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DRAFT STATUTORY INSTRUMENTS

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**2019 No.**

The Financial Services and Markets Act 2000  
(Amendment) (EU Exit) Regulations 2019

PART 1

Introductory

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019.

(2) This regulation, Part 7, Part 8 and the following regulations come into force on the day after the day on which these Regulations are made—

- (a) regulation 49(e);
- (b) regulation 85(3), (6), (8), (11) and (14);
- (c) regulation 87(b);
- (d) regulation 88(e);
- (e) regulation 130;
- (f) regulation 171;
- (g) regulation 179(3);
- (h) regulation 187(3), in so far as it inserts paragraph (3) in article 1 of the Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013<sup>(1)</sup>; and
- (i) regulation 190(3), in so far as it inserts paragraph (3) in article 1 of the Financial Services and Markets Act 2000 (Qualifying EU Provisions) (No. 2) Order 2013<sup>(2)</sup>.

(3) The other provisions of these Regulations come into force on exit day.

(4) In these Regulations, “the Act” means the Financial Services and Markets Act 2000<sup>(3)</sup>.

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<sup>(1)</sup> S.I. 2013/419.  
<sup>(2)</sup> S.I. 2013/3116.  
<sup>(3)</sup> 2000 c.8.

## PART 2

### Amendments to the Act

#### CHAPTER 1

##### Part 1A of the Act: the regulators

#### **Introduction**

2. Part 1A of the Act(4) (the regulators) is amended as follows.

#### **Section 1A (the Financial Conduct Authority)**

3. In section 1A (the Financial Conduct Authority), in subsection (6)(d) for “qualifying EU provision” substitute “qualifying provision”.

#### **Section 1H (further interpretative provisions for sections 1B to 1G)**

4.—(1) Section 1H(5) (further interpretative provisions) is amended as follows.

(2) In subsection (2)(d), for “credit institutions” substitute “qualifying credit institutions”.

(3) In subsection (8)—

(a) omit the definition of “credit institution”(6);

(b) in the definition of “relevant ancillary service”, for “Section B of Annex I to the markets in financial instruments directive” substitute “Part 3A of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001”(7).

#### **Section 1L (supervision, monitoring and enforcement)**

5. In section 1L(8) (supervision, monitoring and enforcement), in subsection (2)(b) for “qualifying EU provision” substitute “qualifying provision”.

#### **Section 2AB (functions of the PRA)**

6. In section 2AB(9) (functions of the PRA), in subsection (3)(d)(10) for “qualifying EU provision” substitute “qualifying provision”.

#### **Section 3E (memorandum of understanding)**

7. In section 3E(11) (memorandum of understanding between regulators) omit subsection (3)(a).

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(4) Part 1A of the Financial Services and Markets Act 2000 (comprising sections 1A to 3S) was substituted by section 6 of the Financial Services Act 2012 (c.21).

(5) Section 1H was inserted by section 6(1) of the Financial Services Act 2012 and was amended by sections 27(1), (2)(a) and (2) (b) of the Financial Guidance and Claims Act 2018 (c.10) and S.I. 2013/655, 2013/1881, 2013/3115, 2017/752 and 2018/135.

(6) This definition was amended by S.I. 2013/3115.

(7) S.I. 2001/544.

(8) Section 1L was amended by S.I. 2013/1773.

(9) Section 2AB was substituted by section 12 of the Bank of England and Financial Services Act 2016 (c.14) and amended by S.I. 2018/1115.

(10) Subsection (3)(d) was amended by S.I. 2018/1115.

(11) Section 3E was substituted by section 6(1) of the Financial Services Act 2012.

**Section 3I (power of PRA to require FCA to refrain from specified action)**

8. In section 3I(12) (power of PRA to require FCA to refrain from specified action), in subsection (8) omit “EU obligation or any other”.

**Section 3J (power of PRA in relation to with-profits policies)**

9. In section 3J(13) (power of PRA in relation to with-profits policies), in subsection (8) omit “EU obligation or any other”.

**Section 3M (directions relating to consolidated supervision of groups)**

10.—(1) Section 3M(14) (directions relating to consolidated supervision of groups) is amended as follows.

(2) In subsection (1) (which refers to supervision required in pursuance of any of the relevant directives), for “any of the relevant directives” substitute—

“(a) any implementing provision contained in subordinate legislation (within the meaning of the Interpretation Act 1978) made otherwise than by any of the following—

(i) statutory instrument, and

(ii) statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)); or

(b) any other implementing provision (as amended from time to time),”(15).

(3) After subsection (2) insert—

“(2A) “Implementing provision” means an enactment that immediately before exit day implemented provisions of any of the relevant directives.”.

(4) In subsection (10) omit “EU obligation or any other”.

CHAPTER 2

Part 3 of the Act: authorisation and exemption

**Introduction**

11. Part 3 of the Act (authorisation and exemption) is amended as follows.

**Section 39 (exemption of appointed representatives)**

12.—(1) Section 39 (exemption of appointed representatives) is amended as follows.

(2) In subsection (1A)(16), in paragraph (a)—

(a) for “credit institution” substitute “qualifying credit institution”;

(b) for “a person mentioned in Article 3.1 (optional exemptions) of the markets in financial instruments directive” substitute “a firm which has a Part 4A permission to carry on regulated activities as an exempt investment firm within the meaning of regulation 8 of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (S.I. 2017/701)”.

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(12) Section 3I was amended by sections 3(a), (b) and 129 and paragraphs 1 and 4 of Part 1 to Schedule 8 to the Financial Services (Banking Reform) Act 2013 (c.33).

(13) Section 3J was substituted by section 6(1) of the Financial Services Act 2012.

(14) Section 3M was amended by S.I. 2013/3115 and 2014/3329.

(15) In the Interpretation Act 1978 (c.30), “subordinate legislation” has the meaning given by section 21(1) of that Act.

(16) Subsection (1A) was inserted by S.I. 2007/126 and has been amended by S.I. 2015/910 and 2017/701.

- (3) In subsection (1AA)(17)—
- (a) in paragraph (a), for “credit institution” substitute “qualifying credit institution”;
  - (b) in paragraph (b) omit “as defined by Article 4.1.43 (definitions) of the markets in financial instruments directive”.
- (4) In subsection (1B)(18), for the words after ““the applicable register” is” substitute “the record maintained by the FCA by virtue of section 347(1)(ha)”.
- (5) In subsection (1BA)(19), in paragraph (b)—
- (a) after “of a kind” insert “that”;
  - (b) in sub-paragraph (i), before “specified” insert “is”;
  - (c) for sub-paragraph (ii) substitute—
    - “(ii) relates to mortgage agreements entered into on or after 21st March 2016,”.
- (6) In subsection (4)(20), for “qualifying EU provision” substitute “qualifying provision”.
- (7) For subsection (7)(21) substitute—
- “(7) A person carries on “investment services business” if, under the full and unconditional responsibility of only one investment firm on whose behalf the person acts, the person—
    - (a) promotes investment services or ancillary services to the firm’s clients or prospective clients,
    - (b) receives and transmits instructions or orders from clients in respect of investment services or financial instruments,
    - (c) places financial instruments, or
    - (d) provides advice to clients or prospective clients in respect of investment services or financial instruments.”.
- (8) For subsection (8)(22) substitute—
- “(8) In this section—
    - “ancillary services” means any of the services and activities listed in Part 3A of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544);
    - “financial instruments” means those instruments specified in Part 1 of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;
    - “investment services” means any of the services and activities listed in Part 3 of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, relating to any of the instruments listed in Part 1 of that Schedule;
    - “structured deposit” has the meaning given by Article 2.1.23 of the markets in financial instruments regulation.”(23).

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(17) Subsection (1AA) was inserted by S.I. 2017/701.

(18) Subsection (1B) was inserted by S.I. 2007/126 and was amended by paragraph 5 of Schedule 18 to the Financial Services Act 2012 and by S.I. 2017/701.

(19) Subsection (1BA) was inserted by S.I. 2015/910.

(20) Subsection (4) was substituted by paragraph 1 of Schedule 18 to the Financial Services Act 2012.

(21) Subsection (7) was inserted by S.I. 2007/126 and has been amended by S.I. 2017/701.

(22) Subsection (8) was amended by S.I. 2013/3115 and 2017/701.

(23) Part 3A was inserted by S.I. 2018/1403.

### **Section 39A (certain tied agents operating outside United Kingdom)**

**13.**—(1) Section 39A(24) (certain tied agents operating outside United Kingdom) is amended as follows.

(2) In subsection (1)(a), for the words after “who is” substitute “established in the United Kingdom; and”.

(3) In subsection (4), for the words after “Condition B is that” substitute “the FCA is satisfied that no such business is, or is likely to be, carried on by the agent in the United Kingdom.”.

(4) In subsection (6)(c)(25) omit sub-paragraph (ii).

(5) In subsection (6)(d)(26) omit “or register”.

(6) For subsection (8)(27) substitute—

“(8) Section 39(7) applies for the purposes of this section.”.

(7) In subsection (9) omit the definition of “competent authority”(28).

(8) The amendments made by paragraphs (2), (3) and (7) do not apply during the three-year transitional period in relation to contracts entered into before exit day.

(9) In relation to such contracts, section 39A(6)(d) has effect during the three-year transitional period as if “or on the register of tied agents of an EEA State maintained pursuant to Article 29 of [Directive 2014/65/EU](#) of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments” were inserted after “entered on that record”.

(10) In paragraphs (8) and (9) “the three-year transitional period” means the period that—

(a) begins with exit day, and

(b) ends at the end of the period of three years starting with the first day after exit day.

## **CHAPTER 3**

### **Part 4A of the Act: permission to carry on regulated activities**

#### **Introduction**

**14.** Part 4A of the Act(29) (permission to carry on regulated activities) is amended as follows.

#### **Section 55D (application for permission)**

**15.**—(1) Section 55D (firms based outside EEA) is amended as follows.

(2) In the heading, for “EEA” substitute “the United Kingdom”.

(3) For “non-EEA”, wherever occurring, substitute “non-UK”.

(4) In subsection (1)(a) for “EEA” substitute “United Kingdom”.

#### **Section 55J (variation and cancellation of Part 4A permission: general)**

**16.**—(1) Section 55J(30) (variation or cancellation on initiative of regulator) is amended as follows.

(2) In subsection (6A)—

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(24) Section 39A was inserted by [S.I. 2007/126](#).

(25) Subsection (6)(c) was substituted by [S.I. 2017/701](#).

(26) Subsection (6)(d) was amended by [S.I. 2017/701](#).

(27) Subsection (8) was amended by [S.I. 2017/701](#).

(28) This definition was amended by [S.I. 2017/701](#).

(29) Part 4A was inserted by section 11(2) of the Financial Services Act 2012.

(30) Relevant amending instruments are [S.I. 2013/1773](#), [S.I. 2013/3115](#), [S.I. 2015/910](#), [S.I. 2015/1882](#) and [S.I. 2016/680](#).

