

Draft Regulations laid before Parliament under paragraph 1(1) and (2) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2018 No. 0000

**EXITING THE EUROPEAN UNION
FINANCIAL SERVICES AND MARKETS**

**The Trade Repositories (Amendment and
Transitional Provision) (EU Exit) Regulations 2018**

*Made - - - - - ***
Coming into force in accordance with regulation 1(2)
and (3)*

The Treasury make the following Regulations in exercise of the powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018⁽¹⁾.

In accordance with paragraph 1(1) and (2) of Schedule 7 to the European Union (Withdrawal) Act 2018, a draft of this instrument has been laid before, and approved by a resolution of, each House of Parliament.

PART 1

General provision

Citation and commencement

1.—(1) These Regulations may be cited as the Trade Repositories (Amendment and Transitional Provision) (EU Exit) Regulations 2018.

(2) These Regulations come into force, subject to paragraph (3), on the day after the day on which they are made.

(3) Part 2 comes into force on exit day.

PART 2

Amendment of retained direct EU legislation: the European Markets Infrastructure Regulation

Amendment of provision in respect of registration of a trade repository

2.—(1) Chapter 1 of Title 6 of the European Markets Infrastructure Regulation (conditions and procedures for registration of a trade repository) is amended as follows.

(2) In Article 55 (registration of a trade repository)—

- (a) in paragraph 1, for “ESMA” substitute “the FCA”;
- (b) in paragraph 2, for “Union” substitute “United Kingdom”;
- (c) omit paragraph 3;
- (d) in paragraph 4, for “ESMA” substitute “the FCA”.

(3) In Article 56 (application for registration)—

- (a) in paragraph 1, for “ESMA” substitute “the FCA”;
- (b) in paragraph 2—
 - (i) for “ESMA”, where first occurring, substitute “The FCA”;
 - (ii) for “ESMA”, wherever else occurring, substitute “the FCA”;
- (c) for paragraph 3 substitute—

“3. The FCA may make technical standards specifying the form and content of applications under paragraph 1.”;

(d) omit paragraph 4.

(4) Omit Article 57 (notification of and consultation with competent authorities prior to registration).

(5) In Article 58 (examination of the application)—

- (a) in paragraph 1, for “ESMA” substitute “The FCA”;
- (b) omit paragraph 2.

(6) Omit Article 59 (notification of ESMA decisions relating to registration).

Amendment of provision in respect of the requirements for trade repositories

3. In Title 7 of the European Markets Infrastructure Regulation (requirements for trade repositories), in Article 81 (transparency and data availability)—

(a) in paragraph 3, for points (a) to (p) substitute—

- “(a) the FCA;
- (b) the Bank of England;
- (c) the Pensions Regulator.”;

(b) omit paragraph 4;

(c) for paragraph 5 substitute—

“5. The FCA may make technical standards specifying—

- (a) the frequency with which a trade repository must comply with its obligations under paragraphs 1 and 3,

- (b) the information which must be provided by a trade repository when complying with those obligations (including, as applicable, requirements as to the anonymization of such information), and
- (c) the manner in which such information is to be aggregated and compared.”

Interpretation

4. In this Part, a reference to the European Markets Infrastructure Regulation is to Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4th July 2012 on OTC derivatives, central counterparties and trade repositories.

PART 3

Transitional and saving provision

CHAPTER 1

Advance applications

Advance application for registration as a trade repository

5.—(1) A person may submit an advance application to the FCA for registration as a trade repository.

(2) Such an application must—

- (a) be made in such manner, and
- (b) contain, or be accompanied by, such information,

as the FCA may direct.

Assessment of whether an advance application is complete

6. The FCA must, before the end of a period of 20 working days beginning with the day of receipt—

- (a) if it considers that an advance application complies with the directions under regulation 5(2), confirm in writing to the applicant that the application is complete;
- (b) if it considers that the application does not comply with one or more of the directions under that regulation—
 - (i) confirm in writing to the applicant that the application is not complete, and
 - (ii) where applicable, inform the applicant of the steps which need to be taken, and the time within which they need to be taken, for the application to be considered complete.

Determination of an advance application

7.—(1) The FCA must, before the end of a period of 40 working days beginning with the day on which the FCA confirms that an application is complete, take the following steps.

