STATUTORY INSTRUMENTS

2011 No. 99

The Electronic Money Regulations 2011

PART 6

THE AUTHORITY

The functions of the Authority

Functions of the Authority

47.—(1) The Authority is to have the functions conferred on it by these Regulations.

(2) In discharging its function of determining the general policy and principles by reference to which it performs particular functions under these Regulations, the Authority must have regard to—

(a) the need to use its resources in the most efficient and economic way;

(b) the responsibilities of those who manage the affairs of electronic money issuers;

(c) the principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction;

(d) the desirability of facilitating innovation in connection with the issuance of electronic money and the provision of payment services;

(e) the international character of financial services and markets and the desirability of maintaining the competitive position of the United Kingdom;

(f) the need to minimise the adverse effects on competition that may arise from anything done in the discharge of those functions;

(g) the desirability of facilitating competition in relation to the issuance of electronic money and the provision of payment services; and

(h) the desirability of enhancing the understanding and knowledge of members of the public of financial matters (including the United Kingdom financial system).

Supervision and enforcement

Monitoring and enforcement

48.—(1) The Authority must maintain arrangements designed to enable it to determine whether—

(a) persons on whom requirements are imposed by or under Part 2, 3 or 4 of these Regulations are complying with them;

(b) there has been any contravention of regulation 63(1), 64(1) or 66(1) or (2).

(2) The Authority may maintain arrangements designed to enable it to determine whether persons on whom requirements are imposed by or under Part 5 of these Regulations are complying with them.

(3) The arrangements referred to in paragraphs (1) and (2) may provide for functions to be performed on behalf of the Authority by any body or person who is, in its opinion, competent to perform them.

(4) The Authority must also maintain arrangements for enforcing the provisions of these Regulations.

(5) Paragraph (3) does not affect the Authority's duty under paragraph (1).

Reporting requirements

49.—(1) An electronic money issuer must give the Authority such information in respect of its issuance of electronic money and provision of payment services and its compliance with requirements imposed by or under Parts 2 to 5 of these Regulations as the Authority may direct.

(2) Information required under this regulation must be given at such times and in such form, and verified in such manner, as the Authority may direct.

Public censure

50. If the Authority considers that an electronic money issuer has contravened a requirement imposed on it by or under these Regulations the Authority may publish a statement to that effect.

Financial penalties

51.—(1) The Authority may impose a penalty of such amount as it considers appropriate on—

(a) an electronic money issuer who has contravened a requirement imposed on it by or under these Regulations; or

(b) a person who has contravened regulation 63(1), 64(1) or 66(1) or (2).

(2) A penalty under this regulation is a debt due from that person to the Authority, and is recoverable accordingly.

Suspending authorisation etc

52.—(1) If the Authority considers that an electronic money institution has contravened a requirement imposed on it by or under these Regulations, it may—

(a) suspend, for such period as it considers appropriate, the institution's authorisation or, as the case may be, registration; or

(b) impose, for such period as it considers appropriate, such limitations or other restrictions in relation to the carrying on of electronic money issuance or payment services business by the institution as it considers appropriate.

(2) The period for which a suspension or restriction is to have effect may not exceed 12 months.

(3) A suspension may relate only to the carrying on of an activity in specified circumstances.

(4) A restriction may, in particular, be imposed so as to require the institution concerned to take, or refrain from taking, specified action.

(5) The Authority may—

(a) withdraw a suspension or restriction; or

(b) vary a suspension or restriction so as to reduce the period for which it has effect or otherwise to limit its effect.

(6) Any one or more of the powers in—

(a) paragraph (1)(a) and (b) of this regulation; and

(b) regulations 50 and 51,

may be exercised in relation to the same contravention.

Proposal to take disciplinary measures

53.—(1) Where the Authority proposes—

(a) to publish a statement under regulation 50;

(b) to impose a penalty under regulation 51; or

(c) to suspend an institution's authorisation or registration or impose a restriction under regulation 52,

it must give the person concerned a warning notice.

(2) The warning notice must set out the terms of the statement, the amount of the penalty or the period for which the suspension or restriction is to have effect, as the case may be.

(3) If, having considered any representations made in response to the warning notice, the Authority decides to take any of the steps mentioned in paragraph (1), it must without delay give the person concerned a decision notice.

