HM TREASURY

Laying of regulations to implement the new E-Money Directive

a consultation document

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1 Introduction

1.1 In July 2006, a review by the European Commission found that the e-money market was developing more slowly than expected, and was far from reaching its full potential.[1] The Commission reported in October 2008 that the legal framework set by the first Electronic Money Directive[2] was holding back the development of the market.[3] The principal causes were identified as uncertainty over the application of the legal framework to new business models, excessive prudential requirements, and inconsistent application of the rules by Member States.

1.2 Proposals for a Directive to address these issues were published in October 2008. The previous Government consulted on the approach it should take to the Directive negotiations. It published a summary of the responses in June 2009.[4]

1.3 A new Electronic Money Directive was adopted by the European Parliament and the Council on 16 September 2009.[5] It must be transposed into UK law by 30 April 2011.This consultation document sets out the changes that will be made to the legal framework for e-money. It sets out the Government's proposed approach to the discretionary elements left open by the Directive, which is maximum harmonising in other respects, and invites comments both on this approach, and on the draft implementing Regulations.

1.4 The Financial Services Authority will publish guidance in an Approach Document and will consult on consequential changes to its handbook.

How to respond

1.5 HM Treasury invites comments on the draft Regulations and the specific questions raised. The questions are listed in annex A.

1.6 The consultation period will end on 30 November 2010.

1.7 Please send responses to:

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[1] Staff Working Document on the Review of the E-Money Directive (2000/46/EC) SEC(2006) 19 July 2006.
[2] Directive 2000/46/EC of the European Parliament and the Council on the taking up and prudential supervision of the business of electronic money institutions.
[3] Staff Working Document accompanying the proposal for a Directive amending Directive 2000/26/EC.SEC(2008)2573. 9 October 2008.
[4] Revisions to the EMD and implementing the EU regulation on cross border payments: a summary of consultation responses. HM Treasury. June 2009.
[5] Directive 2009/110/EC on the taking-up, pursuit and prudential regulation of the business of electronic money institutions amending Directives 2005/6-/EC and 2006/48/EC and repealing Directive 2000/46/EC.

Confidentiality

1.8 When responding please state whether you are responding as an individual or representing the views of an organisation. Written responses will be published on HM Treasury's website unless the author requests otherwise. In the case of electronic responses, general confidentiality disclaimers that often appear at the bottom of e-mails will be disregarded for the purpose of publishing responses, unless an explicit request for confidentiality is made in the body of the response. If you wish part, but not all, of your response to remain confidential please supply two responses - one for publication, with the confidential information deleted; and one confidential version.

2 Background

The market for E-money

2.1 The market for e-money is growing rapidly. The number of e-money accounts operated by e-money issuers in Europe has grown from 15 million in 2005 to 125 million at the end of 2009[1], and the total value of outstanding e-money has risen from €400 million to €1.7 billion over the same period. There is no recent European data for the number of authorised European issuers. However, the number of issuers in the euro area as a whole was 78 in 2008.[2]

2.2 The UK is the European centre for e-money issuers. The UK has 96 non-bank e-money issuers and 16 bank and building society issuers.[3] Non-bank issuers sold an estimated £1 billion in 2009.[4]

2.3 E-money has a short life. Much of it is spent almost immediately. As e-money circulates quickly, it may turn over five, ten or more times a year, depending on the particular application. By comparison, cash (notes) may turn over 4 or 5 times a year. The outstanding value of regulated e-money in issue at the end of 2009 is estimated to be more than £300 million.[5] This is around 0.5 per cent of the value of notes and coins in circulation.

2.4 A substantial volume of business is undertaken by issuers who fall outside the scope of regulation. The volume of this business is twice as big as the regulated sector. This business typically involves prepaid cards that have a narrow use and can be spent only for a limited purpose - for example in a single retail chain. Examples include single-retailers' cards, petrol cards, telephone cards, parking cards, public transport cards, insurance payout cards, membership cards, canteen cards, meal and other vouchers. The retail sector sold around £2 billion worth of this type of prepaid cards in 2009.[6] Chapter 3 considers the interface between the regulated and unregulated sectors in more detail.

2.5 E-money is not strictly a surrogate for cash. Nor are prepaid cards a direct substitute for debit or credit cards. E-money works best when it facilitates new solutions to existing problems. This is, first, because e-money has its own cost and revenue structures, depending on different business models; and secondly, because customers tend to switch away from existing payment methods only when e-money offers a better way to make a payment. The most successful e-money applications have been those that have solved specific problems. Examples include pathbreaking ways to make internet payments; send and receive money on-line; a host of prepaid card applications such as gift cards and travel money cards; and nascent mobile phone payment methods.

[1] Electronic Money Association.
[2] European Central Bank e-money statistics 2008.
[3] Financial Services Authority register.
[4] UK Gift Cards and Vouchers Association.
[5] FSA regulatory returns.
[6] UK Gift Cards and Vouchers Association.

2.6 One target market for e-money that is developing significantly is the sector that is not served by traditional plastic cards. It includes consumers who do not wish to give out their bank or card details on-line, or do not have a bank account or a debit or credit card; and small businesses and start-ups. This market accounted for 7 per cent of consumer internet payments in 2009.[7]

Development of the market

2.7 The Government's coalition agreement highlighted the importance of competition and diversity in financial services. The Government believes that the e-money market has significant growth potential. It has designed the new prudential and conduct rules, set out in this consultation, to promote the growth of the market, while protecting consumers. It would like to encourage more innovation and new entrants to the market, both on-line and in the card market. For example, the rules are designed to promote the entry of mobile phone operators into the e-money market; and to promote the development of new forms of as yet untested e-money services.

2.8 To this end the Government welcomes the interest from new banks and non-banks looking to enter the market, along with those who have recently arrived. For example, there appears to be plenty of scope to develop new, low cost e-money accounts or cards that could compete with bank current accounts. This is already happening in some European countries. Such an account could appeal to the market segments currently addressed by basic bank accounts and internet current accounts.

2.9 The Government will therefore welcome responses to this consultation with this competition and growth objective in mind.

Legal and regulatory changes

2.10 E-money is, broadly speaking, the monetary value of a claim on the e-money issuer, that is stored electronically and is accepted by others as a means of payment. It derives its value, not from any intrinsic worth, but from the expectation that it can be exchanged for its underlying value.

2.11 The legal definition of e-money will be updated so that it includes magnetically stored value, issued for the purposes of making payment transactions, that is accepted by a natural or legal person. It extends to e-money held on a plastic card or on an IT server.

2.12 The principal regulatory changes will:

- create a regulated category of "Electronic Money Institution" with its own prudential and conduct regime;
- introduce new requirements for safeguarding and redeeming customers' funds;
- remove restrictions on e-money institutions that confine them to issuing e-money;
- exempt small e-money institutions from some of the prudential requirements, rather than the total exemption from prudential requirements that currently apply; and
- bring the thresholds for complying with due diligence requirements under the anti-money laundering rules into line with those in the Payment Services Regulations.

[7] Measured by transactions volume. UK Payments Markets. Payments Council. 2010.

2.13 Banks and building societies that issue e-money are regulated differently to non-bank e-money issuers, and the prudential requirements in the Electronic Money Directive do not apply to them. The provisions about issuance, redeemability, interest and complaints do, however, apply to banks and building societies.

2.14 The reason for applying a different regulatory regime to e-money issuers is that buying e-money is not the same as making a deposit. In other words, issuing e-money does not constitute a deposit-taking activity and e-money issuers need not be banks. E-money is by definition a way to make payments, rather than a way to save. That is why e-money issuers are not permitted to make risky loans or investments with the funds they accept from customers; and why they are subject to special rules for safeguarding and repaying that money.

3 Key changes

3.1 This chapter sets out the principal changes made by the new Electronic Money Directive. It explains the Government's proposed approach to implementing the changes, chiefly by replacing rules made under the Financial Services and Markets Act 2000 with the proposed Electronic Money Regulations. It invites views wherever the Government proposes to exercise its discretion in deciding between a range of options.

3.2 This chapter covers:

- the definition of e-money
- authorisation
- prudential requirements
- new, regulated activities and associated prudential requirements
- the exemption of limited networks
- the boundaries of a limited network
- safeguarding e-money
- the financial services compensation scheme
- redeeming e-money
- safeguarding dormant e-money accounts
- storage limits.

Definition of e-money

3.3 The legal definition of e-money is being updated to include magnetically stored value, and to bring it into line with the definition of payment transactions set out in the Payment Services Directive. This is intended to achieve technical neutrality between different forms of e-money. The Directive definition is copied out in the draft implementing Regulations.

Table 3.A

Old Directive text	New Directive text	Comment
Monetary value as represented by a claim on the issuer which is: *(i) stored on an electronic device;* *(ii) issued on receipt of funds of an amount not less in value than the monetary value issued;* *(iii) Accepted as means of payment by undertakings other than the issuer*	*Electronically, including magnetically, stored monetary value as represented by a claim on the issuer which is issued on receipt of funds for the purpose of making payment transactions as defined in point 5 of Article 4 of Directive 2007/64/EC, and which is accepted by a natural or legal person other than the electronic money issuer.*	*This is intended to achieve technical neutrality between different media.* *No adverse impact to consumers or business*

Authorisation

3.4 E-money issuers other than banks or building societies, and those exempted from requiring authorisation by the Directive, will be subject to an authorisation procedure that will be similar to the existing procedure for payments institutions, although some of the prudential requirements will of course be different. An application for authorisation will include, among other things, a business plan, programme of operations, evidence of initial capital and details of governance arrangements. There will be a three month deadline for the regulator to approve or reject an application for authorisation. The Regulations will set out arrangements for grandfathering issuers who are currently authorised, or are small issuers, so that they will not have to reapply for authorisation under the new regime.

Prudential requirements

3.5 There are changes to e-money institutions' initial capital ('own funds') requirements. There are further changes to the on-going capital requirements where these issuers undertake certain activities.

- the initial minimum capital will be reduced from €1 million to €350,000;
- initial and ongoing capital must be at least 2 per cent of the average outstanding balance of e-money. This replaces the previous requirement, which was calculated as 2 per cent of the total amount of financial liabilities related to outstanding electronic money. The difference in calculation method is illustrated in the impact assessment.

3.6 The initial capital requirement was considered by industry participants to be a barrier to entry to the market. Its reduction will reduce the costs of setting up a new business and has been welcomed by the e-money industry. It will benefit issuers, whose obligations will be reduced, and promote a more competitive and innovative market. The benefits are limited by two factors: (i) for large new entrants (electronic money institutions with average outstanding e-money of more than €5 million), the 2% requirement will exceed €1 million, so they will see no reduction. They will nonetheless benefit from a lower capital requirement based on average balances rather than total liabilities; and (ii) for small e-money institutions (issuers with average outstanding e-money of €5 million or less), it is proposed to set a flat cap - a minimum requirement of around €75,000 (around £65,000). The requirements for these small electronic money institutions are considered further in Chapter 4.

3.7 Consumers will be protected by the application of additional safeguarding requirements and conduct rules. The approach to safeguarding client funds is discussed in the safeguarding section below.

3.8 There are a number of optional exemptions from the prudential rules for small issuers. These may apply if an issuer has less than €5 million of average outstanding e-money. The proposed approach to exemptions for small electronic money institutions is discussed in the section on small issuers in Chapter 4.

New activities, and associated prudential requirements

3.9 The scope of activities that e-money institutions can undertake will be expanded so that they can undertake mixed business activities. This means they will be able to carry out unrelated payment services and other unregulated business. They will no longer be restricted to issuing and administering e-money, or storing data. This removes a long standing barrier to entry to the market which has, for example, inhibited mobile phone operators from developing new services or entering the market.

3.10 Additional prudential requirements will apply where an issuer provides payment services that are not linked to issuing e-money, the granting of credit (within certain limits), settling payment transactions, and services that are ancillary to issuing e-money. There are additional capital requirements associated with these activities. They may be calculated in one of three ways, using established methods set out in the Payment Services Directive.[1] The regulator will decide which method should apply in each case.

Exemption for limited networks

3.11 There is an existing exemption from the rules for e-money that can only be accepted by a limited number of undertakings. This distinguishes between regulated, general purpose e-money and unregulated, limited purpose e-money. There is a wide range of limited purpose e-money cards which is growing all the time. Examples include single-retailer cards, petrol cards, telephone cards, parking cards, public transport cards, insurance payout cards, membership cards, canteen cards, meal and other vouchers.

3.12 The limited network exemption will be redefined and aligned with the definition applied by the Payment Services Directive. It will now apply additionally to e-money that can be spent only on a limited range of goods and services. It applies equally to e-money that is delivered through a card, an electronic device, or an on-line account.

Table 3.B

Old Directive text	New Directive text	Comment
Services where e-money can only be accepted by a limited number of undertakings, which can be clearly distinguished by: *(i) their location in the same premises or other limited local area; or* *(ii) their close financial or business relationship with the issuing institution, such as a common marketing or distribution scheme.*	*Services based on instruments that can be used to acquire goods or services only in the premises used by the issuer or under a commercial agreement with the issuer either within a limited network of service providers or for a limited range of goods or services.*	*The exemption is now wider. It refers to a limited range of goods and services as well as a limited number of undertakings.*

3.13 There is no precise definition of a limited network of service providers or a limited range of goods and services. This is because whether it covers a particular institution will often depend on the facts of that case. Geographically, a limited network, such as a single-retailer store card or petrol card, could cover the whole of Europe. Quantitatively, a limited network of retailers could be numerous, covering a large number of subsidiaries in a group, a franchise or it might sometimes cover a wider variety of firms and shops. The greatest diversity lies in the prepaid and gift card markets. Here, different business models include cards that can be redeemed by:

- single legal entities – example single retailer cards;
- single brand, multiple legal entities – example coffee shop cards;
- multi-brand, single legal entity – example department store cards;
- multi-brand, multiple legal entities – example shopping centre cards; and
- general purpose network – example travel money cards.

[1] 2007/64/EC.

3.14 The Government recognises that a clear delineation of the regulatory boundary is desirable. The Financial Services Authority will need to decide where to draw the boundary, although the ultimate decision is for the courts. The decision whether a particular business model constitutes a limited network is a matter of judgement which will take account of various factors, none of which are likely to be conclusive individually.

3.15 The Financial Services Authority therefore plans to issue guidance and give some examples of what does or does not constitute a limited network, in line with its approach to the same definition under the Payment Services Directive.

Question 1:

Is FSA guidance, and case-by-case consideration, the right approach to determining what constitutes a limited network?

Question 2:

Are there any examples of cases where the law determining what constitutes a limited network may be unclear? How should these cases be resolved?

The boundaries of a limited network

3.16 Wherever the precise boundary between a limited and general purpose network is to be found in the UK e-money sector, there is some interaction between the two, which creates certain risks. The risks will increase as the industry grows. They are that:

- an unregulated (limited network) issuer may fail. The worst-case consequences are that:
  - i. a potentially large number of consumers and businesses may suffer irrecoverable losses[2]; and
  - ii. there may be wider reputational impacts. A potential loss of confidence in e-money could set back the whole industry.
- regulated and unregulated products may compete with one another. Some issuers or products could gain a competitive advantage, depending on whether they are or are not regulated.

3.17 There is no generally accepted code of conduct for limited network issuers, and no generally accepted arrangements for safeguarding customers' funds against the failure of such an issuer. Some issuers segregate customers' funds, for example in trust accounts, and some do not. There is considerable scope for confusion and consumer detriment. The Government will therefore work with the e-money industry to take stock of current practices in the limited network sector, the application of current voluntary codes of conduct and arrangements for securing customers' funds. It will assess the effectiveness of current self regulatory solutions for protecting consumers before considering whether further action is warranted.

[2] Potential losses on an individual account or card could rise from €150 to €250 or €500 for non-reloadable devices, and up to €2,500 for reloadable devices. There is a question about the case for increasing the existing ceiling on reloadable devices in this consultation.

Question 3:

i) Are voluntary codes of conduct, supported by safeguarding arrangements for customer funds, the right way to protect consumers in the unregulated sector?

ii) Is there a better alternative?

Safeguarding of e-money

3.18 Safeguarding funds received by non-banks in exchange for e-money is fundamental to the whole concept of e-money. It is one of the factors that distinguishes e-money issued by non-banks from a bank deposit, and ensures that customers are insulated from the failure of a non-bank issuer.

3.19 A high quality and level of consumer protection will inspire confidence in e-money and is in the interests of both consumers and the industry. The broad approach is to follow the safeguarding model set by the existing Payment Services Regulations for payments institutions. The Government believes this approach is proportionate and will give issuers the flexibility to manage funds in a way that suits them.

3.20 The safeguarding requirements are new. Detailed rules limiting the investments that issuers can make will be repealed. In their place is a simpler requirement to safeguard funds in secure, liquid low risk assets. The requirements are those that already apply to payments institutions under the Payment Services Regulations 2009[3], and so have already been established and tested in practice. The key is that, not only are customers' funds to be safeguarded in this way, but that customers rank above other creditors in access to those funds if the issuer becomes insolvent.

3.21 Electronic money institutions have two options. They may protect customers' funds by (i) placing them, or specified assets in which they are invested, in a segregated account or accounts; or (ii) holding an insurance policy or bank guarantee.

3.22 One further simplification has been made with regard to the timing of receipts by the issuer. Where receipts may take some days to clear into the issuers account, the issuer will have a grace period of up to five days before funds that have not yet cleared into the issuer's account must be safeguarded.

Financial Services Compensation Scheme

3.23 E-money issued by banks and building societies (authorised credit institutions) does not fall within the safeguarding arrangements for non-bank issuers set out above. Bank and building society customers are protected by the general capital and other prudential requirements for credit institutions. They are not, however, protected by the Financial Services Compensation Scheme (FSCS) for the e-money issued by a bank or building society in the event if its failure. A decision to include e-money within FSCS scope would require an amendment to article 9j of the Treasury's Regulated Activities Order 2001. It would then be a matter for the Financial Services Authority to decide whether to extend FSCS cover to e-money issued by banks and building societies.

3.24 The Government notes that e-money issued by banks is eligible for deposit protection in some EU Member States, which raises the question whether a similar approach should be adopted in the UK. For example, some products on sale through the Post Office in the UK are protected by the Irish Depositor Protection Scheme.

[3] Regulation19. S.I. 2009 No. 209.

3.25 It would not be desirable for the quality of e-money in the UK to be perceived to be inferior to that in other countries. The Government believes there is a case for asking the Financial Services Authority to consider whether and how to extend FSCS cover to e-money issued by credit institutions in the UK. However, it would be necessary to consider the practical difficulties and potential costs as well as the benefits of extending cover, and the terms on which cover might be provided. For example, there might be a very large number of relatively small potential e-money claims which would need to be verified before they could be paid out after a failure. Some claims might also be hard to pay out quickly. The costs of paying out a large number of fairly trivial amounts may therefore exceed the benefits.

Question 4:

What are the pros and cons of extending FSCS cover to e-money issued by banks and building societies?

Redeeming e-money

3.26 A further change will be made to enhance consumer protection when the operational life of e-money comes to an end. Customers will be entitled to get their money back at any time after a contract (or the time for payment transactions) has ended. This is because the Electronic Money Directive lays down clear redemption rights for customers after these elements of a contract have ended.[4]

3.27 The e-money contract can still provide for the validity of e-money for making payments to cease. This may apply, for example, to some categories of prepaid card, such as non-reloadable cards. The functionality of e-money ceases when it is no longer capable of fulfilling its purpose of making payments or being accepted by third parties. But e-money issuers will no longer be able to curtail, through their terms and conditions, customers' right to get their money back after a contract has ended. It means that a small number of issuers that rely on income generated by funds that are not redeemed by customers will no longer be able to do so. It also means that unreclaimed customer funds must be safeguarded and will count towards the calculation of an authorised electronic money institution's capital requirements.

Table 3.C

Old Directive text	New Directive text	Comment
A bearer of electronic money may, during the period of validity, ask the issuer to redeem it….. The contract may stipulate a minimum threshold for redemption. The threshold may not exceed €10.	*Member States shall ensure that, upon request by the electronic money holder, electronic money issuers redeem, at any moment and at par value, the monetary value of the electronic money held.*	*This means that customers will be entitled to reclaim any unused funds at any time during or after a contract.*

3.28 After April 2011, an issuer must therefore pay back the outstanding value of customers' funds on request, at par value, and at any time. Redemption may be subject to a fee that is proportionate and commensurate with the costs, only if stated in the contract and only where:

- redemption is requested before a contract ends;
- the customer terminates the contract before the end-date;
- redemption is requested more than one year after the contract ends.

[4] Article 11(2) and 11(3) Electronic Money Directive. 2009/110/EC.

3.29 However, customers will not be entitled to receive interest, investment income or other time-related benefits, as the Directive specifically prohibits it.

3.30 The Government believes this clarifies consumer rights in this area. It will enhance the attractions of e-money and ensure that the quality of e-money in the UK is as good as or better than any in the world.

Safeguarding dormant e-money accounts

3.31 A further enhancement to consumer rights is that the Directive requires an e-money institution to continue to safeguard dormant funds (funds that have not been reclaimed by the customer) indefinitely after a contract has ended, with an associated capital charge on e-money institutions. It means that these issuers must redeem e-money at any time after a contract has ended, putting the legal treatment of e-money accounts on a par with cash or deposit accounts for the first time.

3.32 The aggregate amount of e-money left unused after e-money contracts have ended is thought to be of the order of £5 million to £7.5 million annually. In future, these amounts will become dormant accounts. The aggregate amount outstanding will rise as the take-up of e-money rises, so a large pool of dormant funds may accrue over time. These funds must be safeguarded, and the outstanding amounts will count towards the calculation of the issuer's capital requirement as outstanding liabilities.

3.33 While the aggregate amounts are substantial, the amounts unclaimed per customer are typically small because e-money is used to make payments, not to save. In the gift card market, the average card value is less than £50, and the average amount left unused is £2.50. In the general purpose prepaid card market the average card value is well under £1,000 and the average amount unclaimed is estimated to be £10.

Table 3.D: Unredeemed e-money balances after contract termination

Product type	Amounts unclaimed	Average per account
Internet accounts	near 0%	-
General purpose pre-paid cards	1%	£10.00
Prepaid gift cards	4-5%	£2.50

Source: Electronic Money Association and UK Gift Cards and Vouchers Association

3.34 The Government notes that issuers will be able to recover redemption fees, as set out in paragraph 3.28 above. In the language of the Directive, redemption fees must be "proportionate and commensurate with the actual costs incurred". The actual costs will depend on the cost structure and business model of individual businesses. Many issuers do not currently charge redemption fees, and may not do so in future. Issuers may also need to make one-off changes to alter their terms and conditions, administration, and contracts with programme managers.

