

FEES (ELECTRONIC MONEY APPLICATION FEES) INSTRUMENT 2011

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in or under:
- (1) the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 156 (General supplementary powers);
 - (b) section 157 (Guidance); and
 - (c) paragraph 17(1) (Fees) of Schedule 1 (The Financial Services Authority);
 - (2) the following provisions of the Payment Services Regulations 2009 (SI 2009/209):
 - (a) regulation 82 (Reporting requirements);
 - (b) regulation 92 (Costs of supervision); and
 - (c) regulation 93 (Guidance); and
 - (3) the following provisions of the Electronic Money Regulations 2011 (SI 2011/99):
 - (a) regulation 59 (Costs of supervision); and
 - (b) regulation 60 (Guidance).
- B. The rule-making powers listed above are specified for the purposes of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 10 February 2011.

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Fees manual (FEES) is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Fees (Electronic Money Application Fees) Instrument 2011.

By order of the Board
9 February 2011

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Insert the following new definition in the appropriate alphabetical position; the text is not underlined.

- fee-paying electronic money issuer* any of the following when they issue *electronic money*:
- (a) an *authorised electronic money institution*;
 - (b) a *small electronic money institution*;
 - (c) an *EEA authorised electronic money institution*;
 - (d) a *full credit institution*, including a branch of the *full credit institution* within the meaning of article 4(3) of the *BCD* which is situated within the *EEA* and which has its head office in a territory outside the *EEA* in accordance with article 38 of the *BCD*;
 - (e) the Post Office Limited;
 - (f) the Bank of England, when not acting in its capacity as a monetary authority or carrying out functions of a public nature;
 - (g) government departments and local authorities, when carrying out functions of a public nature;
 - (h) a *credit union*;
 - (i) a municipal bank; and
 - (j) the National Savings Bank.

A full credit institution that is an EEA firm is only a fee-paying electronic money issuer if it is exercising an EEA right in accordance with Part II of Schedule 3 to the Act (Exercise of passport rights by EEA firms) to issue electronic money in the United Kingdom. An EEA authorised electronic money institution is only a fee-paying electronic money issuer if it is exercising a right under Article 3 of the Electronic Money Directive to issue electronic money in the United Kingdom.

Amend the following definition as shown.

- firm* (1) an *authorised person*, but not a *professional firm*

unless it is an *authorised professional firm* (see also *GEN 2.2.18R* for the position of an authorised partnership or unincorporated association which is dissolved).

...

- (5) (in *FEES 3* to *FEES 5*) includes a *fee-paying payment service provider* in accordance with *FEES 3.1.1AR*, *FEES 4.1.1AR* and *FEES 5.1.1AR* and in *FEES 3* also includes a *fee-paying electronic money issuer*.

Annex B

Amendments to the Fees manual (FEES)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

2.1.5 G Paragraph 17 of Schedule 1 to and section 99 of the *Act*, ~~and~~ regulation 92 of the *Payment Services Regulations* and regulation 59 of the *Electronic Money Regulations* enable the *FSA* to charge fees to cover its costs and expenses in carrying out its functions. The corresponding provisions for the *FSCS* levy, *FOS* levies and case fees and *CFEB* levies are set out in *FEES* 6.1, *FEES* 5.2 and *FEES* 7.1.4G respectively. *Fee-paying payment service providers* and *fee-paying electronic money issuers* are not required to pay the *FSCS* levy but are liable for *FOS* levies.

2.1.5A G Regulation 92 of the *Payment Services Regulations* ~~provides~~ and regulation 59 of the *Electronic Money Regulations* each provide that the functions of the *FSA* under the respective regulations are treated for the purposes of paragraph 17 of Schedule 1 to the *Act* as functions conferred on the *FSA* under the *Act*. Paragraphs 17(2) and (3) however, have not been included ~~by the *Payment Services Regulations*~~. These are, respectively, the *FSA* *FSA's* obligation to ensure that the amount of penalties received or expected to be received are not to be taken into account in determining the amount of any fee payable and the provision that allows fees to be raised to repay borrowed monies in respect of expenses incurred, before or after the coming into force of the *Act* or the Bank of England Act 1998.

