

**Changes to legislation:** The Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018, SCHEDULE 3 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

## SCHEDULE 3

Regulation 3(2)

### Transitional Provisions

## PART 1

### Transitional provisions relating to Electronic Money Regulations 2011

#### Interpretation

1. In this Part of this Schedule—
  - (a) “EMR 2011” means the Electronic Money Regulations 2011 <sup>M1</sup>,
  - (b) “the 2000 Act” means the Financial Services and Markets Act 2000 <sup>M2</sup>,
  - [<sup>F1</sup>(ba) “the 2018 Regulations” means the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018;]
  - (c) “the FCA” means the Financial Conduct Authority, and
  - (d) “EEA authorised electronic money institution”, “home state competent authority”, “passport right”, “the electronic money directive”, “the money laundering directive” and “the payment services directive” each has the meaning given by EMR 2011 as those Regulations have effect before the amendments made by Schedule 2.

#### Textual Amendments

- F1** Sch. 3 para. 1(ba) inserted (6.9.2019) by [The Financial Services \(Electronic Money, Payment Services and Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1212\)](#), regs. 1(2), **7(2)**

#### Marginal Citations

- M1** [S.I. 2011/99](#).  
**M2** [2000 c. 8](#).

#### Transitional authorisation for EEA authorised electronic money institutions

- 2.—(1) This paragraph applies to a person who—
  - (a) immediately before [<sup>F2</sup>IP completion day] is entitled to provide electronic money issuance, redemption, distribution or payment services in the United Kingdom in the exercise of a passport right as an EEA authorised electronic money institution,
  - (b) would (apart from this Part of this Schedule) cease from [<sup>F2</sup>IP completion day] to be entitled to provide those services in the United Kingdom, and
  - (c) has notified the FCA in accordance with paragraph 3 that the person wishes this paragraph to apply in the person's case.
- (2) During the transition period defined in paragraph 10—
  - (a) the person is to be taken to be an authorised electronic money institution whose authorisation under regulation 9 of EMR 2011 relates to the services mentioned in sub-paragraph (1)(a) and (b), and
  - (b) accordingly, references in EMR 2011 to an authorised electronic money institution are to be read as including a person to whom this paragraph applies.
- (3) Sub-paragraph (2) is subject to paragraphs 7 and 8.

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(4) In the following provisions of this Part of this Schedule, “transitional authorisation” means authorisation by virtue of this paragraph as an authorised electronic money institution.

#### Textual Amendments

**F2** Words in Sch. 3 para. 2 substituted (31.1.2020 immediately before exit day) by [The Financial Services \(Consequential Amendments\) Regulations 2020 \(S.I. 2020/56\)](#), regs. 1, **8(2)(a)**

#### Requirements to be met by notification

- 3.—(1) A notification for the purposes of paragraph 2(1)(c) must—
- (a) be made in such manner as the FCA may direct, and
  - [<sup>F3</sup>(b) be made during the period beginning with 28 December 2018 and ending with the day preceding the day on which IP completion day falls.]
- (2) The notification must—
- (a) state the name and address of the person making the notification and any authorisation or reference number,
  - (b) specify the person's home state competent authority,
  - (c) specify a postal address in the United Kingdom to be used for correspondence,
  - (d) identify the electronic money issuance, redemption, distribution or payment services which the person is entitled to provide in the United Kingdom by virtue of being an EEA authorised electronic money institution for the purposes of EMR 2011,
  - (e) if, for the provision of the services in the United Kingdom, the person uses an agent who is registered with the home state competent authority, include the information referred to in regulation 34(3)(a) of EMR 2011,
  - (f) if the person uses or intends to use a branch in the United Kingdom to provide the services, state the names of those responsible for the management of the branch and details of its organisational structure,
  - (g) identify the distributors, if any, whom the person has engaged or intends to engage to distribute or redeem electronic money in exercise of the person's rights by virtue of the person's transitional authorisation,
  - (h) specify any restrictions or conditions that have been imposed on the person by its home state competent authority, and
  - (i) specify any precautionary measures taken by the FCA under regulation 30(8) of EMR 2011 that are in force.

#### Textual Amendments

**F3** Sch. 3 para. 3(1)(b) substituted (31.1.2020 immediately before exit day) by [The Financial Services \(Consequential Amendments\) Regulations 2020 \(S.I. 2020/56\)](#), regs. 1, **8(3)**

#### Registration of agents

4.—(1) If a notification for the purposes of paragraph 2(1)(c) includes the information required by paragraph 3(2)(e) in relation to an agent, the FCA must, with effect from [<sup>F4</sup>IP completion day] or as soon as practicable after that time, include the agent on the register maintained under regulation 4 of EMR 2011.

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(2) A person to whom paragraph 2 applies may apply to the FCA under regulation 34 of EMR 2011 before [F<sup>4</sup>IP completion day] for the registration at any time after [F<sup>4</sup>IP completion day] of an agent not falling within sub-paragraph (1).

#### Textual Amendments

**F4** Words in Sch. 3 para. 4 substituted (31.1.2020 immediately before exit day) by [The Financial Services \(Consequential Amendments\) Regulations 2020 \(S.I. 2020/56\)](#), regs. 1, **8(2)(b)**

### Requirements imposed by FCA

5.—(1) This paragraph applies in relation to a person to whom paragraph 2 applies.

(2) Any requirement which—

(a) was imposed on the person—

(i) as a precautionary measure under regulation 30(8) of EMR 2011, or

(ii) under section 196 of the 2000 Act as applied by paragraph 4A of Schedule 3 to EMR 2011, and

(b) has effect immediately before [F<sup>5</sup>IP completion day],

is to continue to have effect at and after that time as if it were imposed by the FCA under regulation 7 of EMR 2011.

(3) The FCA may exercise its powers under regulation 7 of EMR 2011 in relation to the person if it appears to the FCA that, immediately before [F<sup>5</sup>IP completion day], the condition in section 194(1) (a) or (b) of the 2000 Act, as applied by paragraph 4A of Schedule 3 to EMR 2011, was met.

#### Textual Amendments

**F5** Words in Sch. 3 para. 5 substituted (31.1.2020 immediately before exit day) by [The Financial Services \(Consequential Amendments\) Regulations 2020 \(S.I. 2020/56\)](#), regs. 1, **8(2)(e)**

### Duties of person relying on transitional authorisation

6.—(1) This paragraph applies, during the transition period defined in paragraph 10, to any person in relation to whom paragraph 2 applies.

(2) The person must notify the FCA of—

(a) any material change affecting any matter dealt with in the information contained in or accompanying the notification for the purposes of paragraph 2(1)(c),

(b) the cancellation or variation by the person's home state competent authority of the person's authorisation to issue electronic money and provide payment services in accordance with the electronic money directive,

(c) any regulatory action taken against the person by the person's home state competent authority,

(d) any adverse judgments made against the person by the person's home state competent authority in pursuance of the money laundering directive, or

(e) the person's intention to engage a distributor through whom electronic money is to be distributed or redeemed.

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(3) The person must when required by the FCA provide the FCA with such evidence as the FCA may reasonably require to demonstrate the person's compliance with the law of the person's home state implementing Article 7 of the electronic money directive (safeguarding).

### **Exclusion of certain provisions of Electronic Money Regulations 2011**

7.—(1) The following provisions of EMR 2011 do not apply in relation to a person while the person is an authorised electronic money institution by virtue of paragraph 2—

- (a) regulation 10(1) (cancellation of authorisation);
- (b) regulation 17 (duty to notify changes);
- (c) regulation 19 (capital requirements);
- (d) [<sup>F6</sup>except where the person is subject to insolvency proceedings (as defined in regulation 24 of EMR 2011) in the United Kingdom,] in regulation 24 (insolvency events), paragraphs (1), (2), (4) and (5);
- (e) regulation 25 (accounting and statutory audit);
- (f) in Schedule 3 (application and modification of legislation), paragraph 4 (control over electronic money institutions).

(2) Regulation 6 (conditions for authorisation) does not apply in relation to a person by virtue of the person's transitional authorisation, but applies in relation to any application for authorisation made by the person during transition period defined in paragraph 10.

#### **Textual Amendments**

**F6** Words in Sch. 3 para. 7(1)(d) inserted (6.9.2019) by [The Financial Services \(Electronic Money, Payment Services and Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1212\)](#), regs. 1(2), 7(3)

### **Power of FCA to cancel transitional authorisation**

8.—(1) The FCA may cancel a person's transitional authorisation and remove the person from the register where—

- (a) the person's authorisation by the person's home state competent authority is cancelled,
- (b) the person has failed to comply with the terms of the person's authorisation by the person's home state competent authority,
- (c) the person does not issue electronic money in the United Kingdom during the 12 months beginning with [<sup>F7</sup>IP completion day],
- (d) the person ceases to engage in business activity in the United Kingdom for more than 6 months,
- (e) the person's notification for the purposes of paragraph 2(1)(c) contains false statements,
- (f) the person lacks one or more of the following—
  - (i) robust governance arrangements for its electronic money issuance and payment service business, including a clear organisational structure with well-defined, transparent and consistent lines of responsibility,
  - (ii) effective procedures to identify, manage, monitor and report any risks to which the person might be exposed, and
  - (iii) adequate internal control mechanisms, including sound administrative, risk management and accounting procedures,

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- (g) any of the directors, or other persons responsible for the management of the person's electronic money and payment services business, is not of good repute,
- (h) the person does not have a business plan under which appropriate and proportionate systems, resources and procedures will be employed by the person to operate soundly,
- (i) the person has not taken adequate measures for the purposes of safeguarding electronic money holders' funds in accordance with regulation 20 of EMR 2011,
- (j) in the case of a person carrying on payment initiation services, the person does not hold professional indemnity insurance, or a comparable guarantee, of the kind mentioned in regulation 6(6)(e) of EMR 2011,
- (k) the person would constitute a threat to the stability of, or trust in, a payment system by continuing the person's electronic money or payment services business,
- (l) the cancellation is desirable in order to protect the interests of consumers, or
- (m) the person's issuance of electronic money or provision of payment services is otherwise unlawful, including where such provision of services is unlawful because the person's registration in a register maintained under regulation 54 or 55 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017<sup>M3</sup> has been cancelled under regulation 60 of those Regulations.