3.35 The impact assessment published with this consultation suggests that the estimated transitional costs of making one-off changes to issuers' contracts and systems are up to £1.3 million in total. Issuers could also face ongoing deadweight costs of maintaining dormant accounts indefinitely, and these funds may build up to a substantial size over time. On the other hand, the majority of customers are unlikely to derive any benefit, given that individual claims are small and a substantial proportion of unreclaimed funds are likely to be absorbed by redemption charges. That will certainly be the case for high volume, low-value gift cards, where the average amount unclaimed is £2.50. These cards account for the bulk of unreclaimed funds.

3.36 The ongoing costs of safeguarding and refunding dormant funds can be mitigated in two ways:

- by identifying the circumstances in which funds in smaller individual accounts need not be safeguarded. The Government expects that such accounts will often be extinguished by redemption-related costs, and the deduction from time to time of such maintenance charges from the outstanding balances of dormant accounts;
- by introducing a prescription period for redemption claims to e-money issuers.

Charges

3.37 The Government expects that issuers will continue to be able to agree in their contracts with their customers the deduction, from time to time, of charges from the outstanding balance of a dormant account (or the extinction of the balance by any charge or charges). Issuers will be able to provide for account charges that could be included in any redemption fee in accordance with the Directive and which are incurred after 12 months following the termination of the contract. Where an issuer chooses to impose such charges, they must be commensurate with costs actually incurred and be proportionate.

3.38 The inclusion of such charges will not interfere with the Directive requirement that electronic money institutions must safeguard funds and all issuers meet redemption claims. However, where charges are imposed, they are likely to absorb the vast majority of funds that are not currently reclaimed within twelve months of the end of a contract because, as set out above, the vast majority of such dormant accounts hold very small sums. Customers who have more substantial amounts at stake will be able to claim redemption of the outstanding balance, but the impact on issuers will be minimal because the number of those customers is relatively small. The impact assessment therefore assesses this measure as cost neutral.

3.39 All outstanding dormant funds, after deduction of redemption-related charges, will continue to count towards the calculation of capital requirements. However, this is expected to be at relatively low cost, given the small proportion of dormant funds that are likely to remain outstanding.

3.40 The Government believes that this is sufficient to address any concerns about the costs of safeguarding dormant accounts indefinitely. However, it wishes to consult on whether there is a case for introducing a prescription period in addition to this.

Prescription period

3.41 A prescription period is being considered by some European Member States. Some states already have a national prescription period which extinguishes the rights of an account holder after a specified period of time, without the need for any prior request for repayment to start the period running. The UK does not have such a prescription period and would need to provide one specifically for e-money.

3.42 The advantage of this option is that it would set a reasonable period during which customers could get their money back while imposing a backstop after which claims would expire. This would prevent dormant accounts having to be maintained for lengthy periods of time. The disadvantages are that it would preclude some claims. It would encourage firms in market sectors that do not currently time limit customer claims to do so in future by providing for backstop dates for the expiry of customer rights.

3.43 There is also a question about whether a prescription period should apply to e-money issued by banks and building societies. It would make bank-issued e-money an inferior product to cash accounts. But a time bar applied to non-bank issuers alone would make e-money inferior not only to cash but to bank-issued e-money, creating what might be regarded as an arbitrary distinction

for the same kind of product. Altogether, it might confuse customers and set back the development of e-money as a cash substitute or as a vehicle for longer term payment products.

3.44 If a prescription period were to be set, then it could be based on the rules for limitation, which provide that claims for repayment of funds held in an account are actionable for six years after a demand for repayment. This provides a suitable yardstick for setting a period of six years for redemption claims. This period would run from the time that the e-money stops being available for payment transactions. Of course, nothing would prevent an issuer from choosing not to rely on the prescription period and deciding to meet claims for redemption that are made after that period.

Question 5

i) Do you think there should be a prescription period?

ii) If so, how long should such a period be?

iii) Should a prescription period apply to claims on banks and building societies as well as non-bank e-money issuers?

Storage limits

3.45 Small e-money institutions are at present subject to a maximum storage limit of €150 on any electronic storage device at the disposal of bearers for the purpose of making payments.[5] The storage limit is thought by the industry to have inhibited the development of a number of product propositions. The Government is sympathetic to this view. It believes that a low limit may inhibit product innovation and that, in any event, a storage limit does little to prevent large liabilities being built up, given a very fast turnover of e-money combined with the ability to issue any number of low-value cards. The maximum storage limit of €150 will be removed.

3.46 The financial crime rules[6] provide exemptions for e-money issuers from carrying out certain customer due diligence checks. There is one exemption in respect of rechargeable devices and another for non-rechargeable devices. If a device can be recharged, the due diligence exemption applies where the transactions in a calendar year do not exceed €2,500, except when an amount of €1,000 or more is redeemed by the bearer in the same calendar year. This is unchanged in the new Directive.

3.47 The due diligence exemption for non-rechargeable devices is linked to the maximum storage limit. It applies where the maximum amount stored in a device is no more than €150 for non-reloadable devices like prepaid cards. The limit for this exemption will be raised from €150 to €250.

3.48 Member States may increase the exemption for carrying out due diligence checks from €250 to €500 for national payment transactions. Issuers can provide an audit trail for how these devices are sold and how and where e-money is deposited or spent. However, a substantially higher limit may create new or more serious opportunities for criminals, and that risk needs to be taken into account. The Government therefore welcomes views on whether to raise the exemption from customer due diligence checks for non-rechargeable devices from €250 up to €500 for national payment transactions.

[5] Article 8 Electronic Money Directive 2000/46/EC.

[6] Article 11 (5) (d) Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.

Question 6

i) Do you agree that the exemption from carrying out customer due diligence checks should be raised from €250 up to €500 for national payment transactions?

ii) Please give reasons if you do not agree.

4 Small e-money institutions

4.1 The existing prudential regime for small electronic money institutions will be substantially modified. This chapter sets out the key changes, and invites views where the Government proposes to exercise new optional exemptions.

4.2 The current Directive enables electronic money institutions meeting certain conditions to be exempted from full authorisation requirements where:

- the total business activities generate total liabilities related to e-money that do not normally exceed €5m and never exceed €6m; or
- the e-money issued is accepted as a means of payment only by subsidiaries of the issuer that perform operational or ancillary functions related to e-money issued or distributed by group companies.

4.3 These issuers do not currently qualify for an EU passport. They must also comply with certain reporting requirements and a maximum storage limit of €150 on any electronic device.

4.4 Under the new Directive, exemptions are available for small electronic money institutions[1] who:

- do not exceed a limit for average outstanding e-money set by the Member State in any six month period, but that amounts to no more than €5 million; and
- none of those responsible for running the business have been convicted of money laundering or terrorist financing offences, or other financial crimes.

These issuers will not, as now, qualify for an EU passport. There are new reporting requirements (discussed below) and Member States also have discretion to set a maximum storage limit.

4.5 The Government proposes to exempt small electronic money institutions from most of the optional prudential requirements. It will not, however, waive all the requirements. It proposes to provide for:

- a minimum capital requirement;
- safeguarding of customers funds exchanged for e-money;
- no change to the float limit; and
- some additional and other reporting requirements;

Capital requirements

4.6 It would be possible to lay down no initial or ongoing capital requirements for small electronic money institutions. However, for prudential reasons, the preferred course is to have a fixed minimum requirement for initial and ongoing capital. As the initial capital requirement is €350,000 for a large (authorised) issuer, a reasonable initial capital requirement for a small

[1] Article 9 Electronic Money Directive. 2009/110/EC.

institution might be under €100,000. This would represent 2 per cent of the maximum business liabilities that a small issuer may accept (€5 million). The Government therefore proposes a fixed minimum requirement of €75,000 (around £65,000) for initial and ongoing capital requirements. It recognises that there may be a case for a different fixed minimum requirement and invites views on this. It invites views on the potential costs and benefits.

Question 7

i) Is a fixed minimum requirement of €75,000 for a small electronic money institution's initial and ongoing capital a sensible approach to setting an own funds requirement?

ii) If not, what are the preferred alternatives, and why?

Safeguarding

4.7 The Government proposes to apply the same safeguarding requirements to all electronic money institutions, as described in Chapter 3. The requirements replicate, with some modifications, the established safeguarding provisions for payments institutions set out in Regulation 19 of the Payment Services Regulations 2000. This seems to strike the right balance between removing prudential obligations that may be onerous for small electronic money institutions, while ensuring that consumers are not put at risk.

Question 8

i) Should the full safeguarding requirements apply to small electronic money institutions?

ii) If not, what are the preferred alternatives, and why?

A float limit

4.8 The Government has not received any representations requesting a limit for average outstanding e-money for small electronic money institutions that is lower than €5 million in any six month period – the float limit. On the contrary it has received industry representations to set the limit at €5 million, as a lower limit might have a negative impact on existing institutions who currently benefit from exemptions. The Government therefore proposes to set the limit at €5 million.

Question 9

Is there any case for setting a limit for average outstanding e-money for small issuers lower than €5 million?

Additional activities

4.9 The Government proposes to enable small issuers to carry out some additional activities. They may carry out payment services, as that is a function of an e-money issuer, and ancillary payments services closely connected with issuing e-money; and providing payment services and operating payment systems. They may also carry out other, non-regulated business activities other than issuing e-money.

Question 10

Does the proposed approach to enabling small electronic money institutions to carry out other regulated and non-regulated activities strike the right balance?

Additional reporting and other requirements

4.10 The Government does not propose to exempt small electronic money institutions from the following requirements:

- to inform the regulator of any material change in measures taken for safeguarding funds received in exchange for e-money[2];
- to enable them to use distributors[3];
- some additional reporting requirements; and
- to enable the regulator to carry out a fit and proper persons test.

[2] Article 3 (2) Electronic Money Directive. 2009/110/EC.
[3] Article 3 (5) Electronic Money Directive. 2009/110/EC.

A List of consultation questions

Question 1:

Is FSA guidance, and case-by-case consideration, the right approach to determining what constitutes a limited network?

Question 2:

Are there any examples of cases where the law determining what constitutes a limited network may be unclear? How should these cases be resolved?

Question 3:

i) Are voluntary codes of conduct, supported by safeguarding arrangements for customer funds, the right way to protect consumers in the unregulated sector?

ii) Is there a better alternative?

Question 4:

What are the pros and cons of extending FSCS cover to e-money issued by banks and building societies?

Question 5

(i) Do you think there should be a prescription period?

(ii) If so, how long should such a period be?

(iii) Should a prescription period apply to claims on banks and building societies, as well as non-bank e-money issuers?

Question 6

(i) Do you agree that the exemption from carrying out customer due diligence checks should be raised from €250 up to €500 for national payment transactions?

(ii) Please give reasons if you do not agree.

Question 7

(i) Is a fixed minimum requirement of €75,000 for a small electronic money institution's initial and ongoing capital a sensible approach to setting an own funds requirement?

(ii) If not, what are the preferred alternatives and why?

Question 8

(iii) Should the full safeguarding requirements apply to small electronic money institutions?

(iv) If not, what are the preferred alternatives and why?

Question 9

Is there any case for setting a limit for average outstanding e-money for small electronic money institutions lower than €5 million?

Question 10

Does the proposed approach to enabling small electronic money institutions to carry out other regulated and non-regulated activities strike the right balance?

B Impact assessment

Impact assessment below.

Title: **Impact Assessment on draft E-Money Regulations** **Lead department or agency:** HM Treasury **Other departments or agencies:**	**Impact Assessment (IA)** **IA No:** **Date:** 14/09/2010 **Stage:** Consultation **Source of intervention:** EU **Type of measure:** Secondary legislation **Contact for enquiries:** Faizan Jabbar

Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary?

A review of the European regulatory framework for issuers of electronic money found that the e-money market was developing more slowly than expected. The main causes were found to be uncertainty over the application of the rules to new business models, tight prudential requirements and inconsistent application of the rules by Member States.

A new Electronic Money Directive to update the rules was adopted in September 2009 (2009/110/EC). Implementing Regulations will take effect on 30 April 2011.

What are the policy objectives and the intended effects?

There are three objectives, to:

- reflect technological changes, and promote innovation in the design of new, secure e-money products;
- reduce barriers to entry and increase competition in the market; and
- modernise the rules for e-money issuers and align them with existing rules for payment service providers.

The new framework introduces a lighter prudential regime for e-money issuers who are not banks, and new safeguarding and refund rules protect customers. For example, it lowers the initial capital requirements, allows issuers to undertake a wide range of mixed business activities, and waives some rules for small firms

What policy options have been considered? Please justify preferred option (further details in Evidence Base)

The options are

Option 1: Exercise some, but not all, of a number of optional waivers, notably to reduce or disapply the requirements for small firms, and to reduce some potential negative impacts of new safeguarding and redemption requirements for customers' funds.

Option 2: Implement the Directive without any cost mitigating measures.

Both options are estimated to generate net benefits. The preferred option is Option 1 because it applies a more proportionate, lower cost regime while maintaining consumer protection.

When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?	It will/will not be reviewed 11/2012
Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?	Yes

SELECT SIGNATORY Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible SELECT SIGNATORY: ..... Date: 7 October 2010

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Summary: Analysis and Evidence

Policy Option 1

Description:

Price Base Year 2010	PV Base Year 2010	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	**High:** Optional	**Best Estimate: £15m**

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	10	Optional	**Optional**
High	Optional		Optional	**Optional**
Best Estimate	3		4	**7**

Description and scale of key monetised costs by 'main affected groups'

The key monetised costs relate to new requirements for safeguarding and redeeming customers' funds, and proposed new minimum capital requirements for small issuers who were previously exempt from holding a minimum level of capital. The precise level of capital required is being consulted on.

Other key non-monetised costs by 'main affected groups'

None

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	10	Optional	**Optional**
High	Optional		Optional	**Optional**
Best Estimate	7		15	**22**

Description and scale of key monetised benefits by 'main affected groups'

Many firms will benefit from lower capital requirements as compared to the existing regime. This will generate one-off transitional benefits for existing firms, and lower on-going capital costs, as well as lower costs for new entrants to the market in future

Other key non-monetised benefits by 'main affected groups'

The new rules will help to promote innovation and competition in the e-money market. New entrants to the market will be able to take advantage of lower prudential requirements and a more proportionate regulatory regime that is aligned with the exising regime for payment service providers. Consumers will benefit from the clarification of their rights to redeem funds at par value and at any moment, and from secure arrangements for protecting their funds from the insolvency of an e-money issuer

Key assumptions/sensitivities/risks — **Discount rate (%)** 3.5

This assessment makes conservative assumptions about:

(i) the number of potential new entrants to the market, based on current entry rates;
(ii) the average capital maintained by small issuers at present, based on their level of business;
(iii) authorisation and registration fees, based on current FSA scales for payment service providers.

Impact on admin burden (AB) (£m):			Impact on policy cost savings (£m):	In scope
New AB:	**AB savings:**	**Net:**	**Policy cost savings:**	Yes/No

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			United Kingdom		
From what date will the policy be implemented?			30/04/2011		
Which organisation(s) will enforce the policy?			FSA		
What is the annual change in enforcement cost (£m)?			Not set yet		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			No		
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** N/A	**Non-traded:** N/A	
Does the proposal have an impact on competition?			Yes		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			**Costs:** N/A	**Benefits:** N/A	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	**Micro**	**< 20**	**Small**	**Medium**	**Large**
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	**Impact**	**Page ref within IA**
Statutory equality duties[1] Statutory Equality Duties Impact Test guidance	No	N/A
Economic impacts		
Competition Competition Assessment Impact Test guidance	Yes	Yes
Small firms Small Firms Impact Test guidance	Yes	Yes
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	N/A
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	N/A
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	N/A
Human rights Human Rights Impact Test guidance	No	N/A
Justice system Justice Impact Test guidance	No	N/A
Rural proofing Rural Proofing Impact Test guidance	No	N/A
Sustainable development Sustainable Development Impact Test guidance	No	N/A

[1] Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Summary: Analysis and Evidence

Policy Option 2

Description:

Price Base Year 2010	PV Base Year 2010	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	**High:** Optional	**Best Estimate: £14m**

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	10	Optional	**Optional**
High	Optional		Optional	**Optional**
Best Estimate	4		4	**8**

Description and scale of key monetised costs by 'main affected groups'

The key monetised costs relate to new requirements for safeguarding and redeeming customers' funds, and new minimum capital requirements for small issuers who were previously exempt from holding a minimum level of capital. The principal cost element is the minimum capital requirement, which is higher than in option 1.

Other key non-monetised costs by 'main affected groups'

None

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	10	Optional	**Optional**
High	Optional		Optional	**Optional**
Best Estimate	7		15	**22**

Description and scale of key monetised benefits by 'main affected groups'

Many firms will benefit from lower capital requirements as compared to the existing regime. This will generate one-off transitional benefits for existing firms, and lower on-going capital costs, as well as lower costs for new entrants to the market in future.

Other key non-monetised benefits by 'main affected groups'

The new rules will help to promote innovation and competition in the e-money market. New entrants to the market will be able to take advantage of lower prudential requirements and a a more proportionate regulatory regime that is aligned with the exising regime for payment service providers. Consumers will benefit from the clarification of their rights to redeem funds at par value and at any moment, and from secure arrangements for protectingng their funds from the insolvency of an e-money issuer

Key assumptions/sensitivities/risks **Discount rate (%)** 3.5

This assessment makes conservative assumptions about:

(i) the number of potential new entrants to the market, based on current entry rates;
(ii) the average capital mainatained by small issuers at present, based on their level of business;
(iii) authorisation and registration fees, based on current FSA scales for payment service providers.

Impact on admin burden (AB) (£m):			Impact on policy cost savings (£m):	In scope
New AB:	**AB savings:**	**Net:**	**Policy cost savings:**	Yes/No

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			United Kingdom		
From what date will the policy be implemented?			30/04/2011		
Which organisation(s) will enforce the policy?			FSA		
What is the annual change in enforcement cost (£m)?			Not yet set		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			No		
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** N/A	**Non-traded:** N/A	
Does the proposal have an impact on competition?			Yes		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			**Costs:** N/A	**Benefits:** N/A	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	**Micro**	**< 20**	**Small**	**Medium**	**Large**
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	**Impact**	**Page ref within IA**
Statutory equality duties[2] Statutory Equality Duties Impact Test guidance	No	N/A
Economic impacts		
Competition Competition Assessment Impact Test guidance	Yes	Yes
Small firms Small Firms Impact Test guidance	Yes	Yes
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	N/A
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	N/A
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	N/A
Human rights Human Rights Impact Test guidance	No	N/A
Justice system Justice Impact Test guidance	No	N/A
Rural proofing Rural Proofing Impact Test guidance	No	N/A
Sustainable development Sustainable Development Impact Test guidance	No	N/A

[2] Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No.	Legislation or publication
1	Directive 2009/110/EC on the taking-up, pursuit and prudential regulation of the business of electronic money institutions amending Directives 2005/6-/EC and 2006/48/EC and repealing Directive 2000/46/EC.
2	Directive 2000/46/EC of the European Parliament and the Council on the taking up and prudential supervision of the business of electronic money institutions.
3	Revisions to the EMD and implementing the EU regulation on cross border payments: a summary of consultation responses. HM Treasury. June 2009.
4	Staff Working Document accompanying the proposal for a Directive amending Directive 2000/26/EC.SEC(2008)2573. 9 October 2008.

+ Add another row

Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y_0	Y_1	Y_2	Y_3	Y_4	Y_5	Y_6	Y_7	Y_8	Y_9
Transition costs	3	0	0	0	0	0	0	0	0	0
Annual recurring cost	0.45	0.43	0.42	0.41	0.39	0.38	0.37	0.35	0.34	0.33
Total annual costs	0.45	0.43	0.42	0.41	0.39	0.38	0.37	0.35	0.34	0.33
Transition benefits	7.2	0	0	0	0	0	0	0	0	0
Annual recurring benefits	1.7	1.64	1.59	1.53	1.48	1.43	1.38	1.34	1.29	1.25
Total annual benefits	8.9	1.64	1.59	1.53	1.48	1.43	1.38	1.34	1.29	1.25

* For non-monetised benefits please see summary pages and main evidence base section

vidence Base (for summary sheets)

A review of the European regulatory framework for issuers of electronic money found that the e-money market was developing more slowly than expected. The main causes were found to be uncertainty over the application of the rules to new business models, tight prudential requirements and inconsistent application of the rules by Member States.

A new Electronic Money Directive to update the rules was adopted in September 2009 (2009/110/EC). Implementing Regulations will take effect on 30 April 2011.

Policy Objective

There are three objectives, to:

- reflect technological changes, and promote innovation in the design of new, secure e-money products;
- reduce barriers to entry and increase competition in the market; and
- modernise the rules for e-money issuers and align them with existing rules for payment service providers.

The new framework introduces a lighter prudential regime for e-money issuers who are not banks, and new safeguarding and refund rules protect customers. For example, it lowers the initial capital requirements, allows issuers to undertake a wide range of mixed business activities, and waives some rules for small firms

Description of options considered

The options are

Option 1: Exercise some, but not all, of a number of optional waivers from the Directive requirements, notably to reduce or disapply the requirements for small firms, and to reduce some potential negative impacts of new safeguarding and redemption requirements for customers' funds.

Option 2: Implement the Directive without any cost mitigating measures.

The preferred option is option 1, because it applies a more proportionate, lower cost regime while maintaining consumer protection.

The baseline for the assessment of these options has been normalised at zero in order to facilitate comparison between options 1 and 2.

Option 1- Exercise a number of optional waivers

Breakdown of costs and benefits				
Summary of key changes	Potential impacts		Potential benefits	
	Transitional	On-going	Transitional	On-going
New definition of e-money	£0	£0	Qualitative	
Prudential requirements	£1.4m- £2.4m	£0.04 - £0.12m	£5.4m-£9m	£0.4m - £1.2m
Cost of capital		£0.25m		£0.9m
New permitted activities	£0	£0	Qualitative	
Exemption for limited networks	£0	£0	Qualitative	
Safeguarding e-money Redemption requirements	£0.8m-£1.4m	£0.1m-£0.4m	Qualitative	
Storage limits	£0	£0	Qualitative	
Waivers for small firms	£0	£0	Qualitative	
New authorisation requirements	£0.04m	£0	Qualitative	
Total	£2.2m- £3.8m	£0.4m-£0.5m	£5.4-£9m	£1.3m - £2.1m

Transition costs

Detail

(a) There are three main sources of transition costs to firms:
   a. New minimum capital requirements for existing small issuers;
   b. New arrangements for redeeming and safeguarding customer funds;
   c. Potentially, existing issuers may incur additional authorisation fees.

   a. Minimum capital requirements for small issuers

   Small e-money issuers are defined in the directive as those whose total business activities generate an average outstanding electronic money of no more than €5 million. There are an estimated 48 small active issuers out of 78 registered small issuers in the UK. This assessment excludes 30 dormant firms. The dormant firms will not be affected by the new rules. They are not trading and are expected to drop out of the FSA's register.