- (a) in paragraph (c)—
  - (i) for the words from “provide” to “managers directive” substitute “carry on the management of portfolios of investments in accordance with mandates given by investors on a discretionary, and client-by-client, basis”;
  - (ii) for “the capital requirements directive” substitute “any enactment (as amended from time to time) that immediately before exit day implemented provisions of the capital requirements directive”;
- (b) in paragraph (e)—
  - (i) for sub-paragraph (i) substitute—
    - “(i) an AIFMD requirement;”;
  - (ii) omit sub-paragraphs (ii) and (iii);
  - (iii) for sub-paragraph (iv), including the “or” at the end, substitute—
    - “(iv) an ELTIF requirement; or”;
  - (iv) for sub-paragraph (v) substitute—
    - “(v) an MMF requirement.”.
- (3) After subsection (6A), insert—
  - “(6AA) For the purposes of subsection (6A)(e)—
    - (a) an AIFMD requirement is a provision of—
      - (i) the Alternative Investment Fund Managers Regulations 2013,
      - (ii) any EU regulation, originally made under the alternative investment fund managers directive, which is retained direct EU legislation,
      - (iii) any provision made by or under this Act that immediately before exit day implemented provisions of the alternative investment fund managers directive (as that implementing provision is amended from time to time), or
      - (iv) any subordinate legislation (within the meaning of the Interpretation Act 1978) which is made under a power substituted for a power of an EU entity to make a directly applicable regulation under the alternative investment fund managers directive by regulations made under section 8 of the European Union (Withdrawal) Act 2018;
    - (b) an ELTIF requirement is a provision of—
      - (i) Regulation (EU) No. 2015/760 of the European Parliament and of the Council of 29th April 2015 on European Long-term Investment Funds (“the ELTIF Regulation”),
      - (ii) any EU regulation, originally made under the ELTIF Regulation, which is retained direct EU legislation, or
      - (iii) any subordinate legislation (within the meaning of the Interpretation Act 1978) made under the ELTIF Regulation on or after exit day;
    - (c) an MMF requirement is a provision of—
      - (i) the MMF Regulation,
      - (ii) any EU regulation, originally made under the MMF Regulation, which is retained direct EU legislation, or
      - (iii) any subordinate legislation (within the meaning of the Interpretation Act 1978) made under the MMF Regulation on or after exit day.”.
- (4) In subsection (6B)—

- (a) in paragraph (c), omit “, in accordance with Chapter 11 of the mortgages directive,”;
- (b) in paragraph (d)—
  - (i) for “implements” substitute “sets”;
  - (ii) omit “set out in the mortgages directive”.
- (5) Omit subsection (7).
- (6) In subsection (7ZA)—
  - (a) in the words before paragraph (a), after the words “managing a”, insert “UK”;
  - (b) for paragraph (c) substitute—
    - “(c) an MMF requirement,”.
- (7) In subsection (7ZB), for the words after “requirement” substitute—  
“imposed by—
  - (a) the market abuse regulation,
  - (b) any EU regulation, originally made under the market abuse regulation, which is retained direct EU legislation, or
  - (c) any subordinate legislation (within the meaning of the Interpretation Act 1978) made under the market abuse regulation on or after exit day.”.
- (8) After subsection (12), insert—
  - “(13) In this section “enactment” has the meaning given by section 3T.”.

#### **Section 55K (variation and cancellation of Part 4A permission: investment firms)**

17. In section 55K (investment firms: particular conditions that enable cancellation), in subsection (1)—

- (a) in paragraph (c) omit the words from “pursuant”, in the first place it occurs, to “that Chapter,”;
- (b) in paragraph (d) for the words from “the operating conditions” to “that Chapter,” substitute “any retained direct EU legislation, or any provision made by or under this Act, which sets the operating conditions”.

#### **Section 55KA (variation and cancellation of Part 4A permission: insurance undertakings etc.)**

18. In section 55KA(31) (insurance undertakings etc.), in subsection (1)(b)(i), for the words from “a finance scheme” to the end substitute “, in accordance with requirements imposed by or under this Act, a finance scheme for restoring compliance with the appropriate capital requirement;”.

#### **Section 55PA (imposition and variation of requirements)**

19. Omit section 55PA(32) (assets requirements imposed on insurance undertakings or reinsurance undertakings).

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(31) Section 55KA was inserted by [S.I. 2015/575](#).

(32) Section 55PA was inserted by [S.I. 2015/575](#).

### **Section 55Q (exercise of power in support of overseas regulator)**

20.—(1) Section 55Q(33) (exercise of power in support of overseas regulator) is amended as follows.

(2) Omit subsection (4).

(3) In subsection (5), in the words before paragraph (a), for the words from “do so” to “EU obligation, it” substitute “exercise its own-initiative powers in response to a request, the UK regulator”.

(4) Omit subsection (7).

(5) In subsection (8), for “subsection” substitute “subsections (5) and”.

### **Section 55R (connected persons)**

21. In section 55R (persons connected with an applicant), omit subsections (4) to (9)(34).

### **Section 55S (additional permissions)**

22. Omit section 55S (duty of FCA or PRA to consider other permissions).

### **Sections 55Z1 to 55Z2A (notification)**

23. Omit sections 55Z1 to 55Z2A(35) (notification of ESMA, EBA and European bodies).

## CHAPTER 4

### Part 5 of the Act: performance of regulated activities

#### **Introduction**

24. Part 5 of the Act (performance of regulated activities) is amended as follows.

#### **Section 59 (approval for particular arrangements)**

25. In section 59 (approval for particular arrangements) omit subsection (8)(36).

#### **Section 63E (certification of employees by relevant authorised persons)**

26. In section 63E(37) (certification of employees by relevant authorised persons) omit subsection (7).

#### **Section 66A (misconduct: action by the FCA)**

27. In section 66A (misconduct: action by the FCA) in subsection (4)(b)(38) for “qualifying EU provision” substitute “qualifying provision”.

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(33) There are other amending instruments but none is relevant.

(34) Subsections (4) to (6) were inserted by S.I. 2013/3115; subsections (7) to (9) were inserted by S.I. 2017/701; there are other amending instruments but none is relevant.

(35) Section 55Z2 was amended by S.I. 2013/3115 and S.I. 2015/486; section 55Z2A was inserted by S.I. 2013/3115.

(36) Subsection (8) was amended by S.I. 2012/1906.

(37) Section 63E was inserted by section 29 of the Financial Services (Banking Reform) Act 2013.

(38) Section 66A was inserted by section 32(2) of the Financial Services (Banking Reform) Act 2013.



### **Section 66B (misconduct: action by the PRA)**

**28.** In section 66B (misconduct: action by the PRA) in subsection (4)(b)(39) for “qualifying EU provision” substitute “qualifying provision”.

### **Section 71D (sections 71B and 71C: conditions)**

**29.** In section 71D (sections 71B and 71C: conditions) in subsection (2) for “any measure of a kind described in Article 27(1) of the recovery and resolution directive” substitute “any measure defined as a “relevant measure” by article 107 of the Bank Recovery and Resolution (No. 2) Order 2014 (S.I. 2014/3348)”.

### **Section 71I (sections 71B to 71H: interpretation)**

- 30.**—(1) Section 71I(40) (sections 71B to 71H: interpretation) is amended as follows.
- (2) In subsection (2)(b) for “an EEA parent” substitute “a UK parent”.
  - (3) In subsection (3)—
    - (a) for “an EEA parent” substitute “a UK parent”;
    - (b) for “any EEA state” substitute “the United Kingdom”.
  - (4) In subsection (4) for “Article 2.1(2) and 2.1(3) of the recovery and resolution directive” substitute “article 2(1) of the Bank Recovery and Resolution (No. 2) Order 2014”.
  - (5) In subsection (5)—
    - (a) in the definition of “consolidating supervisor”, for “an EEA parent” substitute “a UK parent”;
    - (b) omit the definition of “the recovery and resolution directive”.

## CHAPTER 5

### Part 7 of the Act: control of business transfers

#### **Introduction**

**31.** Part 7 of the Act (control of business transfers) is amended as follows.

#### **Section 105 (insurance business transfer schemes)**

- 32.**—(1) Section 105 (insurance business transfer schemes) is amended as follows.
- (2) In subsection (1)—
    - (a) in paragraph (a) for “one of the conditions” substitute “the condition”;
    - (b) in paragraph (b) for “an EEA State” substitute “the United Kingdom”.
  - (3) For subsection (2)(41) substitute—
    - “(2) The condition is that the whole or part of the business carried on in the United Kingdom by an authorised person who has permission to effect or carry out contracts of insurance (“the transferor concerned”) is to be transferred to another body (“the transferee”).”.

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(39) Section 66B was inserted by section 32(2) of the Financial Services (Banking Reform) Act 2013.

(40) Section 71I was inserted by S.I. 2016/1239.

(41) Subsection (2) was amended by S.I. 2007/3253 and paragraph 2 of Schedule 1 to the Financial Services (Banking Reform) Act 2013.

- (4) In subsection (3)(42)—
- (a) omit Case 2;
  - (b) in Case 3—
    - (i) in paragraph (b) for “(none of which is an EEA State)” substitute “outside the United Kingdom”;
    - (ii) in paragraph (b) for “an EEA State”, in the second place it occurs, substitute “the United Kingdom”;
    - (iii) in paragraph (c) for “other than an EEA State” substitute “outside the United Kingdom”.
- (5) In subsection (4)(43) omit “2”.

### Further amendments to Part 7 of the Act

- 33.**—(1) In section 111 (sanction of the court for business transfer schemes) in subsection (2)(a)(44) for “certificates have” substitute “certificate has”.
- (2) In section 112 (effect of order sanctioning business transfer scheme) omit subsection (9)(45).
- (3) Omit sections 114 (rights of certain policyholders), 114A(46) (notice of transfer of reinsurance contracts) and 116 (effect of insurance business transfers authorised in other EEA States).

## CHAPTER 6

### Part 9A of the Act: rules and guidance

#### Introduction

- 34.** Part 9A of the Act (rules and guidance) is amended as follows.

#### Section 137J (rules about recovery plans: duty to consult)

- 35.** In section 137J(47) (rules about recovery plans: duty to consult), in subsection (6)(48)—
- (a) for the definition of “institution” substitute—
    - ““institution” means—
    - (a) a credit institution, other than an entity mentioned in Article 2.5 of the capital requirements directive; or
    - (b) an investment firm as defined in Article 4.1(2) of the capital requirements regulation that is subject to the initial capital requirement specified in rules made by a regulator for the purpose of implementing Article 28(2) of the capital requirements directive;”;
  - (b) in the definition of “institution authorised in the UK”, for “an institution which is an authorised person and” substitute “an authorised person who is”.

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(42) Subsection (3) was amended by [S.I. 2007/3253](#) and paragraph 2 of Schedule 1 to the Financial Services (Banking Reform) Act 2013.

(43) Subsection (4) was amended by [S.I. 2007/3253](#).

(44) Subsection (2)(a) was amended by paragraph 4(3)(a) of Schedule 1 to the Dormant Bank and Building Society Accounts Act 2008 ([c.31](#)).

(45) Subsection (9) was amended by [S.I. 2008/1468](#) and paragraph 2 of Schedule 1 to the Financial Services (Banking Reform) Act 2013.

(46) Section 114A was inserted by [S.I. 2007/3253](#).

(47) Part 9A of the Financial Services and Markets Act 2000 (consisting of sections 137A to 141A) was inserted by section 24(1) of the Financial Services Act 2012.

(48) Subsection (6) was substituted by [S.I. 2014/3348](#).

### **Section 137N (recovery plans and resolution packs: restriction on duty of confidence)**

**36.** In section 137N (recovery plans and resolution packs: interpretation), in subsection (5)(**49**), in the definition of “qualifying parent undertaking” omit paragraph (b) and the “or” preceding it.

### **Section 137Q (price stabilising rules)**

**37.**—(1) Section 137Q (price stabilising rules) is amended as follows.

(2) In subsection (3A)(b)(**50**) for “EEA” substitute “United Kingdom”.

(3) For subsection (5)(**51**) substitute—

“(5) In this section references to Article 5 of the market abuse regulation include—

(a) any technical standards originally adopted or made under that Article which are retained direct EU legislation, and

(b) any technical standards made under that Article by the FCA.”

### **Section 137R (financial promotion rules)**

**38.**—(1) Section 137R (financial promotion rules) is amended as follows.

(2) In subsection (5)(b)(**52**), for the words from “requirements” to “insurance distribution directive,” substitute “listed requirements”.

(3) In subsection (5)(c)(**53**), for “requirements mentioned in paragraph (b)” substitute “listed requirements”.

