
DRAFT STATUTORY INSTRUMENTS

2018 No.

EXITING THE EUROPEAN UNION

FINANCIAL SERVICES

**The Over the Counter Derivatives, Central Counterparties and
Trade Repositories (Amendment, etc., and Transitional
Provision) (EU Exit) Regulations 2018**

Made - - - - *****

Coming into force in accordance with regulation 1

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The Treasury, in exercise of the powers conferred by section 8(1) of, and paragraph 1 of Schedule 4 and paragraph 21(b) of Schedule 7 to, the European Union (Withdrawal) Act 2018^(a) make the following Regulations.

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

PART 1

PRELIMINARY

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018 and come into force on exit day.

(2) In these Regulations—

“FSMA” means the Financial Services and Markets Act 2000^(b);

“EMIR regulation” means Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories^(c);

“FCA” means the Financial Conduct Authority^(d).

PART 2

AMENDMENT OF SUBORDINATE LEGISLATION

Amendments to the Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013

2. The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 ^(e) are amended in accordance with the following provisions of this Part.

Interpretation

3. In regulation 2, in paragraph (1), for the definition of “the EMIR regulation” substitute—

““the EMIR regulation” has the meaning given in section 313 of the Act;”.

Designation of competent authorities

4. In regulation 6—

(a) in paragraph (1)—

(i) in sub-paragraph (b), for “Article 22(1)” substitute “Articles 22 and 25”;

(ii) omit sub-paragraphs (e) and (f);

(a) 2018 c.16.

(b) 2000 c. 8.

(c) OJ No. L 201, 27.7.2012, p.1.

(d) See section 1A of the FSMA inserted by section 6(1) of the Financial Services Act 2012 (c.21).

(e) S.I. 2013/504. Relevant amendments are made by S.I. 2013/1908, 2016/715 and 2017/701.

- (b) omit paragraph (2);
- (c) in paragraph (3), omit sub-paragraphs (e) to (g);
- (d) in paragraph (4), omit sub-paragraphs (a) and (b);
- (e) in paragraph (6)—
 - (i) in sub-paragraph (a), omit “including Article 71(3)”;
 - (ii) at the end of sub-paragraph (a) insert “and”;
 - (iii) omit sub-paragraph (c) and the “and” immediately preceding it;
- (f) in paragraph (8), in sub-paragraph (b), omit paragraphs (i) and (ii).

Applications, notifications and reports to the FCA

5. In regulation 8, in paragraph (3), for “Article 11(6), (7), (8), (9) or (10)” substitute “Article 11(8) or (9)”.

Penalties and statements

6. In regulation 9, in paragraph (10), at the end of sub-paragraph (a) insert “(but not including a requirement enforceable by the FCA pursuant to paragraph (6)(a) or (b) of that regulation)”.

Investigatory powers of ESMA with regard to trade repositories

7. Omit regulations 15B to 19 (Part 7).

Transitional provision

8. Omit regulation 55A and insert—

“Transitional provision: EMIR regulation

55B. The FCA may grant an exemption in accordance with Article 89a of the EMIR regulation.”.

PART 3

AMENDMENT AND REVOCATION OF RETAINED DIRECT EU LEGISLATION

CHAPTER 1

AMENDMENT OF THE EMIR REGULATION

Amendments to the EMIR regulation

9. The EMIR regulation is amended in accordance with this Chapter.

Subject matter and scope

10.—(1) Article 1 is amended as follows.

(2) In paragraph 3, for the words from “point (18)(a)” to the end substitute “Articles 2(1)(24) and 2(1)(25A) of MIFIR”.

(3) In paragraph 4, for point (a) substitute—

“(a) the Bank of England and other public bodies in the United Kingdom charged with or intervening in the management of the public debt;”.

(4) In paragraph 5—

- (a) in point (a), for the words from “Section 4.2” to the end of the point substitute “Article 117 of the Capital Requirements Regulation”;
 - (b) in point (b), for “point (18) of Article 4 of Directive 2006/48/EC” substitute “Article 4(1)(8) of the Capital Requirements Regulation”.
- (5) For paragraph 6 substitute—
- “6. The Treasury may by regulations amend the list set out in paragraph 4 of this Article.”.

Definitions

11.—(1) Article 2 is amended as follows.

(2) Before point (1) insert—

“(A1) “FSMA” means the Financial Services and Markets Act 2000(a);

(A2) “MIFIR” means Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) 648/2012(b);

(A3) “Capital Requirements Regulation” means Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) 648/2012;

(A4) “2013 Regulations” means the Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013(c);

(A5) “Regulated Activities Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(d);

(A6) “PRA-authorised person” has the meaning given in section 2B(5) of the FSMA(e);”.

(3) For point (1) substitute—

“(1) “CCP” means a body corporate or unincorporated association which interposes itself between the counterparties to the contracts traded on one or more financial markets, becoming the buyer to every seller and the seller to every buyer;”.

(4) For point (4) substitute—

“(4) “trading venue” means a UK trading venue within the definition in Article 2(1)(16A) of the MIFIR;”.

(5) For point (5) substitute—

“(5) “derivative” or “derivative contract” means a financial instrument referred to in paragraphs 4 to 10 of Part 1 of Schedule 2 to the Regulated Activities Order;”.

(6) In point (7)—

(a) for the words “regulated market within the meaning of Article 4(1)(14) of Directive 2004/39/EC” substitute “UK regulated market within the meaning given in Article 2(1)(13A) of the MIFIR”;

(b) for “regulated market in accordance with Article 2a of this Regulation” substitute “a UK regulated market in accordance with an implementing act adopted by the Commission under Article 2a of this Regulation before exit day or in accordance with regulations made by the Treasury under that Article after exit day”.

(7) For point (8) substitute—

“(8) “financial counterparty” means:

(a) 2000 c.8.

(b) As amended by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/).

(c) S.I. 2013/504.

(d) S.I. 2001/544.

(e) Section 2B is inserted by section 6(1) of the Financial Services Act 2012 (c. 21).

- (a) an investment firm within the meaning given in Article 2(1A) of the MIFIR which:
 - (i) has its registered office or head office in the United Kingdom;
 - (ii) has permission under Part 4A of the FSMA to carry on regulated activities relating to investment services and activities (as defined in Article 2(1)(2) of the MIFIR) in the United Kingdom;
 - (iii) would require an authorisation given under Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and 2011/61/EU^(a) (as it had effect immediately before exit day) if it had its registered office (or if it does not have a registered office, its head office) in an EEA state; and
 - (iv) is not a firm which has permission under Part 4A of the FSMA to carry on regulated activities as an exempt investment firm, within the meaning given in regulation 8 of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017^(b);
 - (b) a credit institution which is a CRR firm (within the meaning given in Article 4(1)(2A) of the Capital Requirements Regulation);
 - (c) an insurance undertaking or a reinsurance undertaking within the meaning given in section 417 of the FSMA;
 - (d) a UK UCITS (within the meaning given in section 237(3) of the FSMA) and, where relevant, its management company (within the meaning given in section 237(2) of the FSMA);
 - (e) an occupational pension scheme within the meaning given in section 1(1) of the Pension Schemes Act 1993^(c); or
 - (f) an AIF (within the meaning given in regulation 3 of the Alternative Investment Fund Managers Regulations 2013^(d)) managed by an AIFM (within the meaning given in regulation 4 of those Regulations) authorised or registered in accordance with those Regulations;”.
- (8) In point (9), for “Union” substitute “United Kingdom”.
- (9) For point (13) substitute—
- “(13) “competent authority” means:
- (a) the relevant competent authority referred to in the legislation (or the relevant competent authority of the firm, institution, undertaking or other entity) referred to in paragraphs (a) to (f) of point (8);
 - (b) the competent authority referred to in Article 10(5); or
 - (c) the authority designated under Article 22;”.
- (10) In point (16)—
- (a) for “Articles 1 and 2 of Directive 83/349/EEC” substitute “section 1162 of the Companies Act 2006^(e)”;
 - (b) for the words from “the group of undertakings” in the second place where it appears to the end of the point substitute “a group of undertakings meeting the conditions in Article 113(6) of the Capital Requirements Regulation”.
- (11) In point (17), for the words from “of the activities” to the end of the point substitute “of the Annex I activities listed in points (2) to (12) and for this purpose “Annex I activities” has the meaning given in Article 4(1)(26A) of the Capital Requirements Regulation”.

(a) OJ No. L 173, 12.6.2014, p.349.

(b) S.I. 2017/701.

(c) 1993 c.48. Section 1 is substituted by section 239 of the Pensions Act 2004 (c.35).

(d) S.I. 2013/1773.

(e) 2006 c.46.

(12) In point (18), for the words from “Article 2(15)” to the end of the point substitute “Article 4(1)(21) of the Capital Requirements Regulation”.

(13) In each of points (21) and (22), for “Articles 1 and 2 of Directive 83/349/EEC” substitute “section 1162 of the Companies Act 2006”.

(14) In point, (23), for “Article 1 of Directive 83/349/EEC” substitute “section 1162 of the Companies Act 2006”.

(15) In point (25), omit the words from “within the meaning” to “institutions”.

(16) After point (25) insert—

“(25A) “subscribed capital” comprises all amounts, regardless of their actual designations, which, in accordance with the legal structure of the institution concerned, are regarded under the law of any part of the United Kingdom as equity capital subscribed by the shareholders or other proprietors;”.

(17) For point (26) substitute—

“(26) “reserves” means reserves as set out in item K.IV of balance sheet format 1 in Section B of Part 1 of Schedule 1 to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008(a) and profits and losses brought forward as a result of the application of the final profit or loss;”.

(18) In point (27), for “national company law” substitute “company law applying in any part of the United Kingdom”.

