

SCHEDULE 2

Amendments of subordinate legislation

PART 1

Amendments of Electronic Money Regulations 2011

1. The Electronic Money Regulations 2011(1) are amended as follows.

2.—(1) Regulation 2 (interpretation) is amended as follows.

(2) In paragraph (1)—

- (a) omit the definition of “the capital requirements directive”;
 - (b) in the definition of “credit institution”—
 - (i) for “within the EEA” substitute “in the United Kingdom”;
 - (ii) for the words from “outside the EEA” to the end substitute “outside the United Kingdom”;
 - (c) omit the definitions of—
 - “the EEA”;
 - “EEA agent”;
 - “EEA authorised electronic money institution”;
 - “EEA branch”;
 - (d) omit the definition of “the electronic money directive”;
 - (e) in the definition of “electronic money issuer”—
 - (i) omit paragraph (c);
 - (ii) for paragraph (f) substitute—
 - “(f) the Bank of England, when not acting in its capacity as a monetary authority or other public authority;”;
 - (f) omit the definitions of—
 - “European Banking Authority”;
 - “home state competent authority”;
 - “host state competent authority”;
 - (g) omit the definition of “the money laundering directive”;
 - (h) omit the definition of “passport right”;
 - (i) omit the definition of “the payment services directive”;
 - (j) in the definition of “payment transaction”, for “Article 4(5) of the payment services directive” substitute “regulation 2(1) of the Payment Services Regulations 2017(2)”.
- (3) Omit paragraph (3).

3. In regulation 3 (electronic money: exclusions), in paragraph (a)(iv), for “a single EEA State” substitute “the United Kingdom”.

(1) [S.I. 2011/99](#).
(2) [S.I. 2017/752](#).

Status: This is the original version (as it was originally made).

4.—(1) Regulation 4 (the register of certain electronic money issuers) is amended as follows.

(2) In paragraph (1)(a), omit “and their EEA branches”.

(3) In paragraph (2), omit “(c),”.

(4) Omit paragraph (7).

5.—(1) Regulation 6 (conditions for authorisation) is amended as follows.

(2) In paragraph (4)(b), for “EEA” substituted “United Kingdom”.

(3) In paragraph (8)(b), for “not an EEA state” substitute “outside the United Kingdom”.

6. In the heading to Part 3, omit “and Passporting”.

7.—(1) Regulation 21 (safeguarding option 1) is amended as follows.

(2) In paragraph (7)—

(a) in the definition of “authorised credit institution”, for the words from “or otherwise authorised” to “other than” substitute “or an approved foreign credit institution (see paragraph (8)), but does not include”;

(b) in the definition of “authorised custodian”, omit the words from “or authorised” to the end.

(3) After paragraph (7) insert—

“(8) In paragraph (7), “approved foreign credit institution” means—

(a) the central bank of a State that is a member of the Organisation for Economic Co-operation and Development (“an OECD state”),

(b) a credit institution that is supervised by the central bank or other banking regulator of an OECD state,

(c) any credit institution that—

(i) is subject to regulation by the banking regulator of a State that is not an OECD state,

(ii) is required by the law of the country or territory in which it is established to provide audited accounts,

(iii) has minimum net assets of £5 million (or its equivalent in any other currency at the relevant time),

(iv) has a surplus of revenue over expenditure for the last two financial years, and

(v) has an annual report which is not materially qualified.”

8. In regulation 22 (safeguarding option 2), in paragraph (3), in the definition of “authorised insurer”, omit the words from “or otherwise authorised” to “that Directive”.

9.—(1) Regulation 25 (accounting and statutory audit) is amended as follows.

(2) In paragraph (2), for the words from “statutory auditors” to the end substitute “statutory auditor”.

(3) In paragraph (3), omit “or audit firm”.

(4) At the end insert—

“(6) In this regulation “statutory auditor” has the same meaning as in Part 42 of the Companies Act 2006(3) (see section 1210 of that Act).”

(3) 2006 c. 46.

10. Omit regulation 28 (notice of intention), regulation 29 (decision following notice of intention), regulation 29A (notice of intention from an EEA authorised payment institution) and regulation 30 (supervision of firms exercising passport rights).

11.—(1) Regulation 32 (additional activities) is amended as follows.