(2) The first step is that the FCA must consider the application based on compliance with—

- (a) Articles 78 to 80 of the European Markets Infrastructure Regulation, and

- (b) Article 81 of the European Markets Infrastructure Regulation, as that Article has effect on exit day⁽²⁾.
- (3) The second step is that the FCA must decide whether the applicant should be registered as a trade repository or whether the application for registration should be rejected.
- (4) The third step is that the FCA must notify the applicant of its decision, and the reasons therefor.

Effect of determining an advance application

- 8.** A decision in respect of an advance application under regulation 7(3) has effect from—
- (a) the day of notification, or
 - (b) exit day,

whichever is later, as if it were a decision to register or refuse registration adopted in accordance with Article 58 of the European Markets Infrastructure Regulation (notwithstanding provision in Chapter 1 of Title 6 of that Regulation in respect of when a decision has effect).

CHAPTER 2

Temporary registration

Temporary deemed registration under the European Markets Infrastructure Regulation

- 9.—**(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 9

- 10.** Regulation 9 applies to a person—
- (a) who satisfies the conditions in regulation 11;
 - (b) for the period determined in accordance with regulation 12.

Conditions to be satisfied for regulation 9 to apply

- 11.** The conditions are—
- (a) the person is a body corporate which, immediately before exit day, is—
 - (i) incorporated under the law of any part of the United Kingdom, and
 - (ii) included within a group of undertakings which comprises a trade repository registered under the European Markets Infrastructure Regulation;
 - (b) the person has—
 - (i) submitted an advance application in accordance with regulation 5, whether or not the application complies with the directions under regulation 5(2)(b), and
 - (ii) not been notified by the FCA of its decision in respect of the application in accordance with regulation 7(4).

(2) Article 81 of the European Markets Infrastructure Regulation is amended, with effect from exit day, by regulation 3.

Period during which regulation 9 is to apply

12.—(1) For the purposes of regulation 10(b), the period is one that begins with exit day and ends with a day determined in accordance with paragraph (2).

(2) The period ends—

- (a) after three years beginning with the day on which exit day occurs, or
- (b) if earlier, with the day—
 - (i) before the day on which registration as a trade repository has effect,
 - (ii) on which the FCA determines, in accordance with regulation 13(1), that regulation 9 should cease to apply, or
 - (iii) on which the person ceases to be included within a group of undertakings which comprises a trade repository registered under the European Markets Infrastructure Regulation, as that Regulation has effect in the European Union.

Cessation following a determination by the FCA

13.—(1) The FCA may determine that regulation 9 should cease to apply to a person—

- (a) where, in respect of an advance application—
 - (i) the application does not comply with a direction under regulation 5(2), and
 - (ii) the steps referred to in regulation 6(b)(ii) have not been taken within the time specified;
- (b) following a decision refusing registration in accordance with regulation 7(3);
- (c) at the request of the person to whom regulation 9 applies.

(2) The FCA must notify the person in respect of whom the determination is made of the day on which regulation 9 will cease to apply.

(3) Paragraph (1) is subject to Article 71 (withdrawal of registration) of the European Markets Infrastructure Regulation.

CHAPTER 3

Registration conversion

Registration under the European Markets Infrastructure Regulation

14.—(1) Notwithstanding Articles 55 to 58 of the European Markets Infrastructure Regulation, a person to whom this regulation applies is, on and after exit day, registered as a trade repository under Chapter 1 of Title 6 of that Regulation.

(2) Reference in an enactment to a person registered under that Chapter, however expressed, includes a person registered by virtue of this regulation.

Application of regulation 14

15. Regulation 14 applies to a person who—

- (a) satisfies the conditions in regulation 16, and
- (b) notifies the FCA in accordance with regulation 17.

Conditions to be satisfied for regulation 14 to apply

16. The conditions are that the person is a body corporate which, immediately before exit day, is—

- (a) incorporated under the law of any part of the United Kingdom, and
- (b) registered as a trade repository under the European Markets Infrastructure Regulation.

Notification for registration

17.—(1) The person must, no later than the final day, notify the FCA that the person wishes to be registered in accordance with regulation 14.

(2) For the purposes of paragraph (1), the notification must—

- (a) be made in such manner, and
- (b) contain, or be accompanied by, such information,

as the FCA may direct.

(3) For the purposes of paragraph (1), the final day is—

- (a) the day before the day on which exit day occurs, or
- (b) such earlier day as the FCA may direct.

Acknowledgement of receipt

18. The FCA must, before the end of a period of 10 working days beginning with the day on which it receives a notification under regulation 17, send the person making the notification an acknowledgment of receipt.