(2) Regulation 10(4) to (7) of EMR 2011 apply in relation to cancellation under sub-paragraph (1) of this paragraph as they apply in relation to cancellation under regulation 10(1) of those Regulations.

#### Textual Amendments

**F7** Words in Sch. 3 para. 8 substituted (31.1.2020 immediately before exit day) by [The Financial Services \(Consequential Amendments\) Regulations 2020 \(S.I. 2020/56\)](#), regs. 1, **8(2)(d)**

#### Marginal Citations

**M3** [S.I. 2017/692](#).

### Notice of intention

**9.—(1)** A person in relation to whom paragraph 2 applies must, before the end of the 12 months beginning with the day on which [<sup>F8</sup>IP completion day] falls, notify the FCA—

- (a) whether the person or a member of the person's immediate group, as defined by section 421ZA of the 2000 Act, intends to apply under regulation 5 of EMR 2011, and
- (b) whether the person intends to cease at or before the end of the transition period to provide in the United Kingdom the services to which the transitional authorisation relates.

(2) The person must notify the FCA within a reasonable time of any change in an intention previously notified.

#### Textual Amendments

**F8** Words in Sch. 3 para. 9 substituted (31.1.2020 immediately before exit day) by [The Financial Services \(Consequential Amendments\) Regulations 2020 \(S.I. 2020/56\)](#), regs. 1, **8(2)(e)**

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## Transition period

**10.**—(1) The transition period in relation to a person is a period beginning with [F9IP completion day] and ending with a day determined under this paragraph, or with any earlier day on which the cancellation under paragraph 8 of the person's transitional authorisation takes effect.

(2) In a case where a person has applied under regulation 5 of EMR 2011, on or after the date on which this regulation comes into force, to become an authorised electronic money institution and has not withdrawn the application—

- (a) if the application is granted, the person's transition period ends with the day before the day stated in accordance with regulation 9(5) of EMR 2011 as that on which the authorisation takes effect, and
- (b) if the application is refused, the decision notice under regulation 9(7) of EMR 2011 must state the date on which the person's transition period is to end.

(3) In any other case, the person's transition period ends at the end of the 3 years beginning with the day on which [F9IP completion day] falls.

(4) The person may give notice to the FCA specifying a date (earlier than that determined under sub-paragraph (2) or (3)) on which the person will cease to engage in new business covered by the person's transitional authorisation.

(5) The FCA may by notice to the person require the person to specify a date under sub-paragraph (4) before the end of a period specified in the notice, and if the person does not do so the FCA may itself specify a date on which the person's transitional authorisation will cease to cover new business.

### Textual Amendments

**F9** Words in Sch. 3 para. 10 substituted (31.1.2020 immediately before exit day) by [The Financial Services \(Consequential Amendments\) Regulations 2020 \(S.I. 2020/56\)](#), regs. 1, **8(2)(f)**

## Power to extend period specified in paragraph 10(3)

**11.**—(1) The Treasury may by regulations made by statutory instrument amend paragraph 10(3) so as to extend the period referred to in that provision, if the Treasury consider it necessary to do so.

(2) The Treasury may make regulations under sub-paragraph (1) only if, no later than 6 months before the end of the period to be extended, the FCA has submitted to the Treasury an assessment as to the effect of extending, or not extending, the period on persons (in general) to whom paragraph 2 applies.

(3) Regulations under sub-paragraph (1) may not extend the period for the time being by more than 12 months.

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

## Directions

**12.** The power of the FCA to give directions under this Part of this Schedule includes power—

- (a) to give different directions in relation to different notifications or categories of notification, and
- (b) to vary or revoke a previous direction.

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## [<sup>F10</sup>PART 1A

### Continuation of authorisation for limited purposes: Electronic Money Regulations 2011

#### Textual Amendments

**F10** Sch. 3 Pt. 1A inserted (1.3.2019) by [The Financial Services Contracts \(Transitional and Saving Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/405\)](#), regs. 1(2), **10(2)**

#### Interpretation

**12A.** The interpretative provisions in paragraph 1 apply also for the purposes of this Part of this Schedule [<sup>F11</sup>and “PSR 2017” means the Payment Services Regulations 2017].

#### Textual Amendments

**F11** Words in Sch. 3 para. 12A inserted (31.1.2020) by [The Financial Services \(Miscellaneous\) \(Amendment\) \(EU Exit\) \(No. 2\) Regulations 2019 \(S.I. 2019/1010\)](#), regs. 1(3), **7(2)**; 2020 c. 1, Sch. 5 para. 1(1)

#### Continued authorisation for limited purposes

**12B.**—(1) This paragraph applies to a person in relation to whom the [<sup>F12</sup>IP completion day] conditions or the transitional authorisation conditions are satisfied.

(2) The “[<sup>F12</sup>IP completion day] conditions”, in relation to a person, are—

- (a) that immediately before [<sup>F12</sup>IP completion day] the person was providing electronic money issuance or payment services through a branch or agent in the United Kingdom in the exercise of a passport right as an EEA authorised electronic money institution,
- (b) that immediately after [<sup>F12</sup>IP completion day] the person is not (apart from under this Part of this Schedule) an authorised electronic money institution, and
- (c) that immediately after [<sup>F12</sup>IP completion day]—
  - (i) the person has outstanding obligations under contracts which the person entered into through a branch or agent in the United Kingdom as an EEA authorised electronic money institution exercising passport rights, or
  - (ii) any electronic money issued by the person through a branch or agent in the United Kingdom as an EEA authorised electronic money institution exercising passport rights has not been redeemed.

(3) The “transitional authorisation conditions”, in relation to a person, are—

- (a) that on [<sup>F12</sup>IP completion day] the person became authorised to provide electronic money issuance, redemption, distribution or payment services in the United Kingdom by virtue of paragraph 2,
- (b) that the person has provided any such services in the United Kingdom either—
  - (i) before [<sup>F12</sup>IP completion day], in the exercise of a passport right as an EEA authorised electronic money institution, or
  - (ii) on or after [<sup>F12</sup>IP completion day], in accordance with paragraph 2,



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- (c) that immediately after the end of the transition period defined in paragraph 10 the person is not (apart from under this Part of this Schedule) an authorised electronic money institution, and
- (d) that immediately after the end of that period—
  - (i) the person has outstanding obligations under contracts which the person entered into as an EEA authorised electronic money institution exercising passport rights, or
  - (ii) electronic money issued by the person as an EEA authorised electronic money institution exercising passport rights has not been redeemed.
- (4) During the extension period defined in paragraph 12G—
  - (a) a person to whom this paragraph applies is to be taken to be an authorised electronic money institution whose authorisation under regulation 9 of EMR 2011 relates to the permitted services specified in paragraph 12E, <sup>F13</sup>...
  - (b) accordingly, references in EMR 2011 [<sup>F14</sup>and the Payment Services Regulations 2017] to an authorised electronic money institution are to be read as including a person to whom this paragraph applies<sup>F15</sup>, and
  - (c) a requirement imposed by a home state competent authority and which has effect immediately before [<sup>F12</sup>IP completion day] continues to have effect on and after that day as if it were imposed by the FCA under regulation 7 of EMR 2011 insofar as it could be imposed by the FCA under that regulation.]
- (5) Sub-paragraph (4) is subject to paragraphs 12C(4), 12H and 12I.
- (6) In this paragraph reference to providing services at a particular time includes where the performance of a pre-existing contract requires, or may require, a service to be provided at another time.

#### Textual Amendments

- F12** Words in Sch. 3 para. 12B substituted (31.1.2020 immediately before exit day) by [The Financial Services \(Consequential Amendments\) Regulations 2020 \(S.I. 2020/56\)](#), regs. 1, **8(2)(g)**
- F13** Word in Sch. 3 para. 12B(4)(a) omitted (6.9.2019) by virtue of [The Financial Services \(Electronic Money, Payment Services and Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1212\)](#), regs. 1(2), **7(4)(a)**
- F14** Words in Sch. 3 para. 12B(4)(b) inserted (6.9.2019) by [The Financial Services \(Electronic Money, Payment Services and Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1212\)](#), regs. 1(2), **7(4)(b)**
- F15** Sch. 3 para. 12B(4)(c) and preceding word inserted (6.9.2019) by [The Financial Services \(Electronic Money, Payment Services and Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1212\)](#), regs. 1(2), **7(4)(c)**

#### Duty to notify FCA

**12C.—(1)** A person to whom paragraph 12B or 12L applies must notify the FCA of that fact as soon as reasonably practicable, and in any event not later than one month after the person first becomes aware of an obligation to perform a pre-existing contract.

