
STATUTORY INSTRUMENTS

2002 No. 682

The Financial Services and Markets Act 2000
(Regulated Activities) (Amendment) Order 2002

PART II

ELECTRONIC MONEY

Amendments of the principal Order

Definition of “electronic money”

2. In article 3(1) of the principal Order (interpretation), after the definition of “deposit” insert—
- ““electronic money” means monetary value, as represented by a claim on the issuer, which is—
- (a) stored on an electronic device;
 - (b) issued on receipt of funds; and
 - (c) accepted as a means of payment by persons other than the issuer;”.

Sums received in exchange for electronic money not to constitute deposits

3.—(1) In paragraph (2) of article 5 of the principal Order (accepting deposits), for “articles 6 to 9” substitute “articles 6 to 9A”.

- (2) After article 9 of the principal Order insert—

“Sums received in exchange for electronic money

9A. A sum is not a deposit for the purposes of article 5 if it is immediately exchanged for electronic money.”

Issuing electronic money: the specified activity

4. After article 9A insert—

“CHAPTER IIA ELECTRONIC MONEY

The activity

Issuing electronic money

9B. Issuing electronic money is a specified kind of activity.

Exclusions

Persons certified as small issuers etc.

9C.—(1) There is excluded from article 9B the issuing of electronic money by a person to whom the Authority has given a certificate under this article (provided the certificate has not been revoked).

(2) An application for a certificate may be made by—

- (a) a body corporate, or
- (b) a partnership,

(other than a credit institution as defined in Article 1(1)(a) of the banking consolidation directive) which has its head office in the United Kingdom.

(3) The authority must, on the application of such a person (“A”), give A a certificate if it appears to the Authority that paragraph (4), (5) or (6) applies.

(4) This paragraph applies if—

- (a) A does not issue electronic money except on terms that the electronic device on which the monetary value is stored is subject to a maximum storage amount of not more than 150 euro; and
- (b) A’s total liabilities with respect to the issuing of electronic money do not (or will not) usually exceed 5 million euro and do not (or will not) ever exceed 6 million euro.

(5) This paragraph applies if—

- (a) the condition in paragraph (4)(a) is met;
- (b) A’s total liabilities with respect to the issuing of electronic money do not (or will not) exceed 10 million euro; and
- (c) electronic money issued by A is accepted as a means of payment only by—
 - (i) subsidiaries of A which perform operational or other ancillary functions related to electronic money issued or distributed by A; or
 - (ii) other members of the same group as A (other than subsidiaries of A).

(6) This paragraph applies if—

- (a) the conditions in paragraphs (4)(a) and (5)(b) are met; and
- (b) electronic money issued by A is accepted as a means of payment, in the course of business, by not more than one hundred persons where—
 - (i) those persons accept such electronic money only at locations within the same premises or limited local area; or

(ii) those persons have a close financial or business relationship with A, such as a common marketing or distribution scheme.

(7) For the purposes of paragraph (6)(b)(i), locations are to be treated as situated within the same premises or limited local area if they are situated within—

- (a) a shopping centre, airport, railway station, bus station, or campus of a university, polytechnic, college, school or similar educational establishment; or
- (b) an area which does not exceed four square kilometres;

but sub-paragraphs (a) and (b) are illustrative only and are not to be treated as limiting the scope of paragraph (6)(b)(i).

(8) For the purposes of paragraph (6)(b)(ii), persons are not to be treated as having a close financial or business relationship with A merely because they participate in arrangements for the acceptance of electronic money issued by A.

(9) In this article, references to amounts in euro include references to equivalent amounts in sterling.

(10) A person to whom a certificate has been given under this article (and whose certificate has not been revoked) is referred to in this Chapter as a “certified person”.

Applications for certificates

9D. The following provisions of the Act apply to applications to the Authority for certificates under 9C (and the determination of such applications) as they apply to applications for Part IV permissions (and the determination of such applications)—

- (a) section 51(1)(b) and (3) to (6);
- (b) section 52, except subsections (6), (8) and (9)(a) and (b); and
- (c) section 55(1).

Revocation of certificate on Authority’s own initiative

9E.—(1) The Authority may revoke a certificate given to a person (“A”) under article 9C if—

- (a) it appears to it that A does not meet the relevant conditions, or has failed to meet the relevant conditions at any time since the certificate was given; or
- (b) the person to whom the certificate was given has contravened any rule or requirement to which he is subject as a result of article 9G.

