
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 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.”.