(2) In this Part a “pre-existing contract”, in relation to a person to whom paragraph 12B applies, means a contract—

- (a) which was entered into before the extension period defined in paragraph 12G through branch or agent in the United Kingdom, and



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(b) under which the person is obliged to issue electronic money or to provide payment services.

(3) Notification under sub-paragraph (1) must be made in such manner, and be accompanied by such information, as the FCA may direct.

(4) The FCA is not obliged to include a person to whom paragraph 12B applies on the register maintained under regulation 4 of EMR 2011 until the person notifies the FCA under sub-paragraph (1).

(5) During the extension period defined in paragraph 12G, a person to whom paragraph 12B applies must notify the FCA of any of the matters mentioned in paragraph 6(2)(b) to (d).

### Agents

**12D.** If a notification under paragraph 12C includes information as to the use of an agent who is registered with the home state competent authority, the FCA must include the agent on the register maintained under regulation 4 of EMR 2011.

### Permitted services

**12E.—**(1) This paragraph sets out the permitted services for the purposes of paragraph 12B(4)(a).

(2) The permitted services are—

(a) where the [F<sup>16</sup>IP completion day] conditions in paragraph 12B(2) are met, services of the kind mentioned in paragraph 12B(2)(a), but only to the extent that the issue of electronic money, or the provision of payment services, is necessary to enable the person to whom paragraph 12B applies to perform a pre-existing contract [F<sup>17</sup> or to redeem outstanding electronic money], or

(b) where the transitional authorisation conditions in paragraph 12B(3) are met, services of the kind mentioned in paragraph 12B(3)(b)(i) or (ii), but only to the extent that the issue of electronic money, or the provision of payment services, is necessary to enable the person to whom paragraph 12B applies to perform a pre-existing contract [F<sup>18</sup> or to redeem outstanding electronic money].

(3) If a pre-existing contract is varied by agreement for the purpose of complying with regulatory requirements or reducing a risk to the person to whom paragraph 12D applies, but without extending the duration of the contract or materially altering its commercial effect, the contract as varied remains a pre-existing contract.

(4) The FCA may, on an application made before the end of the extension period by a person to whom paragraph 12B applies, approve a plan (a “wind-down plan”) under which new contracts may be entered into for the purposes of the orderly winding down of the person’s business of issuing electronic money or payment services in the United Kingdom.

(5) If a wind-down plan is approved by the FCA, the permitted services include services provided in accordance with the wind-down plan.

(6) A person providing permitted services in accordance with this paragraph must, when required by the FCA, provide the FCA with such evidence as the FCA may reasonably require to demonstrate the person’s compliance with the law of the person’s home state implementing Article 7 of the electronic money directive (safeguarding).

#### Textual Amendments

**F16** Words in Sch. 3 para. 12E substituted (31.1.2020 immediately before exit day) by [The Financial Services \(Consequential Amendments\) Regulations 2020 \(S.I. 2020/56\)](#), regs. 1, **8(2)(h)**

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- F17** Words in Sch. 3 para. 12E(2)(a) inserted (6.9.2019) by [The Financial Services \(Electronic Money, Payment Services and Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1212\)](#), regs. 1(2), **7(5)(a)**
- F18** Words in Sch. 3 para. 12E(2)(b) inserted (6.9.2019) by [The Financial Services \(Electronic Money, Payment Services and Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1212\)](#), regs. 1(2), **7(5)(b)**

**Notification that authorisation no longer required**

**12F.**—(1) A person to whom paragraph 12B applies and who has notified the FCA under paragraph 12C(1) must notify the FCA once it no longer has obligations under pre-existing contracts [<sup>F19</sup>and has redeemed electronic money issued through a branch in the United Kingdom].

(2) On receiving a notification under sub-paragraph (1), the FCA must, if satisfied that the person giving the notification no longer has obligations under pre-existing contracts [<sup>F20</sup>and has redeemed electronic money issued through a branch in the United Kingdom]—

- (a) notify the person of the date on which the person will cease to be an authorised electronic money institution by virtue of this Part of this Schedule, and
- (b) remove the person from the register from that date.

<sup>F21</sup>(3) .....

- Textual Amendments**
- F19** Words in Sch. 3 para. 12F(1) inserted (6.9.2019) by [The Financial Services \(Electronic Money, Payment Services and Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1212\)](#), regs. 1(2), **7(6)(a)**
  - F20** Words in Sch. 3 para. 12F(2) inserted (6.9.2019) by [The Financial Services \(Electronic Money, Payment Services and Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1212\)](#), regs. 1(2), **7(6)(b)**
  - F21** Sch. 3 para. 12F(3) omitted (6.9.2019) by virtue of [The Financial Services \(Electronic Money, Payment Services and Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1212\)](#), regs. 1(2), **7(6)(c)**

**Extension period**

**12G.**—(1) The extension period in relation to a person begins—

- (a) where the [<sup>F22</sup>IP completion day] conditions are met, with the day on which [<sup>F22</sup>IP completion day] falls, and
- (b) where the transitional authorisation conditions are met, with the end of the transition period defined by paragraph 10.

(2) The extension period in relation to a person ends with the earliest of the following—

- (a) the day before the date stated in accordance with regulation 9(5) of EMR 2011 as that on which the person’s authorisation as an electronic money institution (otherwise than by virtue of this Schedule) takes effect;
- (b) the day on which the transfer to another person of the person’s business of providing electronic money issuance, redemption, distribution or payment services in the United Kingdom takes effect;
- (c) in a case where the person has notified the FCA under paragraph 12C(1), the day determined by the FCA under paragraph 12F(2);

**Changes to legislation:** *The Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018, SCHEDULE 3 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- (d) in a case where the person has not notified the FCA under paragraph 12C(1), the time when all the person's obligations under relevant contracts have been discharged [<sup>F23</sup> and the person has redeemed electronic money issued through a branch or an agent in the United Kingdom];
- (e) the day on which any cancellation under paragraph 12J takes effect;
- (f) the day the person ceases to be authorised by its home state competent authority;
- (g) the end of the period of 5 years beginning with the day on which the extension period began.

[<sup>F24</sup>(3) "Relevant contract", in relation to a person to whom paragraph 12B applies, means a contract—

- (a) which—
  - (i) is a pre-existing contract; or
  - (ii) was entered into in accordance with a wind-down plan approved by the FCA under paragraph 12E(4); and
- (b) under which the person is obliged to issue electronic money or payment services.]

#### Textual Amendments

- F22** Words in Sch. 3 para. 12G substituted (31.1.2020 immediately before exit day) by [The Financial Services \(Consequential Amendments\) Regulations 2020 \(S.I. 2020/56\)](#), regs. 1, **8(2)(i)**
- F23** Words in Sch. 3 para. 12G(2)(d) inserted (6.9.2019) by [The Financial Services \(Electronic Money, Payment Services and Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1212\)](#), regs. 1(2), **7(7)(a)**
- F24** Sch. 3 para. 12G(3) substituted (6.9.2019) by [The Financial Services \(Electronic Money, Payment Services and Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1212\)](#), regs. 1(2), **7(7)(b)**

#### [<sup>F25</sup>Supervision and enforcement of persons to whom paragraph 12B applies

**12H.—**(1) In relation to a person to whom paragraph 12B applies, the provisions of EMR 2011 (other than those disapplied by paragraph 7(1)) apply while the person is an authorised electronic money institution by virtue of paragraph 12B(4).

- (2) Paragraph 7(2) applies in relation to that person as if the reference—
  - (a) to a person's transitional authorisation were a reference to authorisation by virtue of paragraph 12B(4);
  - (b) to the transition period were a reference to the extension period in paragraph 12G.

#### Textual Amendments

- F25** Sch. 3 paras. 12H, 12HA substituted for Sch. 3 para. 12H (6.9.2019) by [The Financial Services \(Electronic Money, Payment Services and Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1212\)](#), regs. 1(2), **7(8)**

**Changes to legislation:** The Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018, SCHEDULE 3 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

### **Supervision and enforcement of persons to whom paragraph 12L (exemption from prohibition) applies**

**12HA.**—(1) The following sub-paragraphs apply in relation to a person to whom paragraph 12L applies.

(2) Sections 165, 166, 175 and 177 of the 2000 Act, as modified by Schedule 3 to EMR 2011, apply as if the references to an electronic money issuer were references to a person who is exempt from the prohibition in regulation 63(1) of those Regulations by virtue of paragraph 12L.

(3) If the FCA considers that a person—

- (a) has not notified the FCA in accordance with paragraph 12C; or
- (b) has acted in a manner which the FCA considers contrary to the advancement of its objectives under EMR 2011 or the 2018 Regulations,

the FCA may publish a statement to that effect.

(4) The procedure in regulation 53 of EMR 2011 applies to the publication of a statement under sub-paragraph (3) as if the references to regulation 50 were references to this paragraph.