   The capital requirements for small issuers are, at present, waived by the FSA. The FSA assess that issuers are holding a minimum level of capital in order to operate. This impact assessment makes a conservative assumption that small issuers are on average holding at least £25,000 of capital. This number is based on taking 4% of their reported outstanding liabilities, which average £625,000.

   It would be possible to continue to set no capital requirement for small issuers, as now. This is considered risky, given the new freedoms that small issuers will enjoy, and the experience of failures of payment service providers and of retailers that have issued prepaid cards. It is therefore proposed to set a proportionate, minimum initial capital requirement of €75,000 (£65,000) for small issuers in future. The FSA will be able to vary the capital requirement by +/-20% according to the circumstances of each issuer. Small issuers will therefore be required to hold more capital than they are estimated to hold at present. The precise number is being consulted on.

   The difference between the current estimated average capital being held (£25,000) and the proposed new requirement (£65,000) represents the additional capital that may (subject to the consultation) be required per small issuer.
   The additional capital is:

New capital requirement per issuer	£65,000
Average capital being held by issuers	- £25,000
Additional capital per issuer	£40,000

The **transitional capital requirement for small issuers** is estimated to be:

48 x £40,000 = £1,920,000

The projected range (+/- 25%) is between £1.4 million and £2.4 million

b. Redeeming and safeguarding customer funds

The main transition costs to firms will be in issuing new terms and conditions, and making new administrative arrangements. These relate to redeeming and safeguarding customer funds, with associated compliance costs. Some firms may also need to renegotiate contracts with their programme managers.

It would be possible to disapply this requirement for small issuers. It is not proposed to do so for the risk-based reasons set out in the section on capital requirements above, and in order to mandate best practice in safeguarding customers' funds, and raise the quality of e-money in the UK.

Based on discussions with firms and industry representatives, the average direct costs to 18 currently authorised large issuers are estimated to be in the region of £35,000, and to 48 small registered issuers £10,000, within a range of +/- 25%.

The **transitional safeguarding and redemption costs** are therefore:

Large issuers 18 x £35,000	= £ 630,000
Small issuers 48 x £10,000	= £ 480,000
Total	= £ 1,110,000

The projected range (+/-25%) is between £ 0.83 million and £1.4 million

c. Authorisation fees

The FSA will consult on authorisation fees in October 2010. The FSA does not usually levy fees for grandfathering existing authorised firms, but, this depends on whether the FSA holds enough information to assess whether an authorised firm meets the new standards. Because that is a decision for the FSA, which it has yet to make, this impact assessment assumes that there will be no fee for grandfathering issuers who are already authorised (based on past practice). It assumes that there may be a fee for re-registering small issuers, as there is unlikely to be sufficient information already on hand to re-register them. On the basis of the registration fees currently payable by payments institutions, this assessment assumes that small issuers who need to re-register may be charged between £500 and £1,000 each.

The **transitional authorisation costs for small issuers** are:

From:	48 firms x £500	= £24,000
To:	48 firms x £1,000	= £48,000
	Midpoint:	= £36,000

Transition Benefits

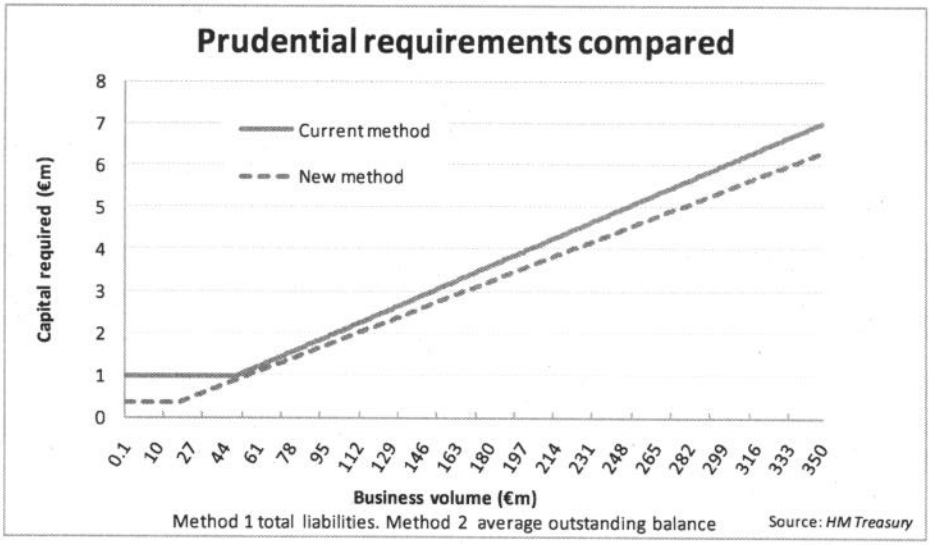
The main quantitative benefits accrue to large issuers who incur lower capital requirements. Issuers may or may not reduce their capital in response to a lower regulatory requirement. This assessment scores the lower capital requirement as a reduction in the regulatory burden (just as it counts the proposed increase in the capital requirement for small issuers as an increase in the regulatory burden for small issuers).

The capital requirement for large issuer is based on 2% of total financial liabilities related to outstanding electronic money over the preceding 6 months or €1 million, whichever is higher.

Based on data provided by the FSA, there are at present 18 large issuers who hold aggregate capital of €87 million (around £73 million). The average capital per issuer at present is therefore:

£73,000,000/ 18 = £4,055,555
Around £4 million per issuer

The new capital requirement will be based on 2% of the average outstanding balance of e-money, or €350,000, whichever is the higher. The minimum capital requirement will therefore be lower than at present. The difference is illustrated in the chart below.



In the absence of comparative data about issuers' average outstanding balances and total financial liabilities this assessment conservatively assumes that average balances are 90% of total liabilities. On this basis the assessment takes 90% of issuers' currently held capital as representing 2% of their average outstanding balances (ie their new, lower capital requirement). This will always be higher than the minimum €350,000, based on the practical experience of current issuers.

The average current capital held by firms is	£4,000,000
90% of this (the assumed average balances) is	£3,600,000
Net reduction	£ 400,000

The difference between the current average capital held by issuers and the new lower requirement represents the benefits to existing issuers of the new methodology. In aggregate, this is:

The **transitional benefits of lower capital requirements for large issuers** are:
£400,000 lower capital x 18 issuers = £7,200,000
Range (+/- 25%) From £5.4 million to £9 million

It is not known whether large issuers will, in fact, reduce their regulatory capital in response to the lower capital requirement. However, the capital that is released will be available for, and will no doubt be, deployed for other activities. This impact therefore scores the total reduction in the capital requirement as a benefit

Ongoing Annual costs

There are three main sources of ongoing costs to firms:

a. New minimum capital requirements for new entrant small issuers;
b. The additional cost of capital for all small issuers.
c. New arrangements for redeeming and safeguarding customer funds

a. New minimum capital requirements for new entrant small issuers

Initial capital requirements will be calculated and applied to new entrants to the market. These are the same as those set out for existing issuers in the transitional costs section, and are assumed to

apply to every new small issuer. These are additional one off costs that will be incurred by every new entrant to the market as a result of holding more capital than they would have had to hold before. The additional entry costs are estimated to be £40,000 per issuer.

It would be possible to continue to set no capital requirement for small issuers, as now. This is considered risky, given the new freedoms that small issuers will enjoy, and the experience of failures of payment service providers and of retailers that have issued prepaid cards. It is therefore proposed to set a proportionate, minimum initial capital requirement of €75,000 (£65,000) for small issuers in future. The FSA will be able to vary the capital requirement by +/-20% according to the circumstances of each issuer. Small issuers will therefore be required to hold more capital than they are estimated to hold at present. The precise number is being consulted on

The rate of entry of small firms to the e-money market is low – currently less than two a year, half of whom do not become active issuers. The rate is expected to increase as a result of the additional freedoms brought in by the directive. This assessment assumes conservatively that the rate will increase to two a year.

The ongoing annual **capital requirement for new entrant small issuers** is estimated to be:	£40,000 x 2 = £80,000
The projected range (+/- 25%) is	between £40,000 and £120,000

b. Cost of capital

There is an on-going cost to small issuers from holding more capital. Given a very wide variety of firm size and business models, however, together with the absence of concrete data, any attempt to model the potential savings in ongoing lower costs of capital is fraught with difficulty. This would be done by comparing the risk free rate of return on capital with the expected rate of return in the e-money market.

In very general terms, the additional capital that small issuers may have to hold was assessed in the transitional costs section at £1,920,000 in total.

Assuming a risk free rate of return of 2.0% and an expected rate of return of 15% (net 13%) the ongoing annual cost of holding more capital is

£1.9 milllion x 13% = £247,000.
around £0.25million

Assuming the business growth rate based on the estimated number of new entrants to the market set out above, the annual cost of capital will grow to a little over £0.3 million in year 10.

c. Redeeming and safeguarding customer funds

Firms may charge fees for redeeming funds in certain circumstances. Fees must be proportionate and reflect the actual costs incurred. This measure is therefore expected to be cost neutral.

Ongoing Annual Benefits

The main quantitative benefits accrue to large new entrants who will incur lower capital requirements than before. These are the same as those set out for existing issuers in the transitional costs section, and are assumed to apply to every large new entrant. These are additional one off benefits that will be incurred by every new entrant to the market as a result of holding less capital than they would have had to hold before. The reduction in capital for the average large new entrant is estimated to be the same as for existing large issuers. This is estimated in the transitional benefits section to be £400,000 per issuer.

Lower capital requirement

The rate of entry of to the e-money market is low – currently less than one large new entrant a year. The rate is expected to increase as a result of the additional freedoms brought in by the directive. This assessment assumes conservatively that the rate will increase to one or two a year.

The ongoing annual **capital reduction for new entrant large issuers** is estimated to be:
£400,000 x 2 = £800,000
The projected range (+/- 1 issuer) is between £400,000 and £1,200,000

The one-off reduction is estimated to apply to one or two new entrants every year, so this is an ongoing benefit of £0.4 million to £1.2 million.

Lower cost of capital

There is an on-going benefit to large issuers from a lower capital requirement, represented by a lower cost of capital. Given a very wide variety of firm size and business models, however, together with the absence of concrete data, any attempt to model the potential savings in ongoing lower costs of capital is fraught with difficulty. This would be done by comparing the risk free rate of return on capital with the expected rate of return in the e-money market.

In very general terms, the one-off benefits of lower capital requirements for 18 large issuers was assessed in the transitional benefits section at £7,200,000

Assuming a risk free rate of return of 2.0% and an expected rate of return of 15% (net 13%) the ongoing annual saving from holding less capital is
£7.2 milllion x 13% = £936,000.
around £0.9 million

Assuming the business growth rate based on the estimated number of new entrants to the market set out above, the annual saving in cost of capital will grow to a little over £1 million in year 10.

Small firms impact

Small firms will benefit from the ability to grant credit, provide payment services and operate payment systems. They may also carry out other, non-regulated business activities other than issuing e-money. This is set out in more detail in the consultation document.

The aggregate cost to small issuers of the new measures is estimated to be:
Transitional costs: £2.4 million (of which additional capital requirements account for £1.9m)
Ongoing costs: £0.3 million

These costs result from the proportionate application of a minimum capital requirement, and a requirement to safeguard customer's funds. It is not considered prudent to waive them altogether. The capital costs may change. They are subject to the consultation on what is an appropriate level of regulatory capital for small issuers.

Option 2 – Implement the Directive in full

Breakdown of costs and benefits				
Summary of key changes	Potential impacts		Potential benefits	
	Transitional	On-going	Transitional	On-going
New definition of e-money	£0	£0	Qualitative	
Prudential requirements	£2.3m - £3.5m	£0.09m - £0.15m	£5.4m - £9m	£0.4m - £1.2m
Cost of capital		£0.4m		£0.9m
New permitted activities	£0	£0	Qualitative	

mption for limited networks	£0	£0	Qualitative	
Safeguarding e-money	£0.83m - £1.4m	£0	Qualitative	
Redemption requirements				
Storage limits	£0	£0	Qualitative	
Waivers for small firms	£0	£0	Qualitative	
New authorisation requirements	£0.04m	£0	Qualitative	
Total	£3.1 - £4.9m	£0.49m - £0.55m	£5.4 - £9m	£1.3m - £2.1m

Transition costs

Detail

There are three main sources of transition costs to firms:

d. New minimum capital requirements for existing small issuers;
e. New arrangements for redeeming and safeguarding customer funds;
f. Potentially, existing issuers may incur additional authorisation fees.

d. Minimum capital requirements for small issuers

Small e-money issuers are defined in the directive as those whose total business activities generate an average outstanding electronic money of no more than €5 million. There are an estimated 48 small active issuers out of 78 registered small issuers in the UK. This assessment excludes 30 dormant firms. The dormant firms will not be affected by the new rules. They are not trading and are expected to drop out of the register.

The capital requirements for small issuers are, at present, waived by the FSA. The FSA assess that issuers are holding a minimum level of capital in order to operate. This assessment makes a conservative assumption that small issuers are on average holding at least £25,000 of capital. This number is based on taking 4% of their reported outstanding liabilities, which average £625,000.

This option provides that small issuers would be required to hold a minimum initial capital requirement of €100,000 (£85,000). This would represent 2% of the maximum business liabilities that a small issuer may accept (€5 million).So small issuers will be required to hold more capital than they are estimated to hold at present. The difference between the current estimated average capital being held (£25,000) and the new requirement (£85,000) represents the additional capital that would be required per small issuer.
The additional capital is:

New capital requirement per issuer	£85,000
Average capital being held by issuers	- £25,000
Additional capital per issuer	£60,000

The **transitional capital requirement for small issuers** is estimated to be:
48 x £60,000 = £2,880,000
The projected range (+/- 25%) is between £2.3 million and £3.5 million

e. Redeeming and safeguarding customer funds

The main transition costs to firms will be in issuing new terms and conditions, and making new administrative arrangements. These relate to redeeming and safeguarding customer funds, with associated compliance costs. Some firms may also need to renegotiate contracts with their programme managers.

The average direct costs to 18 currently authorised large issuers are estimated to be in the region of £35,000, and to 48 small registered issuers £10,000, within a range of +/- 25%.

The **transitional safeguarding and redemption costs** are therefore:

	Large issuers 18 x £35,000	= £ 630,000
	Small issuers 48 x £10,000	= £ 480,000
	Total	= £ 1,110,000

The projected range (+/-25%) is between £ 0.83 million and £1.4 million

f. Authorisation fees

The FSA will consult on authorisation fees in October 2010. The FSA does not usually levy fees for grandfathering existing authorised firms, but, this depends on whether the FSA holds enough information to assess whether an authorised firm meets the new standards. Because that is a decision for the FSA, which it has yet to make, this impact assessment assumes that there will be no fee for grandfathering issuers who are already authorised (based on past practice). It assumes that there may be a fee for re-registering small issuers, as there is unlikely to be sufficient information already on hand to re-register them. On the basis of the registration fees currently payable by payments institutions, this assessment assumes that small issuers who need to re-register may be charged between £500 and £1,000 each.

The **transitional authorisation costs for small issuers** are:

From:	48 firms x £500 = £24,000
To:	48 firms x £1,000 = £48,000
	Midpoint: = £36,000

Transition Benefits

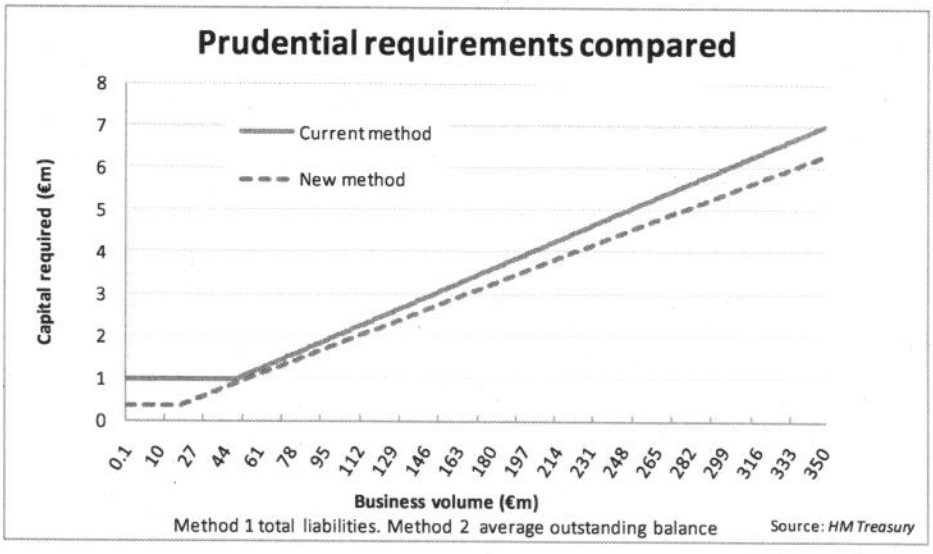
The main quantitative benefits accrue to large issuers who incur lower capital requirements. Their capital requirement is based on 2% of total financial liabilities related to outstanding electronic money over the preceding 6 months or €1 million, whichever is higher.

Based on data provided by the FSA, there are at present 18 large issuers who hold aggregate capital of €87 million (around £73 million). The average capital per issuer at present is therefore:

£73,000,000/ 18 = £4,055,555

Around £4 million per issuer

The new capital requirement will be based on 2% of the average outstanding balance of e-money, or €350,000, whichever is the higher. The minimum capital requirement will therefore be lower than at present. The difference is illustrated in the chart below.



In the absence of comparative data about issuers' average outstanding balances and total financial liabilities this assessment conservatively assumes that average balances are 90% of total liabilities. On this basis the

assessment takes 90% of issuers' currently held capital as representing 2% of their average outstanding balances (ie their new, lower capital requirement). This will always be higher than the minimum €350,000, based on the practical experience of current issuers.

The average currently capital held by firms is	£4,000,000
90% of this (the assumed average balances) is	£3,600,000
Net reduction	£ 400,000

The difference between the current average capital held by issuers and the new lower requirement represents the benefits to existing issuers of the new methodology. In aggregate, this is

The **transitional benefits of lower capital requirements for large issuers** are:
£400,000 lower capital x 18 issuers = £7,200,000
Range (+/- 25%) From £5.4 million to £9 million

Ongoing Annual costs

There are three main sources of ongoing costs to firms:

d. New minimum capital requirements for new entrant small issuers;
e. The additional cost of capital for all small issuers.
f. New arrangements for redeeming and safeguarding customer funds;

d. New minimum capital requirements for new entrant small issuers

Initial capital requirements will be calculated and applied to new entrants to the market. These are the same as those set out for existing issuers in the transitional costs section, and are assumed to apply to every new small issuer. These are additional one off costs that will be incurred by every new entrant to the market as a result of holding more capital than they would have had to hold before. The additional entry costs are estimated to be £60,000 per issuer.

The rate of entry of small firms to the e-money market is low – currently less than two a year, half of whom do not become active issuers. The rate is expected to increase as a result of the additional freedoms brought in by the directive. This assessment assumes conservatively that the rate will increase to two a year.

The ongoing annual **capital requirement for new entrant small issuers** is estimated to be:
£60,000 x 2 = £120,000
The projected range (+/- 25%) is between £90,000 and £150,000

e. Cost of capital

There is an on-going cost to small issuers from holding more capital. Given a very wide variety of firm size and business models, however, together with the absence of concrete data, any attempt to model the potential savings in ongoing lower costs of capital is fraught with difficulty. This would be done by comparing the risk free rate of return on capital with the expected rate of return in the e-money market.

In very general terms, the one-off costs of lower capital requirements for small issuers was assessed in the transitional costs section at £2,880,000.

Assuming a risk free rate of return of 2.0% and an expected rate of return of 15% (net 13%) the ongoing annual cost of holding more capital is
£2.9 milllion x 13% = £377,000.
around £0.4million

Assuming the business growth rate based on the estimated number of new entrants to the market set out above, the annual cost of capital will grow to a little over £0.6 million in year 10.

f. Redeeming and safeguarding customer funds

Firms may charge fees for redeeming funds in certain circumstances. Fees must be proportionate and reflect the actual costs incurred. This measure is therefore expected to be cost neutral.

Ongoing Annual Benefits

The main quantitative benefits accrue to large new entrants who will incur lower capital requirements than before. These are the same as those set out for existing issuers in the transitional costs section, and are assumed to apply to every large new entrant. These are additional one off benefits that will be incurred by every new entrant to the market as a result of holding less capital than they would have had to hold before. The reduction in capital for the average large new entrant is estimated to be the same as for existing large issuers. This is estimated in the transitional benefits section to be £400,000 per issuer.

Lower capital requirement

The rate of entry of to the e-money market is low – currently less than one large new entrant a year. The rate is expected to increase as a result of the additional freedoms brought in by the directive. This assessment assumes conservatively that the rate will increase to one or two a year.

The ongoing annual **capital reduction for new entrant large issuers** is estimated to be: £400,000 x 2 = £800,000 The projected range (+/- 1 issuer) is between £400,000 and £1,200,000

The one-off reduction is estimated to apply to one or two new entrants every year, so this is an ongoing benefit of £0.4 million to £1.2 million.

Lower cost of capital

There is an on-going benefit to large issuers from carrying a lower capital requirement represented by a lower cost of capital. Given a very wide variety of firm size and business models, however, together with the absence of concrete data, any attempt to model the potential savings in ongoing lower costs of capital is fraught with difficulty. This would be done by comparing the risk free rate of return on capital with the expected rate of return in the e-money market.

In very general terms, the one-off benefits of lower capital requirements for 18 large issuers was assessed in the transitional benefits section at £7,200,000

Assuming a risk free rate of return of 2.0% and an expected rate of return of 15% (net 13%) the ongoing annual saving from holding less capital is £7.2 milllion x 13% = £936,000. around £0.9 million

Assuming the business growth rate based on the estimated number of new entrants to the market set out above, the annual saving in cost of capital will grow to a little over £1 million in year 10.

Small firms impact

Small firms will benefit from the ability to grant credit, provide payment services and operate payment systems. They may also carry out other, non-regulated business activities other than issuing e-money. This is explained in more detail in the consultation document.

The aggregate cost to small issuers of these measures is:
Transitional costs: £3.8 million (of which additional capital requirements account for £2.8m)
Ongoing costs: £0.9 million

Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

Basis of the review: [The basis of the review could be statutory (forming part of the legislation), it could be to review existing policy or there could be a political commitment to review]; The Directive requires the European Commission to carry out a post implementation review by 1 November 2012.
Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?] The review will look at the implementation and impact of the directive, in particular on the application of prudential requirements for e-money institutions
Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]
Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured]
Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]
Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection systematic collection of monitoring information for future policy review]
Reasons for not planning a PIR: [If there is no plan to do a PIR please provide reasons here] The review will be carried out at the European level.