(2) For the purposes of paragraph (1), A meets the relevant conditions at any time if, at that time, paragraph (4), (5) or (6) of article 9C applies.

(3) Sections 54 and 55(2) of the Act apply to the revocation of a certificate under paragraph (1) as they apply to the cancellation of a Part IV permission on the Authority’s own initiative, as if references in those sections to an authorised person were references to a certified person.

Revocation of certificate on request

9F.—(1) A certified person (“B”) may apply to the Authority for his certificate to be revoked, and the Authority must then revoke the certificate and give B written notice that it has done so.

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

(3) If—

- (a) B has made an application under Part IV of the Act for permission to carry on a regulated activity of the kind specified by article 9B (or for variation of an existing permission so as to add a regulated activity of that kind), and
- (b) on making an application for revocation of his certificate under paragraph (1), he requests that the revocation be conditional on the granting of his application under Part IV of the Act,

the revocation of B's certificate is to be conditional on the granting of his application under Part IV of the Act.

Obtaining information from certified persons etc.

9G.—(1) The Authority may make rules requiring certified persons to provide information to the Authority about their activities so far as relating to the issuing of electronic money, including the amount of their liabilities with respect to the issuing of electronic money.

(2) Section 148 of the Act (modification or waiver of rules) applies in relation to rules made under paragraph (1) as if references in that section to an authorised person were references to a certified person.

(3) Section 150 of the Act (actions for damages) applies in relation to a rule made under paragraph (1) as if the reference in subsection (1) of that section to an authorised person were a reference to a certified person.

(4) The Authority may, by notice in writing given to a certified person, require him—

- (a) to provide specified information or information of a specified description; or
- (b) to produce specified documents or documents of a specified description.

(5) Paragraph (4) applies only to information or documents reasonably required for the purposes of determining whether the certified person meets, or has met, the relevant conditions.

(6) Subsections (2), (5) and (6) of section 165 of the Act (Authority's power to require information) apply to a requirement imposed under paragraph (4) as they apply to a requirement imposed under that section.

(7) Section 166 of the Act (reports by skilled persons) has effect as if—

- (a) the reference in subsection (1) of that section to section 165 included a reference to paragraph (4) above; and
- (b) the reference in section 166(2)(a) of the Act to an authorised person included a reference to a certified person.

(8) Subsection (4) of section 168 of the Act (appointment of persons to carry out investigations in particular cases) has effect as if it provided for subsection (5) of that section to apply if it appears to the Authority that there are circumstances suggesting that a certified person may not meet, or may not have met, the relevant conditions.

(9) Sections 175 (information and documents: supplemental provisions), 176 (entry of premises under warrant) and 177 (offences) of the Act apply to a requirement imposed under paragraph (4) as they apply to a requirement imposed under section 165 of the Act (the reference in section 176(3)(a) to an authorised person being read as a reference to a certified person).

(10) In this article—

- (a) “specified”, in paragraph (4), means specified in the notice mentioned in that paragraph;
- (b) a certified person (“A”) meets the relevant conditions at any time if, at that time, paragraph (4), (5) or (6) of article 9C applies.

Supplemental

Rules prohibiting the issue of electronic money at a discount

9H.—(1) The Authority may make rules applying to authorised persons with permission to carry on an activity of the kind specified by article 9B, prohibiting the issue of electronic money having a monetary value greater than the funds received.

(2) Section 148 of the Act (modification or waiver of rules) applies in relation to rules made under paragraph (1).

False claims to be a certified person

9I. A person who is not a certified person is to be treated as guilty of an offence under section 24 of the Act (false claims to be authorised or exempt) if he—

- (a) describes himself (in whatever terms) as a certified person;
- (b) behaves, or otherwise holds himself out, in a manner which indicates (or which is reasonably likely to be understood as indicating) that he is a certified person.

Exclusion of electronic money from the compensation scheme

9J. The compensation scheme established under Part XV of the Act is not to provide for the compensation of persons in respect of claims made in connection with any activity of the kind specified by article 9B.

Record of certified persons

9K. The record maintained by the Authority under section 347 of the Act (public record of authorised persons etc.) must include every certified person.”

Agreeing to issue electronic money not to be a regulated activity

5. In article 64 of the principal Order (agreeing to carry on specified kinds of activity), after “article 5,” insert “9B,”.

Electronic money: the specified investment

6. After article 74 of the principal Order insert—

“Electronic money

74A. Electronic money.”