STATUTORY INSTRUMENTS

2020 No. 1275

FINANCIAL SERVICES AND MARKETS

The Payment Services and Electronic Money (Amendment) Regulations 2020

Made - - - -	*12th November 2020*
Laid before Parliament	*16th November 2020*
Coming into force - -	*8th December 2020*

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

The Treasury make the following Regulations in exercise of the powers conferred by section 2(2) of that Act.

PART 1

Introductory Provisions

Citation and commencement

1.—(1) These Regulations may be cited as the Payment Services and Electronic Money (Amendment) Regulations 2020.

(2) These Regulations come into force on 8th December 2020.

PART 2

Amendments to the Electronic Money Regulations 2011

2. The Electronic Money Regulations 2011(**c**) are amended in accordance with regulations 3 and 4.

(**a**) S.I. 2012/1759 section 4.

(**b**) 1972 c. 68. The European Communities Act 1972 was repealed by section 1 of the European Union (Withdrawal) Act 2018 (c. 16) with effect from exit day, but saved with modifications until IP completion day by section 1A of that Act (as inserted by section 1 of the European Union (Withdrawal Agreement) Act 2020 (c.1)). Section 2(2) of the European Communities Act 1972 was amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7). By virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c. 51), regulations may be made under section 2(2) of the European Communities Act 1972 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 that Agreement signed at Brussels on 17th March 1993 (Cm 2183). Paragraph 1A was inserted into Schedule 2 by section 28 of the Legislative and Regulatory Reform Act 2006.

(**c**) S.I. 2011/99, amended by S.I. 2017/752; there are other amending instruments but none is relevant.

3. After regulation 24, insert—

"**Insolvency Regulations**

24A. Sections 93(4) and 233 to 236 of the Banking Act 2009(**a**) apply to authorised electronic money institutions and small electronic money institutions with the modifications set out in Schedule 2ZA.".

4. After Schedule 2, insert—

"SCHEDULE 2ZA

Regulation 24A

Application and modification of the Banking Act 2009

1. Section 93(4) of the Banking Act 2009 (interpretation: other expressions) applies as if—

(a) the reference to a bank were to an authorised electronic money institution or small electronic money institution;

(b) the reference to an agreement in paragraph (a) were to a contract for electronic money issuance or payment services; and

(c) in the closing words, from "for the purposes" to "the bank" were omitted.

2. Section 233 of the Banking Act 2009 (insolvency regulations) applies as if—

(a) references to investment bank insolvency regulations were to electronic money institution insolvency regulations;

(b) references to investment banks were to authorised electronic money institutions and small electronic money institutions;

(c) references to client assets were to relevant funds;

(d) in subsection (3)(c), the reference to clients were to electronic money holders and payment service users; and

(e) in subsection (4)—

(i) references to assets included references to money; and

(ii) in paragraph (b), for "those which an institution undertook to hold for clients" there were substituted "relevant funds".

3. Section 234 of the Banking Act 2009 (regulations: details) applies as if—

(a) references to investment bank insolvency regulations were to electronic money institution insolvency regulations;

(b) references to an investment bank were to an authorised electronic money institution or a small electronic money institution;

(c) in subsection (2)(a), the reference to a trustee of client assets were to a trustee in respect of relevant funds;

(d) in subsection (6)—

(i) references to assets included references to money;

(ii) for sub-paragraphs (a) and (b) there were substituted—

"(a) establishing a mechanism for determining which assets are held in an asset pool;

(**a**) 2009 c.1; section 234 was amended by the Financial Services Act 2012 (c.21), Schedule 17(4) paragraph 56 and section 235 was inserted by the Financial Services Act 2012 (c.21), Schedule 17(4) paragraph 57.

(b) establishing a mechanism for determining that assets are to be, or not to be, treated as part of an asset pool;

(ba) establishing a mechanism for determining whether an asset pool is sufficient to satisfy all the claims of the electronic money holders or payment service users in question;

(bb) for steps to be taken by the administrator, if it is determined that an asset pool is not sufficient to satisfy all the claims of the electronic money holders or payment service users in question;

(bc) about the constitution of an asset pool;"

(iii) in paragraphs (c) and (f), the references to client assets were to an asset pool; and

(iv) in paragraph (e), "financial" were omitted; and

(e) in subsection (7)(a), the reference to client assets were to relevant funds.

4. Section 235 of the Banking Act 2009 (regulations: procedure) applies as if—

(a) references to investment bank insolvency regulations were to electronic money institution insolvency regulations; and

(b) subsections (4), (5) and (6) were omitted.

5. Section 236 of the Banking Act 2009 (review) applies as if the reference to investment bank insolvency regulations were to electronic money institution insolvency regulations.

6. For the purposes of the modifications in this Schedule—

"relevant funds" has the meaning given to it in—

(a) regulation 20(1), in the case of funds of a kind mentioned in that provision, or

(b) regulation 23(1) of the Payment Services Regulations 2017, as applied and modified by regulation 20(6), in the case of funds of a kind mentioned in regulation 20(6); and

"asset pool" has the same meaning as in—

(a) regulation 24(4), in relation to relevant funds under regulation 20(1), or

(b) regulation 23(18) of the Payment Services Regulations 2017, in relation to relevant funds under regulation 23(1) of those Regulations, each as applied and modified by regulation 20(6).".