(5) Section 393(4) of the 2000 Act applies to notices issued in accordance with this paragraph in the same way as it applies to notices issued in accordance with regulation 53 in relation to the publication of statements under regulation 50 of EMR 2011 by virtue of paragraph 8 of Schedule 3 to EMR 2011.

(6) The FCA may, if it considers it appropriate to do so, publish information provided under paragraph 12C in respect of a person.

(7) Publication under sub-paragraph (6) is to be in such a manner as the regulator considers appropriate.]

#### **Textual Amendments**

**F25** Sch. 3 paras. 12H, 12HA substituted for Sch. 3 para. 12H (6.9.2019) by [The Financial Services \(Electronic Money, Payment Services and Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1212\)](#), regs. 1(2), 7(8)

### **Variation and cancellation of authorisation**

**12I.**—(1) In respect of a person to whom paragraph 12B applies, the FCA may—

- (a) cancel the person's authorisation by virtue of that paragraph as an authorised electronic money institution, or
- (b) limit the permitted services to which the authorisation relates.

(2) The FCA may only exercise the power in sub-paragraph (1) where—

- (a) the person's authorisation by the person's home state competent authority is cancelled,
- (b) the person has failed to comply with the terms of the person's authorisation by the person's home state competent authority,
- (c) the person does not issue electronic money in the United Kingdom during the 12 months beginning with [F<sup>26</sup>IP completion day],
- (d) the person ceases to engage in business activity in the United Kingdom for more than six months,
- (e) the person's notification under paragraph 12C contains false statements,

**Changes to legislation:** *The Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018, SCHEDULE 3 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- (f) the person has not taken adequate measures for the purposes of safeguarding electronic money holders' funds in accordance with regulation 20 of EMR 2011 [<sup>F27</sup>and the 2018 Regulations],
- (g) the person would constitute a threat to the stability of, or trust in, a payment system by continuing the person's electronic money or payment services business,
- (h) the cancellation is desirable in order to protect the interests of electronic money holders or payment service users, <sup>F28</sup> ...
- (i) the person's provision of payment services [<sup>F29</sup>or issuance of electronic money] is otherwise unlawful, including where such provision of services is unlawful because the person's registration in a register maintained under regulation 54 or 55 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 has been cancelled under regulation 60 of those Regulations, [<sup>F30</sup>or
- (j) the person has not submitted a notification in accordance with paragraph 12C.]

#### Textual Amendments

- F26** Words in Sch. 3 para. 12I substituted (31.1.2020 immediately before exit day) by [The Financial Services \(Consequential Amendments\) Regulations 2020 \(S.I. 2020/56\)](#), regs. 1, **8(2)(j)**
- F27** Words in Sch. 3 para. 12I(2)(f) inserted (6.9.2019) by [The Financial Services \(Electronic Money, Payment Services and Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1212\)](#), regs. 1(2), **7(9)(a)**
- F28** Word in Sch. 3 para. 12I(2)(h) omitted (6.9.2019) by virtue of [The Financial Services \(Electronic Money, Payment Services and Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1212\)](#), regs. 1(2), **7(9)(b)**
- F29** Words in Sch. 3 para. 12I(2)(i) inserted (6.9.2019) by [The Financial Services \(Electronic Money, Payment Services and Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1212\)](#), regs. 1(2), **7(9)(c)**
- F30** Sch. 3 para. 12I(2)(j) and preceding word inserted (6.9.2019) by [The Financial Services \(Electronic Money, Payment Services and Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1212\)](#), regs. 1(2), **7(9)(d)**

#### Variation and cancellation: procedure

**12J.**—(1) If the FCA proposes to exercise the power in paragraph 12I or 12L(3) in relation to a person, it must give the person a warning notice.

(2) If the FCA decides to exercise the power in paragraph 12I or 12L(3) in relation to a person, it must give the person a decision notice.

(3) Part 26 of the 2000 Act (notices) applies to a notice under sub-paragraph (1) or (2) as it applies (by virtue of Schedule 3 to EMR 2011) in relation to a notice under EMR 2011.

(4) A person in respect of whom the power in paragraph 12I or 12L(3) is exercised may refer the decision to exercise the power to the Upper Tribunal.

(5) Part 9 of the 2000 Act (hearings and appeals) applies to a reference to the Upper Tribunal under sub-paragraph (4) as it applies (by virtue of Schedule 3 to EMR 2011) in relation to a reference under EMR 2011.

#### Power to charge fees

**12K.**—(1) The FCA may make rules providing for the payment to it of fees in connection with the discharge of a function under this Part of this Schedule.

**Changes to legislation:** The Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018, SCHEDULE 3 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

(2) Rules under sub-paragraph (1) may not provide for the payment of a fee greater than an amount equal to the expenses incurred, or expected to be incurred, in the discharge of the function.

(3) Sections 138F to 138O of the 2000 Act (procedural provisions) apply to rules made under sub-paragraph (1) as they apply to rules made by the FCA under the 2000 Act.

### Exemption from prohibition

**12L.**—<sup>[F31]</sup>(1) A person to whom this paragraph applies is, subject to sub-paragraph (6), exempt from the prohibitions in regulation 138(1) of the Payment Services Regulations 2017 and in regulation 63(1) of EMR 2011 for a period of five years beginning with the <sup>[F32]</sup>IP completion day], but only to the extent that it is necessary for the person to provide payment services or electronic money services in the United Kingdom to perform a pre-existing contract or to redeem outstanding electronic money.]

(2) This paragraph applies to an EEA authorised electronic money institution exercising its passport rights in the United Kingdom immediately before <sup>[F32]</sup>IP completion day] other than through a branch in the United Kingdom or a UK-based agent.

(3) The FCA may cancel the exemption of a person to whom this paragraph applies, or direct that paragraph 12B is to apply to the person, if it considers that doing so is necessary—

- (a) for the prevention, detection, investigation or prosecution of a criminal offence;
- (b) for the protection of electronic money holders or payment service users; or
- (c) for the protection of trust in, or the stability of, a payment system.

(4) In exercising the power in paragraph (3), the FCA must take into account—

- (a) the person's conduct,
- (b) the practicality of supervision by the FCA,
- (c) the size of the person's undertaking, and
- (d) the nature of the services the person provides.

(5) Paragraph 3 of Schedule 3 to EMR 2011 has effect in relation to the FCA's exercise of its powers under this paragraph.

[  
<sup>F33</sup>(6) A person to whom paragraph applies is exempt from the prohibition in regulation 138(1) of the Payment Services Regulations 2017 only to the extent that it was providing the payment service in the United Kingdom immediately before <sup>[F32]</sup>IP completion day] in accordance with the exercise of an EEA passport right under Title 5 of Directive (EU) 2015/2366 as in force immediately before <sup>[F32]</sup>IP completion day].]

[  
<sup>F34</sup>(6) Where a person (“A”) to whom this paragraph applies issues electronic money to a person (“B”) in pursuance of a pre-existing contract in reliance on the exemption in sub-paragraph (1), A must, as soon as it is reasonably practicable to do so, notify B—

- (a) that A is exempt from the prohibition in regulation 63(1) of EMR 2011 by virtue of sub-paragraph (1) and is not authorised by the FCA under EMR 2011;
- (b) that, as a result of the United Kingdom's withdrawal from the European Union—
  - (i) it is possible that B's assets held by A in relation to the performance of the pre-existing contract no longer attract the same protection afforded to them immediately before IP completion day;

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- (ii) it is possible that recourse to an alternative dispute resolution procedure or compensation scheme that was available to B under the pre-existing contract immediately before IP completion day is no longer available;
- (c) in so far as it is practicable to do so, of any changes arising as a result of the United Kingdom's withdrawal from the European Union to—
  - (i) the protection afforded to B's assets held by A in relation to the performance of the pre-existing contract; or
  - (ii) the availability to B of an alternative dispute resolution procedure or compensation scheme under the pre-existing contract.
- (7) If at any time after A has provided B with any information under sub-paragraph (6)—
  - (a) there is, or is likely to be, a material change affecting that information; or
  - (b) it becomes apparent to the applicant that the information is incomplete or contains a material inaccuracy,

A must provide B with details of the change, the complete information or a correction of the inaccuracy (as the case may be) as soon as it is reasonably practicable to do so.

(8) The FCA may issue guidance in respect of compliance with an obligation under sub-paragraph (6) or (7).]

#### Textual Amendments

- F31** Sch. 3 para. 12L(1) substituted (6.9.2019) by [The Financial Services \(Electronic Money, Payment Services and Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1212\)](#), regs. 1(2), **7(10)(a)**
- F32** Words in Sch. 3 para. 12L substituted (31.1.2020 immediately before exit day) by [The Financial Services \(Consequential Amendments\) Regulations 2020 \(S.I. 2020/56\)](#), regs. 1, **8(2)(k)**
- F33** Sch. 3 para. 12L(6) inserted (6.9.2019) by [The Financial Services \(Electronic Money, Payment Services and Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1212\)](#), regs. 1(2), **7(10)(b)**
- F34** Sch. 3 para. 12L(6)-(8) inserted (31.1.2020) by [The Financial Services \(Miscellaneous\) \(Amendment\) \(EU Exit\) \(No. 2\) Regulations 2019 \(S.I. 2019/1010\)](#), regs. 1(3), **7(3)** (as amended by S.I. 2020/1301, regs. 1, 3, [Sch. para. 44\(b\)\(i\)](#)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)

#### Duration of extension period

**12M.—**(1) The Treasury may by regulations made by statutory instrument amend paragraph 12G so as to extend the extension period referred to in that paragraph, if the Treasury consider it necessary to do so.

