

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) (d) • a *credit institution*; or
- (e) • the Post Office Limited; or
- (f) • the Bank of England 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 (from which the *Electronic Money Regulations* are derived) 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) 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) ii) If you are a *credit union*, municipal bank or a *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) 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.