(4) After subsection (5) insert—

“(5A) In subsection (5) “the listed requirements” means—

(a) requirements under the law of any part of the United Kingdom that appear to the FCA to correspond to requirements of—

(i) Articles 24 (general principles and information to clients) and 25 (assessment of suitability and appropriateness and reporting to clients) of the markets in financial instruments directive,

(ii) Commission Delegated Directive (EU) 2017/593 of 7 April 2016, so far as adopted under those Articles,

(iii) Article 77 of the UCITS directive,

(iv) Articles 10 and 11 of the mortgages directive, or

(v) Article 17 of the insurance distribution directive, and

(b) requirements of any retained direct EU legislation originally made under Article 24(13) or 25(8) of the markets in financial instruments directive.”(**54**).

### **Section 138K (consultation: mutual societies)**

**39.** In section 138K(**55**) omit subsections (5)(d)(**56**) and (6) (references to EEA mutual societies).

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(49) Subsection (5) was amended by [S.I. 2014/3348](#).

(50) Subsection (3A) was substituted by [S.I. 2016/680](#).

(51) Subsection (5) was inserted by [S.I. 2016/680](#).

(52) Subsection (5)(b) was amended by [S.I. 2015/910](#), [2017/701](#) and [2018/546](#).

(53) Subsection (5) was amended by [S.I. 2015/910](#), [2017/701](#) and [2018/546](#).

(54) Commission Delegated Directive (EU) 2017/593 was published at OJ No. L 87, 31.3.2017, p 500 – 517.

(55) Section 138K was inserted by section 24(1) of the Financial Services Act 2012.

(56) Subsection (5) was amended. None of these amendments is relevant.

### **Section 139A (power of the FCA to give guidance)**

**40.** In section 139A (power of the FCA to give guidance), in subsection (4)(**57**) for “or a directly applicable regulation made under the market abuse regulation” substitute “, any retained EU direct legislation originally made under the market abuse regulation or any subordinate legislation (within the meaning of the Interpretation Act 1978) made on or after exit day under the market abuse regulation”.

### **Section 141A (power to make consequential amendments of references to rules etc)**

**41.** In section 141A (power to make consequential amendments of references to rules etc), after subsection (4) insert—

“(5) A regulator’s power under Part 2 of the Powers Regulations to amend its rules is treated for the purposes of this section as a power under this Part; and for this purpose “the Powers Regulations” means the Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 ([S.I. 2018/1115](#)).”.

## CHAPTER 7

### Part 11 of the Act: information gathering and investigations

#### **Introduction**

**42.** Part 11 of the Act (information gathering and investigations) is amended as follows.

#### **Section 165A (PRA’s power to require information: financial stability)**

**43.**—(1) Section 165A(**58**) (PRA’s power to require information: financial stability) is amended as follows.

(2) In subsection (8), in the definition of “management”, for “Annex II to the UCITS Directive” substitute “Schedule 6 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(**59**)”.

(3) In subsection (9)(b)(**60**), for the words from “meaning given” to the end substitute “same meaning as in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (see article 3(1) of that Order).”.

#### **Section 167 (appointment of persons to carry out general investigations)**

**44.** Omit section 167(3A)(**61**) (investigations of persons in other EEA States).

#### **Section 168 (appointment of persons to carry out investigations in particular cases)**

**45.** In section 168 (appointment of investigators: particular cases), in subsection (4)—

(a) in paragraph (jc)(ii)(**62**) for “a directly applicable EU regulation made” substitute “any retained EU direct legislation originally made under the market abuse regulation or any

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(57) Subsection (4) was inserted by [S.I. 2016/680](#).

(58) Section 165A was inserted by sections 18 (1) and (2) of the Financial Services Act 2010 ([c. 28](#)) and was amended by section 41 of, and paragraphs 2(a), (b) of Part 1 of Schedule 12 to, the Financial Services Act 2012 and section 16 of, and paragraphs 26, 37(1), (2)(a), (2)(b), (3) of Part 2 of Schedule 2 to, the Bank of England and Financial Services Act 2016 ([c. 14](#)) and [S.I. 2017/1255](#).

(59) [S.I. 2001/544](#).

(60) Subsection (9) was amended by [S.I. 2017/1255](#).

(61) Subsection (3A) was inserted by [S.I. 2015/575](#).

(62) Paragraph (jc) was substituted by [S.I. 2017/1255](#).

subordinate legislation (within the meaning of the Interpretation Act 1978) made on or after exit day”;

(b) in paragraph (k)(63) for “qualifying EU provision” substitute “qualifying provision”.

### **Section 169 (investigations etc. in support of overseas regulator)**

46. Omit section 169(3)(64) and (6)(65) (investigations in connection with EU obligations).

### **Section 169A (support of overseas regulator with respect to financial stability)**

47. In section 169A(66) (support of overseas regulator with respect to financial stability), in subsection (4)(b) for “169(3), (4)(a) and (d), (5) and (6)” substitute “169(4)(a) and (d) and (5)”.

## **CHAPTER 8**

### **Part 12 of the Act: control over authorised persons**

#### **Introduction**

48. Part 12 of the Act (control over authorised persons) is amended as follows.

#### **Section 184 (disregarded holdings)**

49. In section 184(67) (disregarded holdings)—

(a) in subsection (4)—

(i) in paragraph (a)(68), for the words from “article 4.1.7” to “directive” substitute “article 2.1.6 of the markets in financial instruments regulation”;

(ii) for paragraph (b), substitute—

“(b) has a Part 4A permission to carry on one or more investment services and activities;”;

(b) in subsection (5), for “credit institution” substitute “qualifying credit institution”;

(c) in subsection (6)—

(i) in the opening words and in paragraph (b)), for “credit institution” substitute “qualifying credit institution”;

(ii) in paragraph (a)(ii), omit the words from “in accordance with” to the end;

(d) in subsection (7)(69), for “Article 2.1(b) of the UCITS Directive” substitute “section 237(2)”;

(e) in subsection (9A)(70), for the words from “Commission” to “financial instruments” substitute “the market abuse regulation and the Commission Delegated Regulation (EU) No. 1052/2016 of 8 March 2016 supplementing Regulation (EU) No. 596/2014 of the

(63) Paragraph (k) was substituted by section 41 of, and paragraphs 8(1) and (4)(g) of Part 1 of Schedule 12 to, the Financial Services Act 2012.

(64) Subsection (3) was amended by section 41 of, and paragraphs 9(1) and (3) of Part 1 of Schedule 12 to, the Financial Services Act 2012 and [S.I. 2011/1043](#).

(65) Subsection (6) was substituted by section 41 of, and paragraphs 9(1) and (5) of Part 1 of Schedule 12 to, the Financial Services Act 2012 and [S.I. 2011/1043](#).

(66) Section 169A was inserted by sections 18(1) and (3) of the Financial Services Act 2010.

(67) Section 184 was substituted by [S.I. 2009/534](#).

(68) Section 184(4)(a) was substituted by [S.I. 2017/701](#).

(69) Section 184(7) was amended by [S.I. 2011/1613](#).

(70) Section 184(9A) was inserted by [S.I. 2015/1755](#).

European Parliament and the Council with regard to the regulatory technical standards for conditions applicable to buy-back programmes and stabilisation measures”.

#### **Section 186 (assessment criteria)**

**50.** In section 186(71) (assessment criteria), in paragraph (f)(i), for the words from “within the” to “terrorist financing” substitute “as defined in regulation 3(1) of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017”(72).

#### **Section 188 (assessment: consultation with EC competent authorities)**

**51.** Omit section 188 (assessment: consultation with EC competent authorities)(73).

#### **Section 189 (assessment: procedure)**

**52.** In section 189(74) (assessment: procedure), in subsections (1A), (1ZB)(a) and (1ZB)(b), for “credit institution” substitute “qualifying credit institution”.

#### **Section 190 (requests for further information)**

**53.** In section 190 (requests for further information)(75), in subsection (4)—

(a) in paragraph (a)(76), for “European Union” substitute “United Kingdom”;

(b) for paragraph (b)(77), substitute—

“(b) is not subject to supervision under the laws of the United Kingdom (or any part of the United Kingdom) relied on immediately before exit day to implement—

(i) the UCITS directive;

(ii) the Solvency 2 Directive;

(iii) the markets in financial instruments directive; or

(iv) the capital requirements directive,

including rules made by the appropriate regulator under this Act, in force on exit day, and, as amended from time to time, in all other cases.”.

#### **Section 190A (assessment and resolution)**

**54.** In section 190A(78) (assessment and resolution), in subsections (1)(a), (1)(c) and (7), for “credit institution” substitute “qualifying credit institution”.

#### **Section 191A (objection by the appropriate regulator)**

**55.** In section 191A (objection by the appropriate regulator), omit subsection (5)(79).

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(71) Section 186 was substituted by S.I. 2009/534.

(72) S.I. 2017/692.

(73) Section 188(1) was substituted by section 26(2) of the Financial Services Act 2012 (c. 21) and S.I. 2009/534 and 2013/3115.

(74) Section 189 was inserted by S.I. 2009/534. Subsection (1A) was inserted by S.I. 2014/3329, and subsection (1ZB) by paragraph 39 of Schedule 2 to the Bank of England and Financial Services Act 2016.

(75) Section 190 was substituted by S.I. 2009/534.

(76) Section 190(4)(a) was amended by S.I. 2011/1043.

(77) Section 190(4)(b) was substituted by S.I. 2015/575.

(78) Section 190A was inserted by S.I. 2016/1239.

(79) Section 191A was substituted by S.I. 2009/534; subsection (5) was amended by section 26(2) of the Financial Services Act 2012.

## Section 191G (interpretation of Part 12)

56. In section 191G(80) (interpretation), in subsection (1)—
- (a) omit the definition of “credit institution”(81);
  - (b) in the definition of “UK authorised person”, in paragraph (b), after “Schedule 5” insert “, or a person treated as having a Part 4A permission to carry on a regulated activity by virtue of regulation 71 of the Collective Investment Scheme (Amendment etc.) (EU Exit) Regulations 2019”(82).

## CHAPTER 9

### Part 12A of the Act: powers exercisable in relation to parent undertakings

#### Introduction

57. Part 12A of the Act (powers exercisable in relation to parent undertakings) is amended as follows.

#### Section 192C (power to direct qualifying parent undertaking)

58.—(1) Section 192C(83) (power to direct qualifying parent undertaking) is amended as follows.

(2) In subsection (3)(a), for “in pursuance of any of the directives mentioned in section 3M(3)” substitute—

“in pursuance of—

(i) any implementing provision contained in subordinate legislation (within the meaning of the Interpretation Act 1978) made otherwise than by any of the following—

(aa) statutory instrument, and

(bb) statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)); or

(ii) any other implementing provision (as amended from time to time)”.

(3) For subsection (4) substitute—

“(4) In subsection (3)(a)—

“consolidated supervision” includes supplemental supervision;

“implementing provision” has the same meaning as in section 3M.”.

#### Section 192JB (rules requiring parent undertakings to facilitate resolution)

59. In section 192JB(84) (rules requiring parent undertakings to facilitate resolution), in subsection (4), for paragraph (b) substitute—

“(b) “group financial support agreement” means an agreement for the provision of financial support, by a member of the group of the parent undertaking, to an institution in the group which, at any time after the agreement is concluded, comes to need financial support;”.

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(80) Section 191G was substituted by [S.I. 2009/534](#).

(81) The definition of “credit institution” in section 191G(1) was amended by [S.I. 2013/3115](#).

(82) S.I. 2019/XXX.

(83) Section 192C was inserted by section 27 of the Financial Services Act 2012.

(84) Section 192JB was inserted by section 133(1) of the Financial Services (Banking Reform) Act 2013 (c. 33) and was amended by [S.I. 2014/3329](#).

