaction (with the remainder being used for non-payment services); and
- (b) the precise portion attributable to the execution of the payment transaction is variable or unknown in advance,

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

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

- (a) are credited to the electronic money institution’s payment account; or
- (b) are otherwise made available to the electronic money institution,

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

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

(6) Regulation 19 of the Payment Services Regulations 2009 applies in relation to funds received by electronic money institutions and credit unions for the execution of payment transactions that are not related to the issuance of electronic money with the following modifications—

- (a) references to an “authorised payment institution” are to be treated as references to an authorised electronic money institution;
- (b) references to a “small payment institution” are to be treated as references to—
 - (i) a small electronic money institution; and
 - (ii) a credit union; and
- (c) references to a “payment transaction” are to be treated as references to a payment transaction that is not related to the issuance of electronic money.

Safeguarding option 1

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

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

- (a) place them in a separate account that it holds with an authorised credit institution; or
- (b) invest the relevant funds in secure, liquid, low-risk assets (“relevant assets”) and place those assets in a separate account with an authorised custodian.

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

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

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

(5) The institution must keep a record of—

- (a) any relevant funds segregated in accordance with paragraph (1);
- (b) any relevant funds placed in an account in accordance with paragraph (2)(a); and
- (c) any relevant assets placed in an account in accordance with paragraph (2)(b).

(6) For the purposes of this regulation—

- (a) assets are both “secure” and “low risk” if they are—
 - (i) asset items falling into one of the categories set out in Table 1 of point 14 of Annex 1 to Directive 2006/49/EC^(a) for which the specific risk capital charge is no higher than 1.6% but excluding other qualifying items as defined in point 15 of that Annex; or
 - (ii) units in an undertaking for collective investment in transferable securities which invests solely in the assets mentioned in paragraph (i); and
- (b) assets are “liquid” if they are approved as such by the Authority.

(7) In this regulation—

“authorised credit institution” means a person authorised for the purposes of the 2000 Act to accept deposits or otherwise authorised as a credit institution in accordance with Article 6 of the banking consolidation directive other than a person in the same group as the electronic money institution;

“authorised custodian” means a person authorised for the purposes of the 2000 Act to safeguard and administer investments or authorised as an investment firm under Article 5 of Directive 2004/39/EC of 12th April 2004 on markets in financial instruments^(b) which holds those investments under regulatory standards at least equivalent to those set out under Article 13 of that directive.

Safeguarding option 2

22.—(1) An electronic money institution must ensure that—

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

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

(3) In this regulation—

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

“authorised insurer” means a person authorised for the purposes of the 2000 Act to effect and carry out a contract of general insurance as principal or otherwise authorised in accordance with Article 6 of the First Council Directive 73/239/EEC of 24th July 1973 on the business of

(a) OJ No 177, 30.6.2006, p.201.

(b) OJ No L 145, 30.4.2004, p.1.

direct insurance other than life insurance^(a), other than a person in the same group as the electronic money institution;

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

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

Power of the Authority to exclude assets

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

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

Insolvency events

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

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

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

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

(4) In this regulation—

“asset pool” means—

- (a) any relevant funds segregated in accordance with regulation 21(1);

(a) OJ No L 228, 16.8.1973, p.3.

- (b) any relevant funds held in an account in accordance with regulation 21(2)(a);
- (c) any relevant assets held in an account in accordance with regulation 21(2)(b);
- (d) any proceeds of an insurance policy or guarantee held in an account in accordance with regulation 22(1)(b);

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

“insolvency proceeding” means—

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

“security right” means—

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

Accounting and statutory audit

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

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

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

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

(4) The circumstances are that—

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

(a) OJ No L 157, 9.6.2006, p.87.

- (d) the auditor is precluded from stating in the auditor’s report that the annual accounts have been properly prepared in accordance with the Companies Act 2006;
- (e) the auditor is precluded from stating in the auditor’s report, where applicable, that the annual accounts give a true and fair view of the matters referred to in section 495 of the Companies Act 2006 (auditor’s report on company’s annual accounts) including as that section is applied and modified by regulation 39 of the Limited Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008^(a) (“the LLP Regulations”); or
- (f) the auditor is required to state in the auditor’s report in relation to the person concerned any of the facts referred to in subsection (2), (3) or (5) of section 498^(b) of the Companies Act 2006 (duties of auditor) or, in the case of limited liability partnerships, subsection (2), (3) or (4) of section 498 as applied and modified by regulation 40 of the LLP Regulations.

(5) In this regulation a person has close links with an authorised electronic money institution (“A”) if that person is—

- (a) a parent undertaking of A;
- (b) a subsidiary undertaking of A;
- (c) a parent undertaking of a subsidiary undertaking of A; or
- (d) a subsidiary undertaking of a parent undertaking of A.

Outsourcing

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

(2) Where the institution intends to outsource any important operational function, all of the following conditions must be met—

- (a) the outsourcing is not undertaken in such a way as to impair—
 - (i) the quality of the institution’s internal control; or
 - (ii) the ability of the Authority to monitor the authorised electronic money institution’s compliance with these Regulations or the Payment Services Regulations 2009;
- (b) the outsourcing does not result in any delegation by the senior management of the institution of responsibility for complying with the requirements imposed by or under these Regulations or the Payment Services Regulations 2009;
- (c) the relationship and obligations of the institution towards its electronic money holders under these Regulations or the Payment Services Regulations 2009 is not substantially altered;
- (d) compliance with the conditions which the institution must observe in order to become an authorised electronic money institution and remain so is not adversely affected; and
- (e) none of the conditions of the institution’s authorisation requires removal or variation.

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

- (a) compliance by the institution with these Regulations or the Payment Services Regulations 2009 and any requirement of its authorisation under these Regulations;
- (b) the financial performance of the institution; or

(a) S.I. 2008/1911.

(b) Section 498(5) was substituted by S.I. 2008/393.

- (c) the soundness or continuity of the institution's electronic money issuance or provision of payment services.

Record keeping

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

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

Exercise of passport rights

Notice of intention

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

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

- (a) identifies the electronic money issuance, redemption, distribution or payment services which it seeks to carry on in exercise of those rights in that State;
- (b) gives the names of those responsible for the management of a proposed EEA branch, if any;
- (c) provides details of the organisational structure of a proposed EEA branch, if any; and
- (d) identifies the distributors, if any, whom the institution intends to engage to distribute or redeem electronic money in exercise of its passport rights in that State.

(3) The Authority must, within one month beginning with the date on which it receives a notice of intention, inform the host state competent authority of—

- (a) the name and address of the authorised electronic money institution; and
- (b) the information contained in the notice.

(4) Regulation 34 applies where an authorised electronic money institution wishes to exercise its passport rights through an agent.

Registration of EEA branch

29.—(1) If the Authority, taking into account any information received from the host competent authority, has reasonable grounds to suspect that, in connection with the establishment of an EEA branch by an authorised electronic money institution—

- (a) money laundering or terrorist financing within the meaning of the money laundering directive is taking place, has taken place, or has been attempted; or
- (b) the risk of such activities taking place would be increased,

the Authority may refuse to register the EEA branch, or cancel any such registration already made and remove the branch from the register.

(2) If the Authority proposes to refuse to register, or cancel the registration of, an EEA branch, it must give the relevant authorised electronic money institution a warning notice.

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

- (a) if it decides not to register the branch, or to cancel its registration, give the authorised electronic money institution a decision notice; or

(b) if it decides to register the branch, or not to cancel its registration, give the authorised electronic money institution notice of its decision.

(4) If the Authority decides not to register the branch, or to cancel its registration, the authorised electronic money institution may refer the matter to the Upper Tribunal.

(5) If the Authority decides to register, or cancel the registration of, an EEA branch, it must update the register as soon as practicable.

(6) If the Authority decides to cancel the registration the Authority must, where the period for a reference to the Upper Tribunal has expired without a reference being made, update the register as soon as practicable.

Supervision of firms exercising passport rights

30.—(1) Without prejudice to regulation 71, the Authority must co-operate with the relevant host state competent authority or home state competent authority, as the case may be, in relation to the exercise of passport rights by any authorised electronic money institution or EEA authorised electronic money institution.

(2) The Authority must, in particular—

- (a) notify the host state competent authority, whenever it intends to carry out an on-site inspection in the host state competent authority’s territory; and
- (b) provide the host state competent authority or home state competent authority, as the case may be—
 - (i) on request, with all relevant information; and
 - (ii) on its own initiative with all essential information,

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

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

(4) If the Authority has reasonable grounds to suspect that, in connection with the proposed establishment of a branch or the proposed provision of services by an EEA authorised electronic money institution—

- (a) money laundering or terrorist financing within the meaning of the Money Laundering Regulations 2007 is taking place, has taken place, or has been attempted; or
- (b) the risk of such activities taking place would be increased,

it must inform the relevant home state competent authority of its grounds for suspicion.