Equivalence decisions for the purposes of the definition of OTC derivatives

12.—(1) Article 2a is amended as follows.

(2) In paragraph 1—

(a) for “a regulated market within the meaning of Article 4(1)(14) of Directive 2004/39/EU” substitute “a UK regulated market within the meaning given in Article 2(1)(13A) of the MIFIR”;

(b) for “laid down in Title III of that Directive” substitute “resulting from provisions of the law of the United Kingdom relied on before exit day to implement Title 3 of Directive 2014/65/EU”;

(c) for the words from “the Commission” to the end of the paragraph substitute “the Treasury”.

(3) In paragraph 2—

(a) for “The Commission may adopt implementing acts” substitute “The Treasury may make regulations”;

(b) for “laid down in Title III of Directive 2004/39/EC” substitute “resulting from provisions of the law of the United Kingdom relied on before exit day to implement Title 3 of Directive 2014/65/EU”;

(c) omit from “Those implementing acts” to the end of the paragraph.

(4) In paragraph 3—

(a) for “The Commission and ESMA” “The Treasury and the FCA”;

(b) for “implementing act referred to in” substitute “regulations made by the Treasury under”.

Intragroup transactions

13.—(1) Article 3 is amended as follows.

(2) In paragraph 1—

(a) S.I. 2008/410. Relevant amending instrument is S.I. 2015/980.

- (a) for “Union” substitute “United Kingdom”;
 - (b) at the end insert “before exit day and the Treasury have made regulations under that Article in respect of that third country after exit day”.
- (3) In paragraph 2—
- (a) in point (a)—
 - (i) in point (i)—
 - (aa) for “Union” substitute “United Kingdom”;
 - (bb) at the end insert “before exit day and the Treasury have made regulations under that Article in respect of that third country after exit day”;
 - (ii) in point (iv) after “control procedures;” insert “or”;
 - (b) omit points (b) and (c);
 - (c) in point (d)—
 - (i) for “Union” substitute “United Kingdom”;
 - (ii) at the end insert “before exit day and the Treasury have made regulations under that Article in respect of that third country after exit day”.
- (4) In paragraph 3, for point (b) substitute—
- “(b) covered by the same supervision on a consolidated basis in accordance with the Capital Requirements Regulation, or in relation to a group the parent undertaking of which has its head office in a third country, the same supervision on a consolidated basis by a third-country competent authority verified as equivalent to that governed by the principles laid down in accordance with the Capital Requirements Regulation.”.

Clearing obligation

14.—(1) Article 4 is amended as follows.

- (2) In paragraph 1—
- (a) in point (a), in points (iv) and (v), for “Union” wherever it appears substitute “United Kingdom”;
 - (b) in point (b), in point (ii)—
 - (i) for “notification as referred to in Article 5(1)” substitute “authorisation of a CCP to clear a class of OTC derivatives under Article 14 or 15”;
 - (ii) for “Commission” substitute “Bank of England”.
- (3) In paragraph 2, in the second sub-paragraph—
- (a) in point (a)—
 - (i) for “Union” substitute “United Kingdom”;
 - (ii) for “their respective competent authorities” substitute “the FCA”;
 - (iii) for “the competent authorities” both times it appears substitute “the FCA”;
 - (iv) omit from “If there is disagreement between” to the end;
 - (b) in point (b)—
 - (i) for “a Member State” substitute “the United Kingdom”;
 - (ii) for “Union” both times it appears substitute “United Kingdom”;
 - (iii) for “its competent authority” substitute “the FCA”;
 - (iv) omit from “The competent authority shall” to the end.
- (4) For paragraph 4, substitute—
- “4. The FCA may make technical standards specifying the contracts that are considered to have a direct, substantial and foreseeable effect within the United Kingdom or the cases

where it is necessary or appropriate to prevent the evasion of any provision of this Regulation as referred to in paragraph 1(a)(v).

The Bank of England may make technical standards in relation to CCPs, and the FCA may make technical standards in relation to all other cases, specifying the types of indirect contractual arrangements that meet the conditions referred to in the second sub-paragraph of paragraph 3.”.

Clearing obligation procedure

15.—(1) Article 5 is amended as follows.

(2) Omit paragraph 1.

(3) For paragraph 2 substitute—

“2. Technical standards may be made as follows:

- (a) the Bank of England may make technical standards specifying the class or classes of OTC derivatives that should be subject to the clearing obligation referred to in Article 4;
- (b) the Bank of England may make technical standards for financial counterparties that are PRA-authorised persons and the FCA may make technical standards for all other cases, specifying the date or dates from which the clearing obligation takes effect, including any phase in and the categories of counterparties to which the obligation applies;
- (c) the Bank of England may make technical standards specifying the minimum remaining maturity of the OTC derivative contracts referred to in paragraph 1(b)(ii) of Article 4.

In developing the technical standards under this paragraph, the Bank and the FCA shall not prejudice the transitional provision relating to C6 energy derivative contracts as laid down in Article 89a.”.

(4) For paragraph 3 substitute—

“3. The Bank of England shall identify in accordance with the criteria set out in points (a), (b) and (c) of paragraph 4 the classes of derivatives that should be subject to the clearing obligation provided in Article 4 but for which no CCP has yet received authorisation.”.

(5) In paragraph 4—

- (a) in the opening words of the first sub-paragraph, for “draft regulatory” substitute “development by the Bank of England of”;
- (b) in the second sub-paragraph—
 - (i) omit “draft regulatory”;
 - (ii) for “ESMA” substitute “the Bank of England”;
 - (iii) for “Union” substitute “United Kingdom”;
- (c) omit the words from “In order to ensure consistent application” to the end of the paragraph.

(6) In paragraph 5, for the words from the beginning to “paragraph 2(b)” substitute “In developing these technical standards, the Bank of England and the FCA”.

Public register

16.—(1) Article 6 is amended as follows.

(2) In paragraph 1—

- (a) for “ESMA” substitute “The Bank of England”;
- (b) for “ESMA’s” substitute “the Bank of England’s”.

(3) In paragraph 2—

- (a) in point (b), after “authorised” insert “(and the date of their authorisation to clear a class of derivatives under Article 14 or 15)”;
- (b) in point (d), for “ESMA” substitute “the Bank of England”;
- (c) omit point (f).
- (4) In paragraph 3, for “ESMA” substitute “the Bank of England.
- (5) For paragraph 4, substitute—

“4. The Bank of England may make technical standards specifying the details to be included in the public register referred to in paragraph 1.”.

Access to a CCP

17.—(1) Article 7 is amended as follows.

(2) Omit paragraph 5.

(3) In paragraph 6, for words from “the technical standards” to the end of the paragraph substitute “Commission Delegated Regulation (EU) 2017/581 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards on clearing access in respect of trading venues and central counterparties”.

Access to a trading venue

18. In Article 8, for paragraph (5) substitute—

“5. The FCA may make technical standards specifying the notion of liquidity fragmentation.”.

Reporting obligation

19.—(1) Article 9 is amended as follows.

(2) For paragraph 3 substitute—

“3. Except where the FCA has suspended the reporting obligation under paragraph 3A, where a trade repository is not available to record the details of a derivative contract:

- (a) counterparties and CCPs shall ensure that such details are reported to the FCA; and
- (b) the FCA shall ensure that all the relevant entities referred to in paragraph 3 of Article 81 have access to all the details of derivative contracts they need to fulfil their respective responsibilities and mandates

3A. The FCA may suspend the reporting obligation in paragraph 1. Before it does so it must:

- (a) provide a report to the Treasury setting out its reasons for suspending the reporting obligation;
- (b) specify a date:
 - (i) on which the suspension of that obligation will end;
 - (ii) by which it anticipates counterparties and CCPs will be able to report details of any derivative contracts as set out in paragraph 3; and
- (c) consult the Treasury and the Bank of England.

3B. The FCA may, with the consent of the Treasury, suspend the reporting obligation under paragraph 3A for a period of up to one year or such longer period as the Treasury may by regulations specify.

3C. Details of any derivative contracts that counterparties and CCPs have concluded, and of any modification or termination of the contract, that have not been reported to a trade repository in accordance with the reporting obligation in paragraph 1 must be reported by

those counterparties and CCPs to a trade repository following the end of the suspension of the reporting obligation in paragraph 3a by no later than the end of the period specified by the FCA for this purpose.”.

(3) In paragraph 4, for “ESMA” substitute “the FCA”.

(4) For paragraph 5 substitute—

“5. The Bank of England may make technical standards for CCPs, and the FCA may make technical standards for all other cases specifying the details and type of the reports referred to in paragraphs 1 and 3 for the different classes of derivatives.

The reports referred to in paragraphs 1 and 3 shall specify at least:

- (a) the parties to the derivative contract and, where different, the beneficiary of the rights and obligations arising from it;
- (b) the main characteristics of the derivative contracts, including their type, underlying maturity, notional value, price, and settlement date.”.

(5) For paragraph 6 substitute—

“6. The Bank of England may make technical standards for CCPs, and the FCA may make technical standards in all other cases specifying:

- (a) the format and frequency of the reports referred to in paragraphs 1 and 3 for the different classes of derivatives;
- (b) the date by which derivative contracts are to be reported, including any phase-in for contracts entered into before the reporting obligation applies.”.

Non-financial counterparties

20.—(1) Article 10 is amended as follows.

(2) In paragraph 1, in point (a)—

- (a) omit “ESMA and”;
- (b) omit “thereof”.

(3) In paragraph 2 for “authority designated in accordance with paragraph 5” substitute “FCA”.

(4) For paragraph 4 substitute—

“4. The FCA may make technical standards specifying:

- (a) criteria for establishing which OTC derivative contracts are objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity referred to in paragraph 3; and
- (b) values of the clearing thresholds, which are determined taking into account the systemic relevance of the sum of net positions and exposures per counterparty and per class of OTC derivatives.

