

**2023 No.**

**FINANCIAL SERVICES**

**The Electronic Money and Payment Services (Amendment)  
Regulations 2023**

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>		***

The Treasury, in exercise of the powers conferred by sections [3] and [70(2)] of the Financial Services and Markets Act 2023(a) (“the Act”), makes the following Regulations.

The Treasury has consulted the regulators as required by section [3(6)] of the Act:

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Electronic Money and Payment Services (Amendment) Regulations 2023.

(2) They come into force on [            ].

(3) They extend to England and Wales, Scotland and Northern Ireland.

**Amendments to the Electronic Money Regulations 2011**

2.—(1) The Electronic Money Regulations 2011(b) are amended as follows.

(2) In regulation 47 (functions of the authority)—

(a) in paragraph (2), after sub-paragraph (c), insert—

“(ca) the desirability of sustainable growth in the economy of the United Kingdom in the medium or long term, including in a way consistent with contributing towards achieving compliance with section 1 of the Climate Change Act 2008 (UK net zero emissions target)(c);”;

(b) after paragraph (2), insert—

“(3) The Treasury may at any time by notice in writing to the Authority make recommendations to the Authority about aspects of the economic policy of His Majesty’s Government to which the Authority should have regard when considering the application of the principles in paragraph (2).

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(a) 2022 c. .  
(b) S.I. 2011/99. Paragraph 2A was inserted into Schedule 3 by S.I. 2017/752.  
(c) 2008 c. 27. Section 1 was amended by S.I. 2019/1056.

- (4) Section 1JA of the 2000 Act(a) applies in relation to any recommendation made under paragraph (3) as if—
- (a) that recommendation were made under section 1JA(1)(d);
  - (b) the reference in subsection (1)(d) to “the regulatory principles in section 3B” were a reference to the principles set out in regulation 47(2) of these Regulations.”.
- (3) In Schedule 3 (application and modification of legislation)—
- (a) in paragraph 2A—
    - (i) in sub-paragraph (1), omit the remaining paragraph (c)(b);
    - (ii) after sub-paragraph (1), insert—
 

“(1A) Sections 137B(c) (FCA general rules: clients’ money, right to rescind etc) and 137P (control of information rules) of the 2000 Act apply as if—

      - (a) references to authorised persons were references to authorised electronic money institutions and small electronic money institutions; and
      - (b) in section 137P, the reference to “Either regulator” were read as a reference to the FCA.”;
    - (iii) in sub-paragraph (2)—
      - (aa) for “paragraph (1)” substitute “sub-paragraphs (1) and (1A)”;
      - (bb) for “section 137A” substitute “sections 137A, 137B and 137P”;
      - (cc) for “sub-paragraph (3)” substitute “sub-paragraphs (2A) and (3)”;
    - (iv) after sub-paragraph (2), insert—
 

“(2A) Section 138C (evidential provisions) applies as if in that section—

      - (a) in subsection (1) “by other provisions of this Act” were read as “by or under the Electronic Money Regulations 2011”;
      - (b) references to “either regulator”, “a regulator”, “that regulator” or to “the regulator making the rule” were read as references to the FCA.”;
    - (v) for sub-paragraph (3), substitute—
 

“(3) Section 138D (actions for damages) applies as if in that section—

      - (a) subsection (1) were omitted;
      - (b) in subsection (2), the reference to “an authorised person” were a reference to “an authorised payment institution, a small payment institution, a registered account information service provider or an electronic money institution”;
      - (c) subsection (6) were omitted and “private person” has the meaning given in regulation 72(3) of these Regulations (actions for breach of requirement).”;
  - (b) in paragraph 5, for sub-paragraph (ac) substitute—
 

“(ac) in section 340—

    - (i) for references to the “regulator making the rules” substitute “FCA”;
    - (ii) for references to “an authorised person” substitute “an electronic money institution or a person required by regulation 3B of the Electronic Money Regulations 2011 to provide an audit opinion to the FCA”;
    - (iii) omit subsections (3A), (5A) and (8)(b);
    - (iv) in subsection (5), omit “(3A) or”;

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(a) 2000 c. 8. Section 1JA was inserted by section 19 of the Bank of England and Financial Services Act 2016 (c. 14).  
 (b) In paragraph 2A as originally inserted by S.I. 2017/752 there were two paragraphs numbered (c) in sub-paragraph (1). The first paragraph (c) was omitted by S.I. 2018/1201.  
 (c) 2000 c. 8. Section 137B was substituted, together with the rest of Part 9A, for sections 138 to 164 by the Financial Services Act 2012 (c. 21), section 24(1).