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2.1.11 G Whilst paragraph 17(2) of Schedule 1 to the *Act* has not been applied to the fee-raising power of the *FSA* under the *Payment Services Regulations* and the *Electronic Money Regulations*, regulation 92(2) and 59(2) of these regulations respectively ~~requires~~ require the *FSA* to apply amounts paid to it by way of penalties imposed under ~~the~~ these regulations towards expenses incurred in carrying out its functions under the regulations, or for any incidental purpose.

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Recovery of Fees

2.2.3 G Paragraph 17(4) and paragraph 19B of Schedule 1 to and section 99(5) of the *Act* permit the *FSA* to recover fees (including fees relating to *payment services*, the issuance of *electronic money* and, where relevant, *FOS* levies and *CFEB* levies), and section 213(6) permits the *FSCS* to recover shares of the *FSCS* levy payable, as a debt owed to the *FSA* and *FSCS* respectively, and the *FSA* and the *FSCS*, as relevant, will consider taking action for recovery (including interest) through the civil courts. Also, the *FOS Ltd* (in

respect of case fees) may take steps to recover any money owed to it (including interest).

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3.1.1 R This chapter applies to every ~~person~~ *person* set out in ~~FEES 1.1.2R(1)~~ column 1 of the Table of application, notification and vetting fees in FEES 3.2.7R.

3.1.1A R A reference to "*firm*" in this chapter includes a reference to a *fee-paying payment service provider* and a *fee-paying electronic money issuer* ~~but not one which is a small e-money issuer.~~

3.1.2 G This chapter does not apply to ~~an EEA firm that wishes to exercise an EEA right:~~

(a) an EEA firm that wishes to exercise an EEA right; or

(b) an EEA authorised payment institution; or

(c) an EEA authorised electronic money institution.

...

3.1.4 G Most of the detail of what fees are payable by the persons referred to in FEES 3.1.3G is set out in FEES 3 Annex 1R – ~~FEES 3 Annex 6R~~ 10R.

...

3.1.6B G Application fees for authorisation or registration under the *Electronic Money Regulations* are set out in FEES 3 Annex 10R. The fee depends on whether the firm is an *authorised electronic money institution* or a *small electronic money institution*.

...

3.2.5 G (1) The appropriate authorisation or registration fee is an integral part of an application for, or an application for a variation of, a *Part IV permission* or authorisation, registration or variation under the *Payment Services Regulations* or the *Electronic Money Regulations*. Any application received by the FSA without the accompanying appropriate fee, in full and without deduction (see FEES 3.2.1R), will not be treated as an application made, incomplete or otherwise, in accordance with section 51(3)(a), or section 44, of the *Act* or regulation 5(3) or 12(3) of the *Payment Services Regulations* or regulation 5 or 12 of the *Electronic Money Regulations*. Where this is the case, the FSA will contact the applicant to point out that the application cannot be progressed until the appropriate fee has been received. In the event that the appropriate authorisation fee, in full and without deduction, is not forthcoming, the application will be returned to the applicant and no application will have been made.

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3.2.7 R Table of application, notification and vetting fees

(1) Fee payer	(2) Fee payable	Due date
...		
(zf) An applicant for a <i>ceding insurer's waiver</i>
<u>(zg) An applicant for authorisation as an authorised electronic money institution under regulation 5 of the <i>Electronic Money Regulations</i>.</u>	<u>The amount set out in FEES 3 Annex 10R. Where an application only involves a simple change of legal status as set out in FEES 3 Annex 1R Part 6, the fee payable is 50% of the tariff that would otherwise be payable in FEES 3 Annex 10R.</u>	<u>On or before the date the application is made.</u>
<u>(zh) An applicant for registration as a small electronic money institution under regulation 12 of the <i>Electronic Money Regulations</i>.</u>	<u>The amount set out in FEES 3 Annex 10R. Where an application only involves a simple change of legal status as set out in FEES 3 Annex 1R Part 6, the fee payable is 50% of the tariff that would otherwise be payable in FEES 3 Annex 10R.</u>	<u>On or before the date the application is made.</u>
<u>(zi) An application by a small electronic money institution for authorisation as an authorised money institution because regulation 16 of the <i>Electronic Money Regulations</i> applies.</u>	<u>The amount set out in FEES 3 Annex 10R.</u>	<u>On or before the date the application is made.</u>
<u>(zj) An authorised electronic money institution applying to vary its authorisation under regulation 8 of the <i>Electronic Money Regulations</i>.</u>	<u>The amount set out in FEES 3 Annex 10R.</u>	<u>On or before the date the application is made.</u>