Add annexes here.

C Draft Regulations

Draft Regulations below.

STATUTORY INSTRUMENTS

2010 No. ***

FINANCIAL SERVICES AND MARKETS

The Electronic Money Regulations 2010

Made - - - - ***

Laid before Parliament ***

Coming into force in accordance with regulation 1(2)

The Treasury are a government department designated for the purposes of section 2(2) of the European Communities Act 1972(**a**) in relation to measures relating to the taking up, pursuit and prudential supervision of the business of electronic money institutions.

The Treasury make these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972.

PART 1

INTRODUCTORY PROVISIONS

Citation and commencement

1.—(1) These Regulations may be cited as the Electronic Money Regulations 2010.

(2) These Regulations shall come into force on—

(a) xx January 2011 for the purposes of—

(i) regulations 30, 46, 58 to 60, 65 to 70 and 73;

(ii) regulation 61 in respect of paragraphs 2, 6 and 8 to 11 of Schedule 3;

(iii) regulation 76 in respect of paragraphs 1 and 17(f) of Schedule 4;

(iv) enabling applications to become an authorised electronic money institution and the variation of an authorisation to be made under regulation 5 and the Authority to determine such applications in accordance with regulations 6 to 9;

(v) enabling applications for registration as a small electronic money institution and the variation of a registration to be made under regulation 12 and the Authority to determine such applications in accordance with regulation 13 and regulations 7 to 9 (as applied by regulation 15);

(**a**) 1972 c.68.

(vi) enabling applications for an agent to be included on the register under regulation 34 and the Authority to determine such applications in accordance with that regulation;

(vii) enabling the Authority to give directions as to the manner in which an application under regulation 5(1) or (2), 12(1) or (2) or 34(3) is to be made and enabling the Authority to require the applicant to provide further information in accordance with regulation 5(4), 12(4) or 34(3)(a)(iv), as the case may be;

(viii) enabling the Authority to cancel an authorisation or registration or vary an authorisation or registration on its own initiative in accordance with regulation 10 or 11 (as applied, in the case of a registration, by regulation 15);

(ix) requiring a person who has made an application under regulation 5(1) or (2) or 12(1) or (2) to provide information to the Authority in accordance with regulation 17 and enabling the Authority to give directions under that regulation;

(x) enabling a person to make a reference to the Upper Tribunal under regulation 9(8), 10(6), 11(5), 29(4) or 34(11);

(xi) enabling an applicant for authorisation as an electronic money institution to give the Authority a notice of intention under regulation 28(2) and the Authority to give directions as to the manner in which such a notice is to be given and to inform the host state competent authority in accordance with regulation 28(3);

(xii) enabling the Authority to decide whether to register an EEA branch or to cancel such a registration under regulation 29(1);

(xiii) enabling the Authority to give directions under regulation 48 to a person whose application under regulation 5(1) or 12(1) has been granted before 30th April 2011 in respect of—

(aa) its provision as from that date of electronic money issuance or payment services; and

(bb) its compliance as from that date with requirements imposed by or under Parts 2 to 5 of these Regulations;

(xiv) enabling the Authority to give directions under paragraph 8, 13(a), 15 or 16 of Schedule 2 to a person whose application under regulation 5(1) or 12(1) has been granted before 30th April 2011;

(xv) requiring a person whose application under regulation 5(1), 12(1) or 34(3) has been granted before 30th April 2011 to provide information to the Authority in accordance with regulation 37 and enabling the Authority to give directions under that regulation; and

(b) 30th April 2011 for all other purposes.

Interpretation

2.—(1) In these Regulations—

"the 2000 Act" means the Financial Services and Markets Act 2000;

"agent" means a person who provides payment services on behalf of an electronic money institution;

"authorised electronic money institution" means—

(a) a person included by the Authority in the register as an authorised electronic money institution pursuant to regulation 4(1)(a); or

(b) a person deemed to have been granted authorisation by the Authority by virtue of regulation 73;

"the Authority" means the Financial Services Authority;

"average outstanding electronic money" means the average total amount of financial liabilities related to electronic money in issue at the end of each calendar day over the preceding six calendar months, calculated on the first calendar day of each calendar month and applied for that calendar month;

"the banking consolidation directive" means Directive 2006/48/EC of the European Parliament and of the Council of 14th June 2006 relating to the taking up and pursuit of the business of credit institutions(**a**);

"consumer" means an individual who is acting for purposes other than a trade, business or profession;

"credit institution" has the meaning given in Article 4(1) of the banking consolidation directive and includes a branch of the credit institution within the meaning of Article 4(3) of that directive which is situated within the EEA and which has its head office in a territory outside the EEA in accordance with Article 38 of that directive;

"credit union" means a credit union within the meaning of—

(a) the Credit Unions Act 1979**(b)**; or

(b) the Credit Unions (Northern Ireland) Order 1985**(c)**;

"decision notice" and "warning notice" have the same meaning as in the 2000 Act;

"distributor" means a person who distributes or redeems electronic money on behalf of an electronic money institution but who does not provide payment services on its behalf;

"the EEA" means the European Economic Area;

"EEA agent" means an agent through which an authorised electronic money institution, in the exercise of its passport rights, provides payment services in an EEA State other than the United Kingdom;

"EEA authorised electronic money institution" means a person authorised in an EEA State other than the United Kingdom to issue electronic money and provide payment services in accordance with the electronic money directive;

"EEA branch" means a branch established by an authorised electronic money institution, in the exercise of its passport rights to issue electronic money, provide payment services, distribute or redeem electronic money or carry out other activities in accordance with these Regulations in an EEA State other than the United Kingdom;

"electronic money" means electronically (including magnetically) stored monetary value as represented by a claim on the electronic money issuer which—

(a) is issued on receipt of funds for the purpose of making payment transactions as defined in Article 4(5) of the payment services directive;

(b) is accepted by a person other than the electronic money issuer; and

(c) is not excluded by regulation 3;

"the electronic money directive" means Directive 2009/110/EC**(d)** of the European Parliament and of the Council of 16th September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC**(e)** and 2006/48/EC and repealing Directive 2000/46/EC**(f)**;

"electronic money institutions" means authorised electronic money institutions and small electronic money institutions;

(a) OJ No L 177, 30.6.2006, p.1 as last amended by Directive 2009/110/EC.
(b) 1979 c.34.
(c) S.I. 1985/1205 (N.I. 12).
(d) OJ No L 267, 10.10.2009 p.7.
(e) OJ No L 309, 25.11.2005, p.15.
(f) OJ No L 275, 27.10.2000 p.39

"electronic money issuer" means any of the following persons when they issue electronic money—

(a) authorised electronic money institutions;

(b) small electronic money institutions;

(c) EEA authorised electronic money institutions;

(d) credit institutions;

(e) the Post Office Limited;

(f) the Bank of England, the European Central Bank and the national central banks of EEA States other than the United Kingdom, when not acting in their capacity as a monetary authority or other public authority;

(g) government departments and local authorities when acting in their capacity as public authorities;

(h) credit unions;

(i) municipal banks;

(j) the National Savings Bank;

"home state competent authority" means the competent authority designated in accordance with Article 3 of the electronic money directive as being responsible for the authorisation and prudential supervision of an EEA authorised electronic money institution which is exercising (or intends to exercise) its passport rights in the United Kingdom;

"host state competent authority" means the competent authority designated in accordance with Article 3 of the electronic money directive in an EEA state in which an authorised electronic money institution exercises (or intends to exercise) its passport rights;

"initial capital" has the meaning given by paragraph 1 of Schedule 2;

"the money laundering directive" means Directive 2005/60/EC of the European Parliament and of the Council of 26th October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing;

"municipal bank" means a company which, immediately before 1st December 2001, fell within the definition in section 103 of the Banking Act 1987**(a)**;

"own funds" has the meaning given by paragraph 4 of Schedule 2;

"parent undertaking" has the same meaning as in the Companies Acts (see section 1162 of, and Schedule 7 to, the Companies Act 2006**(b)**);

"passport right" means the entitlement of a person to establish a branch or provide services in an EEA state other than that in which they are authorised to provide electronic money issuance services—

(a) in accordance with the Treaty establishing the European Community as applied in the EEA; and

(b) subject to the conditions of the electronic money directive;

"payment account" means an account held in the name of one or more payment service users which is used for the execution of payment transactions;

"payment instrument" means any—

(a) personalised device; or

(a) 1987 c.22; repealed by S.I. 2001/3649, article 3(1)(d).
(b) 2006 c.46.

(b) personalised set of procedures agreed between the payment service user and the payment service provider;

"payment services" has the same meaning as in the Payment Services Regulations 2009**(a)**;

"payment service user" means a person when making use of a payment service in the capacity of a payer or payee, or both;

"the payment services directive" means Directive 2007/64/EC of the European Parliament and of the Council of 13th November 2007 on payment services in the internal market**(b)**;

"payment system" means a funds transfer system with formal and standardised arrangements and common rules for processing, clearing and settlement of payment transactions;

"qualifying holding" has the meaning given in Article 4(11) of the banking consolidation directive;

"the register" means the register maintained by the Authority under regulation 4;

"small electronic money institution" means a person included by the Authority in the register pursuant to regulation 4(1)(b);

"subsidiary undertaking" has the same meaning as in the Companies Acts (see section 1162 of, and Schedule 7 to, the Companies Act 2006).

(2) In these Regulations references to amounts in euro include references to equivalent amounts in another currency.

(3) Unless otherwise defined, expressions used in these Regulations which are also used in the electronic money directive have the same meaning as in that directive.

(4) Expressions used in a modification to a provision in primary or secondary legislation applied by these Regulations have the same meaning as in these Regulations.

Electronic money: exclusions

3. For the purposes of these Regulations electronic money does not include—

(a) monetary value stored on instruments that can be used to acquire goods or services only—

(i) in or on the electronic money issuer's premises; or

(ii) under a commercial agreement with the electronic money issuer, either within a limited network of service providers or for a limited range of goods or services;

(b) monetary value that is used to make payment transactions executed by means of any telecommunication, digital or IT device, where the goods or services purchased are delivered to and are to be used through a telecommunication, digital or IT device, provided that the telecommunication, digital or IT operator does not act only as an intermediary between the payment service user and the supplier of the goods and services.

(a) S.I.2009/209, as amended by S.I. 2009/2475.
(b) OJ No L 319, 5.12.2007, p.1.

PART 2

REGISTRATION

The register

4.—(1) The Authority must maintain a register of—

(a) authorised electronic money institutions and their EEA branches;

(b) small electronic money institutions;

(c) agents of electronic money institutions required to be registered under regulation 34; and

(d) the National Savings Bank when it issues electronic money.

(2) The Authority may include on the register any of the persons mentioned in paragraphs (c), (e), (f) and (g) of the definition of electronic money issuer in regulation 2(1) where such persons issue electronic money.

(3) Where a person mentioned in paragraph (e), (f), (g) or (j) of the definition of an electronic money issuer in regulation 2(1)—

(a) is not included on the register; and

(b) issues, or proposes to issue, electronic money,

the person must give notice to the Authority.

(4) A notice under paragraph (3) must be made in such manner as the Authority may direct.

(5) The Authority may—

(a) keep the register in any form it thinks fit;

(b) include on it such information as the Authority considers appropriate, provided that the register identifies the electronic money issuance for which an institution is authorised or registered under this Part; and

(c) exploit commercially the information contained in the register, or any part of that information.

(6) The Authority must—

(a) publish the register online and make it available for public inspection;

(b) update the register on a regular basis; and

(c) provide a certified copy of the register, or any part of it, to any person who asks for it—

(i) on payment of the fee (if any) fixed by the Authority; and

(ii) in a form (either written or electronic) in which it is legible to the person asking for it.

Authorisation

Application to become an authorised electronic money institution or variation of an existing authorisation

5.—(1) An application to become an authorised electronic money institution must contain or be accompanied by the information specified in Schedule 1.

(2) An application for the variation of an authorisation must—

(a) contain a statement of the proposed variation;

(b) contain a statement of the electronic money issuance and payment services business which the applicant proposes to carry on if the authorisation is varied; and

(c) contain, or be accompanied by, such other information as the Authority may reasonably require.

(3) An application under paragraph (1) or (2) must be made in such manner as the Authority may direct.

(4) At any time after receiving an application and before determining it, the Authority may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application.

(5) Different directions may be given, and different requirements imposed, in relation to different applications or categories of application.

Conditions for authorisation

6.—(1) The Authority may refuse to grant an application for authorisation only if any of the conditions set out in paragraphs (2) to (8) is not met.

(2) The application must comply with the requirements of, and any requirements imposed under, regulation 5.

(3) The applicant must immediately before the time of authorisation hold the amount of initial capital required in accordance with Part 1 of Schedule 2.

(4) The applicant must be either—

(a) a body corporate constituted under the law of a part of the United Kingdom having—

(i) its head office; and

(ii) if it has a registered office, that office,

in the United Kingdom; or

(b) a body corporate which has a branch that is located in the United Kingdom and whose head office is situated in a territory that is outside the EEA.

(5) The applicant must satisfy the Authority that, taking into account the need to ensure the sound and prudent conduct of the affairs of the institution, it has—

(a) robust governance arrangements for its electronic money and payment service business, including a clear organisational structure with well-defined, transparent and consistent lines of responsibility;

(b) effective procedures to identify, manage, monitor and report any risks to which it might be exposed;

(c) adequate internal control mechanisms, including sound administrative, risk management and accounting procedures;

which are comprehensive and proportionate to the nature, scale and complexity of electronic money to be issued and payment services to be provided by the institution.

(6) The applicant must satisfy the Authority that—

(a) any persons having a qualifying holding in the institution are fit and proper persons having regard to the need to ensure the sound and prudent conduct of the affairs of an authorised electronic money institution;

(b) the directors and persons responsible for the management of its electronic money and payment services business are of good repute and possess appropriate knowledge and experience to issue electronic money and provide payment services;

(c) it has a business plan (including for the first three years, a forecast budget calculation) under which appropriate and proportionate systems, resources and procedures will be employed by the institution to operate soundly;

(d) it has taken adequate measures for the purpose of safeguarding electronic money holders' funds in accordance with regulation 20.

(7) The applicant must comply with a requirement of the Money Laundering Regulations 2007(**a**) to be included in a register maintained under those Regulations where such a requirement applies to the applicant.

(8) If the applicant has close links with another person ("CL") the applicant must satisfy the Authority—

(a) that those links are not likely to prevent the Authority's effective supervision of the applicant; and

(b) if it appears to the Authority that CL is subject to the laws, regulations or administrative provisions of a territory which is not an EEA State ("the foreign provisions"), that neither the foreign provisions, nor any deficiency in their enforcement, would prevent the Authority's effective supervision of the applicant.

(9) For the purposes of paragraph (8), an applicant has close links with CL if—

(a) CL is a parent undertaking of the applicant;

(b) CL is a subsidiary undertaking of the applicant;

(c) CL is a parent undertaking of a subsidiary undertaking of the applicant;

(d) CL is a subsidiary undertaking of a parent undertaking of the applicant;

(e) CL owns or controls 20% or more of the voting rights or capital of the applicant; or

(f) the applicant owns or controls 20% or more of the voting rights or capital of CL.

Imposition of requirements

7.—(1) The Authority may include in an authorisation such requirements as it considers appropriate.

(2) A requirement may, in particular, be imposed so as to require the person concerned to—

(a) take a specified action;

(b) refrain from taking a specified action.

(3) A requirement may be imposed by reference to the person's relationship with its group or other members of its group.

(4) Where—

(a) an applicant intends to carry on business activities other than the issuance of electronic money and provision of payment services; and

(b) the Authority considers that the carrying on of such other business activities will impair, or is likely to impair—

(i) the financial soundness of the applicant, or

(ii) the Authority's effective supervision of the applicant,

the Authority may require the applicant to establish a separate body corporate to carry on the issuance of electronic money and provision of payment services.

(5) A requirement expires at the end of such period as the Authority may specify in the authorisation.

(6) Paragraph (5) does not affect the Authority's powers under regulation 8 or 11.

Variation etc at request of an authorised electronic money institution

8. The Authority may, on the application of an authorised electronic money institution, vary the person's authorisation by—

(**a**) S.I. 2007/2157; amended by S.I. 2007/3299.

(a) imposing a requirement such as may, under regulation 7, be included in an authorisation;

(b) cancelling a requirement included in the authorisation or previously imposed under paragraph (a); or

(c) varying such a requirement,

provided that the conditions set out in regulation 6(4) to (8), and the requirement in regulation 19(1) to maintain own funds, will continue to be met.

Determination of application for authorisation or variation of authorisation

9.—(1) The Authority must determine an application for authorisation or the variation of an authorisation within three months beginning with the date on which it received the completed application.

(2) The Authority may determine an incomplete application if it considers it appropriate to do so, and it must in any event determine any such application within 12 months beginning with the date on which it received the application.

(3) The applicant may withdraw its application, by giving the Authority notice, at any time before the Authority determines it.

(4) If the Authority decides to grant an application for authorisation, or for the variation of an authorisation, it must give the applicant notice of its decision stating—

(a) that authorisation has been granted to carry out electronic money issuance; or

(b) that the variation has been granted,

described in such manner as the Authority considers appropriate.

(5) The notice must state the date on which the authorisation or variation takes effect.

(6) If the Authority proposes to refuse an application or to impose a requirement it must give the applicant a warning notice.

(7) The Authority must, having considered any representations made in response to the warning notice—

(a) if it decides to refuse the application or to impose a requirement, give the applicant a decision notice; or

(b) if it grants the application without imposing a requirement, give the applicant notice of its decision, stating the date on which the authorisation or variation takes effect.

(8) If the Authority decides to refuse the application or to impose a requirement the applicant may refer the matter to the Upper Tribunal.

(9) If the Authority decides to authorise the applicant, or vary its authorisation, it must update the register as soon as practicable.

Cancellation of authorisation

10.—(1) The Authority may cancel a person's authorisation and remove the person from the register where—

(a) the person does not issue electronic money within 12 months beginning with the date on which the authorisation took effect;

(b) the person requests, or consents to, the cancellation of the authorisation;

(c) the person ceases to engage in business activity for more than six months;

(d) the person has obtained authorisation through false statements or any other irregular means;

(e) the person no longer meets, or is unlikely to continue to meet, any of the conditions set out in regulation 6(4) to (8) or the requirement in regulation 19(1) to maintain own funds;

(f) the person has issued electronic money or provided payment services other than in accordance with the authorisation granted to it;

(g) the person would constitute a threat to the stability of a payment system by continuing its electronic money or payment services business;

(h) the cancellation is desirable in order to protect the interests of consumers; or

(i) the person's issuance of electronic money or provision of payment services is otherwise unlawful.

(2) A request for cancellation of a person's authorisation under paragraph (1)(b) must be made in such manner as the Authority may direct.

(3) At any time after receiving a request under paragraph (1)(b) and before determining it, the Authority may require the person making the request to provide it with such further information as it reasonably considers necessary to enable it to determine the request.

(4) Where the Authority proposes to cancel a person's authorisation, other than at the person's request, it must give the person a warning notice.

(5) The Authority must, having considered any representations made in response to the warning notice—

(a) if it decides to cancel the authorisation, give the person a decision notice; or

(b) if it decides not to cancel the authorisation, give the person notice of its decision.

(6) If the Authority decides to cancel the authorisation, other than at the person's request, the person may refer the matter to the Upper Tribunal.

(7) Where the period for a reference to the Upper Tribunal has expired without a reference being made, the Authority must as soon as practicable update the register accordingly.

Variation of authorisation on Authority's own initiative

11.—(1) The Authority may vary a person's authorisation in any of the ways mentioned in regulation 8 if it appears to the Authority that—

(a) the person no longer meets, or is unlikely to continue to meet, any of the conditions set out in regulation 6(4) to (8) or the requirement in regulation 19(1) to maintain own funds;

(b) the person has issued electronic money or provided a payment service other than in accordance with the authorisation granted to it;

(c) the person would constitute a threat to the stability of a payment system by continuing to issue electronic money or provide payment services;

(d) the variation is desirable in order to protect the interests of consumers; or

(e) the person's issuance of electronic money or provision of payment services is otherwise unlawful.

(2) A variation under this regulation takes effect—

(a) immediately, if the notice given under paragraph (6) states that that is the case;

(b) on such date as may be specified in the notice; or

(c) if no date is specified in the notice, when the matter to which the notice relates is no longer open to review (see paragraph 13)).

(3) A variation may be expressed to take effect immediately or on a specified date only if the Authority, having regard to the ground on which it is exercising the power under paragraph

(1), reasonably considers that it is necessary for the variation to take effect immediately or, as the case may be, on that date.

(4) The Authority must as soon as practicable after the variation takes effect update the register accordingly.

(5) A person who is aggrieved by the variation of their authorisation under this regulation may refer the matter to the Upper Tribunal.

(6) Where the Authority proposes to vary a person's authorisation under this regulation, it must give the person notice.

(7) The notice must—

(a) give details of the variation;

(b) state the Authority's reasons for the variation and for its determination as to when the variation takes effect;

(c) inform the person that they may make representations to the Authority within such period as may be specified in the notice (whether or not the person has referred the matter to the Upper Tribunal);

(d) inform the person of the date on which the variation takes effect; and

(e) inform the person of their right to refer the matter to the Upper Tribunal and the procedure for such a reference.

(8) The Authority may extend the period allowed under the notice for making representations.

(9) If, having considered any representations made by the person, the Authority decides—

(a) to vary the authorisation in the way proposed, or

(b) if the authorisation has been varied, not to rescind the variation,

it must give the person notice.

(10) If, having considered any representations made by the person, the Authority decides—

(a) not to vary the authorisation in the way proposed,

(b) to vary the authorisation in a different way, or

(c) to rescind a variation which has taken effect,

it must give the person notice.

(11) A notice given under paragraph (9) must inform the person of their right to refer the matter to the Upper Tribunal and the procedure for such a reference.

(12) A notice under paragraph (10)(b) must comply with paragraph (7).

(13) For the purposes of paragraph (2)(c), paragraphs (a) to (d) of section 391(8) of the 2000 Act (publication) apply to determine whether a matter is open to review.

Registration as a small electronic money institution

Application for registration as a small electronic money institution or variation of an existing registration

12.— (1) An application for registration as a small electronic money institution must contain, or be accompanied by, such information as the Authority may reasonably require.