FCA's response

19. The FCA must, before the end of a period of 20 working days beginning with the day on which it receives a notification under regulation 17—

- (a) if it considers that the notification complies with the requirements of, or made under, that regulation, confirm in writing to the person making the notification that the notification is valid;
- (b) if it considers that the notification does not comply with those requirements—
 - (i) confirm in writing to the person making the notification that the notification is not valid, and
 - (ii) where applicable, inform the person of the steps which need to be taken, and the time within which they need to be taken, for the notification to be considered valid.

CHAPTER 4

General provisions

Misleading the FCA: criminal offence

20. Section 398 of the Financial Services and Markets Act 2000 (misleading the FCA or PRA: residual cases)⁽³⁾ applies to a requirement to provide information in accordance with a direction under regulation 5(2)(b) or 17(2)(b) as it applies to a requirement falling within subsection (1A) of that section.

(3) 2000 c. 8. Section 398 is amended by paragraph 36 of Schedule 9 to the Financial Services Act 2012 (c. 21), S.I. 2013/1773, S.I. 2015/1882, S.I. 2016/680, S.I. 2017/701, S.I. 2018/135 and S.I. 2018/698.

Further information to be supplied by a person to whom regulation 9 or 14 applies

21.—(1) A person to whom regulation 9 applies must notify the FCA if any information contained in or accompanying an advance application submitted in accordance with regulation 5 changes.

(2) A person to whom regulation 14 applies must notify the FCA if any information contained in or accompanying a notification made in accordance with regulation 17 changes.

Directions

22.—(1) The power to make a direction under this Part includes the power—

- (a) to make different directions in relation to different applications or categories of application;
- (b) to vary or revoke a previous direction.

(2) A direction under this part must be—

- (a) in writing, and
- (b) published by the FCA in a manner suitable to bring it to the attention of persons likely to be affected.

Interpretation

23.—(1) In this Part—

“advance application” means an application submitted during the period—

- (a) beginning with the day on which this Part comes into force, and
- (b) ending immediately before exit day;

“the European Markets Infrastructure Regulation” means Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4th July 2012 on OTC derivatives, central counterparties and trade repositories, as amended from time to time (unless the contrary intention appears);

“the FCA” means the Financial Conduct Authority;

“trade repository” has the same meaning as in Article 2(2) of the European Markets Infrastructure Regulation;

“working day” means a day other than—

- (a) a Saturday or a Sunday,
- (b) Christmas Day or Good Friday, or
- (c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971(4) in any part of the United Kingdom.

(2) Reference to a group of undertakings is to be construed in accordance with Article 2(16) of the European Markets Infrastructure Regulation, as that Regulation has effect immediately before exit day.

(4) 1971 c. 80; amended by section 1 of the St Andrew’s Day Bank Holiday (Scotland) Act 2007 (asp 2).

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument:
The Trade Repositories (Amendment and Transitional Provision) (EU Exit) Regulations 2018 No. 1318

Date

Name
Name
Two of the Lords Commissioners of Her
Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4th July 2012 on OTC derivatives, central counterparties and trade repositories (“the European Markets Infrastructure Regulation”) in order to:

- confer, on and after exit day, functions on the Financial Conduct Authority in respect of the registration of trade repositories;
- amend certain requirements for the provision of information.

Section 8(2)(b) of the European Union (Withdrawal) Act 2018 (c. 16), in particular, is relevant to these Regulations.

These Regulations also make transitional provision in respect of applications for registration as a trade repository and to convert registration as a trade repository under EU law to registration under retained EU law.

In these Regulations:

- Part 1 makes provision as to citation and commencement;
- Part 2 amends the European Markets Infrastructure Regulation;
- Part 3 makes transitional and saving provision, of which:
 - Chapter 1 makes provision for applications for registration as a trade repository to be submitted and considered in advance of exit day;
 - Chapter 2 makes provision for a person to be treated as registered as a trade repository under retained EU law while an advance application for registration is determined;
 - Chapter 3 makes provision for a person’s registration as an EU trade repository under the European Markets Infrastructure Regulation pre-exit day to be converted into a registration as a UK trade repository post-exit day;
 - Chapter 4 makes general provision.

An impact assessment of the effect that this instrument, and certain other instruments made by HM Treasury under the European Union (Withdrawal) Act 2018 (c. 16), will have on the costs of business, the voluntary sector and the public sector is available from HM Treasury, 1 Horse Guards Road, London SW1A 2HQ and is published alongside this instrument at www.legislation.gov.uk.