The FCA shall periodically review the thresholds specified under point (b) and, where necessary, make technical standards to amend them.”.

(5) For paragraph 5 substitute—

“5. The authority responsible for ensuring that the obligation under paragraph 1 is met is the FCA.”.

Risk-mitigation techniques for OTC derivative contracts not cleared by a CCP

21.—(1) Article 11 is amended as follows.

(2) In paragraph 5, for “same Member State” substitute “United Kingdom”.

(3) Omit paragraphs 6 and 7;

(4) In paragraph 8, for “Union”, in both places where it appears, substitute “United Kingdom”.

- (5) In paragraph 9, in the first sub-paragraph, for “Union” substitute “United Kingdom”.
- (6) Omit paragraph 10.
- (7) Omit the second sub-paragraph of paragraph 11.
- (8) In paragraph 12, for “Union” in both places where it appears, “United Kingdom”.
- (9) For paragraph 13 substitute—

“13. The Bank of England shall regularly monitor the activity in derivatives not eligible for clearing in order to identify cases where a particular class of derivatives may pose systemic risk. The FCA and the PRA shall regularly monitor the activity in derivatives not eligible for clearing in order to prevent regulatory arbitrage between cleared and non-cleared derivative transactions.

In particular—

- (a) the Bank of England shall —
 - (i) take action in accordance with paragraph 3 of Article 5; and
 - (ii) review the technical standards on margin requirements laid down in Article 41;
- (b) the FCA and the PRA shall review the technical standards on margin requirements laid down in paragraph 15.”.

- (10) In paragraph 14—

- (a) for the words from the beginning to “regulatory” where it first appears substitute “The FCA may make”;
- (b) in point (c), for “paragraphs 7, 9 and 10” substitute “paragraph 9”;
- (c) omit point (e);
- (d) omit from “ESMA shall submit” to the end of the paragraph.

- (11) After paragraph 14 insert—

“14A. The FCA may make technical standards specifying the contracts that are considered to have a direct, substantial and foreseeable effect within the United Kingdom or the cases where it is necessary or appropriate to prevent the evasion of any provision of this Regulation as referred to in paragraph 12.”

- (12) For paragraph 15 substitute—

“15. The PRA may make technical standards for financial counterparties that are PRA-authorised persons and the FCA may make technical standards for all other cases, specifying the risk-management procedures, including the levels and type of collateral and segregation arrangements, required for compliance with paragraph 3.”.

- (13) After paragraph 15 insert—

“16. The FCA may make technical standards specifying the procedures for the counterparties and the relevant competent authorities to be followed when applying exemptions under paragraphs 8 and 9.

17. The PRA may make technical standards in respect of financial counterparties that are PRA-authorised persons in respect of United Kingdom to United Kingdom intragroup exemptions (see paragraph 5) and the FCA may make technical standards in all other cases, specifying the applicable criteria referred to in paragraphs 5, 8 and 9, including in particular what should be considered as a practical or legal impediment to the prompt transfer of own funds and repayment of liabilities between the counterparties.”.

Penalties

- 22.—(1) Article 12 is amended as follows.
- (2) For paragraph 1 substitute—

“1. Regulation 9 of the 2013 Regulations sets out the penalties applicable to infringements of the rules under this Title.”.

(3) Omit paragraph 2.

Mechanism to avoid duplicative or conflicting rules

23.—(1) Article 13 is amended as follows.

(2) Omit paragraph 1.

(3) In paragraph 2—

(a) for “The Commission may adopt implementing acts declaring” substitute “The Treasury may by regulations determine”;

(b) omit from “Those implementing acts” to the end of the paragraph.

(4) In paragraph 3, for “An implementing act” substitute “Regulations”.

(5) Omit paragraph 4.

Conditions for making technical standards

24. After Article 13 insert—

“Article 13a

Conditions for making technical standards

The FCA, the PRA and the Bank of England, as appropriate, must co-ordinate the exercise of their functions when making technical standards under:

(a) the second sub-paragraph of paragraph 4 of Article 4,

(b) paragraph 5 of Article 9,

(c) paragraph 6 of Article 9,

(d) paragraph 15 of Article 11, or

(e) paragraph 17 of Article 11,

with a view to ensuring that the technical standards made under each of those provisions are compatible.”.

Authorisation of a CCP

25.—(1) Article 14 is amended as follows.

(2) In paragraph 1—

(a) for “legal person established in the Union” substitute “body corporate or unincorporated association established in the United Kingdom”;

(b) for “the competent authority of the Member State where it is established” substitute “its competent authority”.

(3) Omit paragraphs 2 and 5.

Extension of activities and services

26. In Article 15, omit paragraph 2.

Capital requirements

27. In Article 16, in paragraph 3—

(a) for the words from the beginning to “regulatory” where it first appears substitute “The Bank of England may make”;

(b) omit the words from “EBA shall submit” to the end of the paragraph.

Procedure for granting and refusing authorisation

- 28.—(1) Article 17 is amended as follows.
- (2) In paragraph 1, omit “of the Member State where it is established”.
 - (3) In paragraph 2, omit the second sentence.
 - (4) In paragraph 3, omit the words from “and the members” to the end of the paragraph.
 - (5) In paragraph 4—
 - (a) for “notified as a system pursuant to Directive 98/26/EEC” substitute “a designated system as defined in regulation 2(1) of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999(a)”;
 - (b) omit from “The competent authority shall duly consider” to the end of the paragraph.
 - (6) Omit paragraphs 5 and 6.

College

29. Omit Article 18.

Opinion of the college

30. Omit Article 19.

Withdrawal of authorisation

- 31.—(1) Article 20 is amended as follows.
- (2) In paragraph 1, for “Without prejudice to Article 22(3), the” substitute “The”.
 - (3) Omit paragraphs 2 to 4, 6 and 7.

Review and evaluation

- 32.—(1) Article 21 is amended as follows.
- (2) In paragraph 1, for the words from the beginning to “authorities” substitute “The competent authority”.
 - (3) In paragraph 3 and 5, for “competent authorities” substitute “competent authority”.
 - (4) Omit paragraphs 4 and 6.

Competent authority

33. For Article 22 substitute—

“Article 22

Competent authority

The competent authority responsible for carrying out the duties resulting from this Regulation for the authorisation and supervision of CCPs is the Bank of England.”.

Cooperation

34. Omit Chapter 3 (Articles 23 and 24).

(a) S.I. 1999/2979.

Organisational requirements: general provisions

35. In Article 26, in paragraph 9—

- (a) for the words from the beginning to “regulatory” where it first appears substitute “The Bank of England may make”;
- (b) omit from “ESMA shall submit” to the end of the paragraph.

Record keeping

36.—(1) Article 29 is amended as follows.

(2) In paragraph 3, omit from “, to ESMA” to the end of the paragraph.

(3) In paragraph 4—

- (a) for the words from the beginning to “regulatory” where it first appears substitute “The Bank of England may make”;
- (b) omit from “ESMA shall submit” to the end of the paragraph;

(4) In paragraph 5—

- (a) for the words from the beginning to “implementing” where it first appears substitute “The Bank of England may make”;
- (b) omit from “ESMA shall submit” to the end of the paragraph.

Information

37.—(1) Article 31 is amended as follows.

(2) In the title, for “competent authorities” substitute “competent authority.”

(3) In paragraph 4—

- (a) in point (a), for “Union” substitute “United Kingdom”;
- (b) for point (b) substitute—

“ (b) a person not subject to supervision:

(i) under this regulation; or

(ii) in the United Kingdom because the person is not—

- (aa) an investment firm within the meaning given in Article 2(1A) of the MIFIR which has permission under Part 4A of the FSMA to carry on regulated activities relating to investment services and activities (as defined in Article 2(1)(2) of the MIFIR) in the United Kingdom;
- (bb) a credit institution which is a CRR firm (within the meaning given in Article 4(1)(2A) of the Capital Requirements Regulation) which has permission under Part 4A of FSMA to carry on the regulated activity of accepting deposits within the meaning given in article 5 of the Regulated Activities Order;
- (cc) an insurance undertaking and reinsurance undertaking within the meaning given in section 417 of the FSMA;
- (dd) a UK UCITS (within the meaning given in section 237(3) of the FSMA) and, where relevant, its management company (within the meaning given in section 237(2) of the FSMA);
- (ee) an occupational pension scheme within the meaning given in section 1(1) of the Pension Schemes Act 1993(a); or

(a) 1993 c.48. Section 1 is substituted by section 239 of the Pensions Act 2004 (c.35).

- (ff) an AIF (within the meaning given in regulation 3 of the Alternative Investment Fund Managers Regulations 2013^(a)) managed by an AIFM (within the meaning given in regulation 4 of those Regulations) authorised or registered in accordance with those Regulations.

In this point, “regulated activity” has the meaning given in section 22 of the FSMA.”.

(4) In paragraph 5—

- (a) for the words from “The competent authority” to “national law,” substitute “Subject to any provision of the law applying in any part of the United Kingdom,”;
- (b) for the words from “However, Member States” to the end of the paragraph substitute “The competent authority may make such disclosure in the absence of a request by the proposed acquirer.”.

(5) For paragraph 8 substitute—

“8. The competent authority shall not impose requirements for notification and approval of direct or indirect acquisitions of voting rights or capital that are more stringent than those set out in this Regulation.”.

Assessment

38.—(1) Article 32 is amended as follows.

(2) In paragraph 1, in point (d), for the words from “money laundering” to “Directive 2005/60/EC” substitute “terrorist financing or money laundering within the meaning given respectively in paragraph 2(1) and (2) of Schedule 7 to the Counter-Terrorism Act 2008^(b)”.