(2) The Treasury may make regulations under sub-paragraph (1) only if, no later than 6 months before the end of the period to be increased, the FCA has submitted to the Treasury an assessment as to the effect of extending, or not extending, the period in paragraph 12G.

(3) Regulations under sub-paragraph (1) may not extend the period for the time being by more than 12 months.

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



**Changes to legislation:** The Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018, SCHEDULE 3 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

## PART 2

### Transitional provisions relating to Payment Services Regulations 2017

#### Interpretation

13. In this Part of this Schedule—

- (a) “PSR 2017” means the Payment Services Regulations 2017,
- (b) “the 2000 Act” means the Financial Services and Markets Act 2000,
- (c) “the FCA” means the Financial Conduct Authority, and
- (d) “EEA authorised payment institution”, “EEA registered account information service provider”, “home state competent authority”, “the money laundering directive”, “passport right”, and “the payment services directive” each has the meaning given by PSR 2017 as those Regulations have effect before the amendments made by Schedule 2.

#### Transitional authorisation for EEA authorised payment institution etc

14.—(1) This paragraph applies to a person who—

- (a) immediately before [<sup>F35</sup>IP completion day] is entitled to provide payment services in the United Kingdom in the exercise of a passport right,
- (b) would (apart from this Part of this Schedule) cease from [<sup>F35</sup>IP completion day] to be entitled to provide those services in the United Kingdom, and
- (c) has notified the FCA in accordance with paragraph 15 that the person wishes this paragraph to apply in the person's case.

(2) During the transition period defined in paragraph 22—

- (a) the person is to be taken—
  - (i) in case of a person who is an EEA authorised payment institution immediately before [<sup>F35</sup>IP completion day], to be an authorised payment institution whose authorisation under PSR 2017 relates to the payment services mentioned in sub-paragraph (1)(a) and (b), or
  - (ii) in the case of a person who is an EEA registered account information service provider immediately before [<sup>F35</sup>IP completion day], to be a registered account information service provider whose registration under PSR 2017 relates to those payment services, and
- (b) accordingly, references in PSR 2017 to an authorised payment institution or a registered account information service provider are to be read as including a person who is taken by virtue of this paragraph to be an authorised payment institution or a registered account information service provider (as the case may be).

(3) Sub-paragraph (2) is subject to paragraphs 19 and 20.

(4) In the following provisions of this Part of this Schedule, “transitional authorisation” means authorisation by virtue of this paragraph as an authorised payment service provider or registration by virtue of this paragraph as a registered account information service provider.

#### Textual Amendments

**F35** Words in Sch. 3 para. 14 substituted (31.1.2020 immediately before exit day) by [The Financial Services \(Consequential Amendments\) Regulations 2020 \(S.I. 2020/56\)](#), regs. 1, **8(2)(l)**

**Changes to legislation:** *The Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018, SCHEDULE 3 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

## Requirements to be met by notification

15.—(1) A notification for the purposes of paragraph 14(1)(c) must—

- (a) be made in such manner as the FCA may direct, and
- <sup>F36</sup>(b) be made during the period beginning with 28 December 2018 and ending with the day preceding the day on which IP completion day falls.]

(2) The notification must—

- (a) state the name and address of the person making the notification, and any authorisation or reference number,
- (b) specify the person's home state competent authority,
- (c) specify a postal address in the United Kingdom to be used for correspondence,
- (d) identify the payment services which the person is entitled to provide in the United Kingdom by virtue of being an EEA authorised payment institution or an EEA registered account information service provider for the purposes of PSR 2017,
- (e) if, for the provision of the services in the United Kingdom, the person uses an agent who is registered with the home state competent authority, include the information referred to in regulation 34(3)(a) of PSR 2017,
- (f) if the person uses or intends to use a branch in the United Kingdom to provide the services, state the names of those responsible for the management of the branch and details of its organisational structure,
- (g) if the person has entered into a contract with another person under which that other person carries out or will carry out any operational function relating to the person's provision of payment services in the United Kingdom, include such information about that other person as the FCA may direct,
- (h) specify any restrictions or conditions that have been imposed on the person by the person's home state competent authority, and
- (i) specify any precautionary measures taken by the FCA under regulation 30(9) of PSR 2017 that are in force.

### Textual Amendments

**F36** Sch. 3 para. 15(1)(b) substituted (31.1.2020 immediately before exit day) by [The Financial Services \(Consequential Amendments\) Regulations 2020 \(S.I. 2020/56\)](#), regs. 1, **8(4)**

## Registration of agents

16.—(1) If a notification for the purposes of paragraph 14(1)(c) includes the information required by paragraph 15(2)(e) in relation to an agent, the FCA must, with effect from <sup>F37</sup>IP completion day] or as soon as practicable after that time, include the agent on the register maintained under regulation 4 of PSR 2017.

(2) A person to whom paragraph 14 applies may apply to the FCA under regulation 34 of PSR 2017 before <sup>F37</sup>IP completion day] for the registration at any time after <sup>F37</sup>IP completion day] of an agent not falling within sub-paragraph (1).

**Changes to legislation:** The Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018, SCHEDULE 3 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

#### Textual Amendments

**F37** Words in Sch. 3 para. 16 substituted (31.1.2020 immediately before exit day) by [The Financial Services \(Consequential Amendments\) Regulations 2020 \(S.I. 2020/56\)](#), regs. 1, **8(2)(m)**

#### Requirements imposed by FCA

- 17.—**(1) This paragraph applies in relation to a person to whom paragraph 14 applies.
- (2) Any requirement which—
- (a) was imposed on the person—
    - (i) as a precautionary measure under regulation 30(9) of PSR 2017, or
    - (ii) under section 196 of the 2000 Act as applied by paragraph 6 of Schedule 6 to PSR 2017, and
  - (b) has effect immediately before [<sup>F38</sup>IP completion day],

is to continue to have effect at and after that time as if it were imposed by the FCA under regulation 7 of PSR 2017.

(3) The FCA may exercise its powers under regulation 7 of PSR 2017 in relation to the person if it appears to the FCA that, immediately before [<sup>F38</sup>Sch. 3 para. 17], the condition in section 194(1) (a) or (b) of the 2000 Act, as applied by paragraph 6 of Schedule 6 to PSR 2017, was met.

#### Textual Amendments

**F38** Words in Sch. 3 para. 17 substituted (31.1.2020 immediately before exit day) by [The Financial Services \(Consequential Amendments\) Regulations 2020 \(S.I. 2020/56\)](#), regs. 1, **8(2)(n)**

#### Duties of person relying on transitional authorisation

**18.—**(1) This paragraph applies during the transition period defined in paragraph 22 to any person in relation to whom paragraph 14 applies.

- (2) The person must notify the FCA of—
- (a) any material change affecting any matter dealt with in the information contained in or accompanying the notification for the purposes of paragraph 14(1)(c),
  - (b) the cancellation or variation by the person's home state competent authority of the person's authorisation to provide payment services in accordance with the payment services directive,
  - (c) any regulatory action taken against the person by the person's home state competent authority, or
  - (d) any adverse judgments made against the person by the person's home state competent authority in pursuance of the money laundering directive.

(3) The person must when required by the FCA provide the FCA with such evidence as the FCA may reasonably require to demonstrate the person's compliance with the law of the person's home state implementing Article 10 of the payment services directive (safeguarding).

**Changes to legislation:** The Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018, SCHEDULE 3 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

## Exclusion of certain provisions of Payment Services Regulations 2017

**19.**—(1) The following provisions of PSR 2017 do not apply in relation to a person while the person is by virtue of paragraph 14 an authorised payment institution or a registered account information service provider—

- (a) regulation 10(1) (cancellation of authorisation);
- (b) regulation 20 (duty to notify changes);
- (c) regulation 22 and Schedule 3 (capital requirements);
- (d) [<sup>F39</sup>except where the person is subject to insolvency proceedings (as defined in regulation 23 of the PSR 2017) in the United Kingdom,] in regulation 23 (safeguarding requirements), paragraphs (14) to (16);
- (e) regulation 24 (accounting and statutory audit);
- (f) in Schedule 6 (application and modification of legislation), paragraph 5 (control over payment institutions) and paragraph 6 (incoming firms: intervention by FCA).

(2) Regulation 6 (conditions for authorisation) does not apply in relation to a person by virtue of the person's transitional authorisation, but applies in relation to [<sup>F40</sup>any application for registration made by a person to whom paragraph 14(2)(a)(ii) applies] during the transition period defined in paragraph 22.

