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STATUTORY INSTRUMENTS

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**2017 No. 1173**

**The Payment Systems and Services and Electronic Money (Miscellaneous Amendments) Regulations 2017**

**PART 3**

**Amendments relating to the Electronic Money Regulations 2011 and the Payment Services Regulations 2017**

**Amendment of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975**

**3.** In article 3(1)(g) of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975(1), in the table, after “an authorised payment institution” in each place it appears insert “, a registered account information service provider”.

**Amendment of the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979**

**4.** In the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979(2)—

(a) in article 1(2) (interpretation)—

(i) for “Payment Services Regulations 2009” in each place it appears substitute “Payment Services Regulations 2017”;

(ii) in the appropriate place, insert—

““registered account information service provider” has the meaning given by regulation 2(1) of the Payment Services Regulations 2017;”;

(b) in article 2(1)(e) (exclusion of Article 5(2) of the Rehabilitation of Offenders (Northern Ireland) Order 1978 in relation to certain questions), in the table, after “an authorised payment institution” in each place it appears insert “, a registered account information service provider”;

(c) in article 3(1)(d)(xv) (exception from Article 5(3)(b) of the Rehabilitation of Offenders (Northern Ireland) Order 1978 in relation to certain professions, offices, employments, etc.)—

(i) after “an authorised payment institution” insert “, a registered account information service provider”;

(ii) for “2009” substitute “2017”.

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(1) [S.I. 1975/1023](#). Article 3 was amended by [S.I. 2001/3816](#), [2007/2149](#), [2008/3259](#), [2013/472](#), [1198](#) and [1338](#) and [S.S.I. 2003/231](#), and by other instruments which are not relevant here. The definition of “registered account information service provider” was inserted into article 2 by [S.I. 2017/752](#).

(2) [S.R. 1979 No. 195](#). Amended by [S.R. 2012 No. 318](#) and 2014 Nos [27](#) and [174](#) and by other instruments which are not relevant here.

## Amendment of the Electronic Money Regulations 2011

### 5. In the Electronic Money Regulations 2011(3)—

- (a) in regulation 21(3)(b) (safeguarding option 1) after “assets” insert “, or for holding those funds or assets together with proceeds of an insurance policy or guarantee held in accordance with regulation 22(1)(b)”;
- (b) in regulation 22(1)(b)(ii) (safeguarding option 2) after “proceeds” insert “, or for holding those proceeds together with funds or assets held in accordance with regulation 21(3)”;
- (c) after regulation 79 (amendments to primary and secondary legislation) insert—

*“Gibraltar*

### Application to Gibraltar

**80.** Schedule 5, which contains provisions concerning the application of these Regulations to Gibraltar, has effect.”;

- (d) after Schedule 4 insert—

“SCHEDULE 5

Regulation 80

Gibraltar

### Exercise of deemed passport rights by Gibraltar-based firms

**1.—**(1) These Regulations apply as set out in sub-paragraphs (2) and (3) in relation to a firm which—

- (a) has its head office in Gibraltar; and
- (b) is authorised in Gibraltar to issue electronic money and provide payment services in accordance with the electronic money directive.

(2) The firm is to be treated as having an entitlement, corresponding to its passport right deriving from the electronic money directive, to establish a branch or provide services in the United Kingdom.

(3) References in these Regulations to—

- (a) an “EEA authorised electronic money institution” are to be treated as references to the firm;
- (b) a “home state competent authority” are to be treated as references to the competent authority (within the meaning of the electronic money directive) in Gibraltar in relation to the firm; and
- (c) a “passport right” are to be treated as references to the entitlement mentioned in sub-paragraph (2).

### Exercise by authorised electronic money institutions of deemed passport rights in Gibraltar

**2.—**(1) For the purposes of these Regulations, an authorised electronic money institution is to be treated as having an entitlement, corresponding to its passport right, to establish a branch or provide services in Gibraltar.

(2) In relation to an authorised electronic money institution which establishes a branch or provides services in Gibraltar, references in these Regulations to—

- (a) an “EEA branch” are to be treated as including references to such a branch;
- (b) an “EEA State” are to be treated as including references to Gibraltar;
- (c) a “host state competent authority” are to be treated as including references to the competent authority (within the meaning of the electronic money directive) in Gibraltar in relation to the institution; and
- (d) a “passport right” are to be treated as including references to the entitlement mentioned in sub-paragraph (1).

### **Modification of legislation**

3.—(1) Section 138L(1) of the 2000 Act (consultation: general exemptions)(4) has effect for the purposes of these Regulations as if modified by adding at the end “or if it is making rules for the purpose of extending rules that apply to EEA authorised electronic money institutions to Gibraltar-based firms”.

(2) Paragraph 14 of Schedule 17 to the 2000 Act (the ombudsman scheme: the scheme operator’s rules)(5) has effect for the purposes of these Regulations as if modified by adding at the end—

“(8) Sub-paragraphs (4), (5) and (6) do not apply if the scheme operator is making rules for the purpose of extending rules that apply to EEA authorised electronic money institutions to Gibraltar-based firms.”.

