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STATUTORY INSTRUMENTS

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**2023 No. 790**

**The Electronic Money, Payment Card Interchange Fee and Payment Services (Amendment) Regulations 2023**

**Amendments to the Electronic Money Regulations 2011**

- 2.—(1) The Electronic Money Regulations 2011 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 by the Secretary of State with—
- (i) section 1 (target for 2050) of the Climate Change Act 2008(1), and
- (ii) section 5 (environmental targets: effect) of the Environment Act 2021(2),
- where the Authority considers the exercise of its functions to be relevant to the making of such a contribution;”;
- (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).
- (4) Section 1JA of the 2000 Act(3) 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(4)—
- (i) in sub-paragraph (1), omit the remaining paragraph (c)(5);
- (ii) after sub-paragraph (1), insert—
- “(1A) Section 137B(6) of the 2000 Act (FCA general rules: clients’ money, right to rescind etc) applies as if—

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(1) 2008 c. 27. Section 1 was amended by S.I. 2019/1056.

(2) 2021 c. 30.

(3) 2000 c. 8. Section 1JA was inserted by section 19 of the Bank of England and Financial Services Act 2016 (c. 14).

(4) Paragraph 2A was inserted by S.I. 2017/752.

(5) In paragraph 2A as originally inserted there were two paragraphs numbered (c) in sub-paragraph (1). The first paragraph (c) was omitted by S.I. 2018/1201.

(6) 2000 c. 8. Section 137B was substituted, together with the rest of Part 9A (sections 137A to 141A), for sections 138 to 164 by the Financial Services Act 2012 (c. 21), section 24(1).

- (a) references to authorised persons were references to authorised electronic money institutions and small electronic money institutions;
  - (b) after subsection (1) there were inserted—
    - “(1A) Rules relating to the safeguarding of relevant assets held by an authorised electronic money institution, a small electronic money institution or a relevant credit union (“a relevant institution”) may—
      - (a) make any provision in relation to those relevant assets which might be made under subsection (1) in relation to clients’ money;
      - (b) treat two or more relevant assets as being part of a single asset pool, and make provision for the distribution of assets in that pool;
      - (c) authorise the retention by a relevant institution of income or capital gains accruing in relation to relevant assets;
      - (d) make provision as to the distribution of such income or capital gains which are not to be retained by the relevant institution.”;
  - (c) in subsection (2) the references to “clients’ money” and “money” were read as including a reference to relevant assets;
  - (d) after subsection (3), there were inserted—
    - “(3A) “Relevant assets” means assets held by a relevant institution to satisfy its obligations to safeguard funds received—
      - (a) in exchange for electronic money that has been issued, or
      - (b) where no electronic money has been issued—
        - (i) from, or for the benefit of, a payment service user for the execution of a payment transaction, or
        - (ii) from a payment service provider for the execution of a payment transaction on behalf of a payment service user,including proceeds derived from the realisation of such assets.
    - (3B) Assets which may be “relevant assets” include—
      - (a) money;
      - (b) insurance policies, including rights arising under those policies;
      - (c) guarantees, including rights arising under those guarantees;
      - (d) other investments, whether or not specified by the Treasury under section 22 of the 2000 Act.
    - (3C) A “relevant credit union” means a credit union which issues electronic money.
    - (3D) In paragraph (1A)(b), “asset pool” means a collection of assets collectively owned by those persons whose funds the relevant institution is required to safeguard, and in which the relevant institution may also have an interest.”.
- (1B) Section 137P (control of information rules) of the 2000 Act applies as if—
- (a) references to authorised persons were references to authorised electronic money institutions and small electronic money institutions;
  - (b) 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), (1A) or (1B)”;
  - (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 (right to bring actions).”;
- (b) in paragraph 5, for sub-paragraph (ac) substitute—
  - “(ac) in section 340 (appointment)—
    - (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”;