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

31.—(1) Section 203 (power to prohibit the carrying on of Consumer Credit Act business)(a) and 204 (power to restrict the carrying on of Consumer Credit Act business)(b) of, and Schedule 16 (prohibitions and restrictions imposed by the Office of Fair Trading)(c) to, the 2000 Act apply in relation to EEA authorised electronic money institutions exercising passport rights in the United

(a) Section 203 was amended by the Enterprise Act 2002 (c.40), section 278(1) and Schedule 25, paragraph 40(1) and (7), by the Consumer Credit Act 2006, section 33 and by S.I. 2000/2952 and 2007/3300.

(b) Section 204 was amended by the Enterprise Act 2002, section 278(1) and Schedule 25, paragraph 40(1) and (8).

(c) Schedule 16 was amended by the Enterprise Act 2002, section 278(1) and Schedule 25, paragraph 40(1) and (21).

Kingdom under these Regulations as they apply in relation to EEA firms exercising passport rights under Part 2 of Schedule 3 to the 2000 Act (EEA passport rights) with the following modifications—

(a) in section 203(10)—

(i) for the definition of “ a consumer credit EEA firm” substitute—

““a consumer credit EEA firm” means an EEA authorised electronic money institution (as defined in regulation 2(1) of the Electronic Money Regulations 2011) which is exercising passport rights in the United Kingdom and is carrying on any Consumer Credit Act business;” and

(ii) for the definition of “listed activity” substitute—

““listed activity” means the issuance of electronic money and any activity carried on in accordance with Article 6 of the electronic money directive;” and

(b) in paragraph 2(5)(b) of Schedule 16, for “the firm’s home state regulator” substitute “the home state competent authority (as defined by regulation 2(1) of the Electronic Money Regulations 2011)”.

(2) Sections 21 (businesses needing a licence)(a) and 39(1) (offences against Part 3)(b) of the Consumer Credit Act 1974(c) do not apply in relation to the carrying on by an EEA authorised electronic money institution of electronic money issuance or a payment service which is Consumer Credit Act business, unless the Office of Fair Trading has exercised the power conferred on it by section 203 of the 2000 Act, as applied with modifications by paragraph (1), in relation to that institution.

(3) In this regulation “Consumer Credit Act business” has the same meaning as in section 203 of the 2000 Act.

PART 4

ADDITIONAL ACTIVITIES AND USE OF DISTRIBUTORS AND AGENTS

Additional activities

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

(a) the provision of payment services;

(b) the provision of operational and closely related ancillary services, including—

(i) ensuring the execution of payment transactions;

(ii) foreign exchange services;

(iii) safe-keeping activities; and

(iv) the storage and processing of data;

(c) the operation of payment systems; and

(d) business activities other than the issuance of electronic money, subject to any relevant European Union or national law.

(2) Electronic money institutions may grant credit subject to the same conditions as apply to authorised payment institutions by virtue of regulation 27(2) of the Payment Services Regulations 2009 provided that such credit is not granted from funds safeguarded in accordance with regulation 20.

(a) Section 21 was amended by the Consumer Credit Act 2006, section 33(1).

(b) Section 39 was amended by the Enterprise Act 2002, section 278(1) and Schedule 25, paragraph 6(1) and (19).

(c) 1974 c. 39.

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

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

Use of distributors and agents

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

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

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

Requirement for agents to be registered

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

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

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

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

(i) the name and address of the agent;

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

(aa) in the case of an agent in the United Kingdom, to comply with the Money Laundering Regulations 2007; and

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

(iii) the identity of the directors and persons responsible for the management of the agent and evidence that they are fit and proper persons; and

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

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

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

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

(6) The Authority may refuse to include the agent on the register only if—

(a) it has not received the information referred to in paragraph (3)(a), or is not satisfied that such information is correct;

(b) it is not satisfied that the directors and persons responsible for the management of the agent are fit and proper persons;

(c) it has reasonable grounds to suspect that, in connection with the provision of services through the agent—

(i) money laundering or terrorist financing within the meaning of the money laundering directive (or, in the United Kingdom, the Money Laundering Regulations 2007) is taking place, has taken place, or has been attempted; or

(ii) the risk of such activities taking place would be increased.

(7) Where—

(a) an authorised electronic money institution intends to provide payment services through an EEA agent; and

(b) the Authority proposes to include the EEA agent on the register,

the Authority must inform the host state competent authority and take account of its opinion (if provided within such reasonable period as the Authority specifies) on any of the matters referred to in paragraph (6)(b) or (c).

(8) The Authority must decide whether to include the agent on the register within a reasonable period of it having received a completed application.

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

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

(a) if it decides not to include the agent on the register, give the applicant a decision notice; or

(b) if it decides to include the agent on the register, give the applicant notice of its decision, stating the date on which the registration takes effect.

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

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

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

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

Removal of agents from the register

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

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

(b) the institution has obtained registration through false statements or any other irregular means;

(c) regulation 34(6)(b) or (c) applies;

(d) the removal is desirable in order to protect the interests of consumers; or

(e) the agent's provision of payment services is otherwise unlawful.

(2) Where the Authority proposes to remove an agent from the register, other than at the request of the institution, it must give the institution a warning notice.

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

(a) if it decides to remove the agent, give the institution a decision notice; or

(b) if it decides not to remove the agent, give the institution notice of its decision.

(4) If the Authority decides to remove the agent, other than at the request of the institution, the institution may refer the matter to the Upper Tribunal.

(5) Where the period for a reference to the Upper Tribunal has expired without a reference being made, the Authority must as soon as practicable update the register accordingly.

Reliance

36.—(1) Where an electronic money institution relies on a third party for the performance of operational functions it must take all reasonable steps to ensure that these Regulations and the Payment Services Regulations 2009 are complied with.

(2) Without prejudice to paragraph (1), an electronic money institution is responsible, to the same extent as if it had expressly permitted it, for anything done or omitted by any of its employees or by a distributor, agent, branch or any other entity issuing, distributing or redeeming electronic money, or providing payment services, on its behalf or to which activities are outsourced.

Duty to notify change in circumstance

37.—(1) Where it becomes apparent to an electronic money institution that there is, or is likely to be, a significant change in circumstances which is relevant to—

- (a) in the case of an authorised electronic money institution—
 - (i) its fulfilment of any of the conditions set out in regulation 6(4) to (8) or the requirement in regulation 19(1) to maintain own funds; or
 - (ii) the issuance, distribution or redemption of electronic money, or the payment services, which it seeks to carry on in exercise of its passport rights;
- (b) in the case of a small electronic money institution, its fulfilment of any of the conditions set out in regulation 8(2) (as applied by regulation 15); or
- (c) in the case of the use of an agent to provide payment services, the matters referred to in regulation 34(6)(b) and (c),

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

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

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

PART 5

ISSUANCE AND REDEEMABILITY OF ELECTRONIC MONEY

Application of Part 5

38. This Part applies to the issuance and redemption of electronic money where the issuance or redemption is carried on from an establishment maintained by an electronic money issuer or its agent in the United Kingdom.

Issuance and redeemability

39. An electronic money issuer must—

- (a) on receipt of funds, issue without delay electronic money at par value; and
- (b) at the request of the electronic money holder, redeem—
 - (i) at any time; and
 - (ii) at par value,

the monetary value of the electronic money held.

Conditions of redemption

- 40.** An electronic money issuer must ensure—
- (a) that the contract between the electronic money issuer and the electronic money holder clearly and prominently states the conditions of redemption, including any fees relating to redemption; and
 - (b) that the electronic money holder is informed of those conditions before being bound by any contract.

Fees for redemption

41.—(1) Redemption may be subject to a fee only where the fee is stated in the contract in accordance with regulation 40(a), and—

- (a) redemption is requested before the termination of the contract;
- (b) the contract provides for a termination date and the electronic money holder terminates the contract before that date; or
- (c) redemption is requested more than one year after the date of termination of the contract.

(2) Any fees for redemption must be proportionate and commensurate with the costs actually incurred by the electronic money issuer.

Amount of redemption

42.—(1) Where before the termination of the contract an electronic money holder makes a request for redemption, the electronic money holder may request redemption of the monetary value of the electronic money in whole or in part, and the electronic money issuer must redeem the amount so requested subject to any fee imposed in accordance with regulation 41.

(2) Where an electronic money holder makes a request for redemption on, or up to one year after, the date of the termination of the contract, the electronic money issuer must redeem—

- (a) the total monetary value of the electronic money held; or
- (b) if the electronic money issuer carries out any business activities other than the issuance of electronic money and it is not known in advance what proportion of funds received by it is to be used for electronic money, all the funds requested by the electronic money holder.

Requests for redemption

43. An electronic money issuer is not required under regulation 39(b) to redeem the monetary value of electronic money where the electronic money holder makes a request for redemption more than six years after the date of termination of the contract.