### **Firms which have taken action before 13th January 2018**

4. Where an authorised electronic money institution or the Authority has taken action before 13th January 2018 under regulation 28, 29 or 34 in respect of the provision of services, the use of an agent or the establishment of a branch in Gibraltar by that authorised electronic money institution, such action is to be treated as if it had been taken under such regulations as they apply by virtue of paragraph 2.”.

### **Amendment of the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013**

6. In the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013(6)—

- (a) in article 2(1) (interpretation)—
  - (i) for “Payment Services Regulations 2009” in each place it appears substitute “Payment Services Regulations 2017”;
  - (ii) in the appropriate place, insert—

““registered account information service provider” has the meaning given by regulation 2(1) of the Payment Services Regulations 2017;”;
- (b) in Part 1 of Schedule 2 (decisions referred to at articles 3(b) and 5(c)), in paragraph 1—
  - (i) in sub-paragraph (o) after “an authorised payment institution” insert “, a registered account information service provider”;

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(4) Section 138L was substituted by section 24 of the Financial Services Act 2012.

(5) Paragraph 14 was amended by paragraph 25 of Schedule 11 to the Financial Services Act 2012 and by [S.I. 2015/542](#).

(6) [S.S.I. 2013/50](#). Amended by [S.I. 2013/472](#) and by other instruments which are not relevant here.

- (ii) in sub-paragraphs (o) and (p) for “2009” substitute “2017”;
- (c) in Part 2 of Schedule 2 (table referred to in Part 1 of Schedule 2 and in paragraph 7 of Schedule 3), after “an authorised payment institution” in each place it appears insert “, a registered account information service provider”.

### **Amendment of the Payment Services Regulations 2017**

#### **7. In the Payment Services Regulations 2017(7)—**

- (a) in regulation 2(1) (interpretation), in the definition of “agent” for “authorised payment institution or a small payment institution” substitute “authorised payment institution, a small payment institution or a registered account information service provider”;
- (b) in regulation 23 (safeguarding requirements)—
  - (i) in paragraph (7)(b) after “assets” insert “, or for holding those funds or assets together with proceeds of an insurance policy or guarantee held in accordance with paragraph (12)(b)”;
  - (ii) in paragraph (12)(b)(ii) after “proceeds” insert “, or for holding those proceeds together with funds or assets held in accordance with paragraph (7)”;
- (c) in regulation 34 (use of agents)—
  - (i) in paragraph (1) for “and small payment institutions” substitute “, small payment institutions and registered account information service providers”;
  - (ii) in paragraph (2) after “Authorised payment institutions” insert “and registered account information service providers”;
  - (iii) in paragraph (8) for “or the small payment institution” substitute “, the small payment institution or the registered account information service provider”;
  - (iv) in paragraph (14) after “authorised payment institution” insert “or registered account information service provider”;
  - (v) in paragraph (15)—
    - (aa) for “or 13” substitute “, 13 or 17”;
    - (bb) after “15” insert “or 19”;
    - (cc) after “small payment institution” insert “or account information service provider”;
  - (vi) in paragraph (16) for “or a small payment institution” substitute “, a small payment institution or a registered account information service provider”;
  - (vii) in paragraph (17) for “or small payment institution” substitute “, a small payment institution or a registered account information service provider”;
- (d) in regulation 35 (removal of agent from register)—
  - (i) for “or small payment institution”, in each place in which it appears, substitute “, small payment institution or registered account information service provider”;
  - (ii) in paragraph (4) for “institution concerned” substitute “authorised payment institution, small payment institution or registered account information service provider”;
- (e) in regulation 36 (reliance) for “or a small payment institution”, in both places in which it appears, substitute “, a small payment institution or a registered account information service provider”;

- (f) in regulation 37(1) (duty to notify change in circumstance)—
  - (i) for “or a small payment institution” substitute “, a small payment institution or a registered account information service provider”;
  - (ii) after sub-paragraph (b) omit “and” and insert—
    - “(ba) in the case of a registered account information service provider, its fulfilment of any of the conditions set out in regulation 18(3) and (4) (conditions for registration); and”;
- (g) in regulation 89(2) (value date and availability of funds)—
  - (i) in sub-paragraph (a) after “conversion” insert “by the payee’s payment service provider”;
  - (ii) in sub-paragraph (b) for “only a currency conversion” substitute “a currency conversion by the payee’s payment service provider”;
- (h) in regulation 107 (application of Part 9 to requirements of directly applicable EU regulations and FCA rules), in paragraph (c) for “Schedule 7” substitute “Schedule 6”;
- (i) in regulation 109 (reporting requirements), in paragraph (4) for the words from “authorised”, in the first place it appears, to “services,” substitute “payment service provider in the United Kingdom (but not an agent of such a payment service provider or an excluded provider)”.