(2) An application for the variation of a registration must—

(a) contain a statement of the proposed variation;

(b) contain a statement of the electronic money issuance and payment services business which the applicant proposes to carry on if the registration is varied; and

(c) contain, or be accompanied by, such other information as the Authority may reasonably require.

(3) An application under paragraph (1) or (2) must be made in such manner as the Authority may direct.

(4) At any time after receiving an application and before determining it, the Authority may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application.

(5) Different directions may be given, and different requirements imposed, in relation to different applications or categories of application.

Conditions for registration

13.—(1) The Authority may refuse to register an applicant as a small electronic money institution only if any of the conditions set out in paragraphs (2) to (10) is not met.

(2) The application must comply with the requirements of, and any requirements imposed under, regulation 12.

(3) The total business activities of the applicant immediately before the time of registration must not generate average outstanding electronic money that exceeds 5,000,000 euro.

(4) The monthly average over the period of 12 months preceding the application of the total amount of relevant payment transactions must not exceed 3,000,000 euro.

(5) The applicant must immediately before the time of registration hold the amount of initial capital required in accordance with Part 1 of Schedule 2.

(6) The applicant must satisfy the Authority that, taking into account the need to ensure the sound and prudent conduct of the affairs of the institution, it has —

(a) robust governance arrangements for its electronic money and payment service business, including a clear organisational structure with well-defined, transparent and consistent lines of responsibility; and

(b) effective procedures to identify, manage, monitor and report any risks to which it might be exposed,

which are comprehensive and proportionate to the nature, scale and complexity of electronic money to be issued and payment services to be provided by the institution.

(7) The applicant must satisfy the Authority that—

(a) the directors and persons responsible for the management of its electronic money and payment services business are of good repute and possess appropriate knowledge and experience to issue electronic money and provide payment services; and

(b) it has taken adequate measures for the purpose of safeguarding electronic money holders' funds in accordance with regulation 20.

(8) None of the individuals responsible for the management or operation of the business has been convicted of—

(a) an offence under Part 7 of the Proceeds of Crime Act 2002 (money laundering)(**a**) or under the Money Laundering Regulations 2007;

(b) an offence under section 15 (fund-raising), 16 (use and possession), 17 (funding arrangements), 18 (money laundering) or 63 (terrorist finance: jurisdiction) of the Terrorism Act 2000(**b**);

(c) an offence under the 2000 Act;

(**a**) 2002 c.29.
(**b**) 2000 c.11.

(d) an offence under the Terrorism (United Nations Measures) Order 2009(**a**) or the Al-Qaida and Taliban (Asset-Freezing) Regulations 2010**(b)**;

(e) an offence under these Regulations; or

(f) any other financial crime.

(9) The applicant must be a body corporate whose head office is situated in the United Kingdom.

(10) The applicant must comply with a requirement of the Money Laundering Regulations 2007 to be included in a register maintained under those Regulations where such a requirement applies to the applicant.

(11) For the purposes of paragraph (4), where the applicant has yet to commence the provision of payment services which are not related to the issuance of electronic money, or has been providing such payment services for less than 12 months, the monthly average may be based on the projected total amount of relevant payment transactions over a 12 month period.

(12) In paragraph (4) "relevant payment transactions" in respect of a small electronic money institution means payment transactions which—

(a) are not related to the issuance of electronic money; and

(b) are executed by the institution, including any of its agents who are in the United Kingdom.

(13) In paragraph (6) "financial crime" includes any offence involving fraud or dishonesty and, for this purpose, "offence" includes any act or omission which would be an offence if it had taken place in the United Kingdom.

Average outstanding electronic money

14.—(1) Where—

(a) an applicant provides payment services that are not related to the issuance of electronic money or carries out any of the activities referred to in regulation 32(1)(b) to (d) and (2); and

(b) the amount of outstanding electronic money is unknown in advance,

the applicant may make an assessment for the purposes of regulation 13(3) on the basis of a representative portion assumed to be used for the issuance of electronic money provided that the representative portion can be reasonably estimated on the basis of historical data and to the satisfaction of the Authority.

(2) Where an applicant has not completed a sufficiently long period of business to compile historical data adequate to make the assessment under paragraph (1), the applicant must make the assessment on the basis of projected outstanding electronic money as evidenced by its business plan, subject to any adjustments to that plan which are, or have been, required by the Authority.

Supplementary provisions

15. Regulations 7 to 11 apply to registration as a small electronic money institution as they apply to authorisation or the variation of authorisation with the following modifications—

(a) references to authorisation are to be treated as references to registration;

(b) for regulation 8 substitute—

(**a**) S.I. 2009/1912.
(**b**) S.I. 2010/1197.

"8.—(1) The Authority may, on the application of a small electronic money institution, vary the person's registration by—

(a) imposing a requirement such as may, under regulation 7, be included in a registration;

(b) cancelling a requirement included in the registration or previously imposed under paragraph (a); or

(c) varying such a requirement,

provided that the conditions set out in paragraph (2) continue to be met.

(2) The conditions that must continue to be met are—

(a) the conditions in regulation 13(6) to (10);

(b) compliance with the requirement in regulation 19(2) to maintain own funds;

(c) the condition that the total business activities of the applicant generate average outstanding electronic money that does not exceed 5,000,000 euro; and

(d) the condition that the monthly average over any period of 12 months of the total amount of relevant payment transactions does not exceed 3,000,000 euro.

(3) In paragraph (2)(d) "relevant payment transactions" has the same meaning as in regulation 13.";

(c) in regulation 10 for paragraph (1)(e) substitute—

"(e) the person no longer complies with, or is unlikely to continue to comply with, any of the conditions set out in regulation 8(2)(a), (b), (c) and (d);"; and

(d) in regulation 11 for paragraph (1)(a) substitute—

"(a) the person no longer complies with, or is unlikely to continue to comply with, any of the conditions set out in regulation 8(2)(a), (b), (c) and (d);".

Application to become an authorised electronic money institution where a financial limit is exceeded

16. Where a small electronic money institution ceases to comply with a condition referred to in regulation 8(2)(c) or (d) (as applied by regulation 15), the institution concerned must, within 30 days of becoming aware of the change in circumstances, apply to become an authorised electronic money institution under regulation 5 if it intends to continue issuing electronic money in the United Kingdom.

Common provisions

Duty to notify changes

17.—(1) If at any time after an applicant has provided the Authority with any information under regulation 5(1), (2), or (4) or 12(1), (2) or (4) and before the Authority has determined the application—

(a) there is, or is likely to be, a material change affecting any matter contained in that information; or

(b) it becomes apparent to the applicant that the information is incomplete or contains a material inaccuracy,

the applicant must provide the Authority with details of the change, the complete information or a correction of the inaccuracy (as the case may be) without undue delay, or, in the case of a

material change which has not yet taken place, the applicant must provide details of the likely change as soon as the applicant is aware of such change.

(2) The obligation in paragraph (1) also applies to material changes or significant inaccuracies affecting any matter contained in any supplementary information provided pursuant to that paragraph.

(3) Any information to be provided to the Authority under this regulation must be in such form or verified in such manner as it may direct.

Electronic money institutions acting without permission

18.—If an electronic money institution issues electronic money or carries on a payment service in the United Kingdom, or purports to do so, other than in accordance with an authorisation or registration granted, or deemed to be granted under regulation 73, to it by the Authority under these Regulations it is to be taken to have contravened a requirement imposed on it under these Regulations.

PART 3

PRUDENTIAL SUPERVISION AND PASSPORTING

Capital requirements

19.—(1) An authorised electronic money institution must maintain at all times own funds equal to or in excess of—

(a) 350,000 euro; or

(b) the amount of the own funds requirement calculated in accordance with paragraph 13 of Schedule 2 subject to any adjustment directed by the Authority under paragraph 15 of that Schedule,

whichever is the greater.

(2) A small electronic money institution must maintain at all times own funds equal to or in excess of the amount of the own funds requirement mentioned in paragraph 14 of Schedule 2 subject to any adjustment directed by the Authority under paragraph 16 of that Schedule.

Safeguarding

Safeguarding requirements

20.—(1) Electronic money institutions must safeguard funds that have been received in exchange for electronic money that has been issued (referred to in this regulation and regulations 21 and 22 as "relevant funds").

(2) Relevant funds must be safeguarded in accordance with either regulation 21 or regulation 22.

(3) Where—

(a) only a proportion of the funds that have been received are to be used for the execution of a payment transaction (with the remainder being used for non-payment services); and

(b) the precise portion attributable to the execution of the payment transaction is variable or unknown in advance,

the relevant funds are such amount as may be reasonably estimated, on the basis of historical data and to the satisfaction of the Authority, to be representative of the portion attributable to the execution of the payment transaction.

(4) Funds received in the form of payment by payment instrument need not be safeguarded until they—

(a) are credited to the electronic money institution's payment account; or

(b) are otherwise made available to the electronic money institution,

provided that such funds must be safeguarded by the end of five business days after the date on which the electronic money has been issued.

(5) A credit union must safeguard relevant funds as if it were an electronic money institution.

(6) Regulation 19 of the Payment Services Regulations 2009 shall apply to electronic money institutions and credit unions when they carry out payment services that are not related to the activity of issuing electronic money and, for this purpose, references in regulation 19 to an "authorised payment institution" are to be treated as references to an authorised electronic money institution and references to a "small payment institution" are to be treated as references to a small electronic money institution and to a credit union.

Safeguarding option 1

21.—(1) An electronic money institution must keep relevant funds segregated from any other funds that it holds.

(2) Where the institution continues to hold the relevant funds at the end of the business day following the day on which they were received it must—

(a) place them in a separate account that it holds with an authorised credit institution; or

(b) invest the relevant funds in such secure, low-risk and liquid assets as the Authority may approve ("relevant assets") and place those assets in a separate account with an authorised custodian.

(3) An account in which relevant funds or relevant assets are placed under paragraph (2) must—

(a) be designated in such a way as to show that it is in an account which is held for the purpose of safeguarding relevant funds or relevant assets in accordance with this regulation; and

(b) be used only for holding those funds or assets.

(4) No person other than the electronic money institution may have any interest in or right over the relevant funds or the relevant assets placed in an account in accordance with paragraph (2)(a) or (b) except as provided by this regulation.

(5) The institution must keep a record of—

(a) any relevant funds segregated in accordance with paragraph (1);

(b) any relevant funds placed in an account in accordance with paragraph (2)(a); and

(c) any relevant assets placed in an account in accordance with paragraph (2)(b).

(6) For the purposes of this regulation and regulation 23 assets are both "secure" and "low risk" when they are—

(a) asset items falling into one of the categories set out in Table 1 of point 14 of Annex 1 to Directive 2006/49/EC**(a)** for which the specific risk capital charge is no higher

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(a) OJ No 177, 30.6.2006, p.1.

than 1.6% but excluding other qualifying items as defined in point 15 of that Annex; or

(b) units in an undertaking for collective investment in transferable securities which invests solely in the assets mentioned in sub-paragraph (a).

(7) In this regulation—

"authorised credit institution" means a person authorised for the purposes of the 2000 Act to accept deposits or otherwise authorised as a credit institution in accordance with Article 6 of the banking consolidation directive other than a person in the same group as the authorised electronic money institution;

"authorised custodian" means a person authorised for the purposes of the 2000 Act to safeguard and administer investments or authorised as an investment firm under Article 5 of Directive 2004/39/EC of 12th April 2004 on markets in financial instruments**(a)** which holds those investments under regulatory standards at least equivalent to those set out under Article 13 of that directive.

Safeguarding option 2

22.—(1) An electronic money institution must ensure that—

(a) any relevant funds are covered by—

(i) an insurance policy with an authorised insurer,

(ii) a guarantee from an authorised insurer, or

(iii) a guarantee from an authorised credit institution; and

(b) the proceeds of any such insurance policy or guarantee are payable upon an insolvency event into a separate account held by the electronic money institution which must—

(i) be designated in such a way as to show that it is an account which is held for the purpose of safeguarding relevant funds in accordance with this regulation; and

(ii) be used only for holding such proceeds.

(2) No person other than the electronic money institution may have any interest or right over the proceeds placed in an account in accordance with paragraph (1)(b) except as provided by this regulation.

(3) In this regulation—

"authorised credit institution" has the same meaning as in regulation 21;

"authorised insurer" means a person authorised for the purposes of the 2000 Act to effect and carry out a contract of general insurance as principal or otherwise authorised in accordance with Article 6 of the First Council Directive 73/239/EEC of 24th July 1973 on the business of direct insurance other than life insurance**(a)**, other than a person in the same group as an authorised electronic money institution.

Power of the Authority to exclude assets

23. In exceptional circumstances, and where there is adequate justification, the Authority may, having regard to risks associated with an asset, including a risk arising from the security, maturity or value of the asset, determine that an asset that would otherwise be a secure, low risk asset is not such an asset.

(a) OJ No L 228, 16.8.1973, p.3.

Insolvency events

24.—(1) Subject to paragraph (2), where there is an insolvency event—

(a) the claims of electronic money holders are to be paid from the asset pool in priority to all other creditors; and

(b) until all the claims of electronic money holders have been paid, no right of set-off or security right may be exercised in respect of the asset pool except to the extent that the right of set-off relates to fees and expenses in relation to operating an account held in accordance with regulation 21(2)(a) or (b) or 22(1)(b).

(2) The claims referred to in paragraph (1)(a) shall not be subject to the priority of expenses of an insolvency proceeding except in respect of the costs of distributing the asset pool.

(3) An electronic money institution must maintain organisational arrangements sufficient to minimise the risk of the loss or diminution of relevant funds or relevant assets through fraud, misuse, negligence or poor administration.

(4) In this regulation—

"asset pool" means—

(a) any relevant funds segregated in accordance with regulation 21(1);

(b) any relevant funds held in an account in accordance with regulation 21(2)(a);

(c) any relevant assets held in an account in accordance with paragraph 21(2)(b); and

(d) any proceeds of an insurance policy or guarantee held in an account in accordance with regulation 22(1)(b);

"insolvency event" means any of the following procedures in relation to an electronic money institution—

(a) the making of a winding-up order;

(b) the passing of a resolution for voluntary winding-up;

(c) the entry of an institution into administration;

(d) the appointment of a receiver or manager of the institution's property;

(e) the approval of a proposed voluntary arrangement (being a composition in satisfaction of debts or a scheme of arrangement);

(f) the making of a bankruptcy order;

(g) in Scotland, the award of sequestration;

(h) the making of any deed of arrangement for the benefit of creditors or, in Scotland, the execution of a trust deed for creditors;

(i) the conclusion of any composition contract with creditors;

(j) the making of an insolvency administration order or, in Scotland, the execution of a trust deed for creditors;

(k) the conclusion of any composition contract with creditors; or

(l) the making of an insolvency administration order or, in Scotland, sequestration , in respect of the estate of a deceased person;

"insolvency proceeding" means—

(a) winding-up, administration, receivership, bankruptcy or, in Scotland, sequestration;

(b) a voluntary arrangement, deed of arrangement or trust deed for the benefit of creditors; or

(c) the administration of the insolvent estate of a deceased person;

"security right" means—

(a) security for a debt owed by an electronic money institution and includes any charge, lien, mortgage or other security over the asset pool or any part of the asset pool; and

(b) any charge arising in respect of the expenses of a voluntary arrangement.

Accounting and statutory audit

25.—(1) An electronic money institution which carries on activities other than the issuance of electronic money and the provision of payment services, must provide to the Authority separate accounting information in respect of its issuance of electronic money and provision of payment services.

(2) Such accounting information must be subject, where relevant, to an auditor's report prepared by the institution's statutory auditors or an audit firm (within the meaning of Directive 2006/43/EC of the European Parliament and of the Council of 17th May 2006 on statutory audits of annual accounts and consolidated accounts(**a**)).

(3) A statutory auditor or audit firm ("the auditor") must, in any of the circumstances referred to in paragraph (4), communicate to the Authority information on, or its opinion on, matters—

(a) of which it has become aware in its capacity as an auditor of an electronic money institution or of a person with close links to an electronic money institution; and

(b) which relate to the electronic money issued and payment services provided by that institution.

(4) The circumstances are that—

(a) the auditor reasonably believes that—

(i) there is or has been, or may be or may have been, a contravention of any requirement imposed on the electronic money institution by or under these Regulations; and

(ii) the contravention may be of material significance to the Authority in determining whether to exercise, in relation to that institution, any functions conferred on the Authority by these Regulations;

(b) the auditor reasonably believes that the information on, or the auditor's opinion on, those matters may be of material significance to the Authority in determining whether the institution meets or will continue to meet the conditions set out in regulation 6(5) to (8) or, in the case of a small electronic money institution, regulation 13(6) to (10), or the requirement to maintain own funds in accordance with regulation 19(1) or (2);

(c) the auditor reasonably believes that the institution is not, may not be or may cease to be, a going concern;

(d) the auditor is precluded from stating in the auditor's report that the annual accounts have been properly prepared in accordance with the Companies Act 2006;

(e) the auditor is precluded from stating in the auditor's report, where applicable, that the annual accounts give a true and fair view of the matters referred to in section 495 of the Companies Act 2006 (auditor's report on company's annual accounts) including as it is applied and modified by regulation 39 of the Limited Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008(**b**) ("the LLP Regulations"); or

(f) the auditor is required to state in the auditor's report in relation to the person concerned any of the facts referred to in subsection (2), (3) or (5) of section 498 of the Companies Act 2006 (duties of auditor) or, in the case of limited liability

(**a**) OJ No L 157, 9.6.2006, p.87.
(**b**) S.I. 2008/1911.

partnerships, subsection (2), (3) or (4) of section 498 as applied and modified by regulation 40 of the LLP Regulations.

(5) In this regulation a person has close links with an authorised electronic money institution ("A") if that person is—

(a) a parent undertaking of A;

(b) a subsidiary undertaking of A;

(c) a parent undertaking of a subsidiary undertaking of A; or

(d) a subsidiary undertaking of a parent undertaking of A.

Outsourcing

26.—(1) An authorised electronic money institution must notify the Authority of its intention to enter into a contract with another person under which that other person will carry out any operational function relating to the issuance, distribution or redemption of electronic money or the provision of payment services ("outsourcing").

(2) Where the institution intends to outsource any important operational function, all of the following conditions must be met—

(a) the outsourcing is not undertaken in such a way as to impair—

(i) the quality of the institution's internal control; or

(ii) the ability of the Authority to monitor the authorised electronic money institution's compliance with these Regulations or the Payment Services Regulations 2009;

(b) the outsourcing does not result in any delegation by the senior management of the institution of responsibility for complying with the requirements imposed by or under these Regulations or the Payment Services Regulations 2009;

(c) the relationship and obligations of the institution towards its electronic money holders under these Regulations or the Payment Services Regulations 2009 is not substantially altered;

(d) compliance with the conditions which the institution must observe in order to become an authorised electronic money institution and remain so is not adversely affected; and

(e) none of the conditions of the institution's authorisation requires removal or variation.

(3) For the purposes of paragraph (2), an operational function is important if a defect or failure in its performance would materially impair—

(a) compliance by the institution with these Regulations or the Payment Services Regulations 2009 and any requirements of its authorisation under these Regulations;

(b) the financial performance of the institution; or

(c) the soundness or continuity of the institution's electronic money issuance or provision of payment services.

Record keeping

27.—(1) Electronic money institutions must maintain relevant records and keep them for at least five years from the date on which the record was created.

(2) For the purposes of paragraph (1), records are relevant where they relate to the institution's compliance with this Part and, in particular, would enable the Authority to supervise effectively such compliance.

Exercise of passport rights

Notice of intention

28.—(1) An authorised electronic money institution (other than an institution mentioned in regulation 6(4)(b)) may exercise passport rights.

(2) Where an authorised electronic money institution intends to exercise its passport rights for the first time in a particular EEA State it must give the Authority, in such manner as the Authority may direct, notice of its intention to do so ("a notice of intention") which—

(a) identifies the electronic money issuance, redemption, distribution or payment services which it seeks to carry on in exercise of those rights in that State;

(b) gives the names of those responsible for the management of a proposed EEA branch, if any;

(c) provides details of the organisational structure of a proposed EEA branch, if any; and

(d) identifies the distributors, if any, whom the institution intends to engage to distribute or redeem electronic money in exercise of its passport rights in that State.

(3) The Authority must, within one month beginning with the date on which it receives a notice of intention, inform the host state competent authority of—

(a) the name and address of the authorised electronic money institution; and

(b) the information contained in the notice.

Registration of EEA branch

29.—(1) If the Authority, taking into account any information received from the host state competent authority, has reasonable grounds to suspect that, in connection with the establishment of an EEA branch by an authorised electronic money institution—

(a) money laundering or terrorist financing within the meaning of the money laundering directive is taking place, has taken place, or has been attempted; or

(b) the risk of such activities taking place would be increased,

the Authority may refuse to register the EEA branch or cancel any such registration already made and remove the branch from the register.

(2) If the Authority proposes to refuse to register, or cancel the registration of, an EEA branch, it must give the relevant authorised electronic money institution a warning notice.

(3) The Authority must, having considered any representations made in response to the warning notice—

(a) if it decides not to register the branch, or to cancel its registration, give the authorised electronic money institution a decision notice; or

(b) if it decides to register the branch, or not to cancel its registration, give the authorised electronic money institution notice of its decision.

(4) If the Authority decides not to register the branch, or to cancel its registration, the authorised electronic money institution may refer the matter to the Upper Tribunal.

(5) If the Authority decides to register, or cancel the registration of, an EEA branch, it must update the register as soon as practicable.

(6) If the Authority decides to cancel the registration the Authority must, where the period for a reference to the Upper Tribunal has expired without a reference being made, update the register as soon as practicable.

Supervision of firms exercising passport rights

30.—(1) Without prejudice to regulation 70, the Authority must co-operate with the relevant host state competent authority or home state competent authority, as the case may be, in relation to the exercise of passport rights by any authorised electronic money institution or EEA authorised electronic money institution.

(2) The Authority must, in particular—

(a) notify the host state competent authority whenever it intends to carry out an on-site inspection in the host state competent authority's territory; and

(b) provide the host state competent authority or home state competent authority, as the case may be—

(i) on request, with all relevant information; and

(ii) on its own initiative, with all essential information,

relating to the exercise of passport rights by an authorised electronic money institution or EEA authorised electronic money institution, including where there is an infringement or suspected infringement of these Regulations, or of the provisions of the electronic money directive, by a distributor, agent, branch or any other entity carrying out activities on behalf of such an institution.

(3) Where the Authority and the home state competent authority agree, the Authority may carry out on-site inspections on behalf of the home state competent authority in respect of electronic money issuance or payment services provided by an EEA authorised electronic money institution exercising its passport rights.