PART 3

Amendments to the Payment Services Regulations 2017

5. The Payment Services Regulations 2017(**a**) are amended in accordance with regulations 6 and 7.

6. After regulation 23, insert—

"**Insolvency Regulations**

23A. Sections 93(4) and 233 to 236 of the Banking Act 2009 apply to authorised payment institutions and small payment institutions with the modifications set out in Schedule 3A.".

7. After Schedule 3, insert—

(**a**) S.I. 2017/752, amended by S.I. 2017/1173; there are other amending instruments but none is relevant.

"SCHEDULE 3A

Regulation 23A

Application and modification of the Banking Act 2009

Insolvency regulations

1. Section 93(4) of the Banking Act 2009 (interpretation: other expressions) applies as if—

(a) the reference to a bank were to an authorised payment institution or small payment institution;

(b) the reference to an agreement in paragraph (a) were to a contract for payment services; and

(c) in the closing words, from "for the purposes" to "the bank" were omitted.

2. Section 233 of the Banking Act 2009 (insolvency regulations) applies as if—

(a) references to investment bank insolvency regulations were to payment institution insolvency regulations;

(b) references to investment banks were to authorised payment institutions and small payment institutions;

(c) references to client assets were to relevant funds;

(d) in subsection (3)(c), the reference to clients were to payment service users; and

(e) in subsection (4)—

(i) references to assets included references to money; and

(ii) in paragraph (b), for "those which an institution undertook to hold for clients" there were substituted "relevant funds".

3. Section 234 of the Banking Act 2009 (regulations: details) applies as if—

(a) references to investment bank insolvency regulations were to payment institution insolvency regulations;

(b) references to an investment bank were to an authorised payment institution or a small payment institution;

(c) in subsection (2)(a), the reference to a trustee of client assets were to a trustee in respect of relevant funds;

(d) in subsection (6)—

(i) references to assets included references to money;

(ii) for paragraphs (a) and (b) there were substituted—

"(a) establishing a mechanism for determining which assets are held in the asset pool;

(b) establishing a mechanism for determining that assets are to be, or not to be, treated as part of the asset pool;

(ba) establishing a mechanism for determining whether the asset pool is sufficient to satisfy all the claims of the payment service users in question;

(bb) for steps to be taken by the administrator, if it is determined that the asset pool is not sufficient to satisfy all the claims of the payment service users in question;

(bc) about the constitution of the asset pool;";

(iii) in paragraphs (c) and (f), the references to client assets were to the asset pool; and

(iv) in paragraph (e), "financial" were omitted; and

(e) in subsection (7)(a), the reference to client assets were to relevant funds.

4. Section 235 of the Banking Act 2009 (regulations: procedure) applies as if—

(a) references to investment bank insolvency regulations were to payment institution insolvency regulations; and

(b) subsections (4), (5) and (6) were omitted.

5. Section 236 of the Banking Act 2009 (review) applies as if the reference to investment bank insolvency regulations were to payment institution insolvency regulations.

6. For the purposes of the modifications in this Schedule—

"relevant funds" has the meaning given to it in regulation 23(1) of these Regulations, and

"asset pool" has the meaning given to it in regulation 23(18) of these Regulations.".

Michael Tomlinson
Rebecca Harris
12th November 2020 Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations further implement obligations in Directive 2015/2366/EU of the European Parliament and of the Council of 25th November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No. 1093/2010, and repealing Directive 2007/64/EC (OJ L 337 23.12.2015, p.35). This Directive provides for regulation of payment services in the internal market.

Part 2 of these Regulations provides for the amendment of the Electronic Money Regulations 2011 (S.I. 2011/99) to apply specified provisions in the Banking Act 2009 (c.1) to certain types of electronic money institution (authorised electronic money institutions and small electronic money institutions), modifying those provisions to allow them to apply appropriately for those institutions. The application of the Banking Act provisions will allow HM Treasury to make regulations which alter existing insolvency procedures insofar as they apply to authorised electronic money institutions and small electronic money institutions. The Treasury may modify insolvency law as it applies to those institutions, or alternatively, set up a new insolvency scheme.

Part 3 of these Regulations provides for the amendment of the Payment Services Regulations 2017 (S.I. 2017/752) to apply specified provisions in the Banking Act 2009 to certain types of payment institution (authorised payment institutions and small payment institutions), modifying those provisions to allow them to apply appropriately for those institutions. The application of the Banking Act provisions will allow HM Treasury to make regulations which alter existing insolvency procedures insofar as they apply to authorised payment institutions and small payment institutions. The Treasury may modify insolvency law as it applies to those institutions, or alternatively, set up a new insolvency scheme.

An impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from Her Majesty's Treasury, 1 Horse Guards Road, London SW1A 2HQ or on HM Treasury's website (www.gov.uk/treasury), and is published with the Explanatory Memorandum alongside the instrument on www.legislation.gov.uk.

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