### **Section 192K (power to impose penalty or issue censure)**

60. In section 192K(85) (power to impose penalty or issue censure), in subsection (1)(c)(86) for “qualifying EU provision” substitute “qualifying provision”.

#### CHAPTER 10

Part 14 of the Act: disciplinary measures

### **Section 204A (meaning of “relevant requirement” etc.)**

61. In section 204A(87) (meaning of “relevant requirement” etc.), in subsection (2)(b)(88) for “qualifying EU provision” substitute “qualifying provision”.

#### CHAPTER 11

Part 20 of the Act: provision of financial services by members of the professions

### **Introduction**

62. Part 20 of the Act(89) (provision of financial services by members of the professions) is amended as follows.

### **Section 326 (designation of professional bodies)**

63. In section 326 (designation of professional bodies), omit subsection (5)(d).

### **Section 327 (exemption from the general prohibition)**

64. In section 327 (exemption from the general prohibition)—

- (a) in subsection (1)(aa), for “Section A of Annex 1 of the markets in financial instruments directive”, substitute “Part 3 of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001”;
- (b) in subsection (7A)(a), omit “for the purposes of the markets in financial instruments directive”;
- (c) in subsection (7B), omit “for the purposes of the markets in financial instruments directive”;
- (d) in subsection (7C), for the words from “Article 4(a)” to the end, substitute “paragraph 6(a) to (c) of Schedule 3 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001”.

### **Section 328 (directions in relation to the general prohibition)**

65. In section 328 (directions in relation to the general prohibition), in subsection (6)—

- (a) omit “either”;
- (b) at the end of paragraph (a), omit “or”;

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(85) Section 192K as inserted by section 27 of the Financial Services Act 2012.

(86) Subsection (1) was inserted by S.I. 2014/3329 and section 133(2)(a) of the Financial Services (Banking Reform) Act 2013.

(87) Section 204A was inserted by section 37(1) of, and paragraph 1 of Part 1 and paragraph 10 of Part 4 of Schedule 9 to, the Financial Services Act 2012.

(88) Subsection (2) was amended by S.I. 2013/1773 and 2016/255.

(89) 2000 c. 8. Section 327(1)(aa), (7A) and (7B) were inserted by S.I. 2017/701. Section 328(6) was substituted by S.I. 2003/1473 and amended by paragraph 2 of Schedule 16 to the Financial Services Act 2012 (c. 21), S.I. 2011/1043, S.I. 2013/1881 and S.I. 2018/546.



(c) omit paragraph (b).

## CHAPTER 12

### Part 22 of the Act: auditors and actuaries

#### Introduction

66. Part 22 of the Act (auditors and actuaries) is amended as follows.

#### Section 342 (information given by auditor or actuary to a regulator)

67. In section 342 (information given by auditor or actuary to a regulator), in subsection (8)(90), for ““credit institution” and “investment firm” have” substitute ““investment firm” has”.

#### Section 343 (information given by auditor or actuary to a regulator: persons with close links)

68. In section 343(91) (information given by auditor or actuary to a regulator: persons with close links)—

(a) omit subsection (9).

(b) in subsection (10)(92), for ““credit institution” and “investment firm” have” substitute ““investment firm” has”.

## CHAPTER 13

### Part 25 of the Act: injunctions and restitution

#### Introduction

69. Part 25 of the Act (injunctions and restitution) is amended as follows.

#### Section 380 (injunctions)

70.—(1) Section 380(93) (injunctions) is amended as follows.

(2) In subsection (6)(a)(i)(94), for “qualifying EU provision” substitute “qualifying provision”.

(3) In subsection (9)(95) for “qualifying EU provision” in both places substitute “qualifying provision”.

#### Section 382 (restitution orders)

71.—(1) Section 382(96) (restitution orders) is amended as follows.

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(90) Subsection (8) was inserted by [S.I. 2013/3115](#).

(91) Section 343 was amended by section 42 of, and paragraphs 1, 5(1), (2)(a), (2)(b), (3)(a), (3)(b), (3)(c), (4), (5), (6) and (7) of Part 1 of Schedule 13 to, the Financial Services Act 2012 and [S.I. 2013/3115](#).

(92) Subsection (10) was inserted by [S.I. 2013/3115](#).

(93) Section 380 was amended by section 37(1) of, and paragraph 1 of Part 1 and paragraphs 19(1), (2), (3)(a), (3)(b), (3)(c), (4) and (5) of Part 5 of Schedule 9 to, the Financial Services Act 2012, section 141 of, and paragraphs 3(1) and (2) of Schedule 10 to, the Financial Services (Banking Reform) Act 2013, [S.I. 2013/1773](#), [2015/1755](#) and [2016/225](#).

(94) Subsection (6) was amended by section 37(1) of, and paragraph 1 of Part 1 and paragraphs 19(1), (3)(a), (3)(b), (3)(c) of Part 5 of Schedule 9 to, the Financial Services Act 2012, section 141 of, and paragraphs 3(1) and (2) of Schedule 10 to, the Financial Services (Banking Reform) Act 2013, [S.I. 2013/1773](#), [2015/1755](#) and [2016/225](#).

(95) Subsection (9) was inserted by section 37(1) of, and paragraph 1 of Part 1 and paragraphs 19(1) and (5) of Part 5 of Schedule 9 to, the Financial Services Act 2012.

(96) Section 382 was amended by section 37(1) of, and paragraph 1 of Part 1 and paragraphs 21(1), (2), (3), (4), (5)(a), (5)(b), (5)(c), (6), (7) of Part 5 of Schedule 9 to, the Financial Services Act 2012, section 141 of, and paragraphs 3(1), (3) of Schedule 10 to, the Financial Services (Banking Reform) Act 2013 and [S.I. 2013/1773](#).

(2) In subsection (9)(a)(i)(**97**), for “qualifying EU provision” substitute “qualifying provision”.

(3) In subsection (12)(**98**), for “qualifying EU provision” in both places substitute “qualifying provision”.

### Section 384 (power of FCA or PRA to require restitution)

**72.**—(1) Section 384(**99**) (power of FCA or PRA to require restitution) is amended as follows.

(2) In subsection (7)(a)(**100**), for “qualifying EU provision” substitute “qualifying provision”.

(3) In subsection (10)(**101**) for “qualifying EU provision” in both places substitute “qualifying provision”.

## CHAPTER 14

### Part 26 of the Act: notices

#### Introduction

**73.** Part 26 of the Act (notices) is amended as follows.

#### Section 391 (publication)

**74.**—(1) Section 391(**102**) (publication) is amended as follows.

(2) Omit subsections (7A)(**103**) and (7B)(**104**).

(3) In subsection (8A)(**105**), for “requirement imposed by the CSD regulation or any directly applicable regulation made under the CSD regulation” substitute “CSD requirement”.

(4) After subsection (8A) insert—

“(8AA) A “CSD requirement” is a requirement imposed by—

- (a) the CSD regulation,
- (b) any EU regulation, originally made under the CSD regulation, which is retained direct EU legislation, or
- (c) any subordinate legislation (within the meaning of the Interpretation Act 1978) made under the CSD regulation on or after exit day.”.

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(**97**) Subsection (9)(a)(i) was amended by [S.I. 2013/1773](#).

(**98**) Subsection (12) was inserted by section 37(1), and paragraph 1 of Part 1 and paragraphs 21(1) and (7) of Part 5 of Schedule 9 to, the Financial Services Act 2012.

(**99**) Section 384 was amended by section 37(1) of, and paragraph 1 of Part 1 and paragraphs 23(1), (2)(a), (2)(b), (4)(a), (4)(b), (5), (6)(a), (6)(b), (7), (8), (9) and (10) of Part 5 of Schedule 9 to, the Financial Services Act 2012, section 141 of, and paragraphs 3(1) and (4) of Schedule 10 to, the Financial Services (Banking Reform) Act 2013, [S.I. 2007/126](#) and [2016/680](#).

(**100**) Subsection (7) was amended by section 37(1) of, and paragraph 1 of Part 1 and paragraphs 23(1), (6)(a) and (6)(b) of Part 5 of Schedule 9 to, the Financial Services Act 2012, section 141 of, and paragraphs 3(1) and (4) of Schedule 10 to, the Financial Services (Banking Reform) Act 2013 and [S.I. 2007/126](#).

(**101**) Subsection (10) was inserted by section 37(1) of, and paragraph 1 of Part 1 and paragraphs 23(1) and (8) of Part 5 of Schedule 9 to, the Financial Services Act 2012.

(**102**) Section 391 was amended by sections 13(1) and (3), 24(1) and (2) of, and paragraphs 1 and 28 of Part 1 of Schedule 2 to, the Financial Services Act 2010, sections 24(2) and 37(1) of, and paragraph 1 of Part 1 and paragraphs 30(1), (2), (3), (4)(a), (4)(b), (5), (6), (7), (8) of Part 6 of Schedule 9 to, the Financial Services Act 2012, section 4(3) of the Financial Services (Banking Reform) Act 2013, [S.I. 2012/916](#), [2013/1388](#), [2013/3115](#), [2014/2879](#), [2015/1755](#), [2016/225](#), [2016/680](#), [2016/715](#), [2017/701](#), [2017/1127](#) and [2018/135](#).

(**103**) Subsection (7A) was inserted by [S.I. 2012/916](#) and amended by section 37(1) of, paragraph 1 of Part 1 and paragraphs 30(1) and (8) of Part 6 of Schedule 9 to, the Financial Services Act 2012.

(**104**) Subsection (7B) was inserted by [S.I. 2012/916](#) and amended by [S.I. 2016/680](#) and [2017/701](#).

(**105**) Subsection (8A) was inserted by [S.I. 2014/2879](#).

(5) In subsection (8B)(**106**), for “requirement imposed by the market abuse regulation or a directly applicable EU regulation made under the market abuse regulation” substitute “market abuse requirement”.

(6) After subsection (8B) insert—

“(8BA) A “market abuse requirement” is a requirement imposed by—

- (a) the market abuse regulation,
- (b) any EU regulation, originally made under the market abuse regulation, which is retained direct EU legislation, or
- (c) any subordinate legislation (within the meaning of the Interpretation Act 1978) made under the market abuse regulation on or after exit day.”.

(7) In subsection (8D)(**107**)—

- (a) omit the “or” at the end of paragraph (a);
- (b) in paragraph (b)—
  - (i) for “directly applicable regulation” substitute “EU regulation, originally”, and
  - (ii) at the end insert “which is retained direct EU legislation,”;
- (c) after paragraph (b) insert—

“or

  - (c) any subordinate legislation (within the meaning of the Interpretation Act 1978) made under the PRIIPs regulation on or after exit day,”.

(8) In subsection (8E)(**108**), for the words from “imposed by” to “this section” substitute—  
“imposed by—

- (a) the EU Benchmarks Regulation 2016,
- (b) any EU regulation, originally made under the EU Benchmarks Regulation 2016, which is retained direct EU legislation, or
- (c) any subordinate legislation (within the meaning of the Interpretation Act 1978) made under the EU Benchmarks Regulation on or after exit day,

this section”.

(9) Omit subsection (8F)(**109**).

### **Section 391A (publication: special requirements relating to capital requirements directive)**

**75.**—(1) Section 391A(**110**) (publication: special requirements relating to capital requirements directive) is amended as follows.

(2) In the heading, for “the capital requirements directive” substitute “capital requirements”.

(3) In subsection (1) for “to which Article 68(1) of the capital requirements directive applies.” substitute —

“for breach of—

- (a) a provision made in or under this Act for the purpose of implementing the capital requirements directive, or
- (b) a provision of the capital requirements regulation.”.

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(**106**) Subsection (8B) was inserted by [S.I. 2016/680](#).

(**107**) Subsection (8D) was inserted by [S.I. 2017/1127](#).

(**108**) Subsection (8E) was inserted by [S.I. 2018/135](#).