(4) The decision notice must set out the terms of any statement, the amount of any penalty or the period for which any suspension or restriction is to have effect, as the case may be.

(5) If the Authority decides to take any of the steps mentioned in paragraph (1) the person concerned may refer the matter to the Upper Tribunal.

(6) Sections 210(**1**) (statements of policy) and 211 (statements of policy: procedure) of the 2000 Act apply—

(a) in respect of the imposition of penalties under regulation 51 as they apply in respect of the imposition of penalties under Part 14 of the 2000 Act (disciplinary measures); and

(b) in respect of the imposition of a suspension or restriction under regulation 52 as they apply in respect of the imposition of a suspension or restriction under that Part of that Act.

(7) After a statement under regulation 50 is published, the Authority must send a copy of it to the person concerned and to any person to whom a copy of the decision notice was given under section 393(4) of the 2000 Act (third party rights) (as applied by paragraph 8 of Schedule 3 to these Regulations).

Injunctions

54.—(1) If, on the application of the Authority, the court is satisfied—

(a) that there is a reasonable likelihood that any person will contravene a requirement imposed by or under these Regulations; or

(b) that any person has contravened such a requirement and that there is a reasonable likelihood that the contravention will continue or be repeated,

the court may make an order restraining (or, in Scotland, an interdict prohibiting) the contravention.

(2) If, on the application of the Authority, the court is satisfied—

(a) that any person has contravened a requirement imposed by or under these Regulations; and

(b) that there are steps which could be taken for remedying the contravention,

the court may make an order requiring that person, and any other person who appears to have been knowingly concerned in the contravention, to take such steps as the court may direct to remedy it.

(**1**) Section 210 was amended by the Financial Services Act 2010 (c.28) Schedule 2, paragraph 20.

(3) If, on the application of the Authority, the court is satisfied that any person may have—

(a) contravened a requirement imposed by or under these Regulations; or

(b) been knowingly concerned in the contravention of such a requirement,

it may make an order restraining (or, in Scotland, an interdict prohibiting) them from disposing of, or otherwise dealing with, any assets of theirs which it is satisfied that they are reasonably likely to dispose of or otherwise deal with.

(4) The jurisdiction conferred by this regulation is exercisable by the High Court and the Court of Session.

(5) In paragraph (2), references to remedying a contravention include references to mitigating its effect.

Power of Authority to require restitution

55.—(1) The Authority may exercise the power in paragraph (2) if it is satisfied that an electronic money issuer (referred to in this regulation and regulation 56 as "the person concerned") has contravened a requirement imposed by or under these Regulations, or been knowingly concerned in the contravention of such a requirement, and that—

(a) profits have accrued to the person concerned as a result of the contravention; or

(b) one or more persons have suffered loss or been otherwise adversely affected as a result of the contravention.

(2) The power referred to in paragraph (1) is a power to require the person concerned, in accordance with such arrangements as the Authority considers appropriate, to pay to the appropriate person or distribute among the appropriate persons such amount as appears to the Authority to be just having regard—

(a) in a case within sub-paragraph (a) of paragraph (1), to the profits appearing to the Authority to have accrued;

(b) in a case within sub-paragraph (b) of that paragraph, to the extent of the loss or other adverse effect;

(c) in a case within both of those sub-paragraphs, to the profits appearing to the Authority to have accrued and to the extent of the loss or other adverse effect.

(3) In paragraph (2) "appropriate person" means a person appearing to the Authority to be someone—

(a) to whom the profits mentioned in paragraph (1)(a) are attributable; or

(b) who has suffered the loss or adverse effect mentioned in paragraph (1)(b).

Proposal to require restitution

56.—(1) If the Authority proposes to exercise the power in regulation 55(2), it must give the person concerned a warning notice.

(2) The warning notice must state the amount which the Authority proposes to require the person concerned to pay or distribute as mentioned in regulation 55(2).

(3) If, having considered any representations made in response to the warning notice, the Authority decides to exercise the power in regulation 55(2), it must without delay give the person concerned a decision notice.

(4) The decision notice must—

(a) state the amount that the person concerned is to pay or distribute;

(b) identify the person or persons to whom that amount is to be paid or among whom that amount is to be distributed; and

(c) state the arrangements in accordance with which the payment or distribution is to be made.

(5) If the Authority decides to exercise the power in regulation 55(2), the person concerned may refer the matter to the Upper Tribunal.