(4) If the Authority has reasonable grounds to suspect that, in connection with the proposed establishment of a branch or the proposed provision of services by an EEA authorised electronic money institution—

(a) money laundering or terrorist financing within the meaning of the Money Laundering Regulations 2007 is taking place, has taken place, or has been attempted; or

(b) the risk of such activities taking place would be increased,

it must inform the relevant home state competent authority of its grounds for suspicion.

Carrying on of Consumer Credit Act business by an EEA authorised electronic money institution

31.—(1) Sections 203 (power to prohibit the carrying on of Consumer Credit Act business)(**a**) and 204 (power to restrict the carrying on of Consumer Credit Act business)(**b**) of, and Schedule 16 (prohibitions and restrictions imposed by OFT)(**c**) to, the 2000 Act apply in relation to EEA authorised electronic money institutions exercising passport rights in the United Kingdom under these Regulations as they apply in relation to EEA firms exercising passport rights under Part 2 of Schedule 3 to the 2000 Act (EEA passport rights) with the following modifications—

(a) in section 203(10)—

(i) for the definition of "a consumer credit EEA firm" substitute—

" "a consumer credit EEA firm" means an EEA authorised electronic money institution (as defined by regulation 2(1) of the Electronic Money Regulations 2010) which is exercising passport rights in the United Kingdom and is carrying on any Consumer Credit Act business;" and

(ii) for the definition of "listed activity" substitute—

(**a**) Section 203 was amended by the Enterprise Act 2002 (c.40), section 278(1) and Schedule 25, paragraph 40(1) and (7), by the Consumer Credit Act 2006, section 33, by S.I. 2000/2952 and by S.I. 2007/3300.

(**b**) Section 204 was amended by the Enterprise Act 2002, section 278(1) and Schedule 25, paragraph 40(1) and (8).

(**c**) Schedule 16 was amended by the Enterprise Act 2002, section 278(1) and Schedule 25, paragraph 40(1) and (21).

" "listed activity" means the issuance of electronic money and any activity carried on in accordance with Article 6 of the electronic money directive;";

(b) in paragraph 2(5)(b) of Schedule 16, for "the firm's home state regulator" substitute "the home state competent authority (as defined by regulation 2(1) of the Electronic Money Regulations 2010)".

(2) Sections 21 (businesses needing a licence)(**a**) and 39(1) (offences against Part 3)(**b**) of the Consumer Credit Act 1974(**c**) do not apply in relation to the carrying on by an EEA authorised electronic money institution of electronic money issuance or a payment service which is Consumer Credit Act business, unless the OFT has exercised the power conferred on it by section 203 of the 2000 Act, as applied with modifications by paragraph (1), in relation to that institution.

(3) In this regulation "Consumer Credit Act business" has the same meaning as in section 203 of the 2000 Act.

PART 4

ADDITIONAL ACTIVITIES AND USE OF DISTRIBUTORS AND AGENTS

Additional activities

32.—(1) Subject to paragraphs (2), (3) and (4), electronic money institutions may, in addition to issuing electronic money, engage in the following activities—

(a) the provision of payment services;

(b) the provision of operational and closely related ancillary services, including—

(i) ensuring the execution of payment transactions;

(ii) foreign exchange services;

(iii) safe-keeping activities; and

(iv) the storage and processing of data;

(c) the operation of payment systems;

(d) business activities other than the issuance of electronic money, subject to any relevant European Union or national law.

(2) Electronic money institutions may grant credit subject to the same conditions as apply to authorised payment institutions by virtue of regulation 27(2) of the Payment Services Regulations 2009**(d)** provided that such credit is not granted from funds safeguarded in accordance with regulation 20.

(3) Any payment account held by an electronic money institution which is used for payment transactions which are not related to the issuance of electronic money must be used only in relation to such payment transactions.

(4) An authorised electronic money institution which has a branch which is located in the United Kingdom and whose head office is situated in a territory which is outside the EEA may only provide payment services if those services are related to the issuance of electronic money.

(**a**) Section 21 was amended by the Consumer Credit Act 2006, section 33(1).
(**b**) Section 39 was amended by the Enterprise Act 2002, section 278(1) and Schedule 25, paragraph 6(1) and (19).
(**c**) 1974 c. 39.
(**d**) S.I. 2009/209.

Use of distributors and agents

33.—(1) An electronic money institution may distribute or redeem electronic money through a distributor or an agent.

(2) An electronic money institution may not issue electronic money through a distributor, agent or any other entity acting on its behalf.

(3) An authorised electronic money institution may engage a distributor or an agent to distribute or redeem electronic money in the exercise of its passport rights subject to regulations 29 and 31.

Provision of payment services by agents

34.—(1) An electronic money institution may provide payment services in the United Kingdom through an agent only if the agent is included on the register.

(2) An authorised electronic money institution may provide payment services in the exercise of its passport rights through an EEA agent only if the agent is included on the register.

(3) An application for an agent to be included on the register must—

(a) contain, or be accompanied by, the following information—

(i) the name and address of the agent;

(ii) where relevant, a description of the internal control mechanisms that will be used by the agent—

(aa) in the case of an agent in the United Kingdom, to comply with the Money Laundering Regulations 2007; and

(bb) in the case of an EEA agent, to comply with provisions of the money laundering directive; and

(iii) the identity of the directors and persons responsible for the management of the agent and evidence that they are fit and proper persons; and

(iv) such other information as the Authority may reasonably require; and

(b) be made in such manner as the Authority may direct.

(4) Different directions may be given, and different requirements imposed, in relation to different applications or categories of application.

(5) At any time after receiving an application and before determining it, the Authority may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application.

(6) The Authority may refuse to include the agent on the register only if—

(a) it has not received the information referred to in paragraph (3)(a), or is not satisfied that such information is correct;

(b) it is not satisfied that the directors and persons responsible for the management of the agent are fit and proper persons;

(c) it has reasonable grounds to suspect that, in connection with the provision of services through the agent—

(i) money laundering or terrorist financing within the meaning of the money laundering directive (or, in the United Kingdom, the Money Laundering Regulations 2007) is taking place, has taken place, or has been attempted; or

(ii) the risk of such activities taking place would be increased.

(7) Where—

(a) an authorised electronic money institution intends to provide payment services through an EEA agent; and

(b) the Authority proposes to include the EEA agent on the register,

the Authority must inform the host state competent authority and take account of its opinion (if provided within such reasonable period as the Authority specifies) on any of the matters referred to in paragraph (6)(b) or (c).

(8) The Authority must decide whether to include the agent on the register within a reasonable period of it having received a completed application.

(9) If the Authority proposes to refuse to include the agent on the register, it must give the applicant a warning notice.

(10) The Authority must, having considered any representations made in response to the warning notice—

(a) if it decides not to include the agent on the register, give the applicant a decision notice; or

(b) if it decides to include the agent on the register, give the applicant notice of its decision, stating the date on which the registration takes effect.

(11) If the Authority decides not to include the agent on the register the applicant may refer the matter to the Upper Tribunal.

(12) If the Authority decides to include the agent on the register, it must update the register as soon as practicable.

(13) An application under paragraph (3) may be combined with an application under regulation 5 or 12, in which case the application must be determined in the manner set out in regulation 9 (if relevant, as applied by regulation 15).

(14) An electronic money institution must ensure that agents acting on its behalf inform payment service users of the agency arrangement.

Removal of agent from register

35.—(1) The Authority may remove an agent of an electronic money institution from the register where—

(a) the institution requests, or consents to, the agent's removal from the register;

(b) the institution has obtained registration through false statements or any other irregular means;

(c) regulation 34(6)(b) or (c) applies;

(d) the removal is desirable in order to protect the interests of consumers; or

(e) the agent's provision of payment services is otherwise unlawful.

(2) Where the Authority proposes to remove an agent from the register, other than at the request of the institution, it must give the institution a warning notice.

(3) The Authority must, having considered any representations made in response to the warning notice—

(a) if it decides to remove the agent, give the institution a decision notice; or

(b) if it decides not to remove the agent, give the institution notice of its decision.

(4) If the Authority decides to remove the agent, other than at the request of the institution, the institution may refer the matter to the Upper Tribunal.

(5) Where the period for a reference to the Upper Tribunal has expired without a reference being made, the Authority must as soon as practicable update the register accordingly.

Reliance

36.— (1) Where an electronic money institution relies on a third party for the performance of operational functions it must take all reasonable steps to ensure that these Regulations and the Payment Services Regulations 2009 are complied with.

(2) Without prejudice to paragraph (1), an electronic money institution is responsible, to the same extent as if it had expressly permitted it, for anything done or omitted by any of its employees or by a distributor, agent, branch or any other entity issuing, distributing or redeeming electronic money, or providing payment services, on its behalf or to which activities are outsourced.

Duty to notify change in circumstance

37.—(1) Where it becomes apparent to an electronic money institution that there is, or is likely to be, a significant change in circumstances which is relevant to—

(a) in the case of an authorised electronic money institution—

(i) its fulfilment of any of the conditions set out in regulation 6(4) to (8) or the requirement in regulation 19(1) to maintain own funds;

(ii) the issuance, distribution or redemption of electronic money, or the payment services, which it seeks to carry on in exercise of its passport rights;

(b) in the case of a small electronic money institution, its fulfilment of any of the conditions set out in regulation 8(2) (as applied by regulation 15); or

(c) in the case of the use of an agent to provide payment services, the matters referred to in regulation 34(6)(b) and (c),

it must provide the Authority with details of the change without undue delay, or, in the case of a substantial change in circumstance which has not yet taken place, details of the likely change a reasonable period before it takes place.

(2) An electronic money institution must inform the Authority of any material change in the measures that it has taken in accordance with regulations 20 to 22 to safeguard funds that have been received in exchange for electronic money.

(3) Any information to be provided to the Authority under this regulation must be in such form or verified in such manner as it may direct.

PART 5

ISSUANCE AND REDEEMABILITY OF ELECTRONIC MONEY

Application of Part 5

38. This Part applies to the issuance and redemption of electronic money where the issuance or redemption is carried on from an establishment maintained by an electronic money issuer or its agent in the United Kingdom.

Issuance and redeemability

39. A person who is an electronic money issuer must—

(a) on receipt of funds, issue without delay electronic money at par value; and

(b) at the request of the electronic money holder, redeem—

(i) at any time; and

(ii) at par value,

the monetary value of the electronic money held.

Conditions of redemption

40. An electronic money issuer must ensure—

(a) that the contract between the electronic money issuer and the electronic money holder clearly and prominently states the conditions of redemption, including any fees relating to redemption; and

(b) that the electronic money holder is informed of those conditions before being bound by any contract.

Fees for redemption

41.—(1) Redemption may be subject to a fee only where the fee is stated in the contract in accordance with regulation 40(a), and—

(a) redemption is requested before the termination of the contract;

(b) the contract provides for a termination date and the electronic money holder terminates the contract before that date; or

(c) redemption is requested more than one year after the date of the termination of the contract.

(2) Any fee for redemption must be proportionate and commensurate with the costs actually incurred by the electronic money issuer.

Amount of redemption

42.—(1) Where before the termination of the contract an electronic money holder makes a request for redemption ("a redemption request"), the electronic money holder may request redemption of the monetary value in whole or in part, and the electronic issuer must redeem the amount so requested subject to any fee imposed in accordance with regulation 41.

(2) Where a redemption request is made on, or up to one year after, the date of the termination of the contract, the electronic money issuer must redeem—

(a) the total monetary value of the electronic money held; or

(b) if it carries out any business activities other than the issuance of electronic money and it is not known in advance what proportion of funds received by it is to be used for electronic money, all the funds requested by the electronic money holder.

Redemption rights of persons other than consumers

43. Regulations 41 and 42 shall not apply in the case of a person, other than a consumer, who accepts electronic money and, in such a case, the redemption rights of that person shall be subject to the contract between that person and the electronic money issuer.

Prohibition of interest

44. An electronic money issuer must not award—

(a) interest in respect of the holding of electronic money; or

(b) any other benefit related to the length of time during which an electronic money holder holds electronic money.

45. For the purposes of this Part a contract between an electronic money issuer and an electronic money holder terminates when the right to use electronic money for the purpose of

making payment transactions (as defined in Article 4(5) of the payment services directive) ceases.

PART 6

THE AUTHORITY

The functions of the Authority

Functions of the Authority

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

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

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

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

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

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

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

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

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

Supervision and enforcement

Monitoring and enforcement

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

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

(b) there has been any contravention of regulation 62(1), 63(1) or 65(1) or (2).

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

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

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

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

Reporting requirements

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

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

Public censure

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

Financial penalties

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

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

(b) a person who has contravened regulation 62(1), 63(1) or 65(1) or (2).

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

Suspending authorisation etc.

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

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

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

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

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

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

(5) The Authority may

(a) withdraw a suspension or restriction; or

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

(6) Any one or more of the powers under—

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

(b) regulations 49 and 50,

may be exercised in relation to the same contravention.

Proposal to take disciplinary measures

52.—(1) Where the Authority proposes—

(a) to publish a statement under regulation 49;

(b) to impose a penalty under regulation 50; or

(c) to suspend an institution's authorisation or registration or impose a restriction under regulation 51(1),

it must give the person concerned a warning notice.

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

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

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

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

(6) Sections 210**(a)** (statements of policy) and 211 (statements of policy: procedure) of the 2000 Act apply in respect of the imposition of penalties under regulation 50 and the amount of such penalties as they apply in respect of the imposition of penalties under Part 14 of the 2000 Act (disciplinary measures) and the amount of penalties under that Part of that Act.

(7) After a statement under regulation 49 is published, the Authority must send a copy of it to the person concerned and to any person to whom a copy of the decision notice was given under section 393(4) of the 2000 Act (third party rights) (as applied by paragraph 8 of Schedule 3 to these Regulations).

Injunctions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Power of Authority to require restitution

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

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

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

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

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

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

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

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

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

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

Proposal to require restitution

55.—(1) If the Authority proposes to exercise the power under regulation 54(2), it must give the person concerned a warning notice.

(2) The warning notice must state the amount which the Authority propose to require the person concerned to pay or distribute as mentioned in regulation 54(2).

(3) If, having considered any representations made in response to the warning notice, the Authority decides to exercise the power under regulation 54(2), it must without delay give the person concerned a decision notice.

(4) The decision notice must—

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

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

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

(5) If the Authority decides to exercise the power under regulation 54(2), the person concerned may refer the matter to the Upper Tribunal.

Restitution orders

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Complaints

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

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

Costs of supervision

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

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

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

(c) paragraph 17(2) and (3) are omitted.

(2) The Authority must apply amounts paid to it by way of penalties imposed under regulation 50 towards expenses incurred in carrying out its functions under these Regulations or for any incidental purpose.

Guidance

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

(a) the operation of these Regulations;

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

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

(2) The Authority may—

(a) publish its guidance;

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

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

Authority's exemption from liability in damages

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

Application and modification of primary and secondary legislation

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

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

PART 7

GENERAL

Offences

Prohibition on issuing electronic money by persons other than electronic money issuers

62.—(1) A person may not issue electronic money in the United Kingdom, or purport to do so, unless the person is—

(a) an authorised electronic money institution;

(b) a small electronic money institution;

(c) an EEA authorised electronic money institution exercising its passport rights; or

(d) a person mentioned in any of paragraphs (d) to (j) of the definition in regulation 2(1) of an electronic money issuer, including, where relevant, such a person exercising an EEA right in accordance with Part 2 of Schedule 3 to the 2000 Act (exercise of passport rights by EEA firms)**(a)**.

(2) A person who contravenes paragraph (1) is guilty of an offence and is liable—

(a) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding the statutory maximum, or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or both.

False claims to be an electronic money issuer

63.—(1) A person who does not fall within any of sub-paragraphs (a) to (d) of regulation 62(1) may not—

(a) describe themselves (in whatever terms) as a person falling within any of those sub-paragraphs; or

(b) behave, or otherwise hold themselves out, in a manner which indicates (or which is reasonably likely to be understood as indicating) that they are such a person.

(2) A person who contravenes paragraph (1) is guilty of an offence and is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale, or both.

Defences

64. In proceedings for an offence under regulation 62 or 63 it is a defence for the accused to show that they took all reasonable precautions and exercised all due diligence to avoid committing the offence.

Misleading the Authority

65.—(1) A person may not, in purported compliance with any requirement imposed by or under these Regulations, knowingly or recklessly give the Authority information which is false or misleading in a material particular.

(2) A person may not—

(a) Part 2 was amended by the Enterprise Act 2002, section 278(1) and Schedule 25, paragraph 40; by the Consumer Credit Act 2006, section 33(9); by S.I. 2003/1473, 2003/2066, 2007/126 and 2007/3253.

(a) provide any information to another person, knowing the information to be false or misleading in a material particular, or

(b) recklessly provide to another person any information which is false or misleading in a material particular,

knowing that the information is to be used for the purpose of providing information to the Authority in connection with its functions under these Regulations.

(3) A person who contravenes paragraph (1) or (2) is guilty of an offence and is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine.

Restriction on penalties

66. A person who is convicted of an offence under these Regulations is not liable to a penalty under regulation 50 in respect of the same contravention of a requirement imposed by or under these Regulations.

Liability of officers of bodies corporate etc

67.—(1) If an offence under these Regulations committed by a body corporate is shown—

(a) to have been committed with the consent or connivance of an officer, or

(b) to be attributable to any neglect on their part,

the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with such member's functions of management as if the member were a director of the body.

(3) If an offence under these Regulations committed by a partnership is shown—

(a) to have been committed with the consent or connivance of a partner, or

(b) to be attributable to any neglect on their part,

the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

(4) If an offence under these Regulations committed by an unincorporated association (other than a partnership) is shown—

(a) to have been committed with the consent or connivance of an officer, or

(b) to be attributed to any neglect of such officer,

the officer as well as the association is guilty of the offence and liable to be proceeded against and punished accordingly.

(5) In this regulation—

"officer"—

(a) in relation to a body corporate, means a director, manager, secretary, chief executive, member of the committee of management, or a person purporting to act in such a capacity; and

(b) in relation to an unincorporated association, means any officer of the association or any member of its governing body, or a person purporting to act in such capacity;

"partner" includes a person purporting to act as a partner.

Prosecution

68.—(1) Proceedings for an offence under these Regulations may be instituted only—

(a) by the Authority; or

(b) by or with the consent of the Director of Public Prosecutions.

(2) Paragraph (1) does not apply to proceedings in Scotland.

Proceedings against unincorporated bodies

69.—(1) Proceedings for an offence alleged to have been committed by a partnership or an unincorporated association must be brought in the name of the partnership or association (and not in that of its members).

(2) A fine imposed on the partnership or association on its conviction of an offence is to be paid out of the funds of the partnership or association.

(3) Rules of court relating to the service of documents are to have effect as if the partnership or association were a body corporate.

(4) In proceedings for an offence brought against the partnership or association—

(a) section 33 of the Criminal Justice Act 1925(**a**) (procedure on charge of offence against corporation) and section 46 of and Schedule 3 to the Magistrates' Courts Act 1980(**b**) (corporations) apply as they do in relation to a body corporate;

(b) section 70 of the Criminal Procedure (Scotland) Act 1925(**c**) (proceedings against bodies corporate) applies as it does in relation to a body corporate;

(c) section 18 of the Criminal Justice (Northern Ireland) Act 1945(**d**) (procedure on charge) and Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981(**e**) (corporations) apply as they do in relation to a body corporate.

(5) Summary proceedings for an offence under these Regulations may be taken—

(a) against a body corporate or unincorporated association at any place at which it has a place of business;

(b) against an individual at any place where they are for the time being.

(6) Paragraph (5) does not affect any jurisdiction exercisable apart from this regulation.

Duties of the Authority and the Commissioners to cooperate

Duty to co-operate and exchange information

70.—(1) The Authority and the Commissioners of Her Majesty's Revenue and Customs ("the Commissioners") must take such steps as they consider appropriate to co-operate with each other and—

(**a**) 1925 c. 86. Section 33 was amended by the Magistrates' Courts Act 1952 (c.55), section 132 and Schedule 6, by the Courts Act 1971, section 56(1) and Schedule 8, by the Courts Act 1971 (c.23), Schedule 8, and by the Courts Act 2003 (c.39), Schedule 8, paragraph 71 and Schedule 10.

(**b**) 1980 c. 43. Schedule 3 was amended by the Criminal Justice Act 1991 (c.53), section 25(2) and Schedule 13, and by the Criminal Procedures and Investigations Act 1996 (c.25), Schedule 1, paragraph 1. Amendments by the Criminal Justice Act 2003 (c.44), Schedule 3, paragraph 51 and Schedule 37, Part 4 have not come into force at the time of making of these Regulations.

(**c**) 1995 c. 46. Section 70 was amended by the Postal Services Act 2000 (Consequential Modifications No 1) Order 2001 (S.I. 2001/1149), Schedule 1, paragraph 104, the Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), section 10(6), and the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), section 28.

(**d**) 1945 c. 15 (N.I.). Section 18 was amended by the Magistrates' Courts Act 1964 (c.21) and by the Justice (Northern Ireland) Act 2002 (c.26), Schedule 12.

(**e**) S.I. 1981/1675 (N.I. 26).

(a) the competent authorities, designated under Article 3 of the electronic money directive, or referred to in Article 13, of that directive, of EEA States other than the United Kingdom;

(b) the European Central Bank, the Bank of England and the national central banks of EEA States other than the United Kingdom; and

(c) any other relevant competent authorities designated under European Union law or the law of the United Kingdom or any other EEA State which is applicable to electronic money issuers,

for the purposes of the exercise by those bodies of their functions under the electronic money directive and other relevant European Union or national legislation.

(2) Subject to the requirements of the Data Protection Act 1998(**a**), sections 348 and 349 of the 2000 Act (as applied with modifications by paragraph 6 of Schedule 3 to these Regulations), regulations 49A of the Money Laundering Regulations 2007(**b**) and any other applicable restrictions on the disclosure of information, the Authority and the Commissioners may provide information to each other and—

(a) the bodies mentioned in paragraph (1)(a) and (c);

(b) the European Central Bank, the Bank of England and the national central banks of EEA States other than the United Kingdom when acting in their capacity as monetary and oversight authorities;

(c) where relevant, other public authorities responsible for the oversight of payment and settlement systems,

shall apply for the purposes of the exercise by those bodies of their functions under the electronic money directive and other relevant European Union or national legislation.

Actions for breach of requirements

Right to bring actions

71.—(1) A contravention—

(a) which is to be taken to have occurred by virtue of regulation 18;

(b) of a requirement imposed by regulation 20, 21, 22 or 24; or

(c) of a requirement imposed by or under Part 5;

is actionable at the suit of a private person who suffers loss as a result of the contravention, subject to the defences and other incidents applying to actions for breach of statutory duty.

