



# CUMMINGS PEPPERDINE ON E-MONEY

## WHAT IS ELECTRONIC MONEY?

Historically, electronic money (e-money) has been viewed as an electronic surrogate for coins and banknotes. The current legal definition of electronic money expands this idea and now e-money includes magnetically stored value, issued for the purpose of making payment transactions.

This definition of electronic money is set out in regulation 2(1) of the Electronic Money Regulations 2011 (SI 2011/99) (EMRs). This defines e-money as electronically (including magnetically) stored monetary value, as represented by a claim on the electronic money issuer, which is:

- issued on receipt of funds for the purpose of making payment transactions.
- accepted as a means of payment by a person other than the electronic money issuer.

Some exemptions are found in article 3 of the EMRs and these include monetary value stored on instruments that can be used to acquire goods or services only:

- in or on the electronic money issuer's premises; or
- under a commercial agreement with the electronic money issuer, either within a limited network of service providers or for a limited range of goods or services.

Also excluded is monetary value that is used to make payment transactions executed by means of any telecommunication, digital or IT device, where the goods or services purchased are delivered to and are to be used through a telecommunication, digital or IT device, provided that the telecommunication, digital or IT operator does not act only as an intermediary between the payment service user and the supplier of goods and services.

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## THE FCA

The FCA authorises, and supervises the conduct of those firms which provide certain types of financial services. Including within the FCA's regulatory perimeter are those firms which make payment transfers on behalf of customers (PSPs) and/or those which issue e-money and are e-money institutions (EMIs).

Most electronic money issuers are required to be either authorised or registered by the FCA and to comply with certain conduct of business requirements about issuing and redeeming electronic money.

Businesses wishing to start issuing electronic money for the first time will need to apply for authorisation or registration with the FCA (please see below). The issuing of electronic money by banks and building societies continues to be a regulated activity under the Financial Services and Markets Act 2000 (FSMA). These entities therefore require a Part 4A permission as well, in other words those conducting more mainstream investment activities. Details of these activities and making an FCA application for them can be found in our Pep Publications at:

[cumingspepperdine.com/wp-content/uploads/2022/01/Cummings-Pepperdine-on-FCA-Regulated-Activities-and-Investments.pdf](https://cumingspepperdine.com/wp-content/uploads/2022/01/Cummings-Pepperdine-on-FCA-Regulated-Activities-and-Investments.pdf)

and

[cumingspepperdine.com/wp-content/uploads/2022/02/Cummings-Pepperdine-Making-an-FCA-Application.pdf](https://cumingspepperdine.com/wp-content/uploads/2022/02/Cummings-Pepperdine-Making-an-FCA-Application.pdf)

## PSPs

The main pieces of regulation applicable to PSPs are the Payment Services Regulations 2017 (SI 2017/752) (PSRs 2017) and certain parts of the FCA Handbook.

These regulations set out the authorisation and prudential requirements for payment institutions and set the conduct of business rules for PSPs. Any firm which acts as a PSP must be regulated by the FCA unless it falls into one of the exemptions found in the PSRs 2017. Firms which are regulated are subject to complex, detailed

and strenuous rules on the provision of payment services, including specific requirements for payment transactions.

## EMIs

While the main pieces of regulation applicable to EMIs are the EMRs, some sections of the PSRs 2017 and parts of the FCA Handbook also apply.

As can be seen from the above, the payment services and e-money requirements are closely interlinked. Indeed, many EMIs will be carrying on payment services in addition to issuing e-money, and so will need to be familiar with both sets of regulation.

## EMR AUTHORISATION AND REGISTRATION

The EMRs create a separate authorisation and registration regime for electronic money issuers depending on the size of their business (please see below). Some of the key areas which they cover are:

- the definition of electronic money (please see above);
- the persons that must be authorised or registered under the EMRs when they issue electronic money (see further 'Who are electronic money issuers under the EMRs?' below);
- the standards that must be met by electronic money institutions for authorisation or registration to be granted;
- capital requirements and safeguarding requirements for electronic money institutions;
- rules relating to issuing and redeeming electronic money for all electronic money issuers (that is, electronic money institutions and credit institutions, credit unions and municipal banks); and
- the regulatory powers and functions in relation to supervision and enforcement in this area.

## FCA AUTHORISATION AND REGISTRATION OF EMIs

EMIs must be authorised or registered to issue e-money and undertake payment services under the EMRs.