(3) In paragraph 2, for “competent authorities” substitute “competent authority”.

(4) In paragraph 3—

- (a) for Member States” substitute “The competent authority”;
- (b) omit “allow their competent authorities to”.

(5) In paragraph 4—

- (a) for “Member States” in both places where those words occur substitute “The competent authority”;
- (b) for “provided to the competent authorities” substitute “made available”.

(6) In paragraph 6—

- (a) for “The relevant competent authorities” substitute “The Bank of England, the PRA and the FCA, as appropriate”;
- (b) in each of points (a) to (c) omit “authorised in another Member State”.

(7) In paragraph 7, for “The competent authorities” in both places where those words occur substitute “The Bank of England, the PRA and the FCA, as appropriate”.

Business continuity

39. In Article 34, in paragraph 3—

- (a) for the words from the beginning to “regulatory” where it first appears substitute “The Bank of England may make”;
- (b) omit from “ESMA shall submit” to the end of the paragraph.

Outsourcing

40. In Article 35, in paragraph 1, in point (j), for “Union” substitute “United Kingdom”.

(a) S.I. 2013/1773.

(b) 2008 c.28.

Transparency

41. In Article 38, in paragraph 5, omit “, after consulting ESMA,”.

Segregation and portability

42. In Article 39, in paragraph 8, for the words from “Article 2(1)(c)” to “collateral arrangements” substitute “regulation 3(1) of the Financial Collateral Arrangements (No.2) Regulations 2003(a)”.

Margin requirements

43.—(1) Article 41 is amended as follows.

(2) In paragraph 2, omit “and subject to an opinion in accordance with Article 19”.

(3) In paragraph 5—

- (a) for the words from the beginning to “regulatory” where it first appears substitute “The Bank of England may make”;
- (b) omit from “ESMA shall submit” to the end of the paragraph.

Default fund

44. In Article 42, in paragraph 5—

- (a) for the words from the beginning to “regulatory” where it first appears substitute “The Bank of England may make”;
- (b) omit from “ESMA shall submit” to the end of the paragraph.

Liquidity risk controls

45. In Article 44, in paragraph 2—

- (a) for the words from the beginning to “regulatory” where it first appears substitute “The Bank of England may make”;
- (b) omit from “ESMA shall submit” to the end of the paragraph.

Default waterfall

46. In Article 45, in paragraph 5—

- (a) for the words from the beginning to “regulatory” where it first appears substitute “The Bank of England may make”;
- (b) omit from “ESMA shall submit” to the end of the paragraph.

Collateral requirements

47. In Article 46, in paragraph 3—

- (a) for the words from the beginning to “regulatory” where it first appear substitute “The Bank of England may make”;
- (b) omit from “ESMA shall submit” to the end of the paragraph.

Investment policy

48. In Article 47, in paragraph 8—

(a) S.I. 2003/3226. Relevant amending instrument is S.I. 2010/2993.

- (a) for the words from the beginning to “regulatory” where it first appears substitute “The Bank of England may make”;
- (b) omit from “ESMA shall submit” to the end of the paragraph.

Default procedures

49. In Article 48, in paragraph 3, for the words from “ESMA” to the end of the paragraph substitute “the authority responsible for the supervision of the defaulting clearing member”.

Review of models, stress testing and back testing

50.—(1) Article 49 is amended as follows.

(2) In paragraph 1—

- (a) omit “and ESMA”;
- (b) for “their” substitute “its”;
- (c) omit from “The adopted models” to the end of the paragraph;

(3) In paragraph 4—

- (a) for the words from the beginning to “regulatory” where it first appears substitute “The Bank of England may make”;
- (b) omit from “ESMA shall submit” to the end of the paragraph.

Calculation of K_{cep}

51. In Article 50a, in paragraph 4—

- (a) for the words from “EBA” to “specify” substitute “the Bank of England, having consulted the PRA and the FCA, may make technical standards specifying”;
- (b) omit from “EBA shall submit” to the end of the paragraph.

Reporting of information

52. In Article 50c, in paragraph 3—

- (a) for the words from the beginning to “specify” substitute “The Bank of England, having consulted the PRA and the FCA, may make technical standards specifying”;
- (b) omit from “EBA shall submit” to the end of the paragraph.

Risk management

53. In Article 52, in paragraph 1, for “Directive 98/26/EC” substitute “the Financial Markets and Insolvency (Settlement Finality) Regulations 1999(a)”.

Provision of margins among CCPs

54. In Article 53, in paragraph 3, for “notified under Directive 98/26/EEC” substitute “that are designated systems within the meaning given in regulation 2(1) of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999”.

Approval of interoperability arrangements

55.—(1) Article 54 is amended as follows.

(a) S.I. 1999/2979.

(2) In paragraph 1, for “competent authorities of the CCPs involved” substitute “CCP’s competent authority”.

(3) In paragraph 2—

(a) for “competent authorities” substitute “competent authority”;

(b) omit the words from “or authorised” to “three years”.

(4) For paragraph 3 substitute—

“3. Where the competent authority considers that the requirements laid down in paragraph 2 are not met, it shall provide explanations in writing regarding its risk considerations to the CCPs involved.”.

(5) Omit paragraph 4.

Trade Repositories

56.—(1) Omit Articles 60 to 70.

(2) For Article 71 substitute—

“Article 71

Withdrawal of registration

1. The FCA may, on its own initiative, withdraw the registration of a trade repository where the trade repository:

(a) expressly renounces the registration or has provided no services for the preceding 6 months;

(b) obtained the registration by making false statements or by any other irregular means; or

(c) no longer meets the conditions for registration.

2. The FCA may also, on its own initiative, withdraw the registration of a trade repository where it is desirable to do so to advance one or more of its operational objectives set out in section 1B(3) of the FSMA.

3. The FCA may, on an application by a trade repository, withdraw the registration of the trade repository.

4. The decision to withdraw the registration of a trade repository under paragraph 1, 2 and 3 shall be reflected in the Register.

Article 71a

Publication and notification of decisions about registration of trade repositories

1. The FCA must publish on its website a list of trade repositories registered in accordance with Article 58 (“the Register”).

2. On the adoption of a decision under Article 58 or 71, the FCA must notify its decision to the trade repository concerned.

3. A refusal of an application to register under Article 58 comes into effect on the fifth working day following the day on which it is adopted.

4. A withdrawal of registration under Article 71 takes effect:

(a) immediately upon the adoption of the decision if the notice states that is the case;

(b) on such date as may be specified in that notice; or

(c) if no date is specified in the notice, when the matter to which the notice relates is no longer open to review.

5. A decision to withdraw a registration on the FCA’s own initiative under paragraph 1 or 2 of Article 71 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 withdrawal or direction to take effect immediately (or on that date).

6. If the decision referred to in paragraph 2 is:

- (a) to refuse the application for registration made under Article 58;
- (b) to exercise the FCA’s power under paragraph 1 or 2 of Article 71; or
- (c) to refuse an application made by a trade repository under paragraph 3 of Article 71, the FCA must give the trade repository a written notice.

7. A written notice under paragraph 6 must:

- (a) give details of the decision made by the FCA;
- (b) state the FCA’s reasons for the decision;
- (c) state when the decision takes effect; and
- (d) inform the trade repository that it may either:
 - (i) request a review of the decision by the FCA, and make written representations for the purpose of the review, within such period as may be specified in the notice; or
 - (ii) refer the matter to the Upper Tribunal (“the Tribunal”) within such period as may be specified in the notice; and
- (e) indicate the procedure on a reference to the Tribunal.

8. If the trade repository requests a review of the decision made by the FCA (“the original decision”) the FCA must consider any written representations made by the trade repository and review the original decision.

9. On a review under paragraph 8, the FCA may adopt any decision (“the new decision”) it could have adopted on the application.

10. The FCA must give the trade repository written notice of its decision on the review.

11. This paragraph applies to a decision—

- (a) to maintain a decision to refuse an application for registration, made under Article 58;
- (b) to refuse to revoke a decision made under paragraph 1 or 2 of Article 71; or
- (c) to maintain a decision to refuse an application from a trade repository under paragraph 3 of Article 71.

12. A written notice in relation to a decision to which paragraph 11 applies must:

- (a) give details of the new decision made by the FCA;
- (b) state the FCA’s reasons for the new decision;
- (c) state whether the decision takes effect immediately or on such date as may be specified in the notice;
- (d) inform the trade repository that it may, within such period as may be specified in the notice, refer the new decision to the Tribunal; and
- (e) indicate the procedure on a reference to the Tribunal.

