
DRAFT STATUTORY INSTRUMENTS

2018 No.

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

PART 4

SPECIFIC PROVISION FOR TRADE REPOSITORIES

CHAPTER 3

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

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).