
STATUTORY INSTRUMENTS

2019 No. 405

The Financial Services Contracts (Transitional and Saving Provision) (EU Exit) Regulations 2019

PART 5

Amendment of the Trade Repositories (Amendment and Transitional Provision) (EU Exit) Regulations 2018

Temporary registration for run-off period

11. In Part 3 of the Trade Repositories (Amendment and Transitional Provision) (EU Exit) Regulations 2018(1) (transitional and saving provision), after Chapter 2 (temporary registration) insert—

“CHAPTER 2A

Temporary registration for run-off period

Temporary deemed registration under the European Markets Infrastructure Regulation for run-off period

13A.—(1) A person to whom this regulation applies is to be treated as if the person is registered as a trade repository under Chapter 1 of Title 6 of the European Markets Infrastructure Regulation.

(2) Reference in an enactment to a person registered as a trade repository under that Chapter, however expressed, is to be read, unless the contrary intention appears, as including a person treated as being so registered by virtue of this regulation.

Application of regulation 13A

13B. Regulation 13A applies to a person—

- (a) who satisfies the condition in regulation 13C;
- (b) for the period determined in accordance with regulation 13D.

Condition to be satisfied for regulation 13A to apply

13C. The condition is that the FCA has determined that regulation 9 should cease to apply to a person in accordance with regulation 13, or that the FCA has withdrawn registration of a person to whom regulation 9 applies in accordance with Article 71 of the European Market Infrastructure Regulation.

Period during which regulation 13A is to apply

13D. For the purposes of regulation 13B(b), the period is a period of one year beginning with the day on which the condition in regulation 13C is satisfied, or such shorter period as the FCA may determine in a particular case.

Transitional arrangements during the run-off period

13E.—(1) The FCA may make such transitional arrangements imposing requirements in respect of the registration of a person to whom regulation 13A applies as it considers necessary or expedient.

- (2) A requirement may, in particular, be imposed—
 - (a) so as to require the person concerned to take specified action, including to make arrangements for the transfer of data stored by the person to a person to whom regulation 9 applies or a person which is registered as a trade repository under Chapter 1 of Title 6 of the European Markets Infrastructure Regulation, or
 - (b) so as to require the person concerned to refrain from taking specified action.
- (3) A requirement may be imposed by reference to the person's relationship with—
 - (a) the person's group, or
 - (b) other members of the person's group.

Notification of a decision to impose requirements under regulation 13E

13F.—(1) This regulation applies to an exercise of the FCA's power to impose a requirement in respect of the registration of a person ('P') in accordance with regulation 13E.

- (2) The imposition of the requirement takes effect—
 - (a) immediately, if the notice given under paragraph (4) states that that is the case,
 - (b) on such date as may be specified in the notice, or
 - (c) if no date is specified in the notice, when the matter to which the notice relates is no longer subject to review.
- (3) The imposition of a requirement may be expressed to take effect immediately (or on a specified date) only if the FCA, having regard to the ground on which it is exercising its power, reasonably considers that it is necessary for the imposition of the requirement to take effect immediately (or on that date).
- (4) If the FCA proposes to impose, or imposes a requirement, it must give P written notice.
- (5) The notice must—
 - (a) give details of the requirement,
 - (b) state the FCA's reasons for imposition of the requirement,
 - (c) inform P that P may make representations to the FCA within such period as may be specified in the notice, whether or not P has referred the matter to the Upper Tribunal ("the Tribunal"),
 - (d) inform P of when the imposition of the requirement takes effect, and
 - (e) inform P of P's right to refer the matter to the Tribunal.
- (6) The FCA may extend the period allowed under the notice for making representations.
- (7) If, having considered any representations made by P, the FCA decides—

- (a) to impose the requirement, in the way proposed, or
- (b) if the requirement has been imposed, not to rescind the imposition of the requirement,

it must give P written notice.

- (8) If, having considered any representations made by P, the FCA decides—
 - (a) not to impose the requirement in the way proposed,
 - (b) to impose a different requirement, or
 - (c) to rescind a requirement which has effect,

it must give P written notice.

(9) A notice under paragraph (7) must inform P of P's right to refer the matter to the Tribunal.

(10) A notice under paragraph (8)(b) must comply with paragraph (5).

(11) If a notice informs P of P's right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.

Right to refer to the Tribunal

13G. P (within the meaning of regulation 13F) may refer to the Tribunal the FCA's decision to impose a requirement under regulation 13E.

Application of Part 9 of the Financial Services and Markets Act 2000

13H.—(1) Part 9 of the Financial Services and Markets Act 2000 ('the Act') (hearings and appeals) applies in respect of a reference to the Tribunal under regulation 13G as it applies in respect of a reference to the Tribunal under the Act but with the following modifications.

- (2) In section 133 (proceedings before Tribunal: general provisions)—
 - (a) in subsection (1)—
 - (i) omit "(whether made under this or any other Act)";
 - (ii) in paragraph (a), omit "or the PRA";
 - (iii) omit paragraphs (b) and (c);
 - (b) omit subsection (1A);
 - (c) in subsection (2), omit ", (b) or (c)";
 - (d) omit subsection (5);
 - (e) in subsection (6), omit "In any other case,";
 - (f) omit subsection (7A).

(3) Omit section 133A (proceedings before the Tribunal: decision and supervisory notices, etc).

- (4) In section 133B (offences), in subsection (1)—
 - (a) in paragraph (a), omit "or the PRA";
 - (b) omit paragraphs (b) and (c)."