STATUTORY INSTRUMENTS

2017 No. 1173

FINANCIAL SERVICES AND MARKETS

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

Made - - - -	*29th November 2017*
Laid before Parliament	*30th November 2017*
Coming into force in accordance with regulation 1	

The Treasury are a government department designated(**1**) for the purposes of section 2(2) of the European Communities Act 1972(**2**) in relation to financial services.

The Treasury make these Regulations in exercise of the powers conferred on them by section 2(2) of the European Communities Act 1972, section 379A of the Financial Services and Markets Act 2000(**3**) and sections 204(6) and (8) and 259(1) of the Banking Act 2009(**4**).

PART 1

Introductory provisions

Citation and commencement

1.—(1) These Regulations may be cited as the Payment Systems and Services and Electronic Money (Miscellaneous Amendments) Regulations 2017.

(2) This Part and Part 4 come into force on 22nd December 2017.

(3) Regulations 3, 4 and 6 come into force on 22nd December 2017 for the purposes of the determination by the Financial Conduct Authority of applications for authorisation or registration

(**1**) S.I. 2012/1759.

(**2**) 1972 c. 68. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and the European Union (Amendment) Act 2008 (c. 7), Schedule, Part 1. By virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c. 51) legislation may be made under section 2(2) of the European Communities Act to implement obligations of the United Kingdom created or arising by or under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073) and the Protocol adjusting the Agreement signed at Brussels on 17th March 1992 (Cm 2183).

(**3**) 2000 c. 8. Section 379A was inserted by section 112 of the Digital Economy Act 2017 (c. 30).

(**4**) 2009 c. 1. Section 204 was amended by paragraph 45 of Schedule 2 to the Financial Services Act 2010 (c. 28), section 104 of the Financial Services Act 2012 (c. 21), paragraph 60 of Schedule 2 to the Bank of England and Financial Services Act 2016 (c. 14) and paragraph 26 of Schedule 9 to the Digital Economy Act 2017. Section 259 has been amended but none of the amendments are relevant here.

made under Part 2 of the Payment Services Regulations 2017 (including the imposition of requirements in relation to authorisations and registration).

(4) Except as provided for in paragraph (3), Parts 2 and 3 come into force on 13th January 2018.

PART 2

Amendment of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999

Amendment of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999

2. In regulation 2(1) of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (interpretation)(**5**), in the definition of "institution" after paragraph (aa) insert—

"(ab) an authorised payment institution or small payment institution as defined in regulation 2(1) of the Payment Services Regulations 2017, or a person whose head office, registered office or place of residence, as the case may be, is outside the United Kingdom and whose functions correspond to those of such an institution;".

PART 3

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

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

3. In article 3(1)(g) of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975(**6**), in the table, after "an authorised payment institution" in each place it appears insert ", a registered account information service provider".

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

4. In the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979(**7**)—

(a) in article 1(2) (interpretation)—

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

(ii) in the appropriate place, insert—

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

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

(**5**) S.I. 1999/2979. The definition of "institution" was amended by S.I. 2007/126 and 2010/2993.
(**6**) S.I. 1975/1023. Article 3 was amended by S.I. 2001/3816, 2007/2149, 2008/3259, 2013/472, 1198 and 1338 and S.S.I. 2003/231, and by other instruments which are not relevant here. The definition of "registered account information service provider" was inserted into article 2 by S.I. 2017/752.
(**7**) S.R. 1979 No. 195. Amended by S.R. 2012 No. 318 and 2014 Nos 27 and 174 and by other instruments which are not relevant here.

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

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

(ii) for "2009" substitute "2017".

Amendment of the Electronic Money Regulations 2011

5. In the Electronic Money Regulations 2011(**8**)—

(a) in regulation 21(3)(b) (safeguarding option 1) after "assets" insert ", or for holding those funds or assets together with proceeds of an insurance policy or guarantee held in accordance with regulation 22(1)(b)";

(b) in regulation 22(1)(b)(ii) (safeguarding option 2) after "proceeds" insert ", or for holding those proceeds together with funds or assets held in accordance with regulation 21(3)";

(c) after regulation 79 (amendments to primary and secondary legislation) insert—

"Gibraltar

Application to Gibraltar

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

(d) after Schedule 4 insert—

"SCHEDULE 5 — Regulation 80

Gibraltar

Exercise of deemed passport rights by Gibraltar-based firms

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

(a) has its head office in Gibraltar; and

(b) is authorised in Gibraltar to issue electronic money and provide payment services in accordance with the electronic money directive.

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

(3) References in these Regulations to—

(a) an "EEA authorised electronic money institution" are to be treated as references to the firm;

(b) a "home state competent authority" are to be treated as references to the competent authority (within the meaning of the electronic money directive) in Gibraltar in relation to the firm; and

(**8**) S.I. 2011/99. Regulations 21 and 22 were amended by S.I. 2013/3115 and 2017/701 and 752.

(c) a "passport right" are to be treated as references to the entitlement mentioned in sub-paragraph (2).

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

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

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

(a) an "EEA branch" are to be treated as including references to such a branch;

(b) an "EEA State" are to be treated as including references to Gibraltar;

(c) a "host state competent authority" are to be treated as including references to the competent authority (within the meaning of the electronic money directive) in Gibraltar in relation to the institution; and

(d) a "passport right" are to be treated as including references to the entitlement mentioned in sub-paragraph (1).

Modification of legislation

3.—(1) Section 138L(1) of the 2000 Act (consultation: general exemptions)(**9**) has effect for the purposes of these Regulations as if modified by adding at the end "or if it is making rules for the purpose of extending rules that apply to EEA authorised electronic money institutions to Gibraltar-based firms".

(2) Paragraph 14 of Schedule 17 to the 2000 Act (the ombudsman scheme: the scheme operator's rules)(**10**) has effect for the purposes of these Regulations as if modified by adding at the end—

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

Firms which have taken action before 13th January 2018

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

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

6. In the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013(**11**)—

(a) in article 2(1) (interpretation)—

(**9**) Section 138L was substituted by section 24 of the Financial Services Act 2012.
(**10**) Paragraph 14 was amended by paragraph 25 of Schedule 11 to the Financial Services Act 2012 and by S.I. 2015/542.
(**11**) S.S.I. 2013/50. Amended by S.I. 2013/472 and by other instruments which are not relevant here.