Redemption rights of persons other than consumers

44. Regulations 41 and 42 shall not apply in the case of a person, other than a consumer, who accepts electronic money and, in such a case, the redemption rights of that person shall be subject to the contract between that person and the electronic money issuer.

Prohibition of interest

- 45.** An electronic money issuer must not award—
- (a) interest in respect of the holding of electronic money; or
 - (b) any other benefit related to the length of time during which an electronic money holder holds electronic money.

Termination of a contract

46. For the purposes of this Part a contract between an electronic money issuer and an electronic money holder terminates when the right to use electronic money for the purpose of making payment transactions ceases.

PART 6

THE AUTHORITY

The functions of the Authority

Functions of the Authority

47.—(1) The Authority is to have the functions conferred on it by these Regulations.

(2) In discharging its function of determining the general policy and principles by reference to which it performs particular functions under these Regulations, the Authority must have regard to—

- (a) the need to use its resources in the most efficient and economic way;
- (b) the responsibilities of those who manage the affairs of electronic money issuers;
- (c) the principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction;
- (d) the desirability of facilitating innovation in connection with the issuance of electronic money and the provision of payment services;
- (e) the international character of financial services and markets and the desirability of maintaining the competitive position of the United Kingdom;
- (f) the need to minimise the adverse effects on competition that may arise from anything done in the discharge of those functions;
- (g) the desirability of facilitating competition in relation to the issuance of electronic money and the provision of payment services; and
- (h) the desirability of enhancing the understanding and knowledge of members of the public of financial matters (including the United Kingdom financial system).

Supervision and enforcement

Monitoring and enforcement

48.—(1) The Authority must maintain arrangements designed to enable it to determine whether—

- (a) persons on whom requirements are imposed by or under Part 2, 3 or 4 of these Regulations are complying with them;
- (b) there has been any contravention of regulation 63(1), 64(1) or 66(1) or (2).

(2) The Authority may maintain arrangements designed to enable it to determine whether persons on whom requirements are imposed by or under Part 5 of these Regulations are complying with them.

(3) The arrangements referred to in paragraphs (1) and (2) may provide for functions to be performed on behalf of the Authority by any body or person who is, in its opinion, competent to perform them.

(4) The Authority must also maintain arrangements for enforcing the provisions of these Regulations.

(5) Paragraph (3) does not affect the Authority's duty under paragraph (1).

Reporting requirements

49.—(1) An electronic money issuer must give the Authority such information in respect of its issuance of electronic money and provision of payment services and its compliance with requirements imposed by or under Parts 2 to 5 of these Regulations as the Authority may direct.

(2) Information required under this regulation must be given at such times and in such form, and verified in such manner, as the Authority may direct.

Public censure

50. If the Authority considers that an electronic money issuer has contravened a requirement imposed on it by or under these Regulations the Authority may publish a statement to that effect.

Financial penalties

51.—(1) The Authority may impose a penalty of such amount as it considers appropriate on—

- (a) an electronic money issuer who has contravened a requirement imposed on it by or under these Regulations; or
- (b) a person who has contravened regulation 63(1), 64(1) or 66(1) or (2).

(2) A penalty under this regulation is a debt due from that person to the Authority, and is recoverable accordingly.

Suspending authorisation etc

52.—(1) If the Authority considers that an electronic money institution has contravened a requirement imposed on it by or under these Regulations, it may—

- (a) suspend, for such period as it considers appropriate, the institution's authorisation or, as the case may be, registration; or
- (b) impose, for such period as it considers appropriate, such limitations or other restrictions in relation to the carrying on of electronic money issuance or payment services business by the institution as it considers appropriate.

(2) The period for which a suspension or restriction is to have effect may not exceed 12 months.

(3) A suspension may relate only to the carrying on of an activity in specified circumstances.

(4) A restriction may, in particular, be imposed so as to require the institution concerned to take, or refrain from taking, specified action.

(5) The Authority may—

- (a) withdraw a suspension or restriction; or
- (b) vary a suspension or restriction so as to reduce the period for which it has effect or otherwise to limit its effect.

(6) Any one or more of the powers in—

- (a) paragraph (1)(a) and (b) of this regulation; and
- (b) regulations 50 and 51,

may be exercised in relation to the same contravention.

Proposal to take disciplinary measures

53.—(1) Where the Authority proposes—

- (a) to publish a statement under regulation 50;
- (b) to impose a penalty under regulation 51; or

- (c) to suspend an institution's authorisation or registration or impose a restriction under regulation 52,

it must give the person concerned a warning notice.

(2) The warning notice must set out the terms of the statement, the amount of the penalty or the period for which the suspension or restriction is to have effect, as the case may be.

(3) If, having considered any representations made in response to the warning notice, the Authority decides to take any of the steps mentioned in paragraph (1), it must without delay give the person concerned a decision notice.

(4) The decision notice must set out the terms of any statement, the amount of any penalty or the period for which any suspension or restriction is to have effect, as the case may be.

(5) If the Authority decides to take any of the steps mentioned in paragraph (1) the person concerned may refer the matter to the Upper Tribunal.

(6) Sections 210(a) (statements of policy) and 211 (statements of policy; procedure) of the 2000 Act apply—

- (a) in respect of the imposition of penalties under regulation 51 as they apply in respect of the imposition of penalties under Part 14 of the 2000 Act (disciplinary measures); and
- (b) in respect of the imposition of a suspension or restriction under regulation 52 as they apply in respect of the imposition of a suspension or restriction under that Part of that Act.

(7) After a statement under regulation 50 is published, the Authority must send a copy of it to the person concerned and to any person to whom a copy of the decision notice was given under section 393(4) of the 2000 Act (third party rights) (as applied by paragraph 8 of Schedule 3 to these Regulations).

Injunctions

54.—(1) If, on the application of the Authority, the court is satisfied—

- (a) that there is a reasonable likelihood that any person will contravene a requirement imposed by or under these Regulations; or
- (b) that any person has contravened such a requirement and that there is a reasonable likelihood that the contravention will continue or be repeated,

the court may make an order restraining (or, in Scotland, an interdict prohibiting) the contravention.

(2) If, on the application of the Authority, the court is satisfied—

- (a) that any person has contravened a requirement imposed by or under these Regulations; and
- (b) that there are steps which could be taken for remedying the contravention,

the court may make an order requiring that person, and any other person who appears to have been knowingly concerned in the contravention, to take such steps as the court may direct to remedy it.

(3) If, on the application of the Authority, the court is satisfied that any person may have—

- (a) contravened a requirement imposed by or under these Regulations; or
- (b) been knowingly concerned in the contravention of such a requirement,

it may make an order restraining (or, in Scotland, an interdict prohibiting) them from disposing of, or otherwise dealing with, any assets of theirs which it is satisfied that they are reasonably likely to dispose of or otherwise deal with.

(4) The jurisdiction conferred by this regulation is exercisable by the High Court and the Court of Session.

(a) Section 210 was amended by the Financial Services Act 2010 (c.28) Schedule 2, paragraph 20.

(5) In paragraph (2), references to remedying a contravention include references to mitigating its effect.

Power of Authority to require restitution

55.—(1) The Authority may exercise the power in paragraph (2) if it is satisfied that an electronic money issuer (referred to in this regulation and regulation 56 as “the person concerned”) has contravened a requirement imposed by or under these Regulations, or been knowingly concerned in the contravention of such a requirement, and that—

- (a) profits have accrued to the person concerned as a result of the contravention; or
- (b) one or more persons have suffered loss or been otherwise adversely affected as a result of the contravention.

(2) The power referred to in paragraph (1) is a power to require the person concerned, in accordance with such arrangements as the Authority considers appropriate, to pay to the appropriate person or distribute among the appropriate persons such amount as appears to the Authority to be just having regard—

- (a) in a case within sub-paragraph (a) of paragraph (1), to the profits appearing to the Authority to have accrued;
- (b) in a case within sub-paragraph (b) of that paragraph, to the extent of the loss or other adverse effect;
- (c) in a case within both of those sub-paragraphs, to the profits appearing to the Authority to have accrued and to the extent of the loss or other adverse effect.

(3) In paragraph (2) “appropriate person” means a person appearing to the Authority to be someone—

- (a) to whom the profits mentioned in paragraph (1)(a) are attributable; or
- (b) who has suffered the loss or adverse effect mentioned in paragraph (1)(b).

Proposal to require restitution

56.—(1) If the Authority proposes to exercise the power in regulation 55(2), it must give the person concerned a warning notice.

(2) The warning notice must state the amount which the Authority proposes to require the person concerned to pay or distribute as mentioned in regulation 55(2).

(3) If, having considered any representations made in response to the warning notice, the Authority decides to exercise the power in regulation 55(2), it must without delay give the person concerned a decision notice.

(4) The decision notice must—

- (a) state the amount that the person concerned is to pay or distribute;
- (b) identify the person or persons to whom that amount is to be paid or among whom that amount is to be distributed; and
- (c) state the arrangements in accordance with which the payment or distribution is to be made.