(2) In paragraph (1)(d), omit “European Union or”.

(3) In paragraph (4), for “EEA” substitute “United Kingdom”.

12. In regulation 33 (use of distributors and agents), omit paragraph (3).

13.—(1) Regulation 34 (requirement for agents to be registered) is amended as follows.

(2) Omit paragraph (2).

(3) In paragraph (3)(a)—

(a) in paragraph (ii), for the words from “by the agent” to the end substitute “by the agent to comply with the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017(4)”;

(b) in paragraph (iii), omit “or an EEA authorised electronic money institution”.

(4) Omit paragraph (5A).

(5) In paragraph (6)(c)(i), for the words from “money laundering directive” to “Regulations 2017” substitute “Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017”.

(6) Omit paragraph (10A).

(7) In paragraph (10B), for the words from “and (10A)” to the end substitute “within a period of two months beginning on the date on which the Authority received the completed application”.

(8) Omit paragraph (12A).

14. In regulation 37 (duty to notify change in circumstance), in paragraph (1)(a), for the words from “institution” to the end substitute “institution, 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”.

15. Omit regulation 59A (credit agreements).

16. In regulation 63 (prohibition on issuing electronic money by persons other than electronic money issuers), in paragraph (1)—

(a) omit sub-paragraph (c);

(b) in sub-paragraph (d), omit the words from “or exercising” to “EEA firms”;

(c) in sub-paragraph (f), omit the words from “the European” to the end.

17.—(1) Regulation 71 (duty to co-operate and exchange information) is amended as follows.

(2) In paragraph (1)—

(a) omit sub-paragraph (a);

(b) for sub-paragraphs (b) to (d) substitute—

“(b) the Bank of England; and

(c) any other public authorities which exercise functions that are relevant to electronic money issuers,”;

(4) [S.I. 2017/692](#).

Status: This is the original version (as it was originally made).

- (c) for the words from “under the electronic” to the end substitute “under these Regulations and other relevant legislation”.
- (3) In paragraph (2)—
 - (a) in sub-paragraph (a), for “(1)(a), (c) and (d)” substitute “(1)(c)”;
 - (b) for sub-paragraph (b) substitute—
 - “(b) the Bank of England when acting in its capacity as monetary and oversight authority;”;
 - (c) for the words from “under the electronic” to the end substitute “under these Regulations and other relevant legislation”.
- (4) Omit paragraph (3).
- 18.** Omit regulations 74 to 78A (transitional provisions).
- 19.** In Schedule 1 (information to be included in or with an application for authorisation), in paragraph 5E(b)(iii), omit the words from “taking into” to the end.
- 20.** Omit Schedule 2A (credit agreements).
- 21.**—(1) Schedule 3 (application and modification of legislation) is amended as follows.
 - (2) In paragraph 2A (Authority rules), in sub-paragraph (1)—
 - (a) in paragraph (a), for “, small electronic money institutions and EEA authorised electronic money institutions” substitute “and small electronic money institutions”;
 - (b) omit paragraph (c).
 - (3) In paragraph 3 (information gathering and investigations)—
 - (a) in paragraphs (a)(i), (b)(i), (ba), (c)(i)(bb) and (cc) and (ii)(aa), (bb) and (cc), in each of the modifications of sections 165, 166, 166A and 167 of the Financial Services and Markets Act 2000⁽⁵⁾ referring to the definition of “electronic money issuer” in regulation 2(1) of the Electronic Money Regulations 2011, omit “(c),”;
 - (b) in paragraph (d), in the modification of section 168(1) of the Financial Services and Markets Act 2000, omit paragraphs (ac) and (ad);
 - (c) in paragraph (k), in the modification of section 176(3)(a) of the Financial Services and Markets Act 2000, omit “(c),”.
 - (4) Omit paragraph 4A (incoming firms: intervention by the Authority).
- 22.**—(1) Schedule 5 (Gibraltar) is amended as follows.
 - (2) In the heading before paragraph 1, for “deemed passport rights” substitute “market access rights”.
 - (3) In paragraph 1—
 - (a) in sub-paragraph (1)(b), after “in accordance with” insert “Gibraltar legislation which implemented”;
 - (b) after sub-paragraph (1) insert—
 - “(1A) Such a firm is referred to in the following provisions of this Schedule as a Gibraltar-based firm.”;
 - (c) for sub-paragraphs (2) and (3) substitute—

(5) 2000 c. 8.