Article 71b

Reference to the Tribunal

1. A trade repository may, subject to paragraph 2, refer to the Tribunal the FCA’s decision to:

- (a) refuse to register the trade repository under Article 58;
- (b) exercise its power under paragraph 1 or 2 of Article 71; or

- (c) refuse the trade repository's application under paragraph 3 of Article 71.
2. Where there is a review under paragraph 8 of Article 71a, paragraph 1 applies only in relation to the FCA's decision in response to that review."
- (3) Omit Articles 72 to 74.
- (4) Article 75 is amended in accordance with paragraphs (5) to (9).
- (5) In the heading, omit "and international agreements".
- (6) In paragraph 1—
- (a) for "The Commission may adopt an implementing act determining" substitute "The Treasury may by regulations determine";
 - (b) at the end of point (a) insert "including compliance with the requirements to give direct and immediate access to the data to the entities referred to in paragraph 3 of Article 81";
 - (c) for the second sub-paragraph substitute "Regulations made under the first sub-paragraph must also specify the relevant authorities in third countries which are entitled to access data held by trade repositories established in the United Kingdom."
- (7) Omit paragraph 2.
- (8) In paragraph 3—
- (a) for the words from the beginning to "ESMA" substitute "The FCA";
 - (b) in point (a) for the words from "ESMA" to "Regulation" substitute "the FCA";
- (9) Omit paragraph 4.
- (10) In Article 76—
- (a) for "ESMA" where it first appears substitute "the FCA";
 - (b) for "ESMA" in the second place where it appears substitute "The FCA";
 - (c) for "Union trade repositories" in both places where it appears substitute "trade repositories established in the United Kingdom".
- (11) Article 77 is amended in accordance with paragraphs (12) to (14).
- (12) In paragraph 1—
- (a) for "Union" substitute "United Kingdom";
 - (b) for "ESMA" substitute "the FCA";
- (13) In paragraph 2—
- (a) for "ESMA", wherever it appears, substitute "the FCA";
 - (b) in the first sub-paragraph, omit the words from "which" to the end of the sub-paragraph;
 - (c) in the second sub-paragraph, after "receipt of the application" insert "or the date on which a cooperation arrangement with a third country prescribed in accordance with paragraph 3 of Article 75 is entered into, whichever is later".
- (14) After paragraph 2 insert—
- "3. The FCA may grant recognition to a trade repository established in a third country only if:
- (a) the trade repository is authorised and subject to supervision in that third country;
 - (b) the third country is recognised by regulations made by the Treasury as one in which the arrangements for trade repositories are equivalent to those in the United Kingdom (in accordance with paragraph 1 of Article 75); and
 - (c) cooperation arrangements entered into with the third country (in accordance with paragraph 3 of Article 75) provide for the FCA to have immediate and continuous access to the information needed for the performance of their duties, including information on derivative contracts held in trade repositories established in the third country.

4. The FCA may, on its own initiative, withdraw the recognition of a trade repository granted under paragraph 2 where the trade repository:

- (a) no longer meets the conditions for recognition in points (a) to (c) of paragraph 3;
- (b) expressly renounces the recognition or has provided no services for the preceding 6 months; or
- (c) obtained the recognition by making false statements or by any other irregular means.

5. A trade repository must, without undue delay, notify the FCA of any material changes affecting the condition for recognition in point (a) of paragraph 3.”.

(15) In Article 81, in paragraph 3, after point (c) insert—

“(d) the relevant authorities of a third country where the third country is recognised by regulations made by the Treasury as one in which the arrangements for trade repositories are equivalent to those in the United Kingdom (in accordance with paragraph 1 of Article 75);

(e) the relevant authorities of a third country that has entered into a cooperation arrangement with the FCA as referred to in Article 76.”.

(16) Omit Article 82.

Professional secrecy

57.—(1) Article 83 is amended as follows.

(2) In paragraph 1 omit—

- (a) “designated in accordance with Article 22 and the authorities referred to in Article 81(3), for ESMA”;
- (b) “or ESMA”.

(3) In paragraph 3, omit “ESMA,” in both places where it appears.

(4) In paragraph 4 omit—

- (a) “ESMA,”;
- (b) “or the relevant central banks”;
- (c) “competent authority or other”.

(5) In paragraph 5, for the words from “national law” to the end of the paragraph substitute “any provision of the law applying in any part of the United Kingdom”.

Exchange of information

58. Omit Article 84.

Transitional and final provisions

59.—(1) At the beginning of Title 9 before Article 85 insert—

“Article 84a

Regulations

1. Any power to make regulations conferred on the Treasury by this Regulation is exercisable by statutory instrument.

2. Any power to make regulations under this Regulation includes power to make:

- (a) different provision for different purposes;
- (b) consequential, supplementary, incidental, transitional, transitory or saving provision.

3. A statutory instrument containing regulations under this Regulation is subject to annulment in pursuance of a resolution of either House of Parliament.”.

- (2) Omit Articles 85 to 87.
- (3) In Article 88—
- (a) in paragraph 1—
 - (i) for “ESMA shall” substitute “The Bank of England and the FCA must each, where appropriate,”;
 - (ii) in paragraphs (c), (e) and (f), for “Union” wherever it appears substitute “United Kingdom”;
 - (b) omit paragraph 2;
 - (c) in paragraph 3, for “All websites” substitute “The websites”.
- (4) In Article 89—
- (a) omit paragraphs 3 to 5;
 - (b) for paragraph 5a substitute—

“5A. Until 15 December 2020 or until a decision is made under Article 25 on the recognition of a CCP, whichever is earlier, that CCP shall apply the treatment specified in the second sub-paragraph of this paragraph.

Until the deadline defined in the first sub-paragraph of this paragraph, and subject to the third sub-paragraph of this paragraph, where the CCP neither has a default fund nor has in place a binding arrangement with its clearing members that allows it to use all or part of the initial margin received from its clearing members as if they were pre-funded contributions, the information it is to report in accordance with paragraph 1 of Article 50c shall include the total amount of initial margin it has received from its clearing members.

The Treasury may by regulations extend the deadline referred to in the first sub-paragraph by 12 months.”;
 - (c) omit paragraphs 6 to 9.
- (5) After Article 89 insert—

“Article 89a

Further transitional provision

1. Until 3 January 2021:
 - (a) the clearing obligation set out in Article 4 and the risk mitigation procedures set out in paragraph 3 of Article 11 do not apply to C6 energy derivative contracts entered into by non-financial counterparties that meet the conditions in paragraph 1 of Article 10 of this Regulation or by non-financial counterparties that are authorised for the first time as investment firms on or after 3 January 2018; and
 - (b) such C6 energy derivative contracts are not considered to be OTC derivative contracts for the purposes of the clearing threshold set out in Article 10.

C6 energy derivative contracts benefiting from the transitional regime set out in point (a) shall be subject to all other requirements laid down in this Regulation.
2. The FCA shall determine whether paragraph 1 applies to the contract concerned. The FCA shall publish on its website a list of those C6 energy derivative contracts to which that paragraph does apply.
3. In this Article:
 - “C6 energy derivative contracts” means options, futures, swaps, and any other derivative contracts mentioned in paragraph 6 of Part 1 of Schedule 2 to the Regulated Activities Order relating to coal or oil that are traded on a UK OTF and must be physically settled;
 - “investment firms” means investment firms within point (a) of point (8) of Article 2;
 - “UK OTF” has the meaning given in Article 2(1)(13A) of the MIFIR.”.

(6) Omit Articles 90 and 91.

List of infringements referred to in paragraph 1 of Article 65

60. Omit Annex 1.

List of the coefficients linked to aggravating and mitigating factors for the application of paragraph 3 of Article 65

61. Omit Annex 2,

CHAPTER 2

REVOCATION OF COMMISSION DELEGATED REGULATIONS MADE UNDER THE
EMIR REGULATION

Commission Delegated Regulation (EU) No. 1003/2013

62. Commission Delegated Regulation (EU) No 1003/2013 of 12 July 2013 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to fees charged by the European Securities and Markets Authority to trade repositories is revoked.

Commission Delegated Regulation (EU) No. 667/2014

63. Commission Delegated Regulation (EU) No 667/2014 of 13 March 2014 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to rules of procedure for penalties imposed on trade repositories by the European Securities and Markets Authority including rules on the right of defence and temporal provisions is revoked.

PART 4

SPECIFIC PROVISION FOR TRADE REPOSITORIES

CHAPTER 1

PRELIMINARY

Interpretation of Part 4

64. In this Part—

“the TRATP Regulations” means the Trade Repositories (Amendment and Transitional Provision) (EU Exit) Regulations 2018(a);

“trade repository” has the meaning given in point (2) of Article 2 of the EMIR regulation;

“trade repository activities” means the activities of centrally collecting and maintaining records of derivatives;

“the Tribunal” means the Upper Tribunal.

CHAPTER 2

ENFORCEMENT PROVISIONS RELATING TO TRADE REPOSITORIES

Warning notice

65.—(1) If the FCA proposes to—

(a) publish a statement in respect of a trade repository under regulation 67; or

(a) S.I. 2018/ .

(b) impose a penalty on a trade repository under regulation 68,
it must give the trade repository a warning notice.

(2) A warning notice about a proposal to publish a statement must set out the terms of the statement.

(3) A warning notice about a proposal to impose a penalty must state the amount of the penalty.

Decision notice

66.—(1) If, having considered any representations made in response to the warning notice, the FCA decides to—

(a) publish a statement under regulation 67 (whether or not in the terms proposed); or

(b) impose a penalty under regulation 68 (whether or not of the amount proposed);

it must without delay give the trade repository concerned a decision notice.

(2) In case of a statement, the decision notice must set out the terms of the statement.

(3) In the case of a penalty, the decision notice must state the amount of the penalty.

(4) If the FCA decides to —

(a) publish a statement in respect of a trade repository under regulation 67; or

(b) impose a penalty on a trade repository under regulation 68;

the trade repository may refer the matter to the Tribunal.

(5) After a statement under regulation 67 is published, the FCA must send a copy of it to the trade repository concerned and to any person to whom a copy of the decision notice was given under section 393(4) of the FSMA (third party rights) (as applied by regulation 76).

Public censure

67. If the FCA considers that a trade repository has contravened a requirement imposed by or under this Part, the EMIR regulation or the TRATP Regulations, the FCA may publish a statement to that effect.

Financial penalties

68.—(1) If the FCA considers that a trade repository has contravened a requirement imposed by or under this Part, the EMIR regulation or the TRATP Regulations, it may impose a penalty of such amount as it considers appropriate on the trade repository.

(2) A penalty imposed under this regulation is payable to the FCA and may be recovered as a debt owed to the FCA.

Statement of policy

69.—(1) The FCA must prepare and issue a statement of policy with respect to—

(a) the imposition of penalties under regulation 68; and

(b) the amount of penalties under that regulation.