(5) If the Authority decides to exercise the power in regulation 55(2), the person concerned may refer the matter to the Upper Tribunal.

Restitution orders

57.—(1) The court may, on the application of the Authority, make an order under paragraph (2) if it is satisfied that an electronic money issuer has contravened a requirement imposed by or under these Regulations, or been knowingly concerned in the contravention of such a requirement, and that—

- (a) profits have accrued to the electronic money issuer as a result of the contravention; or

- (b) one or more persons have suffered loss or been otherwise adversely affected as a result of the contravention.
- (2) The court may order the electronic money issuer to pay to the Authority such sum as appears to the court to be just having regard—
- (a) in a case within sub-paragraph (a) of paragraph (1), to the profits appearing to the court to have accrued;
 - (b) in a case within sub-paragraph (b) of that paragraph, to the extent of the loss or other adverse effect;
 - (c) in a case within both those sub-paragraphs, to the profits appearing to the court to have accrued and to the extent of the loss or other adverse effect.
- (3) Any amount paid to the Authority in pursuance of an order under paragraph (2) must be paid by it to such qualifying person or distributed by it among such qualifying persons as the court may direct.
- (4) In paragraph (3), “qualifying person” means a person appearing to the court to be someone—
- (a) to whom the profits mentioned in paragraph (1)(a) are attributable; or
 - (b) who has suffered the loss or adverse effect mentioned in paragraph (1)(b).
- (5) On an application under paragraph (1) the court may require the electronic money issuer to supply it with such accounts or other information as it may require for any one or more of the following purposes—
- (a) establishing whether any and, if so, what profits have accrued to them as mentioned in sub-paragraph (a) of that paragraph;
 - (b) establishing whether any person or persons have suffered any loss or adverse effect as mentioned in sub-paragraph (b) of that paragraph; and
 - (c) determining how any amounts are to be paid or distributed under paragraph (3).
- (6) The court may require any accounts or other information supplied under paragraph (5) to be verified in such manner as it may direct.
- (7) The jurisdiction conferred by this regulation is exercisable by the High Court and the Court of Session.
- (8) Nothing in this regulation affects the right of any person other than the Authority to bring proceedings in respect of the matters to which this regulation applies.

Complaints

58.—(1) The Authority must maintain arrangements designed to enable electronic money holders and other interested parties to submit complaints to it that a requirement imposed by or under Part 5 of these Regulations has been breached by an electronic money issuer.

(2) Where it considers it appropriate, the Authority must include in any reply to a complaint under paragraph (1) details of the ombudsman scheme established under Part 16 of the 2000 Act (the ombudsman scheme).

Miscellaneous

Costs of supervision

59.—(1) The functions of the Authority under these Regulations are to be treated for the purposes of paragraph 17 (fees) of Part 3 of Schedule 1 to the 2000 Act as functions conferred on the Authority under that Act with the following modifications—

- (a) section 2(3) of the 2000 Act (the Authority’s general duties) does not apply to the making of rules under paragraph 17 by virtue of this regulation;

(b) rules made under paragraph 17 by virtue of this regulation are not to be treated as regulating provisions for the purposes of section 159(1) of the 2000 Act (competition scrutiny)(a);

(c) paragraph 17(2) and (3) does not apply.

(2) The Authority must apply amounts paid to it by way of penalties imposed under regulation 51 towards expenses incurred in carrying out its functions under these Regulations or for any incidental purpose.

Guidance

60.—(1) The Authority may give guidance consisting of such information and advice as it considers appropriate with respect to—

- (a) the operation of these Regulations;
- (b) any matters relating to the functions of the Authority under these Regulations;
- (c) any other matters about which it appears to the Authority to be desirable to give information or advice in connection with these Regulations.

(2) The Authority may—

- (a) publish its guidance;
- (b) offer copies of its published guidance for sale at a reasonable price;
- (c) if it gives guidance in response to a request made by any person, make a reasonable charge for that guidance.

Authority's exemption from liability in damages

61. The functions of the Authority under these Regulations are to be treated for the purposes of paragraph 19 (exemption from liability in damages) of Part 4 of Schedule 1 to the 2000 Act as functions conferred on the Authority under that Act.

Application and modification of primary and secondary legislation

62. The provisions of primary and secondary legislation specified in Schedule 3 apply in respect of the Authority's functions under these Regulations with the modifications set out in that Schedule.

PART 7

GENERAL

Offences

Prohibition on issuing electronic money by persons other than electronic money issuers

63.—(1) A person may not issue electronic money in the United Kingdom, or purport to do so, unless the person is—

- (a) an authorised electronic money institution;
- (b) a small electronic money institution;
- (c) an EEA authorised electronic money institution exercising its passport rights;

(a) Section 159(1) was amended by the Enterprise Act 2002 (c.40), section 278(1) and Schedule 25, paragraph 40, and by S.I. 2006/2975.

- (d) a credit institution authorised in the UK or exercising an EEA right in accordance with Part 2 of Schedule 3 to the 2000 Act (exercise of passport rights by EEA firms)(a);
 - (e) the Post Office Limited;
 - (f) the Bank of England, the European Central Bank or a national central bank of an EEA state other than the United Kingdom;
 - (g) a government department or local authority;
 - (h) a credit union;
 - (i) a municipal bank; or
 - (j) the National Savings Bank.
- (2) A person who contravenes paragraph (1) is guilty of an offence and is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale, or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or both.

False claims to be an electronic money issuer

64.—(1) A person who does not fall within any of sub-paragraphs (a) to (j) of regulation 63(1) may not—

- (a) describe themselves (in whatever terms) as a person falling within any of those sub-paragraphs; or
- (b) behave, or otherwise hold themselves out, in a manner which indicates (or which is reasonably likely to be understood as indicating) that they are such a person.

(2) A person who contravenes paragraph (1) is guilty of an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Defences

65. In proceedings for an offence under regulation 63 or 64 it is a defence for the accused to show that they took all reasonable precautions and exercised all due diligence to avoid committing the offence.

Misleading the authority

66.—(1) A person may not, in purported compliance with any requirement imposed by or under these Regulations, knowingly or recklessly give the Authority information which is false or misleading in any material particular.

(2) A person may not—

- (a) provide any information to another person, knowing the information to be false or misleading in a material particular; or
- (b) recklessly provide to another person any information which is false or misleading in a material particular,

knowing that the information is to be used for the purpose of providing information to the Authority in connection with its functions under these Regulations.

(3) A person who contravenes paragraph (1) or (2) is guilty of an offence and is liable—

- (a) on summary conviction, to a fine not exceeding level 5 on the standard scale;
- (b) on conviction on indictment, to a fine.

(a) Part 2 was amended by the Enterprise Act 2002, section 278(1) and Schedule 25, paragraph 40, by the Consumer Credit Act 2006, section 33(9) and by S.I. 2003/1473, 2003/2066, 2007/126 and 2007/3253.

Restriction on penalties

67. A person who is convicted of an offence under these Regulations is not liable to a penalty under regulation 51 in respect of the same contravention of a requirement imposed by or under these Regulations.

Liability of officers of bodies corporate etc

68.—(1) If an offence under these Regulations committed by a body corporate is shown—

- (a) to have been committed with the consent or connivance of an officer; or
- (b) to be attributable to any neglect on their part,

the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with such member's functions of management as if the member were a director of the body.

(3) If an offence under these Regulations committed by a partnership is shown—

- (a) to have been committed with the consent or connivance of a partner; or
- (b) to be attributable to any neglect on their part,

the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

(4) If an offence under these Regulations committed by an unincorporated association (other than a partnership) is shown—

- (a) to have been committed with the consent or connivance of an officer; or
- (b) to be attributable to any neglect of such officer,

the officer as well as the association is guilty of the offence and liable to be proceeded against and punished accordingly.

(5) In this regulation—

“officer”—

- (a) in relation to a body corporate, means a director, manager, secretary, chief executive, member of the committee of management, or a person purporting to act in that capacity; and
- (b) in relation to an unincorporated association, means any officer of the association or any member of its governing body, or a person purporting to act in such capacity;

“partner” includes a person purporting to act as a partner.

Prosecution

69.—(1) Proceedings for an offence under these Regulations may be instituted only—

- (a) by the Authority; or
- (b) by or with the consent of the Director of Public Prosecutions.

(2) Paragraph (1) does not apply to proceedings in Scotland.

Proceedings against unincorporated bodies

70.—(1) Proceedings for an offence alleged to have been committed by a partnership or an unincorporated association must be brought in the name of the partnership or association (and not in that of its members).

(2) A fine imposed on the partnership or association on its conviction of an offence is to be paid out of the funds of the partnership or association.

(3) Rules of court relating to the service of documents are to have effect as if the partnership or association were a body corporate.