“(2) A Gibraltar-based firm is to be treated as having an entitlement, corresponding to the passport right deriving from the electronic money directive that such a firm had immediately before exit day, to establish a branch or provide services in the United Kingdom.

(2A) Despite their amendment or revocation by the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018, the provisions of these Regulations listed in sub-paragraph (2B), as they had effect immediately before exit day, continue to apply for the purposes of this paragraph.

(2B) The provisions referred to in sub-paragraph (2A) are as follows—

- (a) in regulation 2 (interpretation), in paragraph (1), paragraph (c) of the definition of “electronic money issuer”;
- (b) in regulation 4 (the register of electronic money issuers), in paragraph (2), the reference to paragraph (c) of the definition of electronic money issuer;
- (d) in regulation 21 (safeguarding option 1), paragraph (7);
- (e) in regulation 22 (safeguarding option 2), paragraph (3);
- (f) regulation 25 (accounting and statutory audit);
- (g) regulations 29A and 30 (passporting);
- (h) in regulation 34 (requirement for agents to be registered), paragraph (3)(a)(iii);
- (i) regulation 59A and Schedule 2A (credit agreements);
- (j) regulation 63 (prohibition on issuing electronic money by persons other than electronic money issuers);
- (k) in regulation 71 (duty to co-operate and exchange information), paragraph (1);
- (l) in Schedule 3 (application and modification of legislation), paragraphs 2A and 3.

(3) In those provisions as applying for the purposes of this paragraph—

- (a) references to an “EEA authorised electronic money institution” are to be read as references to the firm;
- (b) references to the home state competent authority are to be read as references to the Gibraltar Financial Services Commission;
- (c) references to a “passport right” are to be read as references to the entitlement mentioned in sub-paragraph (2);
- (d) references to the authorisation of any person as a credit institution, custodian or insurer in accordance with a directive are to be read as a reference to authorisation in accordance with Gibraltar legislation which implemented the directive;
- (e) references to a person’s rights or entitlements are to be read as references to the rights or entitlements the person would have, if the person’s rights or entitlements were being determined immediately before exit day.”

(4) In the heading before paragraph 2, for “deemed passport rights” substitute “market access rights.

(5) In paragraph 2—

- (a) in sub-paragraph (1) for “its passport right,” substitute “the passport right that such a firm had immediately before exit day,”;
- (b) after sub-paragraph (1) insert—

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“(1A) Despite their amendment or revocation by the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018, the provisions of these Regulations listed in sub-paragraph (1B), as they had effect immediately before exit day, continue to apply for the purposes of this paragraph.

(1B) The provisions referred to in sub-paragraph (1A) are as follows—

- (a) regulations 28 to 30 (passporting);
- (b) in regulation 33 (use of distributors and agents), paragraph (3);
- (c) in regulation 34 (requirement for agents to be registered), paragraphs (2), (3), (5A), (10A), (10B) and (12A);
- (d) in regulation 37 (duty to notify change in circumstance), paragraph (1)(a);
- (c) regulation 71 (duty to co-operate).”;

(c) for sub-paragraph (2) substitute—

“(2) In relation to an authorised electronic money institution which establishes a branch or provides services in Gibraltar, those provisions are to be read as if—

- (a) references to an “EEA branch” were references to such a branch;
- (b) references to an “EEA State” were references to Gibraltar;
- (c) references to the host state competent authority were references to the Gibraltar Financial Services Commission; and
- (e) references to a “passport right” were references to the entitlement mentioned in sub-paragraph (1).”

(6) After paragraph 2 insert—

“References to Gibraltar regulator

2A.—(1) The Treasury may by regulations made by statutory instrument make such amendments of the references in paragraphs 1 and 2 to the Gibraltar Financial Services Commission, or any references previously substituted for those references, as appear to the Treasury to be appropriate in order to take account of any change in the law of Gibraltar.

(2) A statutory instrument containing regulations under sub-paragraph (1) is subject to annulment in pursuance of a resolution of either House of Parliament.”

(7) Omit paragraph 3.