

STATUTORY INSTRUMENTS

2011 No. 99

The Electronic Money Regulations 2011

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;
- (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)^{M1};
- (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.

Marginal Citations

M1 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.

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—

Status: Point in time view as at 09/02/2011.

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- (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.

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,

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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 ^{M2} (procedure on charge of offence against corporation) and section 46 of, and Schedule 3 to, the Magistrates' Courts Act 1980 ^{M3} (corporations) apply as they do in relation to a body corporate;
- (b) section 70 (of the Criminal Procedure (Scotland) Act 1995 ^{M4} (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 ^{M5} (procedure on charge) and Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981 ^{M6} (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;

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- (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.

Marginal Citations

- M2** 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.
- M3** 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.
- M4** 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.
- M5** 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](#).
- M6** S.I. 1981/1675 (N.I. 26).

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^{M7}, sections 348^{M8} and 349^{M9} 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^{M10} and any other applicable 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.

Marginal Citations

- M7** 1998 c.29.
- M8** Section 348 was amended by the Financial Services Act 2010, section 24(1) and (2), Schedule 2, paragraphs 1 and 26.
- M9** 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](#).
- M10** [S.I. 2007/2157](#); amended by [S.I. 2007/3299](#) and [S.I. 2009/209](#).

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—

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- (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.

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(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^{M11}.

Marginal Citations

M11 See section 40 of the 2000 Act.

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^{M12} 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”)^{M13}.

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

Marginal Citations

M12 See section 31(1)(b) of, and paragraph 5 of Schedule 3 to, the 2000 Act.

M13 OJ No L 275, 27.10.2000, p.39.

Certified persons

76.—(1) Any person who—

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- (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 ^{M14} (“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) ^{M15}, shall apply to a person falling within paragraph (1) as if the person were an electronic money institution.

Marginal Citations

M14 S.I. 2001/544; amended by S.I. 2006/3221; article 9C was inserted by S.I. 2002/682.

M15 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.

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
 - (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 ^{M16} 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.

Marginal Citations

M16 Paragraph 2 was substituted by S.I. 2006/3221.

Amendments to legislation

Amendments to primary and secondary legislation

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

Status:

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