
STATUTORY INSTRUMENTS

2011 No. 99

The Electronic Money Regulations 2011

PART 3

PRUDENTIAL SUPERVISION AND PASSPORTING

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 (“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.

(4) Regulation 34 applies where an authorised electronic money institution wishes to exercise its passport rights through an agent.

Registration of EEA branch

29.—(1) If the Authority, taking into account any information received from the host 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 71, 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 the 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 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) Section 203 (power to prohibit the carrying on of Consumer Credit Act business)(**1**) and 204 (power to restrict the carrying on of Consumer Credit Act business)(**2**) of, and Schedule 16 (prohibitions and restrictions imposed by the Office of Fair Trading)(**3**) 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 in regulation 2(1) of the Electronic Money Regulations 2011) 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—

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

(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 2011)”.

(2) Sections 21 (businesses needing a licence)(**4**) and 39(1) (offences against Part 3)(**5**) of the Consumer Credit Act 1974(**6**) 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 Office of Fair Trading 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.

(1) 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 and by S.I. 2000/2952 and 2007/3300.

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

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

(4) Section 21 was amended by the Consumer Credit Act 2006, section 33(1).

(5) Section 39 was amended by the Enterprise Act 2002, section 278(1) and Schedule 25, paragraph 6(1) and (19).

(6) 1974 c. 39.