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## STATUTORY INSTRUMENTS

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### 2019 No. 1212

## The Financial Services (Electronic Money, Payment Services and Miscellaneous Amendments) (EU Exit) Regulations 2019

### PART 3

Amendment of secondary legislation: electronic money and payment services

#### The Electronic Money Regulations 2011

4.—(1) The Electronic Money Regulations 2011 <sup>F1</sup> are amended as follows.

(2) In regulation 63 (prohibition on issuing electronic money by persons other than electronic money issuers)—

(a) in paragraph (1), after sub-paragraph (d) insert—

“(da) a credit institution while it is an exempt person for the purposes of section 19(1)(b) of the Financial Services and Markets Act 2000 by virtue of regulation 47 of the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 <sup>F2</sup> but only in respect of a service specified in paragraph (3);”;

(b) after paragraph (2) insert—

“(3) A service is specified as one that may be provided by a credit institution under paragraph (1)(da) only to the extent that the credit institution was providing the service in the United Kingdom immediately before exit day in accordance with the exercise of an EEA passport right under Title 5 of Directive 2013/36/EU as in force immediately before exit day and the service is necessary as specified in paragraph (4).

(4) This paragraph applies where the service is necessary—

- (a) for the performance of a contract entered into before exit day and provided for the purposes of performing such a contract or to redeem outstanding electronic money;
- (b) for the purpose of reducing the financial risk of a party to a contract entered into before exit day or of a third party affected by the performance of such a contract;
- (c) in order to transfer the property, rights or liabilities under a contract entered into before exit day to a person authorised to carry on a regulated activity under section 31(1)(a) of FSMA (other than a person authorised to carry on a regulated activity under that section of FSMA by virtue of the provisions contained in the Financial Services Contracts (Transitional and Saving Provision) (EU Exit) Regulations 2019 <sup>F3</sup>); or

(d) in order to comply with a requirement imposed by or under an enactment.

(5) For the purposes of paragraph (4)(a), the performance of a contract entered into before exit day includes the performance of an obligation under the contract which is contingent or conditional.”.

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- F1** [S.I. 2011/99](#). Regulation 63 is amended prospectively by [S.I. 2018/1201](#).  
**F2** [S.I. 2018/1149](#). Regulation 47 is amended prospectively by [S.I. 2019/405](#).  
**F3** [S.I. 2019/405](#).

#### Commencement Information

- I1** Reg. 4 in force at 6.9.2019, see reg. 1(2)

### The Payment Services Regulations 2017

5.—(1) The Payment Services Regulations 2017 <sup>F4</sup> are amended as follows.

(2) In regulation 138 (prohibition on provision of payment services by persons other than payment service providers)—

(a) in paragraph (1)—

(i) after sub-paragraph (e) insert—

“(ea) a credit institution while it is an exempt person for the purposes of section 19(1)(b) of the Financial Services and Markets Act 2000 by virtue of regulation 47 of the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 but only in respect of a payment service specified in paragraph (3);”;

(ii) after sub-paragraph (f) insert—

“(fa) a relevant electronic money institution while it is exempt from the prohibitions in regulation 63(1) of the Electronic Money Regulations 2011 and this regulation by virtue of paragraph 12L of Schedule 3 to the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018 <sup>F5</sup> but only in respect of a payment service specified in paragraph (4);”;

(b) after paragraph (2) insert—

“(3) A payment service is specified as one that may be provided by a credit institution under paragraph (1)(ea) only to the extent that the credit institution was providing the service in the United Kingdom immediately before exit day in accordance with the exercise of an EEA passport right under Title 5 of Directive 2013/36/EU as in force immediately before exit day and the service is necessary as specified in paragraph (4).

(4) This paragraph applies where the service is necessary—

- (a) for the performance of a contract entered into before exit day and provided for the purposes of performing such a contract or to redeem outstanding electronic money;
- (b) for the purpose of reducing the financial risk of a party to a contract entered into before exit day or of a third party affected by the performance of such a contract;
- (c) in order to transfer the property, rights or liabilities under a contract entered into before exit day to a person authorised to carry on a regulated activity under section 31(1)(a) of FSMA (other than a person authorised to carry on a regulated activity under that section of FSMA by virtue of the provisions contained in the Financial Services Contracts (Transitional and Saving Provision) (EU Exit) Regulations 2019); or
- (d) in order to comply with a requirement imposed by or under an enactment.

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(5) For the purposes of paragraph (4)(a), the performance of a contract entered into before exit day includes the performance of an obligation under the contract which is contingent or conditional.

(6) A payment service is specified as one that may be provided by a relevant electronic money institution under paragraph (1)(fa) only to the extent that—

- (a) the relevant electronic money institution was providing the service in the United Kingdom immediately before exit 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 exit day; and
- (b) the services are necessary for the performance of a contract entered into before exit day and provided for the purposes of performing such a contract.