(2) A person acting in a fiduciary or representative capacity may bring an action under paragraph (1) on behalf of a private person if any remedy—

(a) will be exclusively for the benefit of the private person; and

(b) cannot be obtained by way of an action brought otherwise than at the suit of the fiduciary or representative.

(3) In this regulation "private person" means—

(a) any individual, except where the individual suffers the loss in question in the course of providing payment services; and

(b) any person who is not an individual, except where that person suffers the loss in question in the course of carrying on business of any kind;

(**a**) 1998 c. 29.
(**b**) S.I. 2007/2157, amended by S.I. 2007/3299.

but does not include a government, a local authority (in the United Kingdom or elsewhere) or an international organisation.

Prohibition on contracting-out

72. A term contained in an agreement between an electronic money issuer and an electronic money holder or a payment service user is void if, and to the extent that, it is inconsistent with a provision for the protection of an electronic money holder or a payment service user contained in these Regulations or the Payment Services Regulations 2009.

Transitional provisions

Persons with a Part 4 permission

73.—(1) Any person who—

(a) has a Part 4 permission in respect of the activity of issuing electronic money;

(b) before 30th April 2011 has carried on that activity in accordance with that permission; and

(c) is not a person mentioned in any of paragraphs (c) to (j) of the definition in regulation 2(1) of electronic money issuer,

shall be deemed to have been granted authorisation by the Authority under regulation 10.

(2) A person who is deemed to have been granted authorisation by virtue of paragraph (1) shall continue on or after 1st July 2011 to be deemed to have been granted authorisation only if it has by that date—

(a) notified the Authority whether it wishes to become an authorised electronic money institution or to be registered as a small electronic money institution; and

(b) provided the Authority with such information as the Authority may reasonably require ("the required information").

(3) Where authorisation continues on or after 1st July 2011 to be deemed to have been granted by virtue of paragraph (2), the Authority must decide whether to include the person in the register as an authorised electronic money institution or as a small electronic money institution, and—

(a) if the Authority decides to include the person in the register, such authorisation shall cease to be so deemed on the making of that decision;

(b) if the Authority decides not to include the person in the register, such authorisation shall cease to be so deemed when the period for a reference to the Upper Tribunal has elapsed without a reference being made or, if the matter is referred, at such time as the Tribunal may direct.

(4) If the Authority decides to include the person in the register as an authorised electronic money institution or a small electronic money institution it must as soon as practicable update the register accordingly.

(5) The Authority may decide that a person is not to be included in the register only if—

(a) it has not received the required information; or

(b) any of the conditions in regulation 6(3) to (8) or, as the case may be, regulation 13 (3) to (10) ("the required conditions") are not met in respect of that person.

(6) If the Authority is satisfied that—

(a) it has received the required information; and

(b) the required conditions are met,

it must give the person notice of its decision.

(7) If the Authority proposes to decide that—

(a) it has not received the required information; or

(b) any of the required conditions is not met,

it must give the person a warning notice.

(8) The Authority must, having considered any representations in response to the warning notice—

(a) if it decides that it has not received the required information, or that any of the required conditions is not met, give the person a decision notice; or

(b) if it decides that it has received the required information and that the required conditions have been met, give the person notice of its decision.

(9) If the Authority gives the person a decision notice, the person may refer the matter to the Upper Tribunal.

(10) Where a person is deemed to have been granted authorisation by virtue of paragraph (1) or (2)—

(a) the duty to which the Authority is subject under regulation 5(1)(a) to maintain a register shall not apply in respect of it; and

(b) Parts 3 and 4 shall not apply to it.

(11) A Part 4 permission in respect of the activity of issuing electronic money, which has not been cancelled by the Authority, shall cease when authorisation ceases in accordance with paragraph (3)(a) or (b) to be deemed to be granted.

(12) In this regulation, "Part 4 permission" has the same meaning as in the 2000 Act**(a)**.

EEA firms

74.—(1) Any person who—

(a) is authorised as an EEA firm for the purposes of the 2000 Act**(b)** in respect of the activity of issuing electronic money;

(b) before 30th April 2011 has carried on that activity; and

(c) is not a credit institution,

may continue until 30th October 2011 to carry on that activity, and engage in any related activity.

(2) Parts 5 and 6 shall apply to a person falling within paragraph (1) as if it were an EEA authorised electronic money institution.

(3) In this regulation and in regulation 74 "related activity" means an activity mentioned in Article 1(5) of Directive 2000/46/EC of the European Parliament and of the Council of 18th September 2000 on the taking up, pursuit of and prudential supervision of the business of electronic money institutions.

Certified persons

75.—(1) Any person who—

(a) See section 40 of the 2000 Act.
(b) See section 31(1)(b) of, and paragraph 5 of Schedule 3 to, the 2000 Act.

(a) has been given a certificate, which has not been revoked, by the Authority under article 9C of the Financial Services and Markets 2000 (Regulated Activities) Order 2001 ("the Order"); and

(b) before 30th April 2011 has carried on the activity of issuing electronic money in accordance with that certificate,

may continue until 30th April 2012 to carry on that activity, and engage in any related activity.

(2) Parts 5 and 6 shall apply to a person falling within paragraph (1) as if it were an electronic money institution.

Amendments to primary and secondary legislation

76. Schedule 4, which contains amendments to primary and secondary legislation, has effect.

Date Two of the Lords Commissioners of Her Majesty's Treasury

SCHEDULE 1

regulation 5(1)

Information to be included in or with an application for authorisation

1. A programme of operations, setting out, in particular, the type of electronic money issuance and payment services which are envisaged.

2. A business plan including a forecast budget calculation for the first three financial years which demonstrates that the applicant is able to employ appropriate and proportionate systems, resources and procedures to operate soundly.

3. Evidence that the applicant holds initial capital for the purposes of regulation 19(1).

4. A description of the measures taken for safeguarding the electronic money holders' and payment service users' funds in accordance with regulation 20.

5. A description of the applicant's governance arrangements and internal control mechanisms including administrative risk management and accounting procedures, which demonstrates that such arrangements, mechanisms and procedures are proportionate, appropriate, sound and adequate.

6. A description of the internal control mechanisms which the applicant has established in order to comply with the Money Laundering Regulations 2007 and Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds**(a)**.

7. A description of the applicant's structural organisation, including, where applicable, a description of the intended use of agents and branches and a description of outsourcing arrangements, and of its participation in a national or international payment system.

8. In relation to each person holding, directly or indirectly, a qualifying holding in the applicant—

(a) OJ No L 345, 8.12.2006 p.1.

(a) the size and nature of their qualifying holding; and

(b) evidence of their suitability taking into account the need to ensure the sound and prudent management of an electronic money institution.

9.—(1) The identity of directors and persons who are or will be responsible for the management of the applicant and, where relevant, persons who are or will be responsible for the management of the electronic money issuance and payment services activities of the applicant.

(2) Evidence that the persons described in sub-paragraph (1) are of good repute and that they possess appropriate knowledge and experience to issue electronic money and perform payment services.

10. The identity of the auditors of the applicant, if any.

11. (1) The legal status of the applicant and, where the applicant is a limited company, its articles.

(2) In this paragraph "articles" has the meaning given in section 18 of the Companies Act 2006 (articles of association).

12. The address of the head office of the applicant.

13. For the purposes of paragraphs 4, 5 and 7, a description of—

a) the audit arrangements of the applicant; and

b) the organisational arrangements that the applicant has set up,

with a view to the applicant taking all reasonable steps to protect the interests of its electronic money holders and payment service users and to ensuring continuity and reliability in the performance of the issuance of electronic money and payment services activities.

SCHEDULE 2

Regulation 19

Capital requirements

PART 1

Initial capital

1. For the purposes of these Regulations "initial capital" comprises the items specified in paragraph 4(a), (b) and (c) of this Schedule.

2. An applicant for authorisation as an electronic money institution must hold an amount of initial capital of at least 350,000 euro.

3. An applicant for registration as a small electronic money institution must hold an amount of initial capital of at least—

(a) 75,000 euro; or

(b) such other amount, between 60,000 euro and 90,000 euro, as the Authority may direct.

PART 2

Own Funds

Qualifying items

4. For the purposes of these Regulations "own funds" means the following items, subject to the deductions specified in paragraph 7 and to the limits specified in paragraph 9—

(a) paid up capital, including share premium accounts but excluding amounts arising in respect of cumulative preference shares;

(b) reserves other than—

(i) revaluation reserves;

(ii) fair value reserves related to gains or losses on cash flow hedges of financial instruments measured at amortised cost; and

(iii) that part of profit and loss reserves that arises from any gains on liabilities valued at fair value that are due to changes in the electronic money institution's credit standing;

(c) profit or loss brought forward as a result of the application of the final profit or loss, provided that—

(i) interim profits may only be included if they are—

(aa) verified by persons responsible for the auditing of the institution's accounts;

(bb) shown to the satisfaction of the Authority that the amount has been evaluated in accordance with the principles set out in Directive 86/635/EEC of the Council of the 8th December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions(**a**); and

(cc) net of any foreseeable charge or dividend;

(ii) in the case of an electronic money institution which is the originator of a securitisation, net gains arising from the capitalisation of future income from the securitised assets and providing credit enhancement to positions in the securitisation are excluded;

(d) revaluation reserves;

(e) general or collective provisions if—

(i) they are freely available to the electronic money institution to cover normal electronic money issuance and payment services risks where revenue or capital losses have not yet been identified;

(ii) their existence is disclosed in internal accounting records; and

(iii) their amount is determined by the management of the electronic money institution, verified by a statutory auditor or audit firm (as defined by regulation 26(2)) and notified to the Authority;

(f) securities of indeterminate duration and other instruments that fulfil the following conditions—

(i) they may not be reimbursed on the bearer's initiative or without the prior agreement of the Authority;

(ii) the debt agreement provides for the electronic money institution to have the option of deferring the payment of interest on the debt;

(iii) the lender's claim on the electronic money institution is wholly subordinated to those of all non-subordinated creditors;

(**a**) OJ No L 372, 31.12.1986, p.1.

(iv) the documents governing the issue of the securities provide for debt and unpaid interest to be such as to absorb losses, whilst leaving the electronic money institution in a position to continue trading;

provided that only fully paid-up amounts are to be taken into account;

(g) cumulative preferential shares, other than fixed-term cumulative preference shares referred to in paragraph 0;

(h) the commitments of the members of an electronic money institution set up as a cooperative, comprising—

(i) that institution's uncalled capital; and

(ii) the legal commitments of the members of that institution to make additional non-refundable payments should the institution incur a loss provided that such payments can be demanded without delay;

(i) the joint and several commitments of the borrower in the case of an electronic money institution organised as a fund, comprising—

(i) that institution's uncalled capital; and

(ii) the legal commitments of the borrowers of that institution to make additional non-refundable payments should the institution incur a loss provided that such payments can be demanded without delay;

(j) fixed-term cumulative preferential shares and subordinated loan capital if—

(i) binding agreements exist under which, in the event of the winding-up of the electronic money institution, they rank after the claims of all other creditors and are not to be repaid until all other debts outstanding at the time have been settled; and

(ii) in the case of subordinated loan capital—

(aa) only fully paid-up funds are taken into account;

(bb) the loans involved have an original maturity of at least five years, after which they may be repaid;

(cc) the extent to which they may rank as own funds is gradually reduced during at least the last five years before the repayment date; and

(dd) the loan agreement does not include any clause providing that in specified circumstances, other than the winding-up of the electronic money institution, the debt will become repayable before the agreed repayment date.

5. The items specified in paragraph 4(a) to (d) must be—

(a) available to the electronic money institution for unrestricted and immediate use to cover risks or losses as soon as these occur; and

(b) net of any foreseeable tax charge at the moment of their calculation or be suitably adjusted in so far as such tax charges reduce the amount up to which these items may be applied to cover risks or losses.

6. Own funds are not to include guarantees provided by the Crown or a local authority to an electronic money institution which is a public sector entity for the purposes of the banking consolidation directive.

Deductions from own funds

7. The deductions from own funds are—

(a) own shares at book value held by the electronic money institution;

(b) intangible assets;

(c) material losses of the current financial year;

(d) holdings of shares in credit institutions and financial institutions exceeding 10% of their capital;

(e) if sub-paragraph (d) applies, the items specified in paragraph 4(f), (g) and (j) held in the relevant credit institution or financial institution;

(f) holdings of shares or of the items specified in paragraph 4(f), (g) and (j) held in other credit institutions or financial institutions where—

(i) the holding has not been deducted in accordance with sub-paragraph (d) or (e) of this paragraph; and

(ii) the total amount of such holdings exceeds 10% of the electronic money institution's own funds calculated before deduction of the items specified in this sub-paragraph and sub-paragraphs (d), (e), (g) and (h);

(g) participations which the electronic money institution holds in an insurance undertaking, reinsurance undertaking or insurance holding company; and

(h) the following instruments held in an insurance undertaking, reinsurance undertaking or insurance holding company in which the electronic money institution holds a participation—

(i) instruments referred to in article 16(3) of Directive 73/239/EEC of the Council on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance(**a**);

(ii) instruments referred to in article 27(3) of Directive 2002/83/EC of the European Parliament and of the Council of 5th November 2002 concerning life assurance(**b**).

8. Where shares in another credit institution, financial institution, insurance undertaking, reinsurance undertaking or insurance holding company are held temporarily for the purposes of a financial assistance operation designed to reorganise and save that entity, the Authority may direct that any or all of the items specified in paragraph 7(d) to (h) are not to be deducted from own funds.

Limits on qualifying items

9.—(1) The limits referred to in paragraph 4 are—

(a) that A must not exceed B; and

(b) that C must not exceed 50% of B.

(2) After applying such limits—

(a) 50% of the total of the items specified in paragraph 7(d) to (h) must be deducted from A and the remaining 50% must be deducted from B; and

(b) the amount, if any, by which the amount to be deducted from A exceeds A must be deducted from B.

(3) In this paragraph—

(a) "A" means the total of the items specified in paragraph 4(d) to (j);

(b) "B" means the total of the items specified in paragraph 4(a) to (c) less the total of the items specified in paragraph 7(a) to (c); and

(c) "C" means the total of the items specified in paragraph 4(h) to (j).

10. The Authority may in temporary and exceptional circumstances direct that an electronic money institution may exceed one or more of the limits described in paragraph 9(1).

(**a**) OJ No L 005, 7.1.78, p.27.
(**b**) OJ No L 345, 19.12.02, p.1.

11. An electronic money institution must not include in its own funds calculation any item used in an equivalent calculation of own funds by an electronic money institution, authorised payment institution, credit institution, investment firm, asset management company or insurance undertaking in the same group.

12. An authorised electronic money institution that carries on activities other than the issuance of electronic money and the provision of payment services related to the issuance of electronic money must not use—

(a) in its calculation of own funds in accordance with Method A, B or C, any qualifying item included in its calculation of own funds in accordance with Method D;

(b) in its calculation of own funds in accordance with Method D, any qualifying item included in its calculation of own funds in accordance with Method A, B or C.

Own funds requirement

13. An authorised electronic money institution must calculate its own funds requirement—

(a) in accordance with such of Method A, Method B or Method C as the Authority may direct in respect of any activities carried on by the authorised electronic money institution consisting of payment services that are not related to the issuance of electronic money; and

(b) in accordance with Method D in respect of any activities carried on by the authorised electronic money institution that consist of the issuance of electronic money and payment services that are related to the issuance of electronic money.

14. A small electronic money institution's own funds requirement is 75,000 euro.

Adjustment by the Authority

15. The Authority may direct in respect of an authorised electronic money institution that—

(a) an amount of own funds resulting from a calculation made in accordance with paragraph 13(a) is to be up to 20% higher or up to 20% lower;

(b) an amount of own funds resulting from a calculation made in accordance with paragraph 13(b) is to be up to 20% higher or up to 20% lower; or

(c) the sum of the amounts of own funds resulting from calculations made in accordance with paragraph 13(a) and (b) is to be up to 20% higher or 20% lower.

16. The Authority may direct in respect of a small electronic money institution that the amount of own funds mentioned in paragraph 14 is to be up to 20% higher or up to 20% lower.

17. A direction made under paragraph 15 or 16 must be on the basis of an evaluation of the relevant electronic money institution including, if available, and where the Authority considers it appropriate, any risk-management processes, risk loss database or internal control mechanisms of the electronic money institution.

18. The Authority may make a reasonable charge for making an evaluation required under paragraph 17.

Provision for start-up electronic money institutions

19. If an electronic money institution has not completed a full financial year's business, references to a figure for the preceding financial year are to be read as the equivalent figure

projected in the business plan provided in the electronic money institution's application for authorisation or registration, subject to any adjustment to that plan required by the Authority.

Method A

20.—(1) "Method A" means the calculation method set out in this paragraph.

(2) The own funds requirement is 10% of the authorised electronic money institution's fixed overheads for the preceding financial year.

(3) If a material change has occurred in an authorised electronic money institution's business since the preceding financial year, the Authority may direct that the own funds requirement is to be a higher or lower amount than that calculated in accordance with sub-paragraph (2).

Method B

21.—(1) "Method B" means the calculation method set out in this paragraph.

(2) The own funds requirement is the sum of the following elements multiplied by the scaling factor—

(a) 4% of the first 5,000,000 euro of payment volume;

(b) 2.5% of the next 5,000,000 euro of payment volume;

(c) 1% of the next 90,000,000 euro of payment volume;

(d) 0.5% of the next 150,000,000 euro of payment volume; and

(e) 0.25% of any remaining payment volume.

(3) "Payment volume" means the total amount of payment transactions that are not related to the issuance of electronic money executed by the authorised electronic money institution in the preceding financial year divided by the number of months in that year.

(4) The "scaling factor" is—

(a) 0.5 for an authorised electronic money institution providing a payment service specified in paragraph 1(f) of Schedule 1 to the Payment Services Regulations 2009;

(b) 0.8 for an authorised electronic money institution providing a payment service specified in paragraph 1(g) of Schedule 1 to those Regulations; and

(c) 1 for an authorised electronic money institution providing any other payment service.

Method C

22.—(1) "Method C" means the calculation method set out in this paragraph.

(2) The own funds requirement is the relevant indicator multiplied by—

(a) the multiplication factor; and

(b) the scaling factor;

subject to the proviso in sub-paragraph (7).

(3) The "relevant indicator" is the sum of the following elements—

(a) interest income;

(b) interest expenses;

(c) gross commissions and fees received; and

(d) gross other operating income.

(4) For the purpose of calculating the relevant indicator—

(a) each element must be included in the sum with its positive or negative sign;

(b) income from extraordinary or irregular items may not be used;

(c) expenditure on the outsourcing of services rendered by third parties may reduce the relevant indicator if the expenditure is incurred from a payment service provider;

(d) the relevant indicator is calculated on the basis of the twelve-monthly observation at the end of the previous financial year;

(e) the relevant indicator must be calculated over the previous financial year; and

(f) audited figures must be used unless they are not available in which case business estimates may be used.

(5) The "multiplication factor" is the sum of—

(a) 10% of the first 2,500,000 euro of the relevant indicator;

(b) 8% of the next 2,500,000 euro of the relevant indicator;

(c) 6% of the next 20,000,000 euro of the relevant indicator;

(d) 3% of the next 25,000,000 euro of the relevant indicator; and

(e) 1.5% of any remaining amount of the relevant indicator.

(6) "Scaling factor" has the meaning given in paragraph 21(4).

(7) The proviso is that the own funds requirement must not be less than 80 % of the average of the previous three financial years for the relevant indicator.

23.—(1) "Method D" means the calculation method that is set out in this paragraph.

(2) The own funds requirement for an authorised electronic money institution for the activity of issuing electronic money and providing payment services that are related to the issuance of electronic money shall amount to 2% of the average outstanding electronic money.

24.—(1) Where—

(a) an authorised electronic money institution provides payment services that are not related to the issuance of electronic money or carries out any of the activities referred to in regulation 32(1)(b) to (d) or (2); and

(b) the amount of outstanding electronic money is unknown in advance,

the institution may calculate its own funds requirement on the basis of a representative portion assumed to be used for the issuance of electronic money and payment services related to the issuance of electronic money, provided that such representative portion can be reasonably estimated on the basis of historical data and to the satisfaction of the Authority.

(2) Where an applicant has not completed a sufficiently long period of business to compile historical data adequate to make the assessment under sub-paragraph (1), the applicant must make the assessment on the basis of projected outstanding electronic money as evidenced by its business plan, subject to any adjustments to that plan which are required by the Authority.

Application of accounting standards

25. Except where this Schedule provides for a different method of recognition, measurement or valuation, whenever a provision in this Schedule refers to an asset, liability, equity or income statement item, an electronic money institution must, for the purpose of that provision, recognise the asset, liability, equity or income statement item and measure its value in accordance with whichever of the following are applicable for the purpose of the institution's external financial reporting—

(a) Financial Reporting Standards and Statements of Standard Accounting Practice issued or adopted by the Accounting Standards Board;

(b) Statements of Recommended Practice, issued by industry or sectoral bodies recognised for this purpose by the Accounting Standards Board;

(c) International Financial Reporting Standards and International Accounting Standards issued or adopted by the International Accounting Standards Board;

(d) International Standards on Auditing (United Kingdom and Ireland) issued by the Auditing Practices Board; and

(e) the Companies Act 2000.

SCHEDULE 3 Regulation 61

Application and modification of legislation

PART 1

Application and modification of the 2000 Act

Disciplinary powers

1. Sections 66**(a)** (disciplinary powers) to 70 (statements of policy: procedure) of the 2000 Act apply with the following modifications to section 66—

(a) for subsection (2) substitute—

"(2) A person is guilty of misconduct if, while a relevant person, he has been knowingly concerned in a contravention of the Electronic Money Regulations 2010 by an electronic money institution.";

(b) for subsection (6) substitute—

"(6) "Relevant person" means any person responsible for the management of the electronic money institution or, where relevant, any person responsible for the management of the institution's electronic money issuance or payment services activities."; and

(c) omit subsection (7).

The Tribunal

2. Part 9 of the 2000 Act (hearings and appeals) applies in respect of references to the Upper Tribunal made under these Regulations as it applies in respect of references to the Upper Tribunal made under that Act, with the following modifications to section 133A**(b)** (proceedings before Tribunal: decision and supervisory notices, etc)—

(a) in subsection (1) omit ",as a result of section 388(2),"; and

(b) in subsection (3) for "has the same meaning as in section 395" substitute "means a notice given under regulation 11(6), (9) or (10)(b) (including as applied by regulation 15) of the Electronic Money Regulations 2010".

