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STATUTORY INSTRUMENTS

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**2011 No. 99**

**The Electronic Money Regulations 2011**

**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;
  - (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<sup>(1)</sup>;

“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<sup>(2)</sup>;

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

“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<sup>(3)</sup>; or

(1) 2000 c.8.

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

(3) 1979 c.34.

- (b) the Credit Unions (Northern Ireland) Order 1985<sup>(4)</sup>;
- “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](#)<sup>(5)</sup> 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](#)<sup>(6)</sup> and [2006/48/EC](#) and repealing Directive [2000/46/EC](#)<sup>(7)</sup>;
- “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;
  - (h) credit unions;
  - (i) municipal banks;
  - (j) the National Savings Bank;

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(4) [S.I. 1985/1205 \(N.I. 12\)](#).

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

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

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

“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<sup>(8)</sup>;

“municipal bank” means a company which, immediately before 1st December 2001, fell within the definition in section 103 of the Banking Act 1987<sup>(9)</sup>;

“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<sup>(10)</sup>);

“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<sup>(11)</sup>;

“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<sup>(12)</sup>;

“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;

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

<sup>(8)</sup> OJ No L 309, 25.11.2005, p. 15.

<sup>(9)</sup> 1987 c.22; repealed by S.I. 2001/3649, article 3(1)(d).

<sup>(10)</sup> 2006 c.46.

<sup>(11)</sup> S.I. 2009/209; amended by S.I. 2009/2475.

<sup>(12)</sup> OJ No L 319, 5.12.2007, p.1.

“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.