(4) In proceedings for an offence brought against the partnership or association—

- (a) section 33 of the Criminal Justice Act 1925(a) (procedure on charge of offence against corporation) and section 46 of, and Schedule 3 to, the Magistrates' Courts Act 1980(b) (corporations) apply as they do in relation to a body corporate;
- (b) section 70 (of the Criminal Procedure (Scotland) Act 1995(c) (proceedings against bodies corporate) applies as it does in relation to a body corporate;
- (c) section 18 of the Criminal Justice (Northern Ireland) Act 1945(d) (procedure on charge) and Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981(e) (corporations) apply as they do in relation to a body corporate.

(5) Summary proceedings for an offence under these Regulations may be taken—

- (a) against a body corporate or unincorporated association at any place at which it has a place of business;
- (b) against an individual at any place where they are for the time being.

(6) Paragraph (5) does not affect any jurisdiction exercisable apart from this regulation.

Duties of the Authority and the Commissioners to co-operate

Duty to co-operate and exchange information

71.—(1) The Authority and the Commissioners of Her Majesty's Revenue and Customs ("the Commissioners") must take such steps as they consider appropriate to co-operate with each other and—

- (a) the competent authorities, designated under Article 3 of the electronic money directive, or referred to in Article 13 of that directive, of EEA states other than the United Kingdom;
- (b) the European Central Bank, the Bank of England and the national central banks of EEA states other than the United Kingdom; and
- (c) any other relevant competent authorities designated under European Union law or the law of the United Kingdom or any other EEA state which is applicable to electronic money issuers,

for the purposes of the exercise by those bodies of their functions under the electronic money directive and other relevant European Union or national legislation.

(2) Subject to the requirements of the Data Protection Act 1998(f), sections 348(g) and 349(h) of the 2000 Act (as applied with modifications by paragraph 6 of Schedule 3 to these Regulations), regulation 49A of the Money Laundering Regulations 2007(i) and any other applicable

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- (a) 1925 c.86. Section 33 was amended by the Magistrates Courts Act 1952 (c.55), section 132 and Schedule 6, by the Courts Act 1971 (c.23), section 56(1) and Schedule 8 and by the Courts Act 2003 (c.39), Schedule 8, paragraph 71 and Schedule 10.
 - (b) 1980 c.43. Schedule 3 was amended by the Criminal Justice Act 1991 (c.53), section 25(2) and Schedule 13, and by the Criminal Procedures and Investigations Act 1996 (c.25), Schedule 1, paragraph 1. Amendments by the Criminal Justice Act 2003 (c.44), Schedule 3, paragraph 51 and Schedule 37, Part 4 have not come into force at the time of making these Regulations.
 - (c) 1995 c.46. Section 70 was amended by the Postal Services Act 2000 (Consequential Modifications No 1) Order 2001 (S.I. 2001/1149), Schedule 1, paragraph 104, the Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), section 10(6) and the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), section 28. Amendments by the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), section 66 have not come into force at the time of making these Regulations.
 - (d) 1945 c.15 (N.I.). Section 18 was amended by the Magistrates Courts Act 1964 (c.21) and by the Justice (Northern Ireland) Act 2002 (c.26), Schedule 12.
 - (e) S.I. 1981/1675 (N.I. 26).
 - (f) 1998 c.29.
 - (g) Section 348 was amended by the Financial Services Act 2010, section 24(1) and (2), Schedule 2, paragraphs 1 and 26.
 - (h) Section 349 was amended by the Companies Act 2006 (c.46), section 964(1) and (4), S.I. 2006/1183 and S.I. 2007/1093.
 - (i) S.I. 2007/2157; amended by S.I. 2007/3299 and S.I. 2009/209.

restrictions on the disclosure of information, the Authority and the Commissioners may provide information to each other and—

- (a) the bodies mentioned in paragraph (1)(a) and (c);
- (b) the European Central Bank, the Bank of England and the national central banks of EEA states other than the United Kingdom when acting in their capacity as monetary and oversight authorities;
- (c) where relevant, other public authorities responsible for the oversight of payment and settlement systems,

for the purposes of the exercise by those bodies of their functions under the electronic money directive and other relevant European Union or national legislation.

Actions for breach of requirements

Right to bring actions

72.—(1) A contravention—

- (a) which is to be taken to have occurred by virtue of regulation 18;
- (b) of a requirement imposed by regulation 20, 21, 22 or 24; or
- (c) of a requirement imposed by or under Part 5,

is actionable at the suit of a private person who suffers loss as a result of the contravention, subject to the defences and other incidents applying to actions for breach of statutory duty.

(2) A person acting in a fiduciary or representative capacity may bring an action under paragraph (1) on behalf of a private person if any remedy—

- (a) will be exclusively for the benefit of the private person; and
- (b) cannot be obtained by way of an action brought otherwise than at the suit of the fiduciary or representative.

(3) In this regulation “private person” means—

- (a) any individual, except where the individual suffers the loss in question in the course of issuing electronic money or providing payment services; and
- (b) any person who is not an individual, except where that person suffers the loss in question in the course of carrying on business of any kind,

but does not include a government, a local authority (in the United Kingdom or elsewhere) or an international organisation.

Prohibition on contracting-out

73. A term contained in an agreement between an electronic money issuer and an electronic money holder or a payment service user is void if, and to the extent that, it is inconsistent with a provision for the protection of an electronic money holder or a payment service user contained in these Regulations or the Payment Services Regulations 2009.

Transitional provisions

Persons with a Part 4 permission

74.—(1) Any person who—

- (a) has a Part 4 permission in respect of the activity of issuing electronic money;
- (b) before 30th April 2011 has carried on that activity in accordance with that permission; and
- (c) is not a person mentioned in any of paragraphs (c) to (j) of the definition in regulation 2(1) of electronic money issuer,

shall be deemed to have been granted authorisation by the Authority under regulation 9.

(2) A person who is deemed to have been granted authorisation by virtue of paragraph (1) must before 1st July 2011—

- (a) notify the Authority whether it wishes to become an authorised electronic money institution or to be registered as a small electronic money institution; and
- (b) provide the Authority with such information as it may reasonably require (“the required information”).

(3) Where a person notifies the Authority before 1st July 2011 that it wishes to become an authorised electronic money institution or that it wishes to be registered as a small electronic money institution, the Authority must decide whether to include the person on the register as an authorised electronic money institution or as a small electronic institution, and—

- (a) if the Authority decides to include the person on the register, the person’s authorisation shall cease to be deemed to have been granted by virtue of paragraph (1) at the time of such inclusion;
- (b) if the Authority decides not to include the person on the register, the person’s authorisation shall cease to be so deemed when the period for a reference to the Upper Tribunal has elapsed without a reference being made or, if the matter is referred, at such time as the Tribunal may direct.

(4) Where a person who is deemed to have been granted authorisation by virtue of paragraph (1)—

- (a) notifies the Authority before 1st July 2011 that it does not wish to be an electronic money institution; or
- (b) fails to make by that date a notification in accordance with paragraph (2)(a),

such authorisation shall cease to be so deemed on 30th October 2011 or, if the person’s Part 4 permission is cancelled before that date, on the cancellation of the permission.

(5) If the Authority decides to include the person on the register as an authorised electronic money institution or a small electronic money institution it must—

- (a) give the person notice of its decision; and
- (b) update the register as soon as practicable.

(6) The Authority may decide that a person is not to be included on the register only if—

- (a) it has not received the required information before 1st July 2011;
- (b) any of the conditions in regulation 6(3) to (8) or, as the case may be, regulation 13(3) to (10) (“the required conditions”) is not met in respect of that person; or
- (c) it appears to the Authority that the person is unlikely to issue electronic money within 12 months beginning with 1st July 2011.

(7) If the Authority proposes to decide not to include a person on the register it must give the person a warning notice.

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

- (a) if it decides not to include the person on the register, give the person a decision notice; or
- (b) if it decides to include the person on the register, give the person notice of its decision.

(9) If the Authority gives the person a decision notice, the person may refer the matter to the Upper Tribunal.

(10) Where a person is deemed to have been granted authorisation by virtue of paragraph (1)—

- (a) the duty to which the Authority is subject under regulation 4(1) to maintain a register shall not apply in respect of it; and
- (b) Parts 3 and 4 shall not apply to it.

(11) A Part 4 permission in respect of the activity of issuing electronic money, which has not been cancelled, shall cease—

- (a) in the case of a person falling within paragraph (3)(a), on 30th April 2011 or, if later, at the time of the person’s inclusion on the register as an electronic money institution;
 - (b) in the case of a person falling within paragraph (3)(b), at the time at which the person’s authorisation ceases to be deemed to have been granted;
 - (c) in the case of a person falling within paragraph (4), on 30th October 2011.
- (12) In this regulation, “Part 4 permission” has the same meaning as in the 2000 Act(a).

