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STATUTORY INSTRUMENTS

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**2011 No. 99**

**The Electronic Money Regulations 2011**

**PART 7**

**GENERAL**

*Transitional provisions*

**Persons with a Part 4 permission**

74.—(1) Any person who—

- (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.
- (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(1).

### **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(2) 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.

(1) See section 40 of the 2000 Act.

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

(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”)(3).

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

### **Certified persons**

**76.**—(1) Any person who—

- (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(4) (“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)(5), shall apply to a person falling within paragraph (1) as if the person were an electronic money institution.

### **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(6) 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.

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

(4) [S.I. 2001/544](#); amended by [S.I. 2006/3221](#); article 9C was inserted by [S.I. 2002/682](#).

(5) 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](#).

(6) Paragraph 2 was substituted by [S.I. 2006/3221](#).