EMIs are defined in the EMRs and generally fall into the following categories when they issue electronic money:

- Authorised electronic money institutions - these are subject to the full regulatory regime, including the capital, safeguarding and conduct of business requirements of the EMRs. They are allowed to provide payment services that are not related to issuing electronic money (unrelated payment services), subject to any requirements imposed on their authorisation, provided that the FCA is notified of the types of payment services they wish to provide; and
- Small electronic money institutions – these are businesses which have average outstanding electronic money that does not exceed Euro 5 million. They are registered with the FCA in accordance with regulation 13 of the EMRs. The registration process is cheaper and more straightforward than authorisation and although small electronic money institutions are subject to capital requirements, all of them are subject to the requirements relating to safeguarding funds received in exchange for electronic money and conduct of business. Small electronic money institutions can also provide unrelated payment services, but only if the average monthly total of payment transactions does not exceed Euro 3 million, on a rolling 12 month basis and if they notify the FCA of the types of payment services they wish to provide.

## FCA RULES

PERG 3A sets out the FCA's guidance on the scope of the EMRs . Set out as a series of Q&As, it covers key areas such as:

- general issues (PERG 3A.2);
- the definition of electronic money (PERG 3A.3);
- small electronic money institutions, mixed businesses, distributors, agents and exempt bodies (PERG 3A.4);
- exclusions (PERG 3A.5);
- territorial scope (PERG 3A.6);
- transitional arrangements (PERG 3A.7).

As of 1 August 2019, the FCA extended general standards and communication rules to the payment services and e-money sectors which affect the provision of payment services and e-money by credit institutions and the conduct of payment institutions, electronic money institutions and registered account information service providers.

The key changes include:

- the extension of the application of its Principles for Businesses to the provision of payment services and the issuance of e-money by certain PSPs and e-money issuers;
- the extension of the application of communications rules and guidance in Chapter 2 of BCOBS to communications with payment service and e-money customers;
- rules and guidance on the communication and marketing of currency transfer services, applicable to payment services and the issuance of e-money involving a currency conversion.

## FCA APPROACH DOCUMENT

The FCA has published a payment services and electronic money approach document, which provides an overview of the payment services and e-money regulatory regime. It is a useful document for a number of reasons, primarily because it explains their approach to the implementation of both the PSRs 2017 and the EMRs, and the relatively small number of payment services and e-money-related rules which are set out in its Handbook.

This document looks at a number of regulatory topics including:

- authorisation and registration;
- conduct of business requirements;
- passporting;
- reporting and notifications;
- safeguarding requirements; and
- appointing agents.

## CRYPTO BUSINESS AND CRYPTOASSETS

Cryptoassets a variety of features and some are regulated under the EMRs or PSRs 2017.

EMIs that do not issue e-money (and so are not caught by the EMRs), but which provide payment services in connection with a cryptoasset (whether or not the cryptoasset is regulated), may need to be registered under the PSRs for the payment services aspects of their businesses.

Cryptoasset tokens have a variety of sometimes multiple uses, which are typically as a means of exchange for investment and to support capital raising (as an alternative or addition to more traditional methods).

Not all types of crypto assets are regulated, but in general, tokens that meet the definition of e-money under the EMRs are regulated. Note that these are e-money tokens and not e-money itself.

## E-MONEY TOKENS

An e-money token is any token that meets the definition of e-money under the EMRs because it is:

“electronically (including magnetically) stored monetary value, as represented by a claim on the electronic money issuer, which is issued on receipt of funds for the purpose of making payment transactions; accepted as a means of payment by a person other than the electronic money issuer; ...” and is not otherwise excluded under the EMRs.

E-money must enable users to make payment transactions with third parties, so must be accepted by more parties than just the issuer. It includes fiat balances in various types of online wallets or prepaid card.

Electronic storage of monetary value includes using DLT and cryptographically secured tokens to represent fiat funds.

This means that cryptoassets that establish a new sort of unit of account, rather than representing fiat funds, are unlikely to be e-money, unless the value is pegged to fiat currency.

**For more information, visit our website to read our [Pep Publications](#) and listen to [The Hugely Popular Cummings Pepperdine Crypto Questions](#)**



The Cummings Pepperdine Online Training Programme, includes sections focussing on the E Money, has been designed by a specialist board of compliance consultants, solicitors, chartered accountants, tax advisors and regulatory consultants. We believe that we are the only firm which offers training created by this range of qualified advisors.

[Click here now to make it all work](#)

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#### **Cummings Pepperdine LLP - May 2022**

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