### Textual Amendments

- F39** Words in Sch. 3 para. 19(1)(d) inserted (6.9.2019) by [The Financial Services \(Electronic Money, Payment Services and Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1212\)](#), regs. 1(2), **7(11)(a)**
- F40** Words in Sch. 3 para. 19(2) substituted (6.9.2019) by [The Financial Services \(Electronic Money, Payment Services and Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1212\)](#), regs. 1(2), **7(11)(b)**

## Power of FCA to cancel transitional authorisation

**20.**—(1) The FCA may cancel a person's transitional authorisation and remove the person from the register where—

- (a) the person's authorisation by the person's home state competent authority is cancelled,
- (b) the person has failed to comply with the terms of the person's authorisation by the person's home state competent authority,
- (c) the person does not provide payment services in the United Kingdom during the 12 months beginning with [<sup>F41</sup>IP completion day],
- (d) the person ceases to engage in business activity in the United Kingdom for more than six months,
- (e) the person's notification for the purposes of paragraph 14(1)(c) contains false statements,
- (f) the person lacks one or more of the following—
  - (i) robust governance arrangements for its payment service business, including a clear organisational structure with well-defined, transparent and consistent lines of responsibility,
  - (ii) effective procedures to identify, manage, monitor and report any risks to which the person might be exposed, and

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- (iii) adequate internal control mechanisms, including sound administrative, risk management and accounting procedures,
  - (g) any of the directors, or persons responsible for the management of the person's payment services, is not of good repute,
  - (h) the person does not have a business plan under which appropriate and proportionate systems, resources and procedures will be employed by the person to operate soundly,
  - (i) the person has not taken adequate measures for the purposes of safeguarding electronic money holders' funds in accordance with regulation 23 of PSR 2017,
  - (j) in the case of a person carrying on payment initiation services, the person does not hold professional indemnity insurance, or a comparable guarantee, of the kind mentioned in regulation 6(7)(e) of PSR 2017,
  - [<sup>F42</sup>(ja) in the case of a person carrying on account information services, the person does not hold professional indemnity insurance, or a comparable guarantee, of the kind mentioned in regulation 6(7)(f) of PSR 2017,]
  - (k) the person would constitute a threat to the stability of, or trust in, a payment system by continuing the person's electronic money or payment services business,
  - (l) the cancellation is desirable in order to protect the interests of consumers, or
  - (m) the person's provision of payment services is otherwise unlawful, including where such provision of services is unlawful because the person's registration in a register maintained under regulation 54 or 55 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 has been cancelled under regulation 60 of those Regulations.
- (2) Regulation 10(2) to (5) of PSR 2017 apply in relation to cancellation under sub-paragraph (1) of this paragraph as they apply in relation to cancellation under regulation 10(1) of those Regulations.

#### Textual Amendments

- F41** Words in Sch. 3 para. 20 substituted (31.1.2020 immediately before exit day) by [The Financial Services \(Consequential Amendments\) Regulations 2020 \(S.I. 2020/56\)](#), regs. 1, **8(2)(o)**
- F42** Sch. 3 para. 20(1)(ja) inserted (31.1.2020) by [The Financial Services \(Miscellaneous\) \(Amendment\) \(EU Exit\) \(No. 2\) Regulations 2019 \(S.I. 2019/1010\)](#), regs. 1(3), **7(4)**; 2020 c. 1, Sch. 5 para. 1(1)

#### Notice of intention

- 21.—**(1) A person in relation to whom paragraph 14 applies must, before the end of the 12 months beginning with the day on which [<sup>F43</sup>IP completion day] falls, notify the FCA—
- (a) whether the person or a member of the person's immediate group, as defined by section 421ZA of the 2000 Act, intends to apply under regulation 5 or 17 of PSR 2017, and
  - (b) whether the person intends to cease at or before the end of the transition period to provide in the United Kingdom the services to which the transitional authorisation relates.
- (2) The person must notify the FCA within a reasonable time of any change in an intention previously notified.

#### Textual Amendments

- F43** Words in Sch. 3 para. 21 substituted (31.1.2020 immediately before exit day) by [The Financial Services \(Consequential Amendments\) Regulations 2020 \(S.I. 2020/56\)](#), regs. 1, **8(2)(p)**

**Changes to legislation:** *The Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018, SCHEDULE 3 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

## Transition period

**22.**—(1) The transition period in relation to a person is a period beginning with [F44IP completion day] and ending with a day determined under this paragraph, or with any earlier day on which the cancellation under paragraph 20 of the person's transitional authorisation takes effect.

(2) In a case where a person has applied under regulation 5 of PSR 2017, on or after the date on which this regulation comes into force, for authorisation as a payment institution and has not withdrawn the application—

- (a) if the application is granted, the person's transition period ends with the day before the day stated in accordance with regulation 9(6) of PSR 2017 as that on which the authorisation takes effect, and
- (b) if the application is refused, the decision notice under regulation 9(8) of PSR 2017 must state the date on which the person's transition period is to end.

(3) In a case where a person has applied under regulation 17 of PSR 2017, on or after the date on which this regulation comes into force, for registration as an account information service provider and has not withdrawn the application—

- (a) if the application is granted, the person's transition period ends with the day before the day stated in accordance with regulation 9(6) of PSR 2017 (as applied by regulation 15 of those Regulations) as that on which the authorisation takes effect, and
- (b) if the application is refused, the decision notice under regulation 9(8) of PSR 2017 (as so applied) must state the date on which the person's transition period is to end.

(4) In any other case, the person's transition period ends at the end of the 3 years beginning with the day on which [F44IP completion day] falls.

(5) The person may give notice to the FCA specifying a date (earlier than that determined under sub-paragraphs (2) to (4)) on which the person will cease to engage in new business covered by the person's transitional authorisation.

(6) The FCA may by notice to the person require the person to specify a date under sub-paragraph (5) before the end of a period specified in the notice, and if the person does not do so the FCA may itself specify a date on which the person's transitional authorisation will cease to cover new business.

### Textual Amendments

**F44** Words in Sch. 3 para. 22 substituted (31.1.2020 immediately before exit day) by [The Financial Services \(Consequential Amendments\) Regulations 2020 \(S.I. 2020/56\)](#), regs. 1, **8(2)(q)**

## Power to extend period specified in paragraph 22(4)

**23.**—(1) The Treasury may by regulations made by statutory instrument amend paragraph 22(4) so as to extend the period referred to in that provision, if the Treasury consider it necessary to do so.

(2) The Treasury may make regulations under sub-paragraph (1) only if, no later than 6 months before the end of the period to be extended, the FCA has submitted to the Treasury an assessment as to the effect of extending, or not extending, the period on persons (in general) to whom paragraph 14 applies.

(3) Regulations under sub-paragraph (1) may not extend the period for the time being by more than 12 months.

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

**Changes to legislation:** The Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018, SCHEDULE 3 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

## Directions

24. The power of the FCA to give directions under this Part of this Schedule includes power—
- (a) to give different directions in relation to different notifications or categories of notification, and
  - (b) to vary or revoke a previous direction.

## [<sup>F45</sup>PART 3

### Continuation of authorisation for limited purposes: Payment Services Regulations 2017

#### Textual Amendments

**F45** Sch. 3 Pts. 3, 4 inserted (1.3.2019) by [The Financial Services Contracts \(Transitional and Saving Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/405\)](#), regs. 1(2), **10(3)**

## Interpretation

25. The interpretative provisions in paragraph 13 apply also for the purposes of this Part of this Schedule.

## Continued authorisation for limited purposes

26.—(1) This paragraph applies to a person in relation to whom the [<sup>F46</sup>IP completion day] conditions or the transitional authorisation conditions are satisfied.

- (2) The “[<sup>F46</sup>IP completion day] conditions”, in relation to a person, are—
- (a) that immediately before [<sup>F46</sup>IP completion day] the person was providing payment services through a branch or agent in the United Kingdom in the exercise of a passport right—
    - (i) as an EEA authorised payment institution, or
    - (ii) as an EEA registered account information service provider,
  - (b) that immediately after [<sup>F46</sup>IP completion day] the person is not (apart from under this Part of this Schedule) an authorised payment institution or a registered account information service provider, and
  - (c) that immediately after [<sup>F46</sup>IP completion day] the person has outstanding obligations under contracts which the person entered into as an EEA authorised payment institution or an EEA registered account information service provider exercising passport rights.
- (3) The “transitional authorisation conditions”, in relation to a person, are—
- (a) that on [<sup>F46</sup>IP completion day] the person became authorised to provide payment services in the United Kingdom by virtue of paragraph 14,
  - (b) that the person has provided any such services in the United Kingdom either—
    - (i) before [<sup>F46</sup>IP completion day], in the exercise of a passport right as an EEA authorised payment institution or an EEA registered account information service provider, or
    - (ii) on or after [<sup>F46</sup>IP completion day], in accordance with paragraph 14, and
  - (c) that immediately after the end of that period the person has outstanding obligations under contracts which the person entered into through branch or agent in the United Kingdom as



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an EEA authorised payment institution or an EEA registered account information service provider exercising passport rights.