(**109**) Subsection (8F) was inserted by [S.I. 2018/1288](#).

(**110**) Section 391A was inserted by [S.I. 2013/3115](#) and amended by [S.I. 2015/1755](#).

- (4) In subsection (6)(111)—
- (a) at the end of paragraph (a) insert “and”; and
  - (b) omit paragraph (c), and the “and” preceding it.

**Section 391B (publication: special provisions relating to the transparency obligations directive)**

76.—(1) Section 391B(112) (publication: special provisions relating to the transparency obligations directive) is amended as follows.

(2) In the heading, for “the transparency obligations directive” substitute “transparency obligations”.

(3) In subsection (1) for “to which Article 29(1) of the transparency obligations directive applies” substitute “for breach of a provision made in or under this Act for the purpose of implementing the transparency obligations directive”.

**Section 391C (publication: special provisions relating to the UCITS directive)**

77.—(1) Section 391C(113) (publication: special provisions relating to the UCITS directive) is amended as follows.

(2) In the heading, for “the UCITS directive” substitute “UCITS”.

(3) In subsection (1) for “to which Article 99 of the UCITS directive applies” substitute “for breach of a provision made in or under this Act for the purpose of implementing the UCITS directive”.

(4) In subsection (7)(114), omit paragraph (b), and the “and” preceding it.

**Section 391D (publication: special provisions relating to the markets in financial instruments directive)**

78.—(1) Section 391D(115) (publication: special provisions relating to the markets in financial instruments directive) is amended as follows.

(2) In the heading, for “the markets in financial instruments directive” substitute “markets in financial instruments”.

(3) In subsection (1), for “to which Article 71 of the markets in financial instruments directive applies.” substitute—

“for breach of—

- (a) a provision made in or under this Act for the purpose of implementing the markets in financial instruments directive, or
- (b) a provision of the markets in financial instruments regulation.”.

(4) In subsection (9)(116), omit paragraph (b), and the “and” preceding it.

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(111) Subsection (6) was amended by section 211(1)(a) of, and paragraphs 48 and 50 of Part 1 of Schedule 19 to, the Data Protection Act 2018 (c. 12).

(112) Section 391B was inserted by S.I. 2015/1755.

(113) Section 391C was inserted by S.I. 2016/225 and amended by section 211(1)(a) of, and paragraphs 48 and 51 of Part 1 of Schedule 19 to, the Data Protection Act 2018.

(114) Subsection (7) was amended by section 211(1)(a) of, and paragraphs 48 and 51 of Part 1 of Schedule 19 to, the Data Protection Act 2018.

(115) Section 391D was inserted by S.I. 2017/701 and amended by S.I. 2018/625.

(116) Subsection (9) was amended by section 211(1)(a) of, and paragraphs 48 and 52 of Part 1 of Schedule 19 to, the Data Protection Act 2018.

**Section 391E (publication: special provisions relating to the insurance distribution directive)**

**79.**—(1) Section 391E(**117**) (publication: special provisions relating to the insurance distribution directive) is amended as follows.

(2) In the heading, for “the insurance distribution directive” substitute “insurance distribution”.

(3) In subsection (1), for “to which Article 32 of the insurance distribution directive applies” substitute “for breach of a provision made in or under this Act for the purpose of implementing the insurance distribution directive”.

(4) Omit subsection (5).

CHAPTER 15

Part 27 of the Act: offences

**Section 398 (misleading FCA or PRA: residual cases)**

**80.**—(1) Section 398(**118**) (misleading FCA or PRA: residual cases) is amended as follows.

(2) In subsection (1A)(**119**)—

(a) for paragraph (ea) substitute—

“(ea) any EU regulation, originally made under the markets in financial instruments directive, which is retained direct EU legislation;”;

(b) for paragraph (eb) substitute—

“(eb) any of the following—

(i) the markets in financial instruments regulation,

(ii) any EU regulation, originally made under the markets in financial instruments regulation, which is retained direct EU legislation, and

(iii) any subordinate legislation (within the meaning of the Interpretation Act 1978) made under the markets in financial instruments regulation on or after exit day;”.

CHAPTER 16

Part 28 of the Act: miscellaneous

**Introduction**

**81.** Part 28 of the Act (miscellaneous) is amended as follows.

**Section 404E (meaning of “consumers”)**

**82.** In section 404E(**120**) (meaning of “consumers”), in subsection (6) omit the definition of “credit institution”.

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(**117**) Section 391E was inserted by [S.I. 2018/546](#).

(**118**) Section 398 was amended by section 37(1) of, and paragraph 1 of part 1 and paragraphs 36(1) and (3) of Part 7 of Schedule 9 to, the Financial Services Act 2012, [S.I. 2013/1773](#), [2015/1882](#), [2016/680](#), [2017/701](#), [2018/135](#) and [2018/698](#).

(**119**) Subsection (1A) was amended by [S.I. 2013/1773](#), [2015/1882](#), [2016/680](#), [2017/701](#), [2018/135](#) and [2018/698](#).

(**120**) Section 404E was inserted by section 14(1) of the Financial Services Act 2010.

### Section 410 (international obligations)

83. In section 410(121) (international obligations), in subsection (1)(122), for “EU obligations or any other” substitute “any”.

## CHAPTER 17

### Part 29 of the Act: interpretation of the Act

#### Introduction

84. Part 29 of the Act (interpretation of the Act) is amended as follows.

#### Section 417 (definitions)

85.—(1) In section 417 (definitions) subsection (1) is amended as set out in paragraphs (2) to (13).

(2) After “In this Act” insert “and in any order or regulations made under this Act”.

(3) In the definition of “capital requirements regulation”(123), at the end insert “, as it has effect at the updating point (see subsection (1A))”.

(4) In the definition of “central securities depository”(124), for “has the meaning given by point (1) of” substitute “means a CSD or third-country CSD as defined in”.

(5) At the appropriate place insert—

““credit institution” means an undertaking the business of which is to take deposits or other repayable funds from the public and to grant credits for its own account;”.

(6) In the definition of “the CSD regulation”(125), at the end insert “, as it has effect at the updating point (see subsection (1A))”.

(7) For the definition of “insurance undertaking”(126) substitute—

““insurance undertaking” means an undertaking which—

- (a) has its head office in the United Kingdom,
- (b) has a Part 4A permission to carry on one or more regulated activities, and
- (c) would require authorisation in accordance with Article 14 of the Solvency 2 Directive if the United Kingdom were a member State;”.

(8) In the definition of “market abuse regulation”(127), at the end insert “, as it has effect at the updating point (see subsection (1A))”.

(9) At the appropriate place insert—

““qualifying credit institution” means a credit institution which—

- (a) is a person who—
  - (i) has Part 4A permission to carry on the regulated activity of accepting deposits, or
  - (ii) satisfies the conditions for being given permission under Part 4A to carry on that activity, or

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(121) Section 410 was amended by sections 16(1), 16(14)(i) and 47 of the Financial Services Act 2012, S.I. 2011/1043 and 2017/1064.

(122) Subsection (1) was amended by S.I. 2011/1043.

(123) This definition was inserted by S.I. 2013/3115.

(124) This definition was inserted by S.I. 2017/1064.

(125) This definition was inserted by S.I. 2014/2879.

(126) This definition was inserted by S.I. 2015/575.

(127) This definition was inserted by S.I. 2016/680.

- (iii) is a body corporate incorporated in the United Kingdom and would satisfy those conditions—
  - (aa) were its head office in the United Kingdom, or
  - (bb) if it has a registered office, were its registered office, or its registered office and its head office, in the United Kingdom,
- (b) is not a friendly society, and
- (c) is not a society registered as a credit union under—
  - (i) the Co-operative and Community Benefit Societies Act 2014,
  - (ii) the Credit Unions (Northern Ireland) Order 1985 (S.I. 1985/1205 (N.I. 12)), or
  - (iii) the Co-operative and Community Benefit Societies Act (Northern Ireland) 1969 (c. 24 (N.I.));”.
- (10) For the definition of “reinsurance undertaking”(128) substitute—

““reinsurance undertaking” means an undertaking which—

  - (a) has its head office in the United Kingdom,
  - (b) has a Part 4A permission to carry on one or more regulated activities,
  - (c) effects or carries out contracts of insurance that are limited to reinsurance contracts, and
  - (d) would require authorisation in accordance with Article 14 of the Solvency 2 Directive if the United Kingdom were a member State;”.
- (11) In the definition of “short selling regulation”(129), at the end insert “, as it has effect at the updating point (see subsection (1A))”.
- (12) In the definition of “third country insurance undertaking”(130), for the words after “received” substitute “from the PRA or the FCA authorisation under any enactment (including an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978), or any rule made under this Act by the PRA or the FCA, that implemented Article 162 of the Solvency 2 Directive”.
- (13) Omit the definitions of—
  - “EBA”(131),
  - “EIOPA”(132),
  - “mortgage creditor”(133),
  - “mortgage intermediary”(134), and
  - “tied mortgage intermediary”(135).
- (14) After subsection (1) of section 417 insert—

“(1A) A reference in subsection (1) to an instrument as it has effect at the updating point is a reference to the instrument as it has effect at the beginning of the day on which the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 are made (but see regulation 2 of the European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) Regulations 2019 (S.I. 2019/XXXX), which may further update the reference).”.

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(128) This definition was inserted by S.I. 2015/575.

(129) This definition was inserted by S.I. 2012/2554.

(130) This definition was inserted by S.I. 2015/575.

(131) This definition was inserted by S.I. 2012/916.

(132) This definition was inserted by S.I. 2018/546.

(133) This definition was inserted by S.I. 2015/910.

(134) This definition was inserted by S.I. 2015/910.

(135) This definition was inserted by S.I. 2015/910.

### Section 418 (carrying on regulated activities in the United Kingdom)

**86.**—(1) Section 418(**136**) (carrying on regulated activities in the United Kingdom) is amended as follows.

- (2) In subsection (1)(**137**), for the words before “described” substitute “In the cases”.
- (3) Omit subsections (2) and (3)(**138**).
- (4) In subsection (5AA)(**139**)—
  - (a) in paragraph (b)(i) and (ii), for “an EEA State” substitute “the United Kingdom”;
  - (b) in paragraph (d), for “the EEA” substitute “the United Kingdom”.
- (5) In subsection (6), for the words before “it is irrelevant” substitute “For the purposes of the preceding subsections”.
- (6) Omit subsection (7)(**140**).
- (7) For subsection (8)(**141**) substitute—
  - “(8) For the purposes of this section, an AIF is “marketed” when—
    - (a) the person managing the AIF (“the AIFM”) makes a direct or indirect offering or placement of units or shares of the AIF to or with an investor domiciled or with a registered office in the United Kingdom, or
    - (b) another person makes such an offering or placement at the initiative of, or on behalf of, the AIFM.”.

### Section 420 (parent and subsidiary undertaking)

- 87.** In section 420 (parent and subsidiary undertaking), in subsection (2)(b)—
- (a) omit “other than the United Kingdom”;
  - (b) for “Seventh Company Law Directive” substitute “[Directive 2013/34/EU](#) of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending [Directive 2006/43/EC](#) of the European Parliament and of the Council and repealing Council Directives [78/660/EEC](#) and [83/349/EEC](#)”(142).

### Section 422A (disregarded holdings)

- 88.** In section 422A(**143**) (disregarded holdings)—
- (a) in subsection (4)—
    - (i) in paragraph (a)(**144**), for the words from “article 4.1.7” to “directive” substitute “article 2.1.6 of the markets in financial instruments regulation”;
    - (ii) for paragraph (b), substitute—
      - “(b) has a Part 4A permission to carry on one or more investment services and activities;”;
  - (b) in subsection (5), for “credit institution” substitute “qualifying credit institution”;

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(136) Amendments of section 418 are made by [S.I. 2013/1797](#) but these are not in force.