EEA firms

75.—(1) Any person who—

- (a) immediately before 30th April 2011 is an electronic money institution;
- (b) is an EEA firm qualifying for authorisation under Schedule 3 to the 2000 Act(b) in respect of the activity of issuing electronic money; and
- (c) before 30th April 2011 has carried on that activity,

may continue until 30th October 2011 to carry on that activity and engage in any related activity.

(2) Parts 5 and 6 shall apply to a person falling within paragraph (1) as if the person were an EEA authorised electronic money institution.

(3) In this regulation “electronic money institution” has the meaning given in Article 1(3)(a) of Directive 2000/46/EC of the European Parliament and of the Council of 18th September 2000 on the taking up, pursuit of and prudential supervision of the business of electronic money institutions (“the first electronic money directive”)(c).

(4) In this regulation and in regulation 76 “related activity” means an activity mentioned in Article 1(5) of the first electronic money directive.

Certified persons

76.—(1) Any person who—

- (a) has a certificate (which has not been revoked) given by the Authority under article 9C of the Financial Services and Markets 2000 (Regulated Activities) Order 2001(d) (“the Order”); and
- (b) before 30th April 2011 has carried on the activity of issuing electronic money in accordance with that certificate,

may continue to carry on that activity in accordance with that certificate and engage in any related activity until 30th April 2012 or, if the person is included on the register as an electronic money institution before that date, until the time of such inclusion.

(2) Parts 5 and 6 of these Regulations, and Part 16 of, and Schedule 17 to, the 2000 Act (the ombudsman scheme)(e), shall apply to a person falling within paragraph (1) as if the person were an electronic money institution.

Existing fixed term contracts

77.—(1) Part 5 shall not apply in respect of the redemption of electronic money that has been issued before 30th April 2011 where the contract—

- (a) provides for a termination date up to two years after the date on which the contract was entered into; and

(a) See section 40 of the 2000 Act.
 (b) See section 31(1)(b) of, and paragraph 5 of Schedule 3 to, the 2000 Act.
 (c) OJ No L 275, 27.10.2000, p.39.
 (d) S.I. 2001/544; amended by S.I. 2006/3221; article 9C was inserted by S.I. 2002/682.
 (e) Part 16 and Schedule 17 were amended by the Consumer Credit Act 2006 (c.14), sections 59, 60 and 61 and Schedule 2, by the Tribunals, Courts and Enforcement Act 2007 (c.15), section 62(3) and Schedule 13 and by S.I. 2009/209.

- (b) does not provide that the means of storing electronic money can be recharged.
- (2) In paragraph (1) “termination date” has the same meaning as in Part 5.

Amendments to the banking consolidation directive

78.—(1) For the purposes of the application of the 2000 Act or any provision made under or by virtue of it in relation to any person during the transitional period, paragraph 2 of Schedule 3(a) to that Act (definition of “Banking Consolidation Directive”) shall be read as if the amendments of the banking consolidation directive by the electronic money directive had not been made.

(2) The “transitional period” means the period beginning when this regulation comes into force and ending with—

- (a) 29th October 2011 in the case of a person falling within regulation 75(1);
- (b) 29th April 2011 otherwise.

Amendments to legislation

Amendments to primary and secondary legislation

79. Schedule 4, which contains amendments to primary and secondary legislation, has effect.

*Angela Watkinson
Michael Fabricant*

18th January 2011

Two of the Lords Commissioners of Her Majesty’s Treasury

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.
- 6.** A description of the internal control mechanisms which the applicant has established in order to comply with the Money Laundering Regulations 2007 and Regulation (EC) No 1781/2006 of

(a) Paragraph 2 was substituted by S.I. 2006/3221.

the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds^(a).

7. A description of the applicant's structural organisation, including, where applicable, a description of the intended use of agents and branches and a description of outsourcing arrangements, and of its participation in a national and international payment system.

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 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.

SCHEDULE 2

Capital Requirements

Regulations 6, 13 and 19

PART 1

Initial capital

1. For the purposes of these Regulations “initial capital” comprises the items specified in paragraph 4(a), (b) and (c) of this Schedule.

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

(a) OJ No L 345, 8.12.2006, p.1.

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 the following items, subject to the deductions specified in paragraph 7 and to the limits specified in paragraph 9—

- (a) paid up capital, including share premium accounts but excluding amounts arising in respect of cumulative preference shares;
- (b) reserves other than—
 - (i) revaluation reserves;
 - (ii) fair value reserves related to gains or losses on cash flow hedges of financial instruments measured at amortised cost; and
 - (iii) that part of profit and loss reserves that arises from any gains on liabilities valued at fair value that are due to changes in the electronic money institution’s credit standing;
- (c) profit or loss brought forward as a result of the application of the final profit or loss provided that—
 - (i) interim profits may only be included if they are—
 - (aa) verified by persons responsible for the auditing of the institution’s accounts;
 - (bb) shown to the satisfaction of the Authority that the amount has been evaluated in accordance with the principles set out in Directive 86/635/EEC of the Council of the 8th December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions^(a); and
 - (cc) net of any foreseeable charge or dividend;
 - (ii) in the case of an electronic money institution which is the originator of a securitisation, net gains arising from the capitalisation of future income from the securitised assets and providing credit enhancement to positions in the securitisation are excluded;
- (d) revaluation reserves;
- (e) general or collective provisions if—
 - (i) they are freely available to the electronic money institution to cover normal electronic money issuance and payment services risks where revenue or capital losses have not yet been identified;
 - (ii) their existence is disclosed in internal accounting records; and
 - (iii) their amount is determined by the management of the electronic money institution, verified by a statutory auditor or audit firm (as defined by regulation 25(2)) and notified to the Authority;
- (f) securities of indeterminate duration and other instruments that fulfil the following conditions—

(a) OJ No L 372, 31.12.1986, p.1.

- (i) they may not be reimbursed on the bearer's initiative or without the prior agreement of the Authority;
- (ii) the debt agreement provides for the electronic money institution to have the option of deferring the payment of interest on the debt;
- (iii) the lender's claim on the electronic money institution is wholly subordinated to those of all non-subordinated creditors;
- (iv) the documents governing the issue of the securities provide for debt and unpaid interest to be such as to absorb losses, whilst leaving the electronic money institution in a position to continue trading,
provided that only fully paid-up amounts are to be taken into account;
- (g) cumulative preferential shares, other than fixed-term cumulative preference shares referred to in paragraph (j);
- (h) the commitments of the members of an electronic money institution set up as a cooperative, comprising—
 - (i) that institution's uncalled capital; and
 - (ii) the legal commitments of the members of that institution to make additional non-refundable payments should the institution incur a loss provided that such payments can be demanded without delay;
- (i) the joint and several commitments of the borrower in the case of an electronic money institution organised as a fund, comprising—
 - (i) that institution's uncalled capital; and
 - (ii) the legal commitments of the borrowers of that institution to make additional non-refundable payments should the institution incur a loss provided that such payments can be demanded without delay;
- (j) fixed-term cumulative preferential shares and subordinated loan capital if—
 - (i) binding agreements exist under which, in the event of the winding-up of the electronic money institution, they rank after the claims of all other creditors and are not to be repaid until all other debts outstanding at the time have been settled; and
 - (ii) in the case of subordinated loan capital—
 - (aa) only fully paid-up funds are taken into account;
 - (bb) the loans involved have an original maturity of at least five years, after which they may be repaid;
 - (cc) the extent to which they may rank as own funds is gradually reduced during at least the last five years before the repayment date; and
 - (dd) the loan agreement does not include any clause providing that in specified circumstances, other than the winding-up of the electronic money institution, the debt will become repayable before the agreed repayment date.

5. The items specified in paragraph 4(a) to (d) must be—

- (a) available to the electronic money institution for unrestricted and immediate use to cover risks or losses as soon as these occur; and
- (b) net of any foreseeable tax charge at the moment of their calculation or be suitably adjusted in so far as such tax charges reduce the amount up to which these items may be applied to cover risks or losses.

6. Own funds are not to include guarantees provided by the Crown or a local authority to an electronic money institution which is a public sector entity for the purposes of the banking consolidation directive.

Deductions from own funds

7. The deductions from own funds are—

- (a) own shares at book value held by the electronic money institution;
- (b) intangible assets;
- (c) material losses of the current financial year;
- (d) holdings of shares in credit institutions and financial institutions exceeding 10% of their capital;
- (e) if sub-paragraph (d) applies, the items specified in paragraph 4(f), (g) and (j) held in the relevant credit institution or financial institution;
- (f) holdings of shares or of the items specified in paragraph 4(f), (g) and (j) held in other credit institutions or financial institutions where—
 - (i) the holding has not been deducted in accordance with sub-paragraph (d) or (e) of this paragraph; and
 - (ii) the total amount of such holdings exceeds 10% of the electronic money institution's own funds calculated before deduction of the items specified in this sub-paragraph and sub-paragraphs (d), (e), (g) and (h);
- (g) participations which the electronic money institution holds in an insurance undertaking, reinsurance undertaking or insurance holding company; and
- (h) the following instruments held in an insurance undertaking, reinsurance undertaking or insurance holding company in which the electronic money institution holds a participation—
 - (i) instruments referred to in article 16(3) of Directive 73/239/EEC of the Council on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance(a);
 - (ii) instruments referred to in article 27(3) of Directive 2002/83/EC of the European Parliament and of the Council of 5th November 2002 concerning life assurance(b).