(7) In this regulation, a “relevant electronic money institution” is an EEA authorised electronic money institution which was exercising its EEA passport rights in the United Kingdom immediately before exit day (other than through an establishment in the United Kingdom maintained by it or its agent) while it is exempt from the prohibitions in regulation 63(1) of the Electronic Money Regulations 2011 and this regulation by virtue of paragraph 12L of Schedule 3 to the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018.”.

**F4** [S.I. 2017/752](#) as amended by [S.I. 2018/1201](#).

**F5** [S.I. 2018/1201](#). Paragraph 12L of Schedule 3 is added prospectively by [S.I. 2019/405](#).

#### **Commencement Information**

**I2** Reg. 5 in force at 6.9.2019, see reg. 1(2)

### **The EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018**

**6.—**(1) The EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 <sup>F6</sup> are amended as follows.

(2) In regulation 30 (conditions to be satisfied for regulation 28 to apply: persons who cease to be authorised on exit day)—

- (a) in paragraph (1)(a)(ii), after “carrying on such an activity” insert “ or, subject to paragraph (3), providing a payment service ”; and
- (b) after paragraph (2) insert—

“(3) The reference to providing a payment service in paragraph (1)(a)(ii) applies only to a credit institution which was providing the service through an establishment in the United Kingdom immediately before exit day in accordance with the exercise of an EEA passport right under Title 5 of Directive 2013/36/EU as in force immediately before exit day.”.

(3) In regulation 36 (conditions to be satisfied for regulation 34 to apply: persons who cease to be authorised on exit day)—

- (a) in paragraph (1)(a)(ii) after “carrying on such an activity” insert “ or, subject to paragraph (3), providing a payment service ”; and
- (b) after paragraph (2) insert—

“(3) The reference to providing a payment service in paragraph (1)(a)(ii) applies only to a credit institution which was providing the service in the United Kingdom immediately before exit day in accordance with the exercise of an EEA passport right under Title 5 of Directive 2013/36/EU as in force immediately before exit day.”.

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(4) In regulation 46 (interpretation), after the definition of “home state regulator” insert—  
““payment service” has the same meaning as in regulation 2 of the Payment Services Regulations 2017<sup>F7</sup>”.

(5) In regulation 49 (conditions to be satisfied for regulation 47 to apply: persons who cease to be authorised on exit day)—

(a) in paragraph (a)(ii) after “carrying on such an activity” insert “or, subject to paragraph (3), providing a payment service”;

(b) after paragraph (2) insert—

“(3) The reference to providing a payment service in paragraph (a)(ii) applies only to a credit institution which was providing the service in the United Kingdom immediately before exit day in accordance with the exercise of an EEA passport right under Title 5 of Directive 2013/36/EU as in force immediately before exit day.”.

(6) In regulation 68 (interpretation of Part 7), after the definition of “home state regulator” insert—

““payment service” has the same meaning as in regulation 2 of the Payment Services Regulations 2017”.

**F6** [S.I. 2018/1149](#) as amended prospectively by [S.I. 2019/405](#).

**F7** [S.I. 2017/752](#) as amended by [S.I. 2018/1201](#).

#### **Commencement Information**

**I3** Reg. 6 in force at 6.9.2019, see reg. 1(2)

### **The Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018**

7.—(1) Schedule 3 (transitional provisions) to the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018<sup>F8</sup> is amended as follows.

(2) In paragraph 1 (interpretation), after sub-paragraph (b) insert—

“(ba) “the 2018 Regulations” means the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018”.

(3) In paragraph 7, at the beginning of sub-paragraph (1)(d), insert “ except where the person is subject to insolvency proceedings (as defined in regulation 24 of EMR 2011) in the United Kingdom, ”.

(4) In paragraph 12B (continued authorisation for limited purposes), in sub-paragraph (4)—

(a) omit “and” at the end of paragraph (a);

(b) in paragraph (b), after “EMR 2011” insert “ and the Payment Services Regulations 2017 ”;

(c) at the end of paragraph (b) insert—

“, and

(c) a requirement imposed by a home state competent authority and which has effect immediately before exit 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) In paragraph 12E (permitted services), in sub-paragraph (2)—