(137) Subsection (1) was amended by [S.I. 2014/1292](#).

(138) Subsection (3)(b) was amended by [S.I. 2011/1043](#).

(139) Subsection (5AA) was inserted by [S.I. 2014/1292](#)

(140) Subsection (7) was inserted by [S.I. 2012/1906](#).

(141) Subsection (8) was inserted by [S.I. 2014/1292](#).

(142) OJ L 182, 29.6.2013, p. 19-76.

(143) Section 422A was substituted by [S.I. 2009/534](#).

(144) Section 422A(4)(a) was amended by [S.I. 2017/701](#).



- (c) in subsection (6)—
  - (i) in the opening words and in paragraph (b), for “credit institution” substitute “qualifying credit institution”;
  - (ii) in paragraph (a)(ii), omit the words from “in accordance with” to the end;
- (d) in subsection (7)(**145**), for “Article 2.1(b) of the UCITS Directive” substitute “section 237(2)”;
- (e) in subsection (9A)(**146**), for the words from “Commission” to “financial instruments” substitute “the market abuse regulation and Commission Delegated Regulation (EU) No. 1052/2016 of 8 March 2016 supplementing Regulation (EU) No. 596/2014 of the European Parliament and the Council with regard to the regulatory technical standards for conditions applicable to buy-back programmes and stabilisation measures”;
- (f) omit subsection (10)(**147**).

### **Mortgage agreements etc**

**89.** After section 423 insert—

#### **“Mortgage agreements etc**

**423A.**—(1) In this Act—

“mortgage agreement” means an agreement to which subsection (2) applies, but to which subsection (3) does not apply, under which a mortgage creditor grants or promises to grant, to a consumer, a credit in the form of a deferred payment, loan or other similar financial accommodation;

“mortgage creditor” means a person who grants or promises to grant—

- (a) in the course of the person’s trade, business or profession, and
- (b) under an agreement to which subsection (2) applies but to which subsection (3) does not apply,

credit in the form of a deferred payment, loan or other similar financial accommodation;

“mortgage intermediary” means a person who, in the course of the person’s trade, business or profession, and acting neither as a mortgage creditor or notary nor in an introductory capacity, does any of the following for any agreed form of financial consideration—

- (a) presenting or offering mortgage agreements to consumers;
- (b) assisting consumers by undertaking preparatory work or other pre-contractual administration in respect of mortgage agreements (otherwise than as referred to in paragraph (a));
- (c) concluding mortgage agreements with consumers on behalf of mortgage creditors;

“tied mortgage intermediary” means a mortgage intermediary who acts on behalf of and under the full and unconditional responsibility of—

- (a) only one mortgage creditor,
- (b) only one group of mortgage creditors, or

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(145) Section 422A(7) was amended by [S.I. 2011/1613](#).

(146) Section 422A(9A) was inserted by [S.I. 2015/1755](#).

(147) Subsection (10) was amended by [S.I. 2012/3115](#).

- (c) a number of mortgage creditors or groups of mortgage creditors which does not represent the majority of the market.
- (2) This subsection applies to the following agreements—
- (a) an agreement secured by a mortgage on, or (in Scotland) a heritable security over, residential immovable property, or by any other charge or right over or related to such property;
  - (b) an agreement the purpose of which is to acquire or retain property rights in land or in an existing or projected building.
- (3) This subsection applies to the following agreements—
- (a) an agreement under which the creditor—
    - (i) contributes a lump sum, periodic payments or other forms of credit disbursement in return for a sum deriving from the future sale of a residential immovable property or a right relating to residential immovable property, and
    - (ii) will not seek repayment of the credit until the occurrence of one or more specified life events of the consumer, unless the consumer breaches contractual obligations so as to allow the creditor to terminate the agreement;
  - (b) an agreement under which credit is granted by an employer to its employees as a secondary activity where the agreement is offered free of interest or at an annual rate lower than that prevailing on the market and not offered to the public generally;
  - (c) an agreement under which credit is granted free of interest and without any other charges except those that recover costs directly related to the securing of the credit;
  - (d) an agreement in the form of an overdraft facility under which the credit has to be repaid within one month;
  - (e) an agreement which is the outcome of a settlement reached in or before a court or other statutory authority;
  - (f) an agreement which—
    - (i) relates to the deferred payment, free of charge, of an existing debt, and
    - (ii) is not secured by a mortgage, by another comparable security commonly used in the United Kingdom on residential immovable property or by a right related to residential immovable property.
- (4) In this section—
- “acting in an introductory capacity” means merely introducing (directly or indirectly) a consumer to a mortgage creditor or mortgage intermediary;
- “annual rate” means the total cost to the borrower expressed as an annual percentage of the total amount of credit;
- “consumer” means an individual who is acting for purposes outside those of any trade, business or profession carried on by the individual;
- “group of mortgage creditors” means a group of mortgage creditors that are to be consolidated for the purposes of drawing up consolidated accounts in accordance with—
- (a) the requirements of Part 15 of the Companies Act 2006, if the parent undertaking (within the meaning of that Act) is a company, or

- (b) if it is not, the legal requirements that apply to the drawing up of consolidated accounts for the parent undertaking;  
“specified” means specified in rules made by the FCA.
- (5) A reference in this section to any immovable property, land or building—
  - (a) in relation to an agreement entered into before exit day, is a reference to any immovable property, land or building in the United Kingdom or within the territory of an EEA State;
  - (b) in relation to an agreement entered into on or after exit day, is a reference to any immovable property, land or building in the United Kingdom.”

#### **Section 424A (meaning of “investment firm”)**

- 90.**—(1) Section 424A(**148**) (meaning of “investment firm”) is amended as follows.
- (2) In subsection (1), for “Article 4.1.1 of the markets in financial instruments directive” substitute “paragraph 2.1A of the markets in financial instruments regulation”.
  - (3) In subsection (2), for “subsections (3) to (5)” substitute “subsection (5)”.
  - (4) Omit subsections (3)(**149**) and (4).
  - (5) In subsection (5)(**150**), for paragraphs (a) and (b) substitute—
    - “(a) a person excluded from the definition of “investment firm” in Article 3(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 ([S.I. 2001/544](#)) by paragraph (a) or (b) of that definition; or
    - (b) a firm which has a Part 4A permission to carry on regulated activities as an exempt investment firm within the meaning of regulation 8 of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 ([S.I. 2017/701](#)).”

#### **Section 425A (consumers: regulated activities etc carried on by authorised persons)**

- 91.**—(1) Section 425A(**151**) (consumers: regulated activities etc carried on by authorised persons) is amended as follows.
- (2) In subsection (3)(b), for “credit institutions” substitute “qualifying credit institutions”.
  - (3) In subsection (7)(**152**)—
    - (a) omit the definition of “credit institution”(**153**);
    - (b) in the definition of “relevant ancillary service”, for “Section B of Annex I to the markets in financial instruments directive” substitute “Part 3A of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 ([S.I. 2001/544](#))”.

#### **Section 425C (“qualifying EU provision”)**

- 92.** For section 425C(**154**) (“qualifying EU provision”) substitute—

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(**148**) Section 424A was inserted by [S.I. 2006/2975](#).

(**149**) Subsection (3) was substituted by [S.I. 2007/126](#).

(**150**) Subsection (5) was amended by [S.I. 2017/701](#).

(**151**) Section 425A was inserted by paragraph 32 of Schedule 2 to the Financial Services Act 2010.

(**152**) Subsection (7) was amended by [S.I. 2013/3115](#).

(**153**) The definition of “credit institution” was amended by [S.I. 2013/3115](#).

(**154**) Section 425C was inserted by section 48(3) of the Financial Services Act 2012.

““Qualifying provision”

- 425C.** In this Act “qualifying provision” means a provision of any of the following—
- (a) retained direct EU legislation;
  - (b) technical standards made in accordance with Chapter 2A of Part 9A;
  - (c) subordinate legislation (within the meaning of the Interpretation Act 1978) made by virtue of regulations made under section 8 of the European Union (Withdrawal) Act 2018.”.

CHAPTER 18

Schedule 1ZA to the Act: the Financial Conduct Authority

**Schedule 1ZA (the Financial Conduct Authority)**

**93.** In Schedule 1ZA(**155**) (the Financial Conduct Authority), in paragraph 23(2)(b)(**156**), for “qualifying EU provision” substitute “qualifying provision”.

CHAPTER 19

Schedule 1ZB to the Act: the Prudential Regulation Authority

**Schedule 1ZB (the Prudential Regulation Authority)**

**94.** In Schedule 1ZB to the Act(**157**) (the Prudential Regulation Authority), in paragraph 31(2)(b)(**158**), for “qualifying EU provision” substitute “qualifying provision”.

CHAPTER 20

Schedule 2 to the Act: regulated activities

**Schedule 2 (regulated activities)**

**95.** In Schedule 2 (regulated activities), in paragraph 13(2)(c) omit “or another member State”.

CHAPTER 21

Schedule 6 to the Act: threshold conditions

**Introduction**

**96.** Schedule 6(**159**) to the Act (threshold conditions) is amended as follows.

**Interpretation**

**97.**—(1) Paragraph 1A(1) (interpretation of Schedule 6) is amended as follows.

(2) After the definition of “functions”, insert—

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(155) Schedule 1ZA was inserted by section 6(2) of, and Schedule 3 to, the Financial Services Act 2012.

(156) Paragraph 23 was amended by section 129 of, and paragraphs 1, 7(1) and (3) of Part 1 of Schedule 8 to, the Financial Services (Banking Reform) Act 2013, section 47 of, and paragraphs 1 and 16(a) of Schedule 3 to, section 47 of, and paragraphs 1, 16(b), (c), (d) of Schedule 3 to, the Pension Schemes Act 2015 (c. 8), sections 29(1), (6)(a), (6)(b) of the Bank of England and Financial Services Act 2016 (c. 14), section 25 of, and paragraphs 5, 21(1), (5)(a)(i), (5)(a)(ii), (5)(a)(iii), (5)(b)(i), (5)(b)(ii), (5)(b)(iii), (5)(b)(iv) of Schedule 3 to, the Financial Guidance and Claims Act 2018 (c. 10), and S.I. 2013/1773.

(157) Schedule 1ZB was inserted by section 6(2) of, and Schedule 3 to, the Financial Services Act 2012.

(158) Paragraph 31 was amended by section 16 of, and paragraphs 26, 50(1) and (7)(b) of Part 2 of Schedule 2 to, the Bank of England and Financial Services Act 2016.

(159) Schedule 6 was substituted by S.I. 2013/555.

““implementing provisions” has the same meaning as in section 3M;”.

(3) After the definition of “relevant directives”, insert—

““relevant implementing provisions” means—

- (a) any implementing provision contained in subordinate legislation (within the meaning of the Interpretation Act 1978) made otherwise than by any of the following—
  - (i) statutory instrument, and
  - (ii) statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)); or
- (b) any other implementing provision (as amended from time to time);”.

#### **Paragraph 2C (effective supervision)**

**98.** In paragraph 2C(1) (effective supervision)—

- (a) in paragraph (e), for “of the relevant directives” substitute “relevant implementing provisions”;
- (b) in paragraph (f)(iii) for “territory which is not an EEA State” substitute “country or territory outside the United Kingdom”.

#### **Paragraph 3B (effective supervision)**

**99.** In paragraph 3B(1) (effective supervision)—

- (a) in paragraph (e), for “of the relevant directives” substitute “relevant implementing provisions”;
- (b) in paragraph (f)(iii) for “territory which is not an EEA State” substitute “country or territory outside the United Kingdom”.