(2) The FCA's policy in determining what the amount of a penalty should be must include having regard to—

(a) the seriousness of the contravention in question in relation to the nature of the requirement contravened; and

(b) the extent to which that contravention was deliberate or reckless.

(3) The FCA may at any time alter or replace a statement issued by it under this regulation.

(4) If a statement issued under this regulation is altered or replaced by the FCA, the FCA must issue the altered or replacement statement.

(5) The FCA must, without delay, give the Treasury a copy of any statement which it issues under this regulation.

(6) A statement issued under this regulation by the FCA must be published by the FCA in the way appearing to the FCA to be best calculated to bring it to the attention of the public.

(7) The FCA may charge a reasonable fee for providing a person with a copy of the statement.

(8) In exercising, or deciding whether to exercise, its power under regulation 68 in the case of any particular contravention, the FCA must have regard to any statement of policy published by it under this regulation and in force at the time when the contravention in question occurred.

Statement of policy: procedure

70.—(1) Before the FCA issues a statement under regulation 69, the FCA must publish a draft of the proposed statement in the way appearing to the FCA to be best calculated to bring it to the attention of the public.

(2) The draft must be accompanied by a notice that representations about the proposed statement may be made to the FCA within a specified time.

(3) Before issuing the proposed statement the FCA must have regard to any representations made to it in accordance with paragraph (2).

(4) If the FCA issues the proposed statement it must publish an account, in general terms, of—

- (a) the representations made to it in accordance with paragraph (2); and
- (b) its response to them.

(5) If the statement differs from the draft published under paragraph (1) in a way which is, in the opinion of the FCA, significant, the FCA must (in addition to complying with paragraph (4)) publish details of the difference.

(6) The FCA may charge a reasonable fee for providing a person with a copy of a draft published by it under paragraph (1).

(7) This regulation also applies to a proposal to alter or replace a statement.

Powers to issue guidance

71.—(1) The FCA may give guidance consisting of such information and advice as it considers appropriate in respect of—

- (a) the operation of this Part, Titles 6 and 7 of the EMIR regulation or the TRATP Regulations;
- (b) any matters relating to the functions of the FCA under this Part, Titles 6 and 7 of the EMIR regulation or the TRATP Regulations;
- (c) any other matters about which it appears to the FCA to be desirable to give information or advice about this Part, Titles 6 and 7 of the EMIR regulation or the TRATP Regulations.

(2) The FCA may—

- (a) publish its guidance;
- (b) offer copies of its published guidance for sale at a reasonable price;
- (c) if it gives guidance in response to a request made by any person, make a reasonable charge for that guidance.

Injunctions

72.—(1) If, on the application of the FCA, the court is satisfied—

- (a) that there is a reasonable likelihood that any person will contravene a requirement imposed by or under this Part or by or under Title 6 or 7 of the EMIR regulation; or
- (b) that any person has contravened such a requirement and that there is a reasonable likelihood that the contravention will continue or be repeated,

the court may make an order restraining (or in Scotland an interdict prohibiting) the contravention.

(2) If, on the application of the FCA, the court is satisfied—

- (a) that any person has contravened a requirement imposed by or under this Part or by or under Title 6 or 7 of the EMIR regulation; and
- (b) that there are steps which could be taken for remedying the contravention,

the court may make an order requiring that person, and any other person who appears to have been knowingly concerned in the contravention, to take such steps as the court may direct to remedy it.

(3) If, on the application of the FCA, the court is satisfied that any person may have—

- (a) contravened a requirement imposed by or under this Part or by or under Title 6 or 7 of the EMIR regulation; or
- (b) been knowingly concerned in the contravention of such a requirement,

it may make an order restraining (or in Scotland an interdict prohibiting) them from disposing of, or otherwise dealing with, any assets of theirs which it is satisfied they are reasonably likely to dispose of or otherwise deal with.

(4) The jurisdiction conferred by this regulation is exercisable by the High Court and the Court of Session.

(5) In paragraph (2), references to remedying a contravention include references to mitigating its effect.

CHAPTER 3

APPLICATION OF THE FSMA FOR THE PURPOSES OF THIS PART, THE EMIR REGULATION AND THE TRATP REGULATIONS

Application of Part 9 of the FSMA (hearings and appeals)

73.—(1) Part 9 of the FSMA (hearings and appeals) applies in respect of a reference to the Tribunal under this Part, under the FSMA as applied by this Part or under the EMIR regulation, as it applies in respect of a reference to the Tribunal under the FSMA but with the following modifications.

(2) Before section 133 insert—

“Interpretation of Part 9

132A. In this Part, “the 2018 Regulations” means the Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018.”.

(3) 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) in subsection (5), the reference to section 393(11) is treated as a reference to section 393(11) as applied by these Regulations;
- (e) for subsection (7A) substitute—

“(7A) A reference is a “disciplinary reference” for the purposes of this section if it is in respect of the following decisions—

 - (a) a decision to publish a statement under regulation 67 of the 2018 Regulations;
 - (b) a decision to impose a penalty under regulation 68 of the 2018 Regulations.”.

- (4) In section 133A (proceedings before the Tribunal: decision and supervisory notices, etc)—
- (a) for subsection (1) substitute—

“(1) In determining in accordance with section 133(5) (as applied by the 2018 Regulations) a reference made as a result of a decision notice given by the FCA under regulation 66 of the 2018 Regulations, the Tribunal may not direct the FCA to take action which it would not, by or under those Regulations have had power to take when giving the notice.”;
 - (b) in subsection (5), omit “or the PRA”.
- (5) In section 133B (offences), in subsection (1)—
- (a) in paragraph (a) omit “or the PRA”;
 - (b) omit paragraphs (b) and (c).

Application of Part 9A of the FSMA (rules and guidance)

74.—(1) The provisions of Part 9A of the FSMA (rules and guidance) specified in the following paragraphs apply but with the following modifications.

- (2) In Part 9A, the references to rules includes rules made under that Part as modified by this regulation.
- (3) Before section 137A insert—

“Interpretation of Part 9A

137ZA. In this Part, “the 2018 Regulations” means the Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018.”.

- (4) In section 137A (the FCA’s general rules)—
- (a) for subsection (1) substitute—

“(1) The FCA may make such rules applying to trade repositories registered under Chapter 1 of Title 6 to the EMIR regulation—

 - (a) with respect to the carrying on by them of trade repository activities within the meaning given in Part 4 of the 2018 Regulations, or
 - (b) with respect to the carrying on by them of activities which are not trade repository activities within the meaning given in that Part of those Regulations,

as appear to the FCA to be necessary or expedient for the purpose of advancing one or more of its operational objectives.”;
 - (b) each reference to the FCA’s general rules is a reference to the rules made under this section as modified by sub-paragraph (a);
 - (c) each reference to an authorised person is a reference to a trade repository.
- (5) In section 138A (modification or waiver of rules)—
- (a) each reference to a regulator is a reference to the FCA;
 - (b) each reference to either regulator is a reference to the FCA only.
- (6) In section 138B (publication of directions under section 138A)—
- (a) each reference to a regulator is a reference to the FCA, and each reference to either regulator is a reference to the FCA only;
 - (b) omit subsections (3)(b) and (4).
- (7) In section 138G (rule-making instruments)—
- (a) each reference to a regulator is a reference to the FCA;
 - (b) each reference to either regulator is a reference to the FCA only.
- (8) In section 138I (consultation by the FCA)—

- (a) in subsection (1)(b), omit “after doing so,”;
- (b) in subsection (2), omit paragraphs (a), (c) and (d);
- (c) in subsection (5)—
 - (i) in paragraph (a) omit “together with a cost benefit analysis, and”;
 - (ii) omit paragraph (b);
 - (iii) omit subsections (6) to (11).
- (9) In section 139B (notification of FCA guidance to the Treasury)—
 - (a) for subsection (5), substitute—

“(5) “General guidance” means guidance given by the FCA under regulation 71(1) of the 2018 Regulations which is—

 - (a) given to persons generally or to trade repositories generally;
 - (b) intended to have continuing effect;
 - (c) given in writing or other legible form.”;
 - (b) omit subsection (6).

Application of Part 11 of the FSMA (information gathering and investigations)

75.—(1) Part 11 of the FSMA (information gathering and investigations), other than sections 165A, 165B, 165C, 169A and 173, applies with respect to the discharge by the FCA of its functions under this Part and the EMIR regulation as it applies with respect to the discharge by the FCA of its functions under the FSMA but with the following modifications.

- (2) In Part 11—
 - (a) each reference to the FSMA includes a reference to this Part and the EMIR regulation;
 - (b) each reference to a section or Part of the FSMA is a reference to that section or Part as applied by this Part;
 - (c) each reference to an authorised person is a reference to a trade repository registered or recognised in accordance with Title 6 of the EMIR regulation;
 - (d) omit each reference to the PRA;
 - (e) each reference to a regulator, however phrased, is a reference to the FCA, and each reference to either regulator is a reference to the FCA only.
- (3) Before section 165 insert—

“Part 11 Interpretation

164A. In this Part—

“the 2018 Regulations” means the Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018;

“the TRATP Regulations” means the Trade Repositories (Amendment and Transitional Provision) (EU Exit) Regulations 2018.”.