8. Where shares in another credit institution, financial institution, insurance undertaking, reinsurance undertaking or insurance holding company are held temporarily for the purposes of a financial assistance operation designed to reorganise and save that entity, the Authority may direct that any or all of the items specified in paragraph 7(d) to (h) are not to be deducted from own funds.

Limits on qualifying items

9. —(1) The limits referred to in paragraph 4 are—

- (a) that A must not exceed B; and
 - (b) that C must not exceed 50% of B.
- (2) After applying such limits—
- (a) 50% of the total of the items specified in paragraph 7(d) to (h) must be deducted from A and the remaining 50% must be deducted from B; and
 - (b) the amount, if any, by which the amount to be deducted from A exceeds A must be deducted from B.
- (3) In this paragraph—
- (a) “A” means the total of the items specified in paragraph 4(d) to (j);
 - (b) “B” means the total of the items specified in paragraph 4(a) to (c) less the total of the items specified in paragraph 7(a) to (c); and

(a) OJ No L 005, 7.1.78, p.27.

(b) OJ No L 345, 19.12.02, p.1.

(c) “C” means the total of the items specified in paragraph 4(h) to (j).

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;
- (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 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.

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 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 2009;
- (b) 0.8 for an authorised electronic money institution providing the payment service specified in paragraph 1(g) of Schedule 1 to those Regulations; and
- (c) 1 for an authorised electronic money institution providing any other payment service.

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,

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 the Accounting Standards Board;
- (b) Statements of Recommended Practice, issued by industry or sectoral bodies recognised for this purpose by the Accounting Standards Board;

- (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 Auditing Practices Board; and
- (e) the Companies Act 2006.

SCHEDULE 3

Regulation 62

Application and modification of legislation

PART 1

Application and modification of the 2000 Act

Disciplinary powers

1. Sections 66(a) (disciplinary powers) to 70 (statements of policy: procedure) of the 2000 Act apply with the following modifications to section 66—

- (a) for subsection (2) substitute—
 - “(2) A person is guilty of misconduct if, while a relevant person, he had 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.”;
- (b) omit subsections (3)(aa) and (ab), (3A) to (3D), (5A) and (7) to (9); and
- (c) for subsection (6) substitute—
 - “(6) 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.”.

The Tribunal

2. Part 9 of the 2000 Act (hearings and appeals)(b) 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(c) (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)”;
- (b) in section 133A (decision and supervisory notices, etc)—
 - (i) in subsection (1) omit “, as a result of section 388(2),”; and
 - (ii) in subsection (3) 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 the Electronic Money Regulations 2011”; and
- (c) in section 133B (offences)—
 - (i) omit subsection (1)(b) and (c); and

(a) Amended by S.I. 2007/126 and section 24 of, and paragraph 8 of Schedule 2 to, the Financial Services Act 2010 (c.28).

(b) Sections 132 and 137 were repealed by S.I. 2010/22.

(c) Substituted, together with sections 133A and 133B, by S.I. 2010/22.

- (ii) in subsection (4)(a) for “the statutory maximum” substitute “level 5 on the standard scale”.

Information gathering and investigations

3. Part 11(a) of the 2000 Act (information gathering and investigations) applies with the following modifications—

- (a) in section 165 (Authority’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 (b) and (c);
- (b) in subsection (2)(a) of section 166 (reports by skilled persons), for “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”;
- (c) in section 167(b) (appointment of persons to carry out general investigations)—
 - (i) in subsection (1)—
 - (aa) omit “or the Secretary of State”;
 - (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”; and
 - (iv) omit subsection (6)(c);
- (d) in section 168(d) (appointment of persons to carry out investigations in particular cases)—

(a) Part 11 was amended by section 18 of, and paragraphs 15, 16 and 17 of Schedule 2 to, the Financial Services Act 2010.
(b) Amended by S.I. 2007/126.
(c) Subsection (6) was inserted by S.I. 2007/126.
(d) Amended by S.I. 2007/126.

- (i) in subsection (1)—
 - (aa) in paragraph (a) for “any regulation made under section 142” substitute “any requirement of or imposed under the Electronic Money Regulations 2011”;
 - (bb) in paragraph (b) for “, 191,” 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, the Money Laundering Regulations 2007.”;
- (iii) omit subsections (4) and (5); and
- (iv) in subsection (6) omit “or the Secretary of State”;
- (e) in section 169 (investigations etc in support of overseas regulator)—
 - (i) in subsection (8) for “Part XXIII” substitute “sections 348, 349, 351 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 the Authority.”;
- (g) in section 171(a) (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(b)(entry of premises under warrant)—
 - (i) in subsection (1)—
 - (aa) omit “the Secretary of State,”; and
 - (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

(a) Amended by S.I.2007/126.

(b) Amended by S.I. 2005/1433.

- (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”.

Control over electronic money institutions

4. Part 12(a) of the 2000 Act (control over authorised persons) applies with the following modifications—

- (a) for references to “UK authorised person” substitute “electronic money institution”;
- (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”;
- (c) in section 191B (restriction notices)—
 - (i) after subsection (2) insert—

“(2A) In a restriction notice, the Authority must direct that voting power to which the notice relates is, until further notice, not to be exercisable.”;
 - (ii) for subsection (3)(b) substitute—

“(b) voting power that has been exercised as a result of the acquisition is void.”;
- (d) after section 191E (requirements for notices under section 191D) insert—

“Direction by the Authority

191EA. The Authority 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.).

Auditors and actuaries

5. Part 22 (auditors and actuaries) applies with the following modifications—

- (a) for references to “authorised person” substitute “electronic money institution”; and
- (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”.

Restriction on disclosure of information

6. Sections 348 (restrictions on disclosure of confidential information by Authority etc), 349 (exceptions from section 348), 351(b) (competition information) and 352(c) (offences) of the 2000 Act apply with the following modifications—

- (a) in section 348—

(a) Sections 178 to 191G were substituted by S.I. 2009/534.
 (b) Section 351 was amended by sections 247 and 278 of, and Schedule 26 to, the Enterprise Act 2002 (c.40).
 (c) Section 352 was amended by section 208 of, and Schedule 26 to, the Criminal Justice Act 2003 (c.44).

- (i) in subsection (2)(b) for the words from “, the competent authority” to the end substitute “under the Electronic Money Regulations 2011”;
- (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 (b) and (c);
 - (cc) in paragraph (e) for “a person mentioned in paragraphs (a) to (c)” substitute “the Authority”;
 - (dd) in paragraph (f) for “a person mentioned in those paragraphs” substitute “the Authority”.
- (iv) in subsection (6)—
 - (aa) omit paragraphs (a) and (b); and
 - (bb) in paragraph (c) for “paragraph 6 of Schedule 1” substitute “regulation 48 of the Electronic Money Regulations 2011”; and
- (b) in section 349(a) omit subsections (3A) and (3B).

Insolvency

7. Sections 359(b) (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”;
- (b) in section 359—
 - (i) omit subsections (1)(b), (3)(b) and (c)(e) 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”(d) 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
 - (d) in section 368 for the words from “winding up” to the end substitute “winding up of an EEA electronic money institution unless it has been asked to do so by the home state competent authority.”.

(a) Subsections (3A) and (3B) were inserted by section 964 of the Companies Act 2006 (c.46).

(b) Substituted by the Enterprise Act 2002, section 248(3), Schedule 17, paragraphs 53 and 55 and amended by S.I. 2005/1455.

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

(d) 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—
- (a) in section 388 (decision notices), omit subsection (2);
 - (b) in section 390(a) (final notices)—
 - (i) omit subsections (6) and (10); and
 - (ii) in subsection (8) omit “or (6)(c)”;
 - (c) in section 391 (publication)—
 - (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 the Electronic Money Regulations 2011”; and
 - (ii) omit subsection (11).
 - (d) for section 392(b) (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 (the Authority’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 the Electronic Money Regulations 2011.”.

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(c) 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.

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(d) apply with the following modifications—

- (a) in regulation 2—

(a) Amended by S.I. 2010/22.

(b) Section 392 was amended by sections 24 and 29 of, and Schedule 2 to, the Financial Services Act 2010.

(c) S.I. 2001/1420; a relevant amending instrument is S.I. 2005/274.

(d) S.I. 2001/2188; relevant amending instruments are S.I. 2003/1473, 2005/3071, 2006/3413 and 2010/2628.