#### **Paragraph 4A (introduction to Part 1D)**

**100.** In paragraph 4A(6)(160)—

- (a) for paragraph (a) substitute—
  - “(a) the persons are undertakings, whether incorporated or not, other than an existing insurance or reinsurance undertaking, which assume risks from insurance or reinsurance undertakings and which fully fund their exposure to such risks through the proceeds of a debt issuance or any other financing mechanism where the repayment rights of the providers of such debt or financing mechanism are subordinated to the reinsurance obligations of such an undertaking;”;
- (b) for paragraph (b) substitute—
  - “(b) the persons are not insurance undertakings;”.

#### **Paragraph 4F (effective supervision)**

**101.** In paragraph 4F(2) (effective supervision)—

- (a) in paragraph (e), for “of the relevant directives” substitute “relevant implementing provisions”;
- (b) in paragraph (f)(iii) for “territory which is not an EEA State” substitute “country or territory outside the United Kingdom”.

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(160) Paragraph 4A(6) was inserted by S.I. 2017/1212.

**Paragraph 5F (effective supervision)**

**102.** In paragraph 5F(2) (effective supervision)—

- (a) in paragraph (e), for “of the relevant directives” substitute “relevant implementing provisions”;
- (b) in paragraph (f)(iii) for “territory which is not an EEA State” substitute “country or territory outside the United Kingdom”.

**Paragraph 8 (additional conditions)**

**103.** In paragraph 8(2)(a) (additional conditions), for “EEA” substitute “United Kingdom”.

## CHAPTER 22

## Schedule 12 to the Act: transfer schemes: certificates

**Introduction**

**104.** Schedule 12 to the Act (transfer schemes: certificates) is amended as follows.

**Paragraph 1 (insurance business transfer schemes)**

**105.** For paragraph 1 (insurance business transfer schemes) substitute—

“**1.** For the purposes of section 111(2) the appropriate certificate, in relation to an insurance business transfer scheme, is a certificate under paragraph 2.”.

**Paragraph 2 (certificates as to margin of solvency)**

**106.**—(1) Paragraph 2 (certificates as to margin of solvency) is amended as follows.

(2) Omit—

- (a) sub-paragraph (1)(b)(**161**) and the “or” preceding it;
- (b) sub-paragraph (3)(**162**).

(3) In sub-paragraph (6)—

- (a) omit paragraphs (a) and (aa)(**163**);
- (b) in paragraph (c)(**164**) omit “(a), (aa) or”;
- (c) in paragraph (c)(i) and (ii)(**165**) omit, in each place it occurs, “or with permission under Schedule 4”.

(4) Omit sub-paragraphs (7A) and (9)(**166**).

**Paragraphs 3 to 6 (further provisions on certificates)**

**107.** Omit paragraphs 3 to 6(**167**) (further provisions on certificates).

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(**161**) Sub-paragraph (1)(b) was amended by paragraph 11(2)(a) of Schedule 6 to the Financial Services Act 2012.

(**162**) Sub-paragraph (3) was amended by paragraph 11(2)(b) and 11(3) of Schedule 6 to the Financial Services Act 2012.

(**163**) Paragraph (a) was amended by [S.I. 2007/3253](#); paragraph (aa) was substituted by [S.I. 2015/575](#).

(**164**) Paragraph (c) was amended by [S.I. 2007/3253](#).

(**165**) Paragraphs (c)(i) and (ii) were substituted by paragraph 11(4) of Schedule 6 to the Financial Services Act 2012.

(**166**) Sub-paragraphs (7A) and (9) were substituted by [S.I. 2015/575](#).

(**167**) Paragraph 3A was inserted by [S.I. 2015/575](#); paragraph 5A was inserted by [S.I. 2007/3253](#).

**Paragraph 7 (banking business transfer schemes)**

108. For paragraph 7 (banking business transfer schemes) substitute—

“7. For the purposes of section 111(2) the appropriate certificate, in relation to a banking business transfer scheme, is a certificate under paragraph 8.”

**Paragraph 8 (certificates as to financial resources)**

109. In paragraph 8 (certificates as to financial resources) in sub-paragraph (2)(168)—

- (a) in sub-paragraphs (a) and (aa) omit “or with permission under Schedule 4”;
- (b) omit paragraph (b);
- (c) in paragraph (c) for “(a), (aa) or (b)” substitute “(a) or (aa)”.

**Paragraph 9 (certificates as to consent of home state regulator)**

110. Omit paragraph 9(169) (certificates as to consent of home state regulator).

**Paragraph 9B (ring-fencing transfer schemes)**

111. For paragraph 9B(170) (ring-fencing transfer schemes) substitute—

“9B. For the purposes of section 111(2) the appropriate certificates, in relation to a ring-fencing transfer scheme, are—

- (a) a certificate given by the PRA certifying its approval of the application, and
- (b) a certificate under paragraph 9C.”

**Paragraph 9C (certificate as to financial resources)**

112. In paragraph 9C (certificate as to financial resources) in sub-paragraph (2)(171)—

- (a) in paragraph (a) omit “or with permission under Schedule 4”;
- (b) omit paragraph (b);
- (c) in paragraph (c) omit “or (b)”.

**Paragraph 9D (certificate as to consent of home state regulator)**

113. Omit paragraph 9D(172) (certificate as to consent of home state regulator).

**Paragraph 10 (insurance business transfers effected outside the United Kingdom)**

114. In paragraph 10 (insurance business transfers effected outside the United Kingdom)—

- (a) in sub-paragraph (1) for “any of the conditions in sub-paragraphs (2), (3) or (4)” substitute “the condition in sub-paragraph (4)”;
- (b) omit sub-paragraphs (2) and (3)(173);

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(168) Sub-paragraphs (a) and (aa) were substituted by paragraph 16(a) of Schedule 6 to the Financial Services Act 2012. Sub-paragraph (c) was amended by paragraph 16(b) of Schedule 6 to the Financial Services Act 2012.

(169) Paragraph 9 was amended but none is relevant.

(170) Paragraph 9B was inserted by paragraph 13 of Schedule 1 to the Financial Services (Banking Reform) Act 2013.

(171) Paragraph 9C was inserted by paragraph 13 of Schedule 1 to the Financial Services (Banking Reform) Act 2013.

(172) Subsection (2) was amended by [S.I. 2007/3253](#) and paragraph 2 of Schedule 1 to the Financial Services (Banking Reform) Act 2013.

(173) Sub-paragraph (2) was amended by [S.I. 2007/3253](#) and paragraph 19(2) of Schedule 6 to the Financial Services Act 2012; sub-paragraph (3) was substituted by [S.I. 2015/575](#).

- (c) in sub-paragraph (4)(174) for “a UK authorised person” to the end substitute “a UK authorised person as defined in section 105(8)”.

## CHAPTER 23

### Schedule 17A to the Act: further provisions in relation to exercise of Part 18 functions by Bank of England

#### Introduction

**115.** Schedule 17A to the Act (further provision in relation to the exercise of Part 18 functions by Bank of England)(175) is amended as follows.

#### Paragraph 11 (information gathering and investigations)

**116.** In paragraph 11(176) (information gathering and investigations)—

- (a) in sub-paragraph (1)—
- (i) for paragraph (ab) substitute—
- “(ab) a third country CSD, in relation to any services referred to in the Annex to the CSD regulation which the third country CSD provides in the United Kingdom;”;
- (ii) in paragraph (b), for “, a recognised CSD or an EEA CSD” substitute “or a recognised CSD”;
- (b) in sub-paragraph (2), for paragraph (d) substitute—
- “(d) information or documents reasonably required in connection with the exercise by the Bank of its functions—
- (i) under—
- (aa) the EMIR regulation,
- (bb) the CSD regulation,
- (cc) any EU regulation originally made under the CSD Regulation which is retained direct EU legislation, or
- (dd) any subordinate legislation made under the CSD Regulation on or after exit day;
- (ii) in connection with Article 4 or 15 of the SFT regulation; or
- (iii) under any subordinate legislation made under the SFT regulation on or after exit day.”.

#### Paragraphs 22 and 23 (public record and disclosure of information)

**117.**—(1) In paragraph 22(177) (public record and disclosure of information), before “or a recognised CSD”, insert “, a third country CSD”.

(2) In paragraph 23(178) (public record and disclosure of information), in sub-paragraph (1), for the words from “or any directly applicable regulation” to the end substitute “, any EU regulation

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(174) Sub-paragraph (4) was substituted by [S.I. 2015/575](#).

(175) Schedule 17A was inserted by paragraph 1 of Schedule 7 to the Financial Services Act 2012.

(176) Sub-paragraph (1)(ab) was inserted by [S.I. 2017/1064](#); sub-paragraph (2)(d) was inserted by [S.I. 2013/504](#) and amended by [S.I. 2014/2879](#) and [2016/715](#).

(177) Paragraph 22 was amended by [S.I. 2017/1064](#).

(178) Sub-paragraph (1) was renumbered by paragraph 51(4) of Schedule 2(2) to the Bank of England and Financial Services Act 2016 (c. 14) and amended by [S.I. 2017/1064](#).



originally made under the CSD regulation which is retained direct EU legislation, or any subordinate legislation made under the CSD regulation on or after exit day”.

### **Paragraph 30 (offences)**

**118.** In paragraph 30(179) (offences)—

- (a) in sub-paragraph (a), for “, a recognised CSD or an EEA CSD” substitute “or a recognised CSD”;
- (b) in sub-paragraph (c), for “qualifying EU provision” substitute “qualifying provision”.

### **Paragraph 36 (fees)**

**119.** In paragraph 36(180)—

- (a) in sub-paragraph (1), omit “, EEA CSDs”;
- (b) in sub-paragraph (2)(b), for “qualifying EU provision”, substitute “qualifying provision”.

## **PART 3**

### **Amendments to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001**

#### **Introduction**

**120.** The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(181) is amended as follows.

#### **Article 3 (interpretation)**

**121.**—(1) In article 3 (interpretation) paragraph (1) is amended as set out in paragraphs (2) to (13).

(2) Omit the definitions of—

- “aircraft operator”(182),
- “auction platform”(183),
- “EEA AIFM”(184),
- “credit institution”(185),
- “emission allowance auctioning regulation”(186),
- “greenhouse gas emissions allowances”(187),
- “investment services and activities”(188),
- “operator”(189),

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(179) Sub-paragraph (a) was amended by S.I. 2017/1064.

(180) Sub-paragraph (1) was amended by S.I. 2013/504, 2017/1064 and 2018/1184. Sub-paragraph (2)(b) was amended by S.I. 2018/1115.

(181) S.I. 2001/544.

(182) This definition was inserted by S.I. 2012/1906.

(183) This definition was inserted by S.I. 2012/1906.

(184) This definition was inserted by S.I. 2013/1773.

(185) This definition was inserted by S.I. 2006/3384 and was amended by S.I. 2013/3115 and 2017/488.

(186) This definition was inserted by S.I. 2012/1906.

(187) This definition was inserted by S.I. 2012/1906.

(188) This definition was substituted by S.I. 2012/1906 and was amended by S.I. 2017/488.

(189) This definition was inserted by S.I. 2012/1906.

“reception”, “transmission” and “submission”(190),

“UCITS”(191), and

“UK AIF”(192).

(3) In the definition of “contract of insurance”(193), for paragraph (f) substitute—

“(f) contracts relating to the length of human life that are regulated by or under any enactment relating to social security, in so far as they are effected or carried out at their own risk by undertakings with permission to effect or carry out contracts of long-term insurance as principals;”.

(4) In the definition of “financial instrument”(194), for “Section C of Annex I to the markets in financial instruments directive (the text of which is set out in Part 1 of Schedule 2)” substitute “Part 1 of Schedule 2”.

(5) Omit the definition of “home Member State”(195) and insert in the appropriate place—

““home State”—

(a) in relation to a qualifying credit institution, means the State in which the institution has been granted authorisation;

(b) in relation to a legal person (other than a qualifying credit institution) that has a registered office under the person’s national law, means the State in which that office is located;

(c) in relation to any other person, means the State in which the person’s head office is located;”.