- (4) In section 165 (regulators’ power to require information: authorised persons etc.)—
 - (a) omit subsections (4)(b), (7)(b) to (e) and (8A);
 - (b) after subsection (7)(e) insert--
 - “(f) by the FCA, to impose requirements on related third parties to whom the trade repositories have outsourced operational functions or activities to provide all information that is necessary in order to carry out the trade repository’s duties.”.
- (5) In section 166 (reports by skilled persons), omit subsections (10) and (11).
- (6) In section 166A (appointment of skilled person to collect and update information)—

- (a) for subsection (1) substitute—
 - “(1) This section applies if the FCA considers that a person has contravened a requirement imposed by or under the EMIR regulation to collect, and keep up to date, information of a description specified in that Regulation.”;
 - (b) omit subsection (10).
- (7) In section 167 (appointment of persons to carry out general investigations)—
- (a) for subsection (1) substitute—
 - “(1) If it appears to the FCA that there is good reason for doing so, the FCA may appoint one or more competent persons to conduct an investigation on its behalf into—
 - (a) the nature, conduct or state of the business of a person in respect of whom a requirement is imposed by or under the TRATP Regulations, Part 4 of the 2018 Regulations or the EMIR regulation;
 - (b) a particular aspect of that business; or
 - (c) the ownership or control of a person subject to the TRATP Regulations, Part 4 of the 2018 Regulations or the EMIR regulation.”;
 - (b) omit subsections (2)(c) and (3A);
 - (c) for subsection (4) substitute—
 - “(4) The power conferred by this section may be exercised in relation to a person who was formerly a person subject to the TRATP Regulations or the EMIR regulation but only in relation to—
 - (a) a business carried on when the person was a person subject to the TRATP Regulations, Part 4 of the 2018 Regulations or the EMIR regulation; or
 - (b) the ownership or control of a person who was formerly a person subject to the TRATP Regulations, Part 4 of the 2018 Regulations or the EMIR regulation at any time when the person was a person subject to the TRATP Regulations, Part 4 of the 2018 Regulations or the EMIR regulation.”;
 - (d) in subsection (5), for “regulated activities” substitute “trade repository activities within the meaning given in Part 4 of the 2018 Regulations”;
 - (e) omit subsections (5A) and (6);
- (8) In section 168 (appointment of persons to carry out investigations in particular cases)—
- (a) for subsection (1) substitute—
 - “(1) Subsection (3) applies if it appears to the FCA that there are circumstances suggesting that a person—
 - (a) may be guilty of an offence under section 398, as applied by regulation 80 of the 2018 Regulations;
 - (b) may be guilty of an offence under section 177, as applied by regulation 78 of the 2018 Regulations;
 - (c) may have contravened a requirement imposed by or under—
 - (i) this Act as applied by Part 4 of the 2018 Regulations;
 - (ii) Part 4 of the 2018 Regulations; or
 - (iii) the EMIR regulation.”;
 - (b) omit subsections (2), (4) and (5);
 - (c) for subsection (6) substitute—
 - “(6) “Investigating authority” means the FCA.”.
- (9) In section 169 (investigations etc. in support of overseas regulator)—
- (a) omit subsection (2A);
 - (b) for subsection (13) substitute—

“(13) “Overseas regulator” means an authority in a country or territory outside the United Kingdom which has functions corresponding to those of the FCA under the EMIR regulation and Part 4 of the 2018 Regulations.”.

(10) In section 170 (investigations: general)—

- (a) each reference to the investigating authority is a reference to the FCA;
- (b) in subsection (1), omit “or (5)”;
- (c) for subsection (3) substitute—

“(3) Subsections (2) and (9) do not apply if the investigator is appointed as a result of section 168(1) and the FCA believes that the notice required by subsection (2) or (9) would be likely to result in the investigation being frustrated.”.

- (d) omit subsection (10).

(11) In section 171 (powers of persons appointed under section 167) omit subsections (3A) and (7);

(12) In section 172 (additional power of persons appointed as a result of section 168(1) or (4)) omit “or (4)” both in the heading and in subsection (4).

(13) In section 174 (admissibility of statements made to investigators)—

- (a) in subsection (2), omit “or in proceedings in relation to action to be taken against that person under section 123 to which this section applies”;
- (b) omit subsection (3A);
- (c) in subsection (4), omit the words from “or (5),” to the end;
- (d) in subsection (5), omit “,173”.

(14) In section 175 (information and documents: supplemental provisions), in subsection (8), omit “or (5)”.

(15) In section 176 (entry of premises under warrant)—

- (a) for subsection (1) substitute—

“(1) A justice of the peace may issue a warrant under this section if satisfied on information on oath given by or on behalf of the FCA or an investigator that there are reasonable grounds for believing that the first, second or third set of conditions is satisfied.”
;

- (b) in subsection (3)(a), omit “or an appointed representative”;
- (c) in subsection (10), omit “or (5)”;
- (d) in subsection (11)—
 - (i) in paragraph (a), omit “87C, 87J,” and “,165A, 169A”;
 - (ii) in paragraph (b), omit “,173”.

Application of Part 26 of the FSMA (notices)

76.—(1) Part 26 of the FSMA (notices), other than sections 391A, 391B, 391C, 391D and 391E, applies with respect to the giving of notices under this Part, under the FSMA as applied by this Part and under the EMIR regulation as it applies with respect to the giving of notices under the FSMA but with the following modifications.

(2) In Part 26—

- (a) each reference to the FSMA includes a reference to this Part and the EMIR regulation;
- (b) each reference to a section of the FSMA is a reference to that section as applied by this Part;
- (c) each reference to a regulator or to the regulator concerned is a reference to the FCA;
- (d) omit references to the PRA.

(3) Before section 387 insert—

“Part 26 Interpretation

386A. In this Part, “the 2018 Regulations” means the Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018.”.

- (4) In section 387 (warning notices) omit subsections (1A) and (3A).
- (5) In section 388 (decision notices) omit subsections (1A) and (2).
- (6) In section 391 (publication)—
 - (a) in subsection (1) the reference to a warning notice falling within subsection (1ZB) is to a warning notice given under regulation 65;
 - (b) omit subsections (1ZA), (1ZB), (4A), (5A), (6A), (7A), (7B), (8A), (8B), (8C), (8D) and (8E);
 - (c) for subsection (11) substitute—

“(11) Section 425A (meaning of “consumers”) applies for the purposes of this section as if—

 - (a) subsection (2)(c) were omitted;
 - (b) for subsection (3) there were substituted—

“(3) The services within this subsection are trade repository activities within the meaning given in Part 4 of the 2018 Regulations.”;
 - (c) subsection (7) were omitted.”.
- (7) In section 392 (application of sections 393 and 394)—
 - (a) for paragraph (a) substitute—

“(a) a warning notice given in accordance with regulation 65(1) of the 2018 Regulations;”;
 - (b) for paragraph (b) substitute—

“(b) a decision notice given in accordance with regulation 66(1) of the 2018 Regulations.”.
- (8) In section 395 (the FCA’s and PRA’s procedures)—
 - (a) for subsection (1) substitute—

“(1) The FCA must determine the procedure that it proposes to follow in relation to a decision which gives rise to an obligation for it to give—

 - (a) a supervisory notice, warning notice or decision notice; or
 - (b) a decision under section 391(1)(c), to publish information about the matter to which a warning notice relates.”;
 - (b) in subsection (2)(a), for “any of paragraphs (a) to (c)”, substitute “paragraph (a)”;
 - (c) in subsection (2)(b) for “(d)” substitute “(b)”;
 - (d) in subsection (2)(c)—
 - (i) for “(d)” substitute “(b)”;
 - (ii) for “(b) or (c)” substitute “(a)”;
 - (e) omit subsections (3)(b) and (4);
 - (f) in subsection (9), omit “other than a warning notice or decision notice relating to a decision of the PRA that is required by a decision of the FCA of the kind mentioned in subsection (1)(b)(ii)”;
 - (g) omit subsection (9A);
 - (h) for subsection (13) substitute —

“(13) “Supervisory notice” means a supervisory notice given in accordance with paragraph 6 or 10 of Article 71a of the EMIR regulation.”.

Application of Part 27 of the FSMA (offences)

77.—(1) Part 27 of the FSMA applies with respect to the discharge by the FCA of its functions under—

- (a) that Act as applied by this Part;
- (b) this Part; and
- (c) the EMIR regulation,

as it applies with respect to the discharge by it of its functions under the FSMA but with the following modifications.

(2) In section 398, in subsection (1A), after paragraph (i) insert—

“(j) the Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018;

(k) the EMIR regulation.”.

Application of Schedule 1ZA to the FSMA (the Financial Conduct Authority)

78.—(1) Paragraphs 19 to 21 (penalties) of Schedule 1ZA to the FSMA apply with respect to the discharge by the FCA of its functions under that Act as applied by this Chapter of this Part as they apply with respect to the discharge by it of its functions under the FSMA but with the following modifications.

(2) In those paragraphs—

- (a) each reference to penalties imposed under the FSMA includes a reference to penalties imposed under this Part;
- (b) each reference to a section or Part of the FSMA includes a reference to that section or Part as applied by this Part;
- (c) each reference to the functions of the FCA includes a reference to its functions under this Part, the EMIR regulation or the TRATP Regulations.

(3) In paragraph 20, the references to the FCA’s enforcement powers include references to—

- (a) its powers under this Part, under Part 26 of the FSMA as applied by this Part;
- (b) its powers in relation to the investigation of offences under this Part or under the FSMA as applied by this Part;
- (c) its powers in England and Wales or Northern Ireland in relation to the prosecution of offences under this Part or under the FSMA as applied by this Part.

(4) In paragraph 21, the references to regulated persons includes references to trade repositories.

PART 5

TRANSITIONAL PROVISIONS: INTRAGROUP TRANSACTIONS

Interpretation

79.—(1) In this Part—

“Regulation 2015/2205” means Commission Delegated Regulation (EU) 2015/2205 of 6 August 2015 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on the clearing obligation^(a);

(a) OJ No. L 314, 1.12.2015, p.13.

