
STATUTORY INSTRUMENTS

2002 No. 682

**The Financial Services and Markets Act 2000
(Regulated Activities) (Amendment) Order 2002**

PART II

ELECTRONIC MONEY

Supplemental and transitional provisions

Amendment of the Financial Services and Markets Act 2000 (Professions) (Non-Exempt Activities) Order 2001

7.—(1) In the Financial Services and Markets Act 2000 (Professions) (Non-Exempt Activities) Order 2001(1), after sub-paragraph (a) of article 4(1) (activities to which exemption from the general prohibition does not apply), insert—

“(aa) article 9B (issuing electronic money);”.

(2) In article 8 of that Order, after “article 4(a),” insert “(aa),”.

Variation of threshold condition

8. In paragraph 1(2) of Schedule 6(2) to the Act (threshold conditions: legal status of deposit-takers), after “accepting deposits” insert “or issuing electronic money”.

Transitional provisions for persons issuing electronic money at commencement

9.—(1) Where, immediately before commencement, a credit institution with Part IV permission to accept deposits was carrying on by way of business in the United Kingdom the activity of issuing electronic money, the institution’s permission is to be treated as including, for a period of six months beginning at commencement, permission to carry on an activity of the kind specified by article 9B of the principal Order.

(2) Where, immediately before commencement—

(a) an EEA firm of the kind mentioned in paragraph 5(b) or (c) of Schedule 3 to the Act qualified for authorisation under that Schedule, and

(b) the activities which were treated as permitted activities for the purposes of paragraph 13 or 14 of that Schedule as it applied to that firm included the issuing of electronic money,

the firm’s permission under paragraph 15 of that Schedule is to be treated, at commencement, as including permission to carry on that activity.

(3) Where an existing issuer having his head office in the United Kingdom is, after commencement, granted a Part IV permission to carry on an activity of the kind specified by article

(1) S.I.2001/1227, amended by S.I. 2001/3650.

(2) Schedule 6 was amended by S.I. 2001/2507.

9B (and hence becomes a UK firm, within the meaning of Schedule 3 to the Act, in relation to that activity)—

- (a) if, immediately before commencement, the existing issuer was carrying on the activity of issuing electronic money from a branch established in another EEA State, the conditions in paragraph 19(2) to (5) of that Schedule are to be treated as satisfied with respect to that branch;
- (b) if, immediately before commencement, the existing issuer was carrying on the activity of issuing electronic money by providing services in another EEA State, the conditions in paragraph 20(1) of that Schedule are to be treated as satisfied with respect to the provision of those services in that EEA State.

(4) An existing issuer having his head office in an EEA State other than the United Kingdom who, after commencement, becomes authorised (within the meaning of Article 1 of the banking consolidation directive) by his home state regulator (and hence becomes an EEA firm)—

- (a) is to be treated as having complied with the establishment conditions (within the meaning of paragraph 13 of Schedule 3 to the Act) where, immediately before commencement, he was carrying on the activity of issuing electronic money from a branch established in the United Kingdom;
- (b) is to be treated as having complied with the service conditions (within the meaning of paragraph 14 of that Schedule) where, immediately before commencement, he was carrying on the activity of issuing electronic money by providing services in the United Kingdom.

(5) Where paragraph (4)(a) or (b) applies, the existing issuer is to be treated as having permission to carry on the activity mentioned in that paragraph through its United Kingdom branch or (as the case may be) by providing services in the United Kingdom.

(6) There is excluded from article 9B of the principal Order any activity carried on by an existing issuer before 27th October 2002, unless he has been granted a Part IV permission to carry on that activity, or has permission to carry on that activity as a result of paragraph (5).

(7) There is also excluded from article 9B of the principal Order any activity carried on by an existing issuer after the beginning of 27th October 2002, provided—

- (a) he has made an application before 27th June 2002 under section 40 of the Act for permission to carry on that activity, and has not withdrawn it; and
- (b) the application has not been finally determined.

(8) For the purposes of paragraph (7), an application is to be treated as finally determined—

- (a) in a case where the Authority gives permission to carry on the activity and does not exercise its power under section 42(7)(a) or (b) or section 43(1) of the Act, on the date on which the permission takes effect;
- (b) in a case where the Authority refuses permission, or gives permission but exercises its power under section 42(7)(a) or (b) or section 43 of the Act, at the time when the matter ceases to be open to review (within the meaning of section 391(8) of the Act).

(9) In this article—

- (a) “commencement” means the beginning of 27th April 2002;
- (b) “credit institution” means a credit institution as defined in Article 1(1)(a) of the banking consolidation directive;
- (c) an “existing issuer” means a body corporate or partnership (other than one falling within paragraph (1) or (2)) which, immediately before commencement—
 - (i) has its head office in the United Kingdom, and is carrying on by way of business in the United Kingdom the activity of issuing electronic money; or

- (ii) has its head office in an EEA State other than the United Kingdom, and is carrying on such an activity by way of business in the United Kingdom without contravening the law of that other EEA State;
- (d) in paragraph (1) and in sub-paragraph (c) of this paragraph, the references to carrying on an activity in the United Kingdom are to be construed without reference to section 418 of the Act (carrying on regulated activities in the United Kingdom).

Anticipatory consultation on rules

10. If—

- (a) before 11th April 2002 any steps were taken in relation to a draft of rules which the Authority proposes to make under article 9G(1) or 9H of the principal Order (as inserted by article 4 of this Order), and
- (b) those steps, had they been taken after that day, would to any extent have satisfied the requirements of section 155 of the Act,

those requirements are to that extent to be taken to have been satisfied.