## Amendments to the Payment Services Regulations 2017

- 3.—(1) The Payment Services Regulations 2017(a) are amended as follows.
- (2) In regulation 106 (functions of the FCA)—
- (a) in paragraph (3), in sub-paragraph (c), at the end insert “, including in a way consistent with contributing towards achieving compliance with section 1 of the Climate Change Act 2008 (UK net zero emissions target);”;
- (b) after paragraph (3), insert—
- “(4) The Treasury may at any time by notice in writing to the FCA make recommendations to the FCA about aspects of the economic policy of His Majesty’s Government to which the FCA should have regard when considering the application of the principles in paragraph (3).
- (5) Section 1JA of the 2000 Act applies in relation to any recommendation made under paragraph (4) as if—
- (a) that recommendation were made under section 1JA(1)(d);
- (b) the reference in subsection (1)(d) to the regulatory principles in section 3B” were a reference to the principles set out in regulation 106(3) of these Regulations.”.
- (3) In Schedule 6 (application and modification of legislation)—
- (a) in paragraph 3—
- (i) in sub-paragraph (1), omit paragraph (d);
- (ii) after sub-paragraph (1), insert—
- “(1A) Sections 137B (FCA general rules: clients’ money, right to rescind etc) and 137P (control of information rules) of the 2000 Act apply as if—
- (a) references to authorised persons were references to authorised payment institutions, small payment institutions, registered account information service providers and electronic money institutions; and
- (b) in section 137P, the reference to “Either regulator” were read as a reference to the FCA.”;
- (iii) in sub-paragraph (2)—
- (aa) after “sub-paragraph (1)” insert “and (1A)”;
- (bb) for “section 137A” substitute “sections 137A, 137B and 137P”;
- (cc) for “sub-paragraph (3)” substitute “sub-paragraphs (2A) and (3)”;
- (iv) after sub-paragraph (2), insert—
- “(2A) Section 138C (evidential provisions) applies as if in that section—
- (a) in subsection (1) “by other provisions of this Act” were read as “by or under the Payment Services Regulations 2017”;
- (b) references to “either regulator”, “a regulator”, “that regulator” or to “the regulator making the rule” were read as references to the FCA”;
- (v) for sub-paragraph (3), substitute—
- “(3) Section 138D (actions for damages) applies as if in that section—
- (a) subsection (1) were omitted;
- (b) in subsection (2), the reference to “an authorised person” were a reference to “an authorised payment institution, a small payment institution, a registered account information service provider or an electronic money institution”;
- (c) subsection (6) were omitted and “private person” has the meaning given in regulation 148(3) of these Regulations (actions for breach of requirement).”;

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(a) S.I. 2017/752.

(b) in paragraph 7—

- (i) renumber the existing text as sub-paragraph (2);
- (ii) before sub-paragraph (2), as so renumbered, insert—

“(1) Section 340 (appointment) of the 2000 Act<sup>(a)</sup> applies with the following modifications—

- (a) references to “the appropriate regulator” and to the “regulator making the rules” are to be read as references to the FCA;
- (b) references to an authorised person are to be read as references to an authorised payment institution or a person required by regulation 39 of the Payment Services Regulations 2017 to provide an audit opinion to the FCA;
- (c) subsections (3A), (5A) and (8)(b) were omitted;
- (d) in subsection (5), “(3A) or” were omitted.”.

	<i>Name</i>
	<i>Name</i>
Date	Two of the Lords Commissioners of His Majesty’s Treasury

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations amend the Electronic Money Regulations 2011 (“the 2011 Regulations”) and the Payment Services Regulations 2017 (“the 2017 Regulations”) to remove a limitation on the FCA’s power to make rules in relation to authorised electronic money institutions, small electronic money institutions, authorised payment institutions, small payment institutions, and registered account information service providers. They also extend the FCA’s existing powers to make rules for authorised persons in relation to client money, the control of information, and the appointment of auditors so that such rules may also be made in relation to these institutions, apply the Treasury’s power to make recommendations to the FCA in connection with its general duties to the FCA’s duties in relation to electronic money institutions and payment services, and require the FCA to have regard to the net zero emissions target as one of the regulatory principles applying to the exercise of its functions under the 2011 Regulations and the 2017 Regulations.

A full impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available from HM Treasury, 1 Horse Guards Road, London SW1A 2HQ.

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<sup>(a)</sup> Subsection (3A) was substituted, and subsection (5A) inserted, by paragraph 1 and of Schedule 13 to the Financial Services Act 2012.