“Regulation 2016/592” means Commission Delegated Regulation (EU) 2016/592 of 1 March 2016 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on the clearing obligation(a);

“Regulation 2016/1178” means Commission Delegated Regulation (EU) 2016/1178 of 10 June 2016 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on the clearing obligation(b);

“Regulation 2016/2251” means Commission Delegated Regulation (EU) 2016/2251 of 4 October 2016 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards for risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty(c);

“clearing obligation” means the obligation imposed on counterparties by paragraph 1 of Article 4;

“counterparty” means—

(a) a financial counterparty within the meaning given in point (8) of Article 2; or

(b) a non-financial counterparty within the meaning given in point (9) of Article 2;

“equivalence determination” means a determination made by the Treasury in relation to a third country under paragraph 2 of Article 13;

“intragroup transaction” means a transaction referred to in paragraph 1 or 2 of Article 3;

“non-UK counterparty” means a counterparty which is established in a third country in respect of which there is no equivalence determination;

“OTC derivative contract” has the meaning given in point (7) of Article 2;

“risk-management obligation” means the obligation imposed on counterparties by paragraph 3 of Article 11;

“third country” means a country other than the United Kingdom;

“UK counterparty” means a counterparty which is established in the United Kingdom.

(2) References in this Part to numbered Articles, except in regulations 80(1)(c) and 82(5)(a) and (b), are to the Articles of the EMIR regulation bearing that number.

(3) References in this Part to the EMIR regulation, except in regulations 80(2)(c) and 82(6), are to that Regulation as in force after exit day.

Continuation of exemptions from certain clearing obligations and risk-management obligations

80.—(1) This regulation applies to an OTC derivative contract—

(a) where one of the counterparties is a UK counterparty;

(b) where the other counterparty is neither a UK counterparty nor established in a member State; and

(c) which immediately before exit day was exempt from—

(i) the clearing obligation by virtue of—

(aa) paragraph 2 of Article 3 of Regulation 2015/2205 as it had effect immediately before exit day;

(bb) paragraph 2 of Article 3 of Regulation 2016/592 as it had effect immediately before exit day; or

(a) OJ No. L 103, 19.4.2016, p.5.

(b) OJ No. L 195, 20.7.2016, p.3.

(c) OJ No. L 340, 15.12.2016, p.9.

- (cc) paragraph 2 of Article 3 of Regulation 2016/1178 as it had effect immediately before exit day; or
 - (ii) certain requirements of the risk-management obligation by virtue of the application of paragraph 2 of Article 36 or paragraph 3 of Regulation 2016/2251 (as read with Chapter 3 of that Regulation) as they had effect immediately before exit day.
- (2) This regulation also applies to an OTC derivative contract—
- (a) where one of the counterparties is a UK counterparty;
 - (b) where the other counterparty is established in a member State; and
 - (c) which immediately before exit day—
 - (i) was exempt from the clearing obligation by virtue of paragraph 2(a) of Article 4 as it had effect immediately before exit day; or
 - (ii) was exempt from, or was partially exempt from, certain requirements of the risk management obligation by virtue of paragraph 6, 7 or 10 of Article 11 (as read with Chapter 3 of the 2016 Regulation) as they had effect immediately before exit day.
- (3) Where this regulation applies, the exemptions or partial exemptions specified in paragraph (1)(c) or, as the case may be, (2)(c) continue to apply in relation to the relevant contract, subject to regulation 84, until the relevant day specified in regulation 81.

Relevant day for the purposes of regulation 80

81.—(1) In relation to the clearing obligation, the relevant day referred to in regulation 80(3) is the earlier of—

- (a) the day which is 2 months after the day on which an equivalence determination in relation to the third country in which the non-UK counterparty is established comes into force; or
- (b) the day which is 3 years after exit day.

(2) In relation to the risk-management obligation, the relevant day referred to in regulation 80(3) is the earlier of—

- (a) the day which is 4 months after the day on which an equivalence determination in relation to the third country in which the non-UK counterparty is established comes into force; or
- (b) the day which is 3 years after exit day.

New exemptions from certain clearing obligations and risk-management obligations

82.—(1) This regulation applies to an OTC derivative contract where—

- (a) one of the counterparties is a UK counterparty;
- (b) the other counterparty is a non-UK counterparty; and;
- (c) the contract would be an intragroup transaction if the Treasury were to make an equivalence determination in respect of the third country in which the non-UK counterparty is established.

(2) Where this regulation applies, the UK counterparty may after exit day—

- (a) apply to the FCA for; or
- (b) notify the FCA of its intention to apply,

an exemption in accordance with the provision of the EMIR regulation to which the exemption relates as if the Treasury had made an equivalence determination in respect of the third country in which the non-UK counterparty is established.

(3) Notwithstanding—

- (a) paragraph 2(b) of Article 4; and
- (b) paragraphs 8 and 9 of Article 11,

the FCA may authorise or, as the case may be, object to, the exemptions specified in those provisions (as read with Chapter 3 of Regulation 2016/2251) pursuant to the application or notification referred to in paragraph (2).

(4) The exemptions mentioned in paragraph (3) apply, subject to regulation 84, until the relevant day specified in regulation 83.

(5) Paragraph (8) applies where one or both of the counterparties—

- (a) has applied before exit day to a competent authority for an exemption from an obligation as specified in paragraph (6) or (7); or
- (b) has notified a competent authority before exit day of its intention to apply an exemption from an obligation as specified in either of those paragraphs.

(6) The obligations specified in this paragraph are—

- (a) the clearing obligation in a case where the application or notification relates to an exemption which would apply by virtue of—
 - (i) paragraph 2 of Article 3 of Regulation 2015/2205 as it had effect immediately before exit day;
 - (ii) paragraph 2 of Article 3 of Regulation 2016/592 as it had effect immediately before exit day; or
 - (iii) paragraph 2 of Article 3 of Regulation 2016/1178 as it had effect immediately before exit day; or
- (b) certain requirements of the risk-management obligation in a case where the application or notification relates to an exemption which would apply by virtue of paragraph 2 of Article 36 of Regulation 2016/2251, or paragraph 3 of Article 37 of that Regulation as they had effect immediately before exit day.

(7) The obligations specified in this paragraph are—

- (a) the clearing obligation in a case where the application or notification relates to an exemption which would apply by virtue of paragraph 2(a) of Article 4 as it had effect immediately before exit day; or
- (b) certain requirements of the risk management obligation in a case where the application or notification relates to an exemption which would apply by virtue of paragraph 6, 7 or 10 of Article 11 as they had effect immediately before exit day.

(8) Where this paragraph applies, the application or notification to the competent authority is to be treated after exit day as if it were an application or, as the case may be, a notification to the FCA by the UK counterparty for the purposes of paragraph (2).

(9) Where it appears to the FCA that the application or notification referred to in paragraph (5) does not meet the requirements of the EMIR regulation and Chapter 3 of Regulation 2016/2251 to which the exemption relates, the FCA may request that the UK counterparty provides such further information as is necessary to enable the FCA to ascertain whether those requirements are complied with.

(10) Paragraphs 11 and 12 of Article 11 have effect for the purposes of the exemptions, or partial exemptions, applying by virtue of paragraph (3)(b) as they have effect in relation to exemptions or partial exemptions applying by virtue of paragraph 8 or 9 of Article 11 (as read with Chapter 3 of Regulation 2016/2251).

(11) In this regulation, “competent authority” means a regulatory authority which is responsible for the authorisation and supervision of counterparties in its territory.

Relevant day for the purposes of regulation 82

83.—(1) In relation to the clearing obligation, the relevant day referred to in regulation 82(3) is the earlier of—

- (a) the day which is 2 months after the day on which an equivalence determination in relation to the third country in which the non-UK counterparty is established comes into force; or

(b) 3 years after exit day.

(2) In relation to the risk-management obligation, the relevant day referred to in regulation 82(3) is the earlier of the day which is—

(a) 4 months after the day on which an equivalence determination in relation to the third country in which the non-UK counterparty is established comes into force; or

(b) 3 years after exit day.

Regulations

84.—(1) The Treasury may, in respect of the relevant days referred to in—

(a) regulation 81(1)(b) and (2)(b); or

(b) regulation 83(1)(b) and (2)(b),

prescribe a later day in regulations in respect of any third country in which a non-UK counterparty is established.

(2) The power to make regulations conferred by paragraph (1) is exercisable by statutory instrument.

(3) A statutory instrument made under paragraph (1) is subject to annulment in pursuance of a resolution of either House of Parliament.

| | |
|------|--|
| | <i>Name</i> |
| | <i>Name</i> |
| Date | Two of the Lords Commissioners of Her Majesty's Treasury |

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers in section 8(1) of the European Union (Withdrawal) Act 2018 (c.16) (“the 2018 Act”) in order to address failures of retained EU law to operate effectively (see in particular paragraphs (a) to (e) and (g) of section 8(2) of that Act) and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

Part 2 amends subordinate legislation. In particular, it amends the Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504) which implemented Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ No. L201, 27.7.2012, p.1) (“the EMIR regulation”).

Part 3 both amends the EMIR regulation and revokes two pieces of EU tertiary legislation made under that regulation.

Part 4 prescribes enforcement provisions relating to trade repositories replacing those in the EMIR regulation which are revoked by Part 2. It also modifies the Financial Services and Markets Act 2000 (c.8) so that the provisions in that Act concerning enforcement may apply, both to those enforcement provisions and those in the EMIR regulation.

Part 5 prescribes transitional provisions applying in respect of certain exemptions from the clearing obligation and the risk-management obligation in the EMIR regulation relating to OTC derivative contracts.

An impact assessment of the effect that this instrument, and other instruments made by HM Treasury under the 2018 Act at or about the same time, 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.

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