- (i) in the definition of “directive restrictions” for “and article 9 of the insurance mediation directive” substitute “, article 9 of the insurance mediation 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;”;
- (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—
 - “(c) 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”;
- (g) in Schedule 1, after Part 5 insert—

“PART 6

<i>Person</i>	<i>Functions</i>
The Commissioners for Her Majesty’s Revenue and Customs	Their functions under the Money Laundering Regulations 2007”

Amendments to primary and secondary legislation

PART 1

Amendments to primary legislation

Consumer Credit Act 1974

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

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)(c) (compulsory jurisdiction), after “authorised person,” insert “or an electronic money issuer within the meaning of the Electronic Money Regulations 2011”; and

(b) in section 234(1)(d) (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)(e), 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—

(a) Section 25(1C) was inserted by S.I. 2001/3649 and amended by S.I. 2006/3221 and 2007/126.

(b) 1974 c.39.

(c) Section 226(2)(b) was amended by S.I. 2009/209.

(d) Section 234(1) was amended by S.I. 2009/209.

(e) Section 404, together with sections 404A to 404G, was substituted by section 14 of the Financial Services Act 2010 (c.28).

“(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)(a)—

(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)(b) for “4(1)(a)” substitute “4(1)”.

(8) In paragraph 13(4) of Schedule 17 (the ombudsman scheme)(c), after “an authorised person,” insert “an electronic money issuer within the meaning of the Electronic Money Regulations 2011”.

The Terrorism Act 2000

3. In the Terrorism Act 2000(d)—

(a) in Part 1 of Schedule 3A (regulated sector)(e) —

(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)”;

(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”;

(iii) in sub-paragraph (h), for “and 14” substitute “, 14 and 15”.

(a) Schedule 1A was inserted by Schedule 1 to the Financial Services Act 2010.

(b) Schedule 11A was inserted by S.I. 2005/1433.

(c) Paragraph 13(4) of Schedule 17 was amended by S.I. 2009/209.

(d) 2000 c.11.

(e) 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(a) (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”.

The Companies Act 2006

5. In the Companies Act 2006(b)—
- (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”.

The Counter-Terrorism Act 2008

6. In Part 2 of Schedule 7 to the Counter-Terrorism Act 2008(c) (terrorist financing and money laundering) —
- (a) in paragraph 5(1)(a), for “Article 4(1)(a)” substitute “Article 4(1)”; and
 - (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”.

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(d) 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 The Financial Services Authority.
responsible for the management
of the electronic money or
payment services business of an
electronic money institution.

(a) 2002 c.29. Part 1 of Schedule 9 was substituted by S.I. 2007/3287.

(b) 2006 c.46.

(c) 2008 c.28.

(d) S.I. 1975/1023; amended by S.I. 1986/2268; S.I. 2001/3816 and 2007/2149.

18 A controller of an electronic money institution. The Financial Services Authority.”;

(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.”.

The Financial Markets and Insolvency (Settlement Finality) Regulations 1999

8. In regulation 2(1) of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999(a) 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)”.

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(b)—

(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”.

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(c)—

(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”.

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(d) 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

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

(b) S.I. 2000/262; relevant amending instruments are S.I. 2006/3221 and 2000/2952.

(c) S.I. 2000/309; relevant amending instruments are S.I. 2006/3221 and 2000/952.

(d) S.I.2001/2511; a relevant amending instrument is S.I. 2002/765.

- (c) in regulation 2(4)(a)(ii) omit “(other than an electronic money institution)”.

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

12. The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(a) 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.”;
- (e) omit article 9L.

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(b)—

- (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”.

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(c), 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)”.

(a) S.I. 2001/544; relevant amending instruments are S.I. 2002/682, 2002/1776 and 2009/209.
(b) S.I. 2003/1370; a relevant amending instrument is S.I. 2006/3221.
(c) 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(a) after “electronic money by” insert “an electronic money institution within the meaning of the Electronic Money Regulations 2011 or”.

The Credit Institutions (Reorganisation and Winding Up) Regulations 2004

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

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(c), 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”.

The Pension Protection Fund (Entry Rules) Regulations 2005

18. In regulation 1 of the Pension Protection Fund (Entry Rules) Regulations 2005(d), 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).”.

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)”;
 - (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—

(a) S.I. 2004/2095.

(b) S.I. 2004/1045; a relevant amending instrument is S.I. 2006/3221.

(c) S.I. 2004/3200; a relevant amending instrument is S.I. 2006/3221.

(d) S.I. 2005/590; relevant amending instruments are S.I. 2009/451 and 2010/2628.

“by the electronic money holder (within the meaning of Article 11 of the electronic money directive).”;

- (d) in regulation 17(5)(a) 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)(b), 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.”.

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

The Payment Services Regulations 2009

21. The Payment Services Regulations 2009(d) 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”;

(a) Regulation 17(5) was substituted by S.I. 2009/209.
(b) Regulation 49A was inserted by S.I. 2009/209.
(c) S.I. 2008/1911.
(d) S.I. 2009/209.

- (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)”;
- (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)”;
- (d) in regulation 110(1)(a), 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;”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement 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 (“the Directive”) (OJ No L 275, 27.10.2009, p.39).

Parts 2 to 4 of these Regulations establish a new authorisation regime for electronic money issuers. This replaces the regime applicable to electronic money institutions and small electronic money issuers which implemented Directive 2000/46/EC. The new regime does not apply to credit institutions such as banks and other categories of person described in regulation 2(1).

Part 2 of the Regulations requires the Financial Services Authority (“the FSA”) to establish a register of electronic money institutions and sets out the procedures and conditions for registration. It also sets out the circumstances in which registration may be varied or cancelled. Bodies requiring registration must be registered either as an authorised electronic money institution (regulations 5 to 11) or a small electronic money institution (regulations 12 to 15), depending on the value of electronic money that they issue, the value of payment transactions that they execute and whether they are seeking to establish a branch or provide services in another Member State.

Part 3 of the Regulations sets out the requirements to be met by electronic money institutions and stipulates the conditions for them to establish a branch or provide services in another Member State. These requirements include meeting capital requirements (regulation 19 and Schedule 2) and safeguarding electronic money holders’ and payment service users’ funds (regulation 20). Electronic money institutions must keep records and provide information to the FSA about accounts (regulations 25 and 27). Authorised electronic money institutions must comply with provisions about outsourcing (regulation 26). Regulations 28 to 30 make provision about the provision of services in another EEA state.

(a) Regulation 110 was amended by S.I. 2009/2475.

Part 4 of the Regulations sets out provisions about the activities that an electronic money institution may engage in. It sets out the business activities that an institution may undertake by virtue of being registered. It sets out the conditions that apply to such activities including in respect of the grant of credit, the use of payment accounts, issuing electronic money and the provision of services through an agent (regulations 32 to 35). It permits the electronic money issuer to distribute and redeem electronic money through another person (regulation 33). Regulation 36 provides for the responsibilities of an institution that relies on a branch or a third party for operational functions such as issuance, redemption or payment services. Institutions have a duty to notify the FSA of any change in their circumstances relevant to the conditions of their registration (regulation 37).

Part 5 of the Regulations sets out the requirements to be met by all electronic money issuers when issuing and redeeming electronic money. Electronic money must be issued and redeemed at par value (regulation 39) and issuers are not permitted to award interest on the outstanding balances (regulation 45). Redemption must be provided at any time upon request for a period of six years from the end of the contract (regulations 39 and 43). Redemption may be subject to proportionate fees to cover actual costs in certain cases.

Part 6 of the Regulations makes provision in respect of the FSA. In particular, it confers on the FSA functions in relation to the supervision and enforcement of certain provisions of the Regulations (regulations 47 to 58). Regulation 62 and Schedule 3 apply provisions of primary and secondary legislation (with modifications) in respect of the FSA's functions under the Regulations.

Part 7 of the Regulations provides for criminal offences. Regulation 63 makes it an offence for a person to issue electronic money in the United Kingdom unless it is an authorised or small electronic money institution or one of the other permitted categories of electronic money issuer. There are also offences relating to false claims to be an electronic money issuer and misleading the FSA. Regulations 74 to 78 make transitional provision for persons who have issued electronic money before 30th April 2011 to continue to do so for a limited time while they take steps to comply with these Regulations. All persons who continue to issue electronic money under the transitional provisions must comply with Parts 5 and 6 of these Regulations. Regulation 79 and Schedule 4 provide for amendments to primary and secondary legislation including provision for the Financial Ombudsman Service to apply.

A Transposition Note setting out how this Directive will be transposed into UK law is available from the Banking and Credit Team, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ. A full regulatory impact assessment of the effect that this instrument will have on the costs to business and the voluntary sector has also been prepared. Copies of both documents have been placed in the library of each House of Parliament and are available on HM Treasury's website (www.hm-treasury.gov.uk). A copy of the regulatory impact assessment is also annexed to the Explanatory Memorandum which is available alongside the instrument on the legislation website (<http://www.legislation.gov.uk/>).