

SCHEDULE 3

Regulation 62

Application and modification of legislation

PART 1

Application and modification of the 2000 Act

Disciplinary powers

1. Sections 66(1) (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)(2) 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(3) (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

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

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

(2) Sections 132 and 137 were repealed by [S.I. 2010/22](#).

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

Information gathering and investigations

3. Part 11(4) 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(5) (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)(6);
- (d) in section 168(7) (appointment of persons to carry out investigations in particular cases)—

(4) Part 11 was amended by section 18 of, and paragraphs 15, 16 and 17 of Schedule 2 to, the Financial Services Act 2010.

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

(6) Subsection (6) was inserted by S.I. 2007/126.

(7) 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(8) (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(9)(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

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

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

- definition of “electronic money issuer” in regulation 2(1) of the Electronic Money Regulations 2011”;
- (iii) omit subsection (4);
- (iv) in subsection (10) omit “or (5)”;
- (v) in subsection (11)(a) omit “87C, 87J,”; and
- (l) in subsection (5)(a) of section 177 (offences)—
 - (i) for “six months” substitute “three months”; and
 - (ii) for “the statutory maximum” substitute “level 5 on the standard scale”.

Control over electronic money institutions

4. Part 12(10) 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)—

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

- (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(**11**) (competition information) and 352(**12**) (offences) of the 2000 Act apply with the following modifications—

- (a) in section 348—
 - (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(**13**) omit subsections (3A) and (3B).

Insolvency

7. Sections 359(**14**) (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)(**15**) 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

(11) Section 351 was amended by sections 247 and 278 of, and Schedule 26 to, the Enterprise Act 2002 (c.40).

(12) Section 352 was amended by section 208 of, and Schedule 26 to, the Criminal Justice Act 2003 (c.44).

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

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

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

- (iv) in subsection (4) omit the definitions of “agreement”, “authorised deposit taker”, “authorised reclaim fund”(16) 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.”.

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(17) (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(18) (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.

(16) Inserted by the Dormant Bank and Building Society Accounts Act 2008.

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

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

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⁽¹⁹⁾ 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⁽²⁰⁾ apply with the following modifications—

- (a) in regulation 2—
 - (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;” and
 - (iii) in paragraph (a) of the definition of “overseas regulatory authority” after “of the Act” insert “or any function conferred under national legislation in implementation of the electronic money directive”;
- (b) in regulation 5(4)(a) and (6)(d) and (e) for “an authorised person, former authorised person or former regulated person” substitute in each case “an electronic money institution or former electronic money institution”;
- (c) in regulation 8 after paragraph (b) insert—

“(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—

⁽¹⁹⁾ S.I. 2001/1420; a relevant amending instrument is [S.I. 2005/274](#).

⁽²⁰⁾ S.I. 2001/2188; relevant amending instruments are [S.I. 2003/1473](#), [2005/3071](#), [2006/3413](#) and [2010/2628](#).

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- “or
- (iii) electronic money issuers or former electronic money issuers”;
- (ii) “The Department of Enterprise, Trade and Investment in Northern Ireland”, after paragraph (c)(ii) insert—
- “or
- (iii) electronic money issuers or former electronic money issuers”;
- (iii) “The Pensions Regulator”, after paragraph (ii) insert—
- “or
- (iii) electronic money issuers or former electronic money issuers”;
- (iv) “The Charity Commissioners for England and Wales”, after paragraph (ii) insert—
- “or
- (iii) electronic money issuers or former electronic money issuers”; and
- (g) in Schedule 1, after Part 5 insert—

“PART 6

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