

## Chapter 3A

# Guidance on the scope of the Electronic Money Regulations 2011

## 3A.2 General issues

### Q2. Why does it matter whether or not we fall within the scope of the Electronic Money Regulations?

It matters because if you issue *electronic money* in the *United Kingdom* and do not fall within an exclusion or exemption you must be:

- (a) an *authorised electronic money institution*; or
- (b) a *small electronic money institution*; or
- (c) an *EEA authorised electronic money institution*; or
- (d) a *credit institution*; or
- (e) the Post Office Limited; or
- (f) the Bank of England or a central bank when not acting in its capacity as a monetary authority or other public authority; or
- (g) a government department or local authority when acting in its capacity as a public authority; or
- (h) a *credit union*, municipal bank or the National Savings Bank.

Otherwise you risk committing a criminal offence under regulation 63.

### Q3. How much can we rely on these Q&As?

The answers given in these Q&As represent the *FCA's* views but the interpretation of financial services legislation is ultimately a matter for the courts. How the scope of *Electronic Money Regulations* affects the regulatory position of any particular *person* will depend on their individual circumstances. If you have doubts about your position after reading these Q&As, you may wish to seek legal advice. The Q&As do not purport to be exhaustive and are not a substitute for reading the relevant legislation. In addition to *FCA* guidance, some of the *Electronic Money Directive* provisions may be the subject of guidance or communications by the European Commission.

### Q4. As an electronic money issuer am I carrying on the regulated activity of accepting deposits when I receive a sum in exchange for electronic money?

No, provided the sum paid over is exchanged immediately for *electronic money*; see article 9A of the *Regulated Activities Order*.

Some *electronic money* products may be charged up by means of scratch cards that can be purchased from shops. The price paid for the card is the monetary value of the *electronic money*. The card contains a number. The purchaser then enters the number on a web site to activate the *electronic money* account. There is thus a delay between the payment for the *electronic money* and its use by the holder. In our view, this delay does not make the payment for the *electronic money* a *deposit*. This is because the

means of spending the *electronic money* is put into the hands of the purchaser when they purchase the card.

**Q5. I intend to issue electronic money in the United Kingdom. How does the authorisation and registration process apply to me?**

It depends on a number of factors:

- i) Unless you are a person falling within ii) to iv) below you must apply under the *Electronic Money Regulations* for either:
  - authorisation to be an *authorised electronic money institution* (see regulation 6 for the relevant conditions); or
  - registration to be a *small electronic money institution* (see regulation 13).
- ii) If you are a *credit union*, municipal bank or a *UK or non-EEA full credit institution*:
  - authorisation and variation of permission remains that imposed by Part 4A of the Act. This means you will need to have a separate *Part 4A permission* in order to issue *electronic money*;
  - where you issue *electronic money* you will be subject to the provisions on issuance and redeemability of *electronic money* in the *Electronic Money Regulations*;
  - note that you may also be subject to the conduct of business requirements in the *Payment Services Regulations*.
- iii) If your head office is located in an *EEA state* other than the *United Kingdom* you cannot apply for authorisation or registration under the *Electronic Money Regulations*. However, you may be entitled to issue *electronic money* in the *United Kingdom* as an *EEA authorised electronic money institution*, in which case the Competent Authority in your Home State will be responsible for your authorisation.
- iv) Government departments, local authorities, the Post Office Limited and the National Savings Bank cannot apply for authorisation or registration under the *Electronic Money Regulations* but they must give notice to the *FCA* if they issue or propose to issue *electronic money*.

Transitional arrangements may also be relevant, see ■ PERG 3A.7.

**Q6. We are a payment institution. How will the Electronic Money Regulations apply to us?**

If you are a *payment institution* that does not intend to issue *electronic money* or act as agent for an *electronic money institution* the *Electronic Money Regulations* are unlikely to apply to you.

If you are a *payment institution* that wishes to also issue *electronic money* then, in our view, you should cancel your authorisation or registration as a *payment institution* and apply to be an *electronic money institution*. An *electronic money institution* does not need to be authorised or registered under the *Payment Services Regulations* to provide *payment services*.

**Q7. As an electronic money institution how will the Payment Services Regulations apply to us?**

The issuance of *electronic money* is not itself a *payment service* but it is likely to entail the provision of *payment services*. For example, issuing a *payment instrument* is a *payment service* and *electronic money* is likely to be issued on a *payment instrument* in order to make a payment transaction. See Q20 at ■ PERG 15 for more detail on what amounts to issuing *payment instruments*.

As an *electronic money institution* you are permitted to engage in the provision of *payment services* as well as other activities, see regulation 32 and Q19 below, without needing to be separately authorised or registered under the *Payment Services Regulations*.

The conduct of business requirements in Parts 6 and 7 of the *Payment Services Regulations* apply to *electronic money issuers*.

Transitional arrangements may also be relevant; see ■ PERG 3A.7.

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