Restitution orders

57.—(1) The court may, on the application of the Authority, make an order under paragraph (2) if it is satisfied that an electronic money issuer has contravened a requirement imposed by or under these Regulations, or been knowingly concerned in the contravention of such a requirement, and that—

(a) profits have accrued to the electronic money issuer as a result of the contravention; or

(b) one or more persons have suffered loss or been otherwise adversely affected as a result of the contravention.

(2) The court may order the electronic money issuer to pay to the Authority such sum as appears to the court to be just having regard—

(a) in a case within sub-paragraph (a) of paragraph (1), to the profits appearing to the court to have accrued;

(b) in a case within sub-paragraph (b) of that paragraph, to the extent of the loss or other adverse effect;

(c) in a case within both those sub-paragraphs, to the profits appearing to the court to have accrued and to the extent of the loss or other adverse effect.

(3) Any amount paid to the Authority in pursuance of an order under paragraph (2) must be paid by it to such qualifying person or distributed by it among such qualifying persons as the court may direct.

(4) In paragraph (3), "qualifying person" means a person appearing to the court to be someone—

(a) to whom the profits mentioned in paragraph (1)(a) are attributable; or

(b) who has suffered the loss or adverse effect mentioned in paragraph (1)(b).

(5) On an application under paragraph (1) the court may require the electronic money issuer to supply it with such accounts or other information as it may require for any one or more of the following purposes—

(a) establishing whether any and, if so, what profits have accrued to them as mentioned in sub-paragraph (a) of that paragraph;

(b) establishing whether any person or persons have suffered any loss or adverse effect as mentioned in sub-paragraph (b) of that paragraph; and

(c) determining how any amounts are to be paid or distributed under paragraph (3).

(6) The court may require any accounts or other information supplied under paragraph (5) to be verified in such manner as it may direct.

(7) The jurisdiction conferred by this regulation is exercisable by the High Court and the Court of Session.

(8) Nothing in this regulation affects the right of any person other than the Authority to bring proceedings in respect of the matters to which this regulation applies.

Complaints

58.—(1) The Authority must maintain arrangements designed to enable electronic money holders and other interested parties to submit complaints to it that a requirement imposed by or under Part 5 of these Regulations has been breached by an electronic money issuer.

(2) Where it considers it appropriate, the Authority must include in any reply to a complaint under paragraph (1) details of the ombudsman scheme established under Part 16 of the 2000 Act (the ombudsman scheme).

Miscellaneous

Costs of supervision

59.—(1) The functions of the Authority under these Regulations are to be treated for the purposes of paragraph 17 (fees) of Part 3 of Schedule 1 to the 2000 Act as functions conferred on the Authority under that Act with the following modifications—

(a) section 2(3) of the 2000 Act (the Authority's general duties) does not apply to the making of rules under paragraph 17 by virtue of this regulation;

(b) rules made under paragraph 17 by virtue of this regulation are not to be treated as regulating provisions for the purposes of section 159(1) of the 2000 Act (competition scrutiny)(**2**);

(c) paragraph 17(2) and (3) does not apply.

(2) The Authority must apply amounts paid to it by way of penalties imposed under regulation 51 towards expenses incurred in carrying out its functions under these Regulations or for any incidental purpose.

Guidance

60.—(1) The Authority may give guidance consisting of such information and advice as it considers appropriate with respect to—

(a) the operation of these Regulations;

(b) any matters relating to the functions of the Authority under these Regulations;

(c) any other matters about which it appears to the Authority to be desirable to give information or advice in connection with these Regulations.

(2) The Authority may—

(a) publish its guidance;

(b) offer copies of its published guidance for sale at a reasonable price;

(c) if it gives guidance in response to a request made by any person, make a reasonable charge for that guidance.

Authority's exemption from liability in damages

61. The functions of the Authority under these Regulations are to be treated for the purposes of paragraph 19 (exemption from liability in damages) of Part 4 of Schedule 1 to the 2000 Act as functions conferred on the Authority under that Act.

(**2**) Section 159(1) was amended by the Enterprise Act 2002 (c.40), section 278(1) and Schedule 25, paragraph 40, and by S.I. 2006/2975.

Application and modification of primary and secondary legislation

62. The provisions of primary and secondary legislation specified in Schedule 3 apply in respect of the Authority's functions under these Regulations with the modifications set out in that Schedule.