- (4) During the extension period defined in paragraph 31—
- (a) a person to whom this paragraph applies is to be taken—
- (i) in the case of a person who was an EEA authorised payment institution, to be an authorised payment institution whose authorisation under regulation 6 of PSR 2017 relates to the permitted services specified in paragraph 29, or
- (ii) in the case of a person who was an EEA registered account information service provider, to be a registered account information service provider whose registration under regulation 18 of PSR 2017 relates to the permitted services specified in paragraph 29;
- (b) accordingly, references in PSR 2017 to an authorised payment institution or a registered account information service provider are to be read as including a person who is taken by virtue of this paragraph to be an authorised payment institution or a registered account information service provider (as the case may be).
- [ a requirement imposed by a home state competent authority and which has effect
- <sup>F47</sup>(c) immediately before [<sup>F46</sup>IP completion day] continues to have effect on and after that day as if it were imposed by the FCA under regulation 7 of the PSR 2017 insofar as it could be imposed by the FCA under that regulation.]
- (5) Sub-paragraph (4) is subject to paragraphs 27(4), 32 and 33.
- (6) In this paragraph reference to providing services at a particular time includes where the performance of a pre-existing contract requires, or may require, a service to be provided at another time.

#### Textual Amendments

- F46** Words in Sch. 3 para. 26 substituted (31.1.2020 immediately before exit day) by [The Financial Services \(Consequential Amendments\) Regulations 2020 \(S.I. 2020/56\)](#), regs. 1, **8(2)(r)**
- F47** Sch. 3 para. 26(4)(c) inserted (6.9.2019) by [The Financial Services \(Electronic Money, Payment Services and Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1212\)](#), regs. 1(2), **7(12)**

#### Duty to notify FCA

**27.—**(1) A person to whom paragraph 26 or 36 applies must notify the FCA of that fact as soon as reasonably practicable, and in any event not later than one month after the person first becomes aware of an obligation to perform a pre-existing contract.

(2) In this Part of this Schedule a “pre-existing contract”, in relation to a person to whom paragraph 26 applies, means a contract—

- (a) which was entered into before the extension period defined in paragraph 31 through an agent or branch in the United Kingdom, and
- (b) under which the person is obliged to provide payment services.

(3) Notification under sub-paragraph (1) must be made in such manner, and be accompanied by such information, as the FCA may direct.

(4) The FCA is not obliged to include a person to whom paragraph 26 applies on the register maintained under regulation 4 of PSR 2017 until the person notifies the FCA under sub-paragraph (1).

**Changes to legislation:** The Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018, SCHEDULE 3 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

(5) During the extension period defined in paragraph 31, a person to whom paragraph 26 applies must notify the FCA of any of the matters mentioned in paragraph 18(2)(b) to (d).

### Agents

**28.** If a notification under paragraph 27 includes information as to the use of an agent who is registered with the home state competent authority, the FCA must include the agent on the register maintained under regulation 4 of PSR 2017.

### Permitted services

**29.—**(1) This paragraph sets out the permitted services for the purposes of paragraph 26(4)(a).

(2) The permitted services are—

- (a) where the [F<sup>48</sup>IP completion day] conditions in paragraph 26(2) are met, payment services of the kind mentioned in paragraph 26(2)(a), but only to the extent that the provision of the services is necessary to enable the person to whom paragraph 26 applies to perform a pre-existing contract, or
- (b) where the transitional authorisation conditions in paragraph 26(3) are met, payment services of the kind mentioned in paragraph 26(3)(b)(i) or (ii), but only to the extent that the provision of the services is necessary to enable the person to whom paragraph 12B applies to perform a pre-existing contract.

(3) If a pre-existing contract is varied by agreement for the purpose of complying with regulatory requirements or reducing a risk to the person to whom paragraph 26 applies, but without extending the duration of the contract or materially altering its commercial effect, the contract as varied remains a pre-existing contract.

(4) The FCA may, on an application made before the end of the extension period by a person to whom paragraph 26 applies, approve a plan (a “wind-down plan”) under which new contracts may be entered into for the purposes of the orderly winding down of the person’s business of providing payment services in the United Kingdom.

(5) If a wind-down plan is approved by the FCA, the permitted services include services provided in accordance with the wind-down plan.

(6) A person providing permitted services in accordance with this paragraph must, when required by the FCA, provide the FCA with such evidence as the FCA may reasonably require to demonstrate the person’s compliance with the law of the person’s home state implementing Article 10 of the payment services directive (safeguarding).

#### Textual Amendments

**F48** Words in Sch. 3 para. 29 substituted (31.1.2020 immediately before exit day) by [The Financial Services \(Consequential Amendments\) Regulations 2020 \(S.I. 2020/56\)](#), regs. 1, **8(2)(s)**

### Notification that authorisation no longer required

**30.—**(1) A person to whom paragraph 26 applies and who has notified the FCA under paragraph 27(1) must notify the FCA once it no longer has obligations under pre-existing contracts.

(2) On receiving a notification under sub-paragraph (1), the FCA must, if satisfied that the person giving the notification no longer has obligations under pre-existing contracts—

**Changes to legislation:** *The Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018, SCHEDULE 3 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- (a) notify the person of the date on which the person will cease to be an authorised payment institution, or a registered account information service provider, by virtue of this Part of this Schedule, and
- (b) remove the person from the register from that date.

<sup>F49</sup>(3) .....

**Textual Amendments**

**F49** Sch. 3 para. 30(3) omitted (6.9.2019) by virtue of [The Financial Services \(Electronic Money, Payment Services and Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1212\)](#), regs. 1(2), **7(13)**

**Extension period**

**31.—**(1) The extension period in relation to a person begins—

- (a) where the [<sup>F50</sup>IP completion day] conditions are met, with the day on which [<sup>F50</sup>IP completion day] falls, and
- (b) where the transitional authorisation conditions are met, with the end of the transition period defined by paragraph 22.

(2) The extension period in relation to a person ends with the earliest of the following—

- (a) the day before the date stated in accordance with regulation 9(6) of PSR 2017 (or that provision as applied by regulation 15 of those Regulations) as the date on which the person’s authorisation as a payment institution or registration as an account information service provider (otherwise than by virtue of this Schedule) takes effect;
- (b) the day on which the transfer to another person of the person’s business of providing payment services in the United Kingdom takes effect;
- (c) in a case where the person has notified the FCA under paragraph 27(1), the day determined by the FCA under paragraph 29(2);
- (d) in a case where the person has not notified the FCA under paragraph 27(1), the time when all the person’s obligations under relevant contracts have been discharged;
- (e) the day on which any cancellation under paragraph 33 takes effect;
- (f) the day the person ceases to be authorised by its home state competent authority;
- (g) the end of the period of 5 years beginning with the day on which the extension period began.

[<sup>F51</sup>(3) “Relevant contract”, in relation to a person to whom paragraph 26 applies, means a contract—

- (a) which—
  - (i) is a pre-existing contract; or
  - (ii) was entered into in accordance with a wind-down plan approved by the FCA under paragraph 29(4); and
- (b) under which the person is obliged to issue electronic money or provide payment services.]

**Textual Amendments**

**F50** Words in Sch. 3 para. 31 substituted (31.1.2020 immediately before exit day) by [The Financial Services \(Consequential Amendments\) Regulations 2020 \(S.I. 2020/56\)](#), regs. 1, **8(2)(t)**

**Changes to legislation:** The Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018, SCHEDULE 3 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

**F51** Sch. 3 para. 31(3) substituted (6.9.2019) by [The Financial Services \(Electronic Money, Payment Services and Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1212\)](#), regs. 1(2), **7(14)**

### [<sup>F52</sup>Supervision and enforcement of persons to whom paragraph 26 applies

**32.**—(1) In relation to a person to whom paragraph 26 applies, the provisions of the PSR 2017 (other than those disapplied by paragraph 19(1)) apply while the person is an authorised payment institution by virtue of paragraph 26(4)(a)(i) or a registered account information service provider by virtue of paragraph 26(4)(a)(ii).

(2) Paragraph 19(2) applies to that person as if the reference—

- (a) to a person’s transitional authorisation were a reference to authorisation by virtue of paragraph 26(4)(a);
- (b) to the transition period is a reference to the extension period in paragraph 31.

### Textual Amendments

**F52** Sch. 3 paras. 32, 32A substituted for Sch. 3 para. 32 (6.9.2019) by [The Financial Services \(Electronic Money, Payment Services and Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1212\)](#), regs. 1(2), **7(15)**

### Supervision and enforcement of persons to whom paragraph 36 applies

**32A.**—(1) The following sub-paragraphs apply in relation to a person to whom paragraph 36 applies.

(2) Sections 165, 166, 175 and 177 of the 2000 Act, as modified by paragraph 4 of Schedule 6 to the PSR 2017, apply as if the references to a payment service provider were to a person who is exempt from the prohibition in regulation 138(1) of those Regulations by virtue of paragraph 36.

(3) If the FCA considers that a person—

- (a) has not notified the FCA in accordance with paragraph 27; or
- (b) has acted in a manner which the FCA considers contrary to the advancement of its objectives under the PSR 2017 or the 2018 Regulations,

the FCA may publish a statement to that effect.

(4) The procedure in regulation 112 of the PSR 2017 applies to the publication of a statement under sub-paragraph (3) as if the references to regulation 110 were references to this paragraph.

(5) Section 393(4) of the 2000 Act applies to notices issued in accordance with this paragraph in the same way as it applies to notices issued in accordance with regulation 53 in relation to the publication of statements under regulation 110 of the PSR 2017 by virtue of paragraph 10 of Schedule 6 to the PSR 2017.