- (a) in paragraph (a) after “pre-existing contract” insert “ or to redeem outstanding electronic money ”;
- (b) in paragraph (b) after “pre-existing contract” insert “ or to redeem outstanding electronic money ”.
- (6) In paragraph 12F (notification that authorisation no longer required)—
  - (a) at the end of sub-paragraph (1) insert “ and has redeemed electronic money issued through a branch in the United Kingdom ”;
  - (b) in sub-paragraph (2), after “pre-existing contracts” insert “ and has redeemed electronic money issued through a branch in the United Kingdom ”; and
  - (c) omit sub-paragraph (3).
- (7) In paragraph 12G (extension period)—
  - (a) at the end of sub-paragraph (2)(d) insert “ and the person has redeemed electronic money issued through a branch or an agent in the United Kingdom ”; and
  - (b) for sub-paragraph (3) substitute—
    - “(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.”.
- (8) For paragraph 12H (supervision and enforcement) substitute—

**“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.

**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

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- (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.”
- (9) In paragraph 12I (variation and cancellation of authorisation), in sub-paragraph (2)—
- (a) at the end of paragraph (f) insert “ and the 2018 Regulations ”;
  - (b) omit “or” at the end of paragraph (h);
  - (c) in paragraph (i), after “provision of payment services” insert “ or issuance of electronic money ”; and
  - (d) at the end of paragraph (i), insert—
    - “or
    - (j) the person has not submitted a notification in accordance with paragraph 12C.”.
- (10) In paragraph 12L (exemption from prohibition)—
- (a) for sub-paragraph (1) substitute—
    - “(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 exit 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.”.
  - (b) after sub-paragraph (5) insert—
    - “(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 exit day in accordance with the exercise of an EEA passport right under Title 5 of Directive (EU) 2015/2366 as in force immediately before exit day.”.
- (11) In paragraph 19 (exclusion of certain provisions of Payment Services Regulations 2017)—
- (a) at the beginning of sub-paragraph (1)(d) insert “ except where the person is subject to insolvency proceedings (as defined in regulation 23 of the PSR 2017) in the United Kingdom, ”;
  - (b) in sub-paragraph (2), for “any application for authorisation made by the person”, substitute “any application for registration made by a person to whom paragraph 14(2)(a)(ii) applies ”.
- (12) In paragraph 26 (continued authorisation for limited purposes), after sub-paragraph (4)(b) insert—

- “(c) a requirement imposed by a home state competent authority and which has effect immediately before exit 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.”.
- (13) In paragraph 30, omit sub-paragraph (3).
- (14) In paragraph 31, for sub-paragraph (3) substitute—
- “(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.”.
- (15) For paragraph 32 (supervision and enforcement) substitute—

**“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.

**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.

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(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.”

(16) In paragraph 33 (variation and cancellation of authorisation), in sub-paragraph (2)(f), after “PSR 2017” insert “ and the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018 ”.

(17) In paragraph 36 (exemption from prohibition), after sub-paragraph (2) insert—

“(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 exit 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 exit day.”.

**F8** [S.I. 2018/1201](#) as amended prospectively by [S.I. 2019/405](#).

#### **Commencement Information**

**I4** Reg. 7 in force at 6.9.2019, see reg. 1(2)

### **The Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019**

**8.**—(1) The Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019<sup>F9</sup> are amended as follows.

(2) In regulation 143 (Article 60JA (payment institutions))—

(a) after paragraph (2) insert—

“(2A) In relation to a person who has a continued authorisation for a limited purpose in accordance with paragraph 26 of Schedule 3 to the 2018 Regulations or is exempt from the prohibition in regulation 138(1) of Payment Services Regulations 2017 by virtue of paragraph 36 of Schedule 3 to the 2018 Regulations, the amendment made by paragraph (1) does not apply during the extension period (within the meaning given by paragraph 31 of that Schedule) or the period of exemption (within the meaning given by paragraph 36 of that Schedule).”; and

(b) in paragraph (3), after “paragraph (2)”, insert “ or (2A) ”.

(3) In regulation 144 (Article 60JB (electronic money institutions))—

(a) after paragraph (2) insert—

“(2A) In relation to a person who has continued authorisation for limited purposes in accordance with paragraph 12B of Schedule 3 to the 2018 Regulations or is exempt from the prohibition in regulation 63(1) of Electronic Money Regulations 2011 by virtue of paragraph 12L of Schedule 3 to the 2018 Regulations, the amendment made by paragraph (1) does not apply during the extension period (within the meaning given by paragraph 12G of that Schedule) or the period of exemption (within the meaning given by paragraph 12L of that Schedule).”; and

(b) in paragraph (3), after “paragraph (2)”, insert “ or (2A) ”.

**F9** [S.I. 2019/632](#).



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#### Commencement Information

- I5** Reg. 8 in force at 31.12.2020 in force immediately before IP completion day (in accordance with [2020 c. 1](#), [Sch. 5 para. 1\(1\)](#)), see [reg. 1\(3\)](#)

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

- Regulations power to modify conferred by [2023 c. 29 s. 3Sch. 1 Pt. 2](#)
- Regulations revoked by [2023 c. 29 Sch. 1 Pt. 2](#)