Information gathering and investigations

3. Part 11**(c)** of the 2000 Act (information gathering and investigations) applies with the following modifications—

(a) in section 165 (Authority's power to require information)—

(i) for references to "an authorised person" substitute "an electronic money institution or an EEA authorised electronic money institution";

(a) Amended by S.I. 2007/126 and section 12 of, and paragraph 8 of Schedule 2 to, the Financial Services Act 2010 (c.28).
(b) Substituted by S.I. 2010/22
(c) Part 11 was amended by section 18 of, and paragraphs 15, 16 and 17 of Schedule 2 to, the Financial Services Act 2010.

(ii) in subsection (4) for "this Act" substitute "the Electronic Money Regulations 2010"; and

(iii) in subsection (7) omit paragraph (b).

(b) in subsection (2)(a) of section 166 (reports by skilled persons), for "an authorised person" substitute "an electronic money institution or an EEA authorised money institution";

(c) in section 167**(a)** (appointment of persons to carry out general investigations)—

(i) in subsection (1)—

(aa) omit "or the Secretary of State";

(bb) in paragraph (a) for "a recognised investment exchange or an authorised person or of an appointed representative" substitute "an electronic money institution or an EEA electronic money institution";

(cc) in paragraph (c) for "a recognised investment exchange or an authorised person" substitute "an electronic money institution or an EEA electronic money institution";

(ii) in subsection (4)—

(aa) for "in relation to a former authorised person (or appointed representative)" substitute "in relation to a former electronic money institution or former EEA electronic money institution";

(bb) in paragraph (a) for "he was an authorised person (or appointed representative)" substitute "it was an electronic money institution or an EEA electronic money institution";

(cc) for paragraph (b) substitute—

"(b) the ownership or control of a former electronic money institution or former EEA electronic money institution at any time when it was an electronic money institution or an EEA electronic money institution, as the case may be.";

(iii) in subsection (5) for "regulated activities" substitute "the activity of issuing electronic money"; and

(iv) omit subsection (6);

(d) in section 168**(b)** (appointment of persons to carry out investigations in particular cases)—

(i) in subsection (1)—

(aa) in paragraph (a) for "any regulation made under section 142" substitute "any requirement of or imposed under the Electronic Money Regulations 2010";

(bb) in paragraph (b) for "191" to the end substitute "or under regulation 62, 63 or 65 of the Electronic Money Regulations 2010";

(ii) for subsection (2) substitute—

"(2) Subsection (3) also applies if it appears to an investigating authority that there are circumstances suggesting that a person may be guilty of an offence under, or has contravened a requirement of, the Money Laundering Regulations 2007.";

(iii) omit subsections (4) and (5); and

(iv) in subsection (6) omit "or the Secretary of State";

(e) in section 169 (investigations etc in support of overseas regulator)—

(i) in subsection (8) for "Part XXIII" substitute "sections 348, 349, 351 and 352, as applied with modifications by the Electronic Money Regulations 2010"; and

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(a) Amended by S.I. 2007/126.
(b) Amended by S.I. 2007/126.

(ii) in subsection (13) for "has the same meaning as in section 195" substitute "means a competent authority designated in accordance with Article 3 of the electronic money directive";

(f) in section 170 (investigations: general)—

(i) in subsection (1) omit "or (5)";

(ii) in subsection (3)(a) omit "or (4)"; and

(iii) for subsection (10) substitute—

"(10) "Investigating authority" in relation to an investigator means the Authority.";

(g) in section 171(**a**) (powers of persons appointed under section 167), omit subsections (3A) and (7);

(h) in subsection (4) of section 172 (additional power of persons appointed as a result of section 168(1) or (4)), omit "or (4)";

(i) in section 174 (admissibility of statements made to investigators)—

(i) in subsection (2) omit "or in proceedings in relation to action to be taken against that person under section 123";

(ii) in subsection (3)(a) for "398" substitute "regulation 65 of the Electronic Money Regulations 2010"; and

(iii) in subsection (4) omit "or (5)";

(j) in subsection (8) of section 175 (information and documents: supplemental provisions) omit "or (5)";

(k) in section 176(**b**)(entry of premises under warrant)—

(i) in subsection (1)—

(aa) omit "the Secretary of State,"; and

(bb) for "the first, second or third" substitute "the first or second";

(ii) in subsection (3)(a) for "an authorised person or an appointed representative" substitute "an electronic money institution or an EEA electronic money institution";

(iii) omit subsection (4);

(iv) in subsection (10) omit "or (5)";

(v) in subsection (11)(a) omit "87C, 87J,"; and

(l) in subsection (5)(a) of section 177 (offences), for "six months" substitute "three months".

Control over electronic money institutions

4. Part 12**(c)** of the 2000 Act applies with the following modifications—

(a) for references to "UK authorised person" and "home state regulator" substitute respectively "electronic money institution" and "home state competent authority";

(b) in section 191B (restriction notices)—

(i) after subsection (2) insert—

"(2A) In a restriction notice, the Authority must direct that voting power to which the notice relates is, until further notice, not to be exercisable."; and

(ii) for subsection (3)(b) substitute—

"(b) voting power that has been exercised as a result of the acquisition is void;";

(**a**) Amended by S.I. 2007/126.
(**b**) Amended by S.I. 2005/1433.
(c) Sections 178 to 191G were substituted by S.I. 2009/534.

(c) after section 191E (requirements for notices under section 191D) insert—

"191EA The Authority may direct that—

(a) the obligations to notify imposed by sections 178 and 191D do not apply; or

(b) the obligation to make an assessment imposed by section 185(1) does not apply,

in respect of any case where the acquisition or, for the purposes of section 191D, the reduction or cessation of control, is in respect of an electronic money institution which carries on business activities other than the issuance of electronic money and payment services.";

(d) in section 191G (interpretation), in subsection (1), omit the definition of "UK authorised person"; and

(e) omit section 192 (power to change definitions of control etc.).

Auditors and actuaries

5. Sections 341 (access to books etc) to 346 (provision of false or misleading information to auditor or actuary) of the 2000 Act apply as though in sections 341(1), 342(1) to (3) and (7), 343(1) to (3), (7) and (8), 344(2), 345(1) and 346(1) and (2) the references to "an authorised person" were to "an electronic money institution".

Restriction on disclosure of information

6. Sections 348 (restrictions on disclosure of confidential information by Authority etc), 349 (exceptions from section 348), 351 (competition information) and 352 (offences) of the 2000 Act apply with the following modifications—

(a) in section 348—

(i) in subsection (2)(b) for the words from ", the competent authority" to the end substitute "under the Electronic Money Regulations 2010";

(ii) in subsection (3)(a) for "this Act" substitute "the Electronic Money Regulations 2010";

(iii) in subsection (5)—

(aa) for "this Part", substitute "the Electronic Money Regulations 2010";

(bb) omit paragraphs (b) and (c);

(cc) in paragraph (e) for "a person mentioned in paragraphs (a) to (c)" substitute "the Authority";

(dd) in paragraph (f) for "a person mentioned in those paragraphs" substitute "the Authority".

(iv) in subsection (6)—

(aa) omit paragraphs (a) and (b); and

(bb) in paragraph (c) for "paragraph 6 of Schedule 1" substitute "regulation 47 of the Electronic Money Regulations 2010 "; and

(b) in section 349(**a**) omit subsections (3A) and (3B).

Insolvency

7. Sections 359(**b**) (administration order), 367 (winding-up petitions) and 368 (winding-up petitions: EEA and Treaty firms) of the 2000 Act apply with the following modifications—

(**a**) Subsections (3A) and (3B) were inserted by the Companies Act 2006, section 964(1),(4).
(**b**) Substituted by the Enterprise Act 2002, section 248(3), Schedule 17, paragraphs 53 and 55 and amended by S.I. 2005/1455.

(a) for references to "an authorised person" substitute "an electronic money institution or an EEA electronic money institution";

(b) in section 359—

(i) omit subsections (1)(b), (3)(b) and (5);

(ii) for subsection (1)(c) substitute—

"(c) is issuing or has issued electronic money in contravention of regulation 62(1) of the Electronic Money Regulations 2010.";

(iii) in subsection (3)(a) omit "or partnership" and for "an agreement" substitute "a contract for electronic issuance or payment services"; and

(iv) in subsection (4) omit the definitions of "agreement", "authorised deposit taker" and "relevant deposit";

(c) in section 367—

(i) omit subsections (1)(b), (2), (5), (6) and (7);

(ii) for subsection (1)(c) substitute—

"(c) is issuing or has issued electronic money in contravention of regulation 62(1) of the Electronic Money Regulations 2010."; and

(iii) in subsection (4) for "an agreement" substitute "a contract for electronic money issuance or payment services"; and

(d) in section 368 for the words from "winding up" to the end substitute "winding up of an EEA electronic money institution unless it has been asked to do so by the home state competent authority.".

Warning notices and decision notices

8. Part 26 of the 2000 Act (notices) applies with the following modifications—

(a) in section 388 (decision notices), omit subsection (2);

(b) in section 390 (final notices)—

(i) omit subsections (6) and (10); and

(ii) in subsection (8) omit "or (6)(c)";

(c) in section 391 (publication), in subsection (10) for "has the same meaning as in section 395" substitute "means a notice given under regulation 11(6), (9) or (10)(b) (including as applied by regulation 15) of the Electronic Money Regulations 2010";

(d) for section 392 (application of sections 393 and 394) substitute—

"**392.** Sections 393 and 394 apply to—

(a) a warning notice given in accordance with regulations 11(4) (including as applied by regulation 15), 29(2) (in relation to the cancellation of a registration), 35(2), 52(1) or 55(1) of the Electronic Money Regulations 2010;

(b) a decision notice given in accordance with regulations 10(5)(a) (including as applied by regulation 15), 29(3)(a) (in relation to the cancellation of a registration), 35(3)(a), 52(3) or 55(3) of the Electronic Money Regulations 2010."; and

(e) in section 395 (the Authority's procedures) in subsection (13) for "in accordance with" to the end substitute "under regulation 11(6), (9) or (10)(b) (including as applied by regulation 15) of the Electronic Money Regulations 2010".

Limitation on powers to require documents

9. Section 413 of the 2000 Act (protected items) applies for the purposes of these Regulations as it applies for the purposes of that Act.

PART 2

Application and modification of secondary legislation

The Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001

10. The Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001(**a**) applies to any notice, direction or document of any kind given by or to the Authority under these Regulations as it applies to any notice, direction or document of any kind under the 2000 Act.

The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001

11. The Financial Services and Markets Act 2000 (Disclosure of Confidential Information Regulations 2001(**b**) applies with the following modifications—

(a) in regulation 2—

(i) in the definition of "directive restrictions" for "and article 9 of the insurance mediation directive" substitute ", article 9 of the insurance mediation directive and Article 3 of the electronic money directive insofar as it applies Article 22 of the payment services directive";

(ii) in paragraph (a) of the definition of "overseas regulatory authority" after "of the Act" insert "or any function conferred under national legislation in implementation of the electronic money directive"; and

(iii) after the definition of "EEA regulatory authority" insert—

""electronic money directive" means Directive 2009/110/EC of the European Parliament and of the Council of 16th September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions";

""electronic money directive information" means confidential information received by the Authority in the course of discharging its functions as the competent authority under the electronic money directive;";

(b) in regulation 5(4)(a) for "an authorised person, former authorised person or former regulated person" substitute "an electronic money institution or former electronic money institution";

(c) in regulation 5(6)(e) for "an authorised person, former authorised person or former regulated person" substitute "an electronic money institution or former electronic money institution";

(d) in regulation 8 after sub-paragraph (b) insert—

"(c) electronic money directive information.";

(e) in regulation 9—

(i) in paragraph (1) for "(3) and (3A)" substitute "(3), (3A) and (4)"; and

(ii) after paragraph (3B) insert—

"(4) Paragraph (1) does not permit disclosure to the persons specified in the first column in Part 5 of Schedule 1 unless the disclosure is of electronic money directive information.";

(f) in regulation 11 after sub-paragraph (d) insert—

"(e) electronic money directive information.";

(g) in the second column in Part 1 of Schedule 1, in the list of functions beside—

(**a**) S.I. 2001/1420; a relevant amending instrument is S.I 2005/274.
(**b**) S.I. 2001/2188; relevant amending instruments are S.I. 2003/1473, 2005/3071, 2006/3413.

(i) "An official receiver appointed under section 399 of the Insolvency Act 1986, or an official receiver for Northern Ireland appointed under article 355 of the Insolvency (Northern Ireland) Order 1989", after paragraph (ii) insert—

"or

(iii) electronic money issuers or former electronic money issuers";

(ii) "The Department of Enterprise, Trade and Investment in Northern Ireland", after paragraph (c)(ii) insert—

"or

(iii) electronic money issuers or former electronic money issuers";

(iii) "The Pensions Regulator", after paragraph (ii) insert—

"or

(iii) electronic money issuers or former electronic money issuers";

(iv) "The Charity Commissioners for England and Wales", after paragraph (ii) insert—

"or

(iii) electronic money issuers or former electronic money issuers"; and

(h) in Schedule 1, after Part 4 insert—

"PART 5

Person	*Functions*
The Commissioners for Her Majesty's Revenue and Customs	Their functions under the Money Laundering Regulations 2007"

SCHEDULE 4

Regulation 76

Amendments to primary and secondary legislation

PART 1

Amendments to primary legislation

The 2000 Act

1. In the 2000 Act—

(a) in Part 16 (the ombudsman scheme)—

(i) in section 226(2)(b), after "authorised person," insert "an electronic money issuer within the meaning of the Electronic Money Regulations 2010"; and

(ii) in section 234(1), after "class of authorised person" insert ",an electronic money issuer within the meaning of the Electronic Money Regulations 2010";

(b) in paragraph 12 of Schedule 1A (further provision about the consumer financial education body)**(a)**—

(i) in sub-paragraph (1)(a) after "authorised persons" insert ",electronic money issuers";

(ii) in sub-paragraph (1)(b) after "authorised person" insert ",electronic money issuers"; and

(a) Schedule 1A was inserted by Schedule 1 to the Financial Services Act 2010.

(iii) after sub-paragraph (4) insert—

"(5A) "Electronic money issuer" means a person who falls within the definition of "electronic money issuer" in regulation 2(1) of the Electronic Money Regulations 2010 by virtue of paragraphs (a) to (j) of that definition."; and

(c) in paragraph 13(4) of Schedule 17 (the ombudsman scheme), after "an authorised person," insert " an electronic money issuer within the meaning of the Electronic Money Regulations 2010".

Consumer Credit Act 1974

2. In section 25(1C) of the Consumer Credit Act 1974**(a)** (licensee to be a fit person), after "credit institutions" insert "(as last amended by Directive 2009/110/EC)".

Terrorism Act 2000

3. In Part 1 of Schedule 3A to the Terrorism Act 2000**(b)** (regulated sector), in paragraph (2)(a) (meaning of "credit institution"), after "Banking Consolidation Directive" insert "as last amended by Directive 2009/110/EC".

Proceeds of Crime Act 2002

4. In Part 1 of Schedule 9 to the Proceeds of Crime Act 2002**(c)** (regulated sector) —

(a) in paragraph 1(2)(a) for "Article 4(1)(a)" substitute "Article 4(1)"; and

(b) in paragraph 3(1), at the end of the definition of "the Banking Consolidation Directive" insert "as last amended by Directive 2009/110/EC".

Companies Act 2006

5. In the Companies Act 2006**(d)**—

(a) in section 1173(1) (minor definitions: general), in the definition of "credit institution"—

(i) for "Article 4.1(a)" substitute "Article 4.1"; and

(ii) at the end insert "as last amended by Directive 2009/110/EC"; and

(b) in section 1210(3) (meaning of "statutory auditor" etc.), in paragraph (a) of the definition of "bank"—

(i) for "Article 4.1(a)" substitute "Article 4.1"; and

(ii) at the end insert "as last amended by Directive 2009/110/EC".

Counter-Terrorism Act 2008

6. In Part 2 of Schedule 7 to the Counter-Terrorism Act 2008**(e)** (terrorist financing and money laundering) —

(a) 1974 c.39.
(b) 2000 c. 11
(c) 2002 c. 29
(d) 2006 c. 46.
(e) 2008 c. 28

(a) in paragraph 5(1)(a) (meaning of "credit institution"), for "Article 4(1)(a)" substitute "Article 4(1)"; and

(b) in paragraph 7 (interpretation), at the end of the definition of "the banking consolidation directive" insert "as last amended by Directive 2009/110/EC".

PART 2

Amendments to secondary legislation

The Financial Markets and Insolvency (Settlement Finality) Regulations 1999

7. In regulation 2(1) of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999, in the definition of "credit institution" for "Article 4(1)(a)" substitute "Article 4(1)".

The Competition Act 1998 (Small Agreements and Conduct of Minor Significance) Regulations 2000

8. In paragraph 1 of the Schedule to the Competition Act 1998 (Small Agreements and Conduct of Minor Significance) Regulations 2000, in the definition of "credit institution" for "Article 4(1)(a)" substitute "Article 4(1)".

The Competition Act 1998 (Determination of Turnover for Penalties) Order 2000

9. In regulation 1(2) of the Schedule to the Competition Act 1998 (Determination of Turnover for Penalties) Order 2000, in the definition of "credit institution", for "Article 4(1)(a)" substitute "Article 1(1)".

The Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001

10. The Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001 are amended as follows—

(a) in regulation 1(2) omit the definition of "electronic money institution";

(b) in paragraph (3)(d) of regulation 2 omit "except where the firm is an electronic money institution"; and

(c) in paragraph (4)(a)(ii) of that regulation omit "(other than an electronic money institution)".

The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001

11. The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(**a**) is amended as follows—

(a) in article 3(1), in the definition of "credit institution" after "banking consolidation directive" insert "as last amended by Directive 2009/110/EC";

(b) in article 3(1), in the definition of "electronic money", for "means" to the end substitute—

"has the meaning given by regulation 2 of the Electronic Money Regulations 2010;"

(c) in article 9B after "money" insert—

"by—

(a) a credit institution, a credit union or a municipal bank; or

(b) a person who is deemed to have been granted authorisation under regulation 73 of the Electronic Money Regulations 2010 or who falls within regulation 75(1) of those Regulations"; and

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(**a**) S.I. 2001/544; relevant amending instruments are S.I. 2002/682, 2002/1776.

(d) after 9B insert—

"9CA Articles 9C to 9I and 9K apply only in the case of a person falling within regulation 75(1) of the Electronic Money Regulations 2010.".

The Enterprise Act 2002 (Merger Fees and Determination of Turnover) Order 2003

12. In paragraph 1 of the Schedule to the Enterprise Act 2002 (Merger Fees and Determination of Turnover) Order 2003, at the end of the definition of "credit institution" insert "as last amended by Directive 2009/110/EC".

The Conduct of Employment Agencies and Employment Business Regulations 2003

13. In regulation 25(1) of the Conduct of Employment Agencies and Employment Business Regulations 2003 (client accounts), in the definition of "credit institution"—

(a) for "Article 4(1)(a)" substitute "Article 4(1)"; and

(b) at the end insert "as last amended by Directive 2009/110/EC".

The Financial Services (Distance Marketing) Regulations 2004

14. In the Financial Services (Distance Marketing) Regulations 2004(**a**) in regulation 17 for "to whom" to the end substitute "who is an electronic money institution within the meaning of the Electronic Money Regulations 2010;"

The Credit Institutions (Reorganisation and Winding Up) Regulations 2004

15. In regulation 2(1) of the Credit Institutions (Reorganisation and Winding Up) Regulations 2004 (interpretation), at the end of the definition of "banking consolidation directive" insert "as last amended by Directive 2009/110/EC".

The Building Societies Act 1986 (Modification of the Lending Limit and Funding Limit Calculations) Order 2004

16. In article 2(1) of the Building Societies Act 1986 (Modification of the Lending Limit and Funding Limit Calculations) Order 2004 (interpretation), in the definition of "credit institution"—

(a) omit "the first sub-paragraph of"; and

(b) at the end insert "as last amended by Directive 2009/110/EC".

The Money Laundering Regulations 2007

17. The Money Laundering Regulations 2007 are amended as follows—

(a) in regulation 2 in the definition of the electronic money directive—

(i) for "Directive 2000/46/EC" substitute "Directive 2009/110/EC"; and

(ii) for "18th September 2000" substitute "16th September 2009";

(b) in regulation 3—

(i) in paragraph (2)(a) for "Article 4(1)(a)" substitute "Article 4(1)"; and

(ii) in paragraph (3) for "and 14" substitute ",14 and 15";

(**a**) S.I. 2004/2095.

(c) in regulation 13(7)(d)—

(i) in the opening words for "Article 1(3)(b)" substitute "Article 2(2)";

(ii) in paragraph (i) for "150" substitute "250"; and

(iii) in paragraph (ii) for "by the bearer" to the end substitute—

"by the electronic money holder (within the meaning of Article 11 of the electronic money directive).";

(d) in regulation 17(5)**(a)** after "those Regulations" insert—

"and

(c) any electronic money institution or EEA electronic money institution (within the meaning of the Electronic Money Regulations 2010) which provides payment services mainly falling within paragraph 1(f) of Schedule 1 to the Payment Services Regulations 2009";

(e) in regulation 20 after paragraph (5) insert—

"(5A) A relevant person who is an issuer of electronic money must appoint an individual to monitor and manage compliance with, and the internal communication of, the policies and procedures relating to the matters referred to in paragraph (1)(a) to (e), and in particular to—

(a) identify any situations of higher risk of money laundering or terrorist financing;

(b) maintain a record of its policies and procedures, risk assessment and risk management including the application of such policies and procedures;

(c) apply measures to ensure that such policies and procedures are taken into account in all relevant functions, including in the development of new products, dealing with new customers and in changes to business activities; and

(d) provide information to senior management about the operation and effectiveness of such policies and procedures at least annually."

(f) in regulation 49A(1)**(b)**, after "Payment Services Regulations 2009" insert "or the Electronic Money Regulations 2010"; and

(g) in Schedule 1 after point 14 insert—

"15. Issuing electronic money.".

Limited Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008

18. In the Limited Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008, in regulations 32 and 47, for the definition of "e-money issuer" (in the modifications to the Companies Act 2006) substitute—

""e-money issuer" means a person who issues electronic money within the meaning of Directive 2009/110/EC of the European Parliament and of the Council of 16th September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions;".

The Payment Services Regulations 2009

19. The Payment Services Regulations 2009 are amended as follows—

(a) in regulation 2—

(i) for the definition of "electronic money institution", substitute—

(a) Regulation 17(5) was substituted by S.I. 2009/209.
(b) Regulation 49A was inserted by S.I 2009/209.

““electronic money institution” has the meaning given in Article 2(1) of the electronic money directive”; and

(ii) for the definition of “the electronic money directive” substitute—

““the electronic money directive” means Directive 2009/110/EC of the European Parliament and of the Council of 16th September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions;”; and

(b) in paragraph (3) of regulation 53, for “Article 1(3)(b)” substitute “Article 2(1)”.

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