<u>(zk) A small electronic money institution applying to vary its registration under regulation 12 of the <i>Electronic Money Regulations</i>.</u>	<u>The amount set out in FEES 3 Annex 10R.</u>	<u>On or before the date the application is made.</u>
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3 Annex 1R Authorisation fees payable

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Part 6 – Change of legal status

An application involving only a simple change of legal status for the purposes of <i>FEES</i> 3.2.7R(a), <i>FEES</i> 3.2.7R(y), and <i>FEES</i> 3.2.7R(za), <i>FEES</i> 3.2.7R(zg) and <i>FEES</i> 3.2.7R(zh) is from an applicant:	
(1) which is a new legal entity intending to carry on the business, using the same business plan, of an existing <i>firm</i> with no outstanding regulatory obligations cancelling its <i>Part IV permission</i> , or authorisation or registration under the <i>Payment Services Regulations</i> or the <i>Electronic Money Regulations</i> , and	
(2) which is to:	
	(a) have the same or narrower <i>permission</i> , scope of authorisation or registration under the <i>Payment Services Regulations</i> or <i>Electronic Money Regulations</i> and the same <i>branches</i> (if any), as the <i>firm</i> ;
	(b) assume all of the rights and obligations in connection with <u>any of the regulated activities</u> , and <i>payment services</i> and <i>electronic money issuance</i> carried on by the <i>firm</i> ;
...	

...

After FEES 3 Annex 9R, insert the following new Annex. The text is not underlined.

3 Annex 10R Fees payable for authorisation as an authorised electronic money institution or registration as a small electronic money institution or variation thereof in accordance with the *Electronic Money Regulations*

Authorisation, registration and variation fees payable

Application type for authorisation, registration or variation under Part 2 of the <i>Electronic Money Regulations</i>	Amount payable
(1) <i>small electronic money institution</i>	£1,000

(2) <i>authorised electronic money institution</i>	£5,000
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...

After FEES TP 5 insert the following new transitional provisions. The text is not underlined.

TP 6 Transitional arrangements in relation to the introduction of the Electronic Money Regulations

6.1 Introduction

6.1.1 G *FEES* TP 6 deals with transitional arrangements relating to the introduction of the *Electronic Money Regulations* in 2011.

6.2 Application fees

6.2.1 G Under regulation 74 of the *Electronic Money Regulations* a person who before 30th April 2011 issued electronic money in accordance with a *Part IV permission* may notify the *FSA* that it wishes to be authorised as an *authorised electronic money institution* or to be registered as a *small electronic money institution*. This covers the category of *firm* called an ELMI. That category is abolished by the *Electronic Money Regulations*.

6.2.2 G No fee under *FEES* 3 is payable for that notification.

6.2.3 G Before it was amended by the *Electronic Money Regulations*, article 9C of the *Regulated Activities Order* allowed a small electronic money issuer to obtain a certificate from the *FSA* that allowed it to issue electronic money without being authorised. Regulation 76 of the *Electronic Money Regulations* applies to such an issuer. Such an issuer can apply under the *Electronic Money Regulations* to become an *authorised electronic money institution* or to be registered as a *small electronic money institution*. If it does, a fee is payable under *FEES* 3 in the same way as it is for any other new application.

Amend the following as shown.

Schedule 4 Powers exercised

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Sch 4.2	G	The following additional powers have been exercised by the <i>FSA</i> to make the <i>rules</i> in <i>FEES</i> :
		...
		Section 123 (Role of the FSCS) of the Banking Act 2009
		<u>Regulation 59 (Costs of supervision) of the <i>Electronic Money</i></u>

	<u>Regulations</u>
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...

Sch 4.4

G

The following additional ~~power powers~~ has have been exercised by the *FSA* to make ~~the guidance~~ guidance in *FEES*:

	Regulation 93 (Guidance) of the <i>Payment Services Regulations</i>
	<u>Regulation 60 (Guidance) of the <i>Electronic Money Regulations</i></u>