(6) The FCA may, if it considers it appropriate to do so, publish information provided under paragraph 27 in respect of a person.

(7) Publication under sub-paragraph (6) is to be in such a manner as the regulator considers appropriate.]

**Changes to legislation:** The Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018, SCHEDULE 3 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

### Textual Amendments

**F52** Sch. 3 paras. 32, 32A substituted for Sch. 3 para. 32 (6.9.2019) by [The Financial Services \(Electronic Money, Payment Services and Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1212\)](#), regs. 1(2), **7(15)**

### Variation and cancellation of authorisation

- 33.**—(1) In respect of a person to whom paragraph 26 applies, the FCA may—
- (a) cancel the person’s authorisation by virtue of that paragraph as an authorised payment institution or a registered account information service provider, or
  - (b) limit the permitted services to which the authorisation relates.
- (2) The FCA may only exercise the power in sub-paragraph (1) where—
- (a) the person’s authorisation by the person’s home state competent authority is cancelled,
  - (b) the person has failed to comply with the terms of the person’s authorisation by the person’s home state competent authority,
  - (c) the person does not provide payment services in the United Kingdom during the 12 months beginning with [<sup>F53</sup>IP completion day],
  - (d) the person ceases to engage in business activity in the United Kingdom for more than six months,
  - (e) the person’s notification under paragraph 27 contains false statements,
  - (f) the person has not taken adequate measures for the purposes of safeguarding electronic money holders’ funds in accordance with regulation 23 of PSR 2017 [<sup>F54</sup>and the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018],
  - (g) the person would constitute a threat to the stability of, or trust in, a payment system by continuing the person’s electronic money or payment services business,
  - (h) the cancellation is desirable in order to protect the interests of payment service users, or
  - (i) the person’s provision of payment services is otherwise unlawful, including where such provision of services is unlawful because the person’s registration in a register maintained under regulation 54 or 55 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 has been cancelled under regulation 60 of those Regulations.

### Textual Amendments

**F53** Words in Sch. 3 para. 33 substituted (31.1.2020 immediately before exit day) by [The Financial Services \(Consequential Amendments\) Regulations 2020 \(S.I. 2020/56\)](#), regs. 1, **8(2)(u)**

**F54** Words in Sch. 3 para. 33(2)(f) inserted (6.9.2019) by [The Financial Services \(Electronic Money, Payment Services and Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1212\)](#), regs. 1(2), **7(16)**

### Variation and cancellation: procedure

**34.**—(1) If the FCA proposes to exercise the power in paragraph 33 or 36(3) in relation to a person, it must give the person a warning notice.

(2) If the FCA decides to exercise the power in paragraph 33 or 36(3) in relation to a person, it must give the person a decision notice.

**Changes to legislation:** *The Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018, SCHEDULE 3 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(3) Part 26 of the 2000 Act (notices) applies to a notice under sub-paragraph (1) or (2) as it applies (by virtue of Schedule 6 to PSR 2017) in relation to a notice under PSR 2017.

(4) A person in respect of whom the power in paragraph 33 or 36(3) is exercised may refer the decision to exercise the power to the Upper Tribunal.

(5) Part 9 of the 2000 Act (hearings and appeals) applies to a reference to the Upper Tribunal under sub-paragraph (4) as it applies (by virtue of Schedule 6 to PSR 2017) in relation to a reference under PSR 2017.

### Power to charge fees

**35.**—(1) The FCA may make rules providing for the payment to it of fees in connection with the discharge of a function under this Part of this Schedule.

(2) Rules under sub-paragraph (1) may not provide for the payment of a fee greater than an amount equal to the expenses incurred, or expected to be incurred, in the discharge of the function.

(3) Sections 138F to 138O of the 2000 Act (procedural provisions) apply to rules made under sub-paragraph (1) as they apply to rules made by the FCA under the 2000 Act.

### Exemption from prohibition

**36.**—(1) A person to whom this paragraph applies is exempt from the prohibition in regulation 138(1) of PSR 2017, for a period of five years beginning with [F55IP completion day], but only to the extent that it is necessary for the person to provide payment services in the United Kingdom to perform a pre-existing contract.

(2) This paragraph applies to an EEA authorised payment institution or an EEA registered account information service provider exercising its passport rights in the United Kingdom immediately before [F55IP completion day] other than through a branch in the United Kingdom or a UK-based agent.

[  
F56(2A) A person to whom this paragraph applies is exempt from the prohibition in regulation 138(1) of the PSR 2017 only to the extent that it was providing the payment service in the United Kingdom immediately before [F55IP completion day] in accordance with the exercise of an EEA passport right under article 3(1) of [Directive 2009/110/EC](#) as in force immediately before [F55IP completion day].]

(3) The FCA may cancel the exemption of a person to whom this paragraph applies, or direct that paragraph 26 is to apply to the person, if it considers that doing so is necessary—

- (a) for the prevention, detection, investigation or prosecution of a criminal offence;
- (b) for the protection of payment service users; or
- (c) for the protection of trust in, or the stability of, a payment system.

(4) In exercising the power in paragraph (3), the FCA must take into account—

- (a) the person’s conduct,
- (b) the practicality of supervision by the FCA,
- (c) the size of the person’s undertaking, and
- (d) the nature or the services person provides.

(5) Paragraph 4 of Schedule 5 to PSR 2017 has effect in relation to the exercise of the FCA’s powers under this paragraph.

[F57(6) Where a person (“A”) to whom this paragraph applies provides payment services to a person (“B”) in pursuance of a pre-existing contract in reliance on the exemption in sub-paragraph (1), A must, as soon as it is reasonably practicable to do so, notify B—



**Changes to legislation:** *The Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018, SCHEDULE 3 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- (a) that A is exempt from the prohibition in regulation 138(1) of PSR 2017 by virtue of sub-paragraph (1) and is not authorised by the FCA under PSR 2017;
- (b) that, as a result of the United Kingdom's withdrawal from the European Union—
  - (i) it is possible that B's assets held by A in relation to the performance of the pre-existing contract no longer attract the same protection afforded to them immediately before IP completion day;
  - (ii) it is possible that recourse to an alternative dispute resolution procedure or compensation scheme that was available to B under the pre-existing contract immediately before IP completion day is no longer available;
- (c) in so far as it is practicable to do so, of any changes arising as a result of the United Kingdom's withdrawal from the European Union to—
  - (i) the protection afforded to B's assets held by A in relation to the performance of the pre-existing contract; or
  - (ii) the availability to B of an alternative dispute resolution procedure or compensation scheme under the pre-existing contract.
- (7) If at any time after A has provided B with any information under sub-paragraph (6)—
  - (a) there is, or is likely to be, a material change affecting that information; or
  - (b) it becomes apparent to the applicant that the information is incomplete or contains a material inaccuracy,

A must provide B with details of the change, the complete information or a correction of the inaccuracy (as the case may be) as soon as it is reasonably practicable to do so.

(8) The FCA may issue guidance in respect of compliance with an obligation under sub-paragraph (6) or (7).]

#### Textual Amendments

- F55** Words in Sch. 3 para. 36 substituted (31.1.2020 immediately before exit day) by [The Financial Services \(Consequential Amendments\) Regulations 2020 \(S.I. 2020/56\)](#), regs. 1, **8(2)(v)**
- F56** Sch. 3 para. 36(2A) inserted (6.9.2019) by [The Financial Services \(Electronic Money, Payment Services and Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1212\)](#), regs. 1(2), **7(17)**
- F57** Sch. 3 para. 36(6)-(8) inserted (31.1.2020) by [The Financial Services \(Miscellaneous\) \(Amendment\) \(EU Exit\) \(No. 2\) Regulations 2019 \(S.I. 2019/1010\)](#), regs. 1(3), **7(5)** (as amended by S.I. 2020/1301, regs. 1, 3, [Sch. para. 44\(b\)\(ii\)](#)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)

#### Duration of extension period

**37.—(1)** The Treasury may by regulations made by statutory instrument amend paragraph 31 so as to extend the extension period referred to in that paragraph, if the Treasury consider it necessary to do so.

(2) The Treasury may make regulations under sub-paragraph (1) only if, no later than 6 months before the end of the period to be increased, the FCA has submitted to the Treasury an assessment as to the effect of extending, or not extending, the period in paragraph 12G.

(3) Regulations under sub-paragraph (1) may not extend the period for the time being by more than 12 months.

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



**Changes to legislation:** *The Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018, SCHEDULE 3 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

## PART 4

### Supplementary provision

**38.**—(1) The reference in regulation 61 of the Electronic Money Regulations 2011 (FCA’s indemnity from liability in damages) to the functions of the FCA under those Regulations is to be read as including a reference to its functions under Parts 1 and 1A of this Schedule.

(2) The reference in regulation 121 of the Payment Services Regulations 2017 (FCA’s indemnity from liability in damages) to the functions of the FCA under those Regulations is to be read as including a reference to its functions under Parts 2 and 3 of this Schedule.

(3) “The FCA” means the Financial Conduct Authority.]

**Changes to legislation:**

The Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018, SCHEDULE 3 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

[View outstanding changes](#)

**Changes and effects yet to be applied to :**

- Regulations revoked by [2023 c. 29 Sch. 1 Pt. 2](#)