(6) For the definition of “investment firm”(196) substitute—

““investment firm” means a person whose regular occupation or business is the provision or performance of investment services and activities on a professional basis, other than—

(a) a person excluded by Schedule 3, read with the Commission Regulation and with Commission Delegated Regulation (EU) 2017/592 of 1 December 2016 supplementing [Directive 2014/65/EU](#) of the European Parliament and of the Council with regard to regulatory technical standards for the criteria to establish when an activity is considered to be ancillary to the main business;

(b) a person whose home State is not the United Kingdom and who would be excluded by Schedule 3, read with the Commission Regulation and with Commission Delegated Regulation (EU) 2017/592, if the person’s registered office (or head office, in the case of a person that is not a body corporate or a person that is a body corporate but has no registered office) was in the United Kingdom;”.

(7) For the definition of “management company”(197) substitute—

““management company” has the meaning given by section 237(2) of the Act;”.

(8) For the definition of “market operator”(198) substitute—

““market operator” means—

(a) a person that manages or operates the business of a UK regulated market (including a person who does so as the UK regulated market itself), or

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(190) These definitions were inserted by [S.I. 2013/1906](#).

(191) This definition was inserted by [S.I. 2013/1773](#).

(192) This definition was inserted by [S.I. 2013/1773](#).

(193) This definition was amended by [S.I. 2015/575](#).

(194) This definition was inserted by [S.I. 2006/3384](#) and was amended by [S.I. 2017/488](#).

(195) This definition was inserted by [S.I. 2006/3384](#) and was amended by [S.I. 2013/3115](#), [2015/910](#) and [2017/488](#).

(196) This definition was inserted by [S.I. 2006/3384](#) and was amended by [S.I. 2017/488](#).

(197) This definition was substituted by [S.I. 2011/1613](#).

(198) This definition was inserted by [S.I. 2006/3384](#) and was amended by [S.I. 2017/488](#).

- (b) a person that would fall within paragraph (a) if the person had its registered office (or, if it does not have one, its head office) in the United Kingdom,

other than a person falling within paragraph (1A);”.

- (9) For the definition of “multilateral trading facility”**(199)** substitute—

““multilateral trading facility” or “MTF” means—

- (a) a UK multilateral trading facility (within the meaning of Article 2.1.14A of the markets in financial instruments regulation) operated by an investment firm, a qualifying credit institution or a market operator, or
- (b) a facility which—
  - (i) is operated by an investment firm, qualifying credit institution or market operator whose home State is not the United Kingdom, and
  - (ii) if its operator’s home State was the United Kingdom, would be a UK multilateral trading facility (within the meaning of Article 2.1.14A of the markets in financial instruments regulation);”.

- (10) For the definition of “organised trading facility”**(200)** substitute—

““organised trading facility” or “OTF” means—

- (a) a UK organised trading facility (within the meaning of Article 2.1.15A of the markets in financial instruments regulation) operated by an investment firm, a qualifying credit institution or a market operator, or
- (b) a facility which—
  - (i) is operated by an investment firm, qualifying credit institution or market operator whose home State is not the United Kingdom, and
  - (ii) if its operator’s home State was the United Kingdom, would be a UK organised trading facility (within the meaning of Article 2.1.15A of the markets in financial instruments regulation);”.

- (11) At the appropriate places insert—

““portfolio management” has the meaning given by Article 2.7 of the Commission Regulation;”;

““qualifying credit institution” means a credit institution which—

- (a) is a person who—
  - (i) has Part 4A permission to carry on the regulated activity of accepting deposits, or
  - (ii) satisfies the conditions for being given permission under Part 4A to carry on that activity, or
  - (iii) is a body corporate incorporated in the United Kingdom and would satisfy those conditions—
    - (aa) were its head office in the United Kingdom, or
    - (bb) if it has a registered office, were its registered office, or its registered office and its head office, in the United Kingdom,
- (b) is not a friendly society,
- (c) is not a society registered as a credit union under—

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**(199)** This definition was inserted by [S.I. 2006/3384](#) and was amended by [S.I. 2017/488](#).

**(200)** This definition was inserted by [S.I. 2017/488](#).

- (i) the Co-operative and Community Benefit Societies Act 2014<sup>(201)</sup>,
  - (ii) the Credit Unions (Northern Ireland) Order 1985<sup>(202)</sup>, or
  - (iii) the Co-operative and Community Benefit Societies Act (Northern Ireland) 1969<sup>(203)</sup>, and
- (d) is not a person excluded from the definition of “investment firm” by Schedule 3, read with the Commission Regulation and with Commission Delegated Regulation (EU) 2017/592 of 1 December 2016 supplementing [Directive 2014/65/EU](#) of the European Parliament and the Council with regard to regulatory technical standards for the criteria to establish when an activity is considered to be ancillary to the main business;”.
- (12) In the definition of “trade repository”<sup>(204)</sup>, for “ESMA” in all four places substitute “the FCA”.
- (13) At the appropriate places insert—
- ““UK regulated market” has the meaning given by Article 2.1.13A of the markets in financial instruments regulation;”;
- ““UK UCITS” has the meaning given by section 237(3) of the Act;”.
- (14) After paragraph (1) of article 3 insert—
- “(1A) A person falls within this paragraph if—
- (a) the person is excluded from the definition of “investment firm” by Schedule 3, read with the Commission Regulation and with Commission Delegated Regulation (EU) 2017/592 of 1 December 2016 supplementing [Directive 2014/65/EU](#) of the European Parliament and of the Council with regard to regulatory technical standards for the criteria to establish when an activity is considered to be ancillary to the main business, or
  - (b) the person is one whose home State is not the United Kingdom and who would be excluded from that definition by Schedule 3, read with the Commission Regulation and with Commission Delegated Regulation (EU) 2017/592, if the person had its registered office (or, if it does not have one, its head office) in the United Kingdom.”.
- (15) After paragraph (3) of article 3 insert—
- “(4) In this Order any reference to a sourcebook is to a sourcebook in the Handbook of Rules and Guidance published by the FCA containing rules made by the FCA under the Act, as the sourcebook has effect on exit day.”.

#### Article 4 (specified activities: general)

**122.**—(1) Article 4 (specified activities: general) is amended as follows.

(2) In paragraph (4)<sup>(205)</sup>, for “credit institution” (in both places) substitute “qualifying credit institution”.

(3) In paragraph (4A)<sup>(206)</sup>, in sub-paragraph (a), for “an EEA State” substitute “the United Kingdom”.

(4) After that paragraph insert—

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<sup>(201)</sup> 2014 c.14.

<sup>(202)</sup> S.I. 1985/1205 (N.I. 12).

<sup>(203)</sup> 1969 c. 24 (N.I.).

<sup>(204)</sup> This definition was substituted by S.I. 2016/715.

<sup>(205)</sup> Paragraph (4) was substituted by S.I. 2006/3384 and was amended by S.I. 2017/488.

<sup>(206)</sup> Paragraph (4A) was substituted by S.I. 2018/546.

“(4AA) In its application to any activity relating to a contract of insurance entered into before exit day, paragraph (4A)(a) has effect as if “or an EEA State” were inserted after “the United Kingdom.”.

(5) In paragraph (4B)(207), for “does not fall within Article 3(2) or (3) of the mortgages directive” substitute “neither relates to an agreement to which section 423A(3) of the Act applies nor falls within the scope of any of the derogations set out in Article 3(3) of the mortgages directive (as it had effect immediately before exit day)”.

(6) In paragraph (5)(208)—

- (a) in the definition of “ancillary insurance intermediary”, after “Schedule 4” insert “, read with the modifications set out in paragraph 3 of Part 6(209) of that Schedule”;
- (b) in the definition of “insurance distribution”, after “respectively” insert “, read with the modification set out in paragraph 4 of Part 6 of that Schedule”;
- (c) in the definition of “reinsurance distribution”, after “respectively” insert “, read with the modifications set out in paragraphs 2 and 4 of Part 6 of that Schedule”.

#### **Article 6 (sums paid by certain persons)**

123.—(1) In article 6 (sums paid by certain persons) paragraph (1)(a) is amended as follows.

(2) In paragraph (i) omit “, the central bank of an EEA State other than the United Kingdom, or the European Central Bank”.

(3) Omit paragraph (x)(210).

#### **Article 9B (issuing electronic money)**

124. In article 9B(211) (issuing electronic money), in paragraph (a), for “credit institution” substitute “qualifying credit institution”.

#### **Article 9C (persons certified as small issuers etc)**

125. In article 9C(212) (persons certified as small issuers etc), in paragraph (2) omit “as defined in Article 4(1)(1) of the capital requirements regulation”.

#### **Article 24A (bidding in emissions auctions)**

126. Omit article 24A(213) (bidding in emissions auctions).

#### **Article 24B (miscellaneous exclusions)**

127. Omit article 24B(214) (miscellaneous exclusions).

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(207) Paragraph (4B) was inserted by S.I. 2015/910 and was amended by S.I. 2016/392.

(208) Paragraph (5) was substituted by S.I. 2018/546.

(209) Part 6 is inserted by these Regulations.

(210) Paragraph (x) was amended by S.I. 2011/1043.

(211) Article 9B was inserted by S.I. 2002/682 and was amended by S.I. 2011/99.

(212) Article 9C was inserted by S.I. 2002/682, and paragraph (2) was amended by S.I. 2013/3115.

(213) Article 24A was inserted by S.I. 2012/1906.

(214) Article 24B was inserted by S.I. 2012/1906.

### Article 33B (provision of information – contracts of insurance)

**128.**—(1) Article 33B(**215**) (provision of information – contracts of insurance) is amended as follows.

(2) In paragraph (4)—

(a) for the definition of “insurance intermediary” substitute—

““insurance intermediary” means a person other than—

- (a) an insurance or reinsurance undertaking or an employee of such an undertaking, or
- (b) an ancillary insurance intermediary,

who, for remuneration, takes up or pursues the activity of insurance distribution;”;

(b) for the definition of “reinsurance intermediary” substitute—

““reinsurance intermediary” means a person other than—

- (a) a reinsurance undertaking, or
- (b) an employee of a reinsurance undertaking,

who, for remuneration, takes up or pursues the activity of reinsurance distribution;”.

(3) After that paragraph insert—

“(5) In paragraph (4)—

“ancillary insurance intermediary”, “insurance distribution” and “reinsurance distribution” have the same meaning as in article 4;

“remuneration” means any commission, fee, charge or other payment, including an economic benefit of any kind or any other financial or non-financial advantage or incentive offered or given.”.

### Article 35 (international securities self-regulating organisations)

**129.**—(1) In article 35 (international securities self-regulating organisations) paragraph (3) is amended as follows.

(2) In sub-paragraph (ba)(**216**) omit “an EEA central counterparty (as defined in section 285(1)(c) of the Act) or”.

(3) In sub-paragraph (bb)(**217**) omit “an EEA CSD (as defined in section 285(1)(f) of the Act) or”.

### Article 35A (trade repositories)

**130.** At the end of article 35A(**218**) (trade repositories), the existing text of which becomes paragraph (1), insert—

“(2) The reference in paragraph (1)(a) to Regulation (EU) 648/2012 is a reference to that instrument as it has effect at the beginning of the day on which the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 are made (but see regulation 2 of the European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) Regulations 2019(**219**), which may further update the reference).”.

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(**215**) Article 33B was inserted by [S.I. 2018/546](#).

(**216**) Sub-paragraph (ba) was inserted by [S.I. 2013/504](#).

(**217**) Sub-paragraph (bb) was inserted by [S.I. 2017/1064](#).

(**218**) Article 35A was inserted by [S.I. 2013/504](#) and has been amended by [S.I. 2016/715](#).

(**219**) S.I. 2019/XXXX.

#### **Article 42A (depositaries of UCITS and AIFs)**

- 131.**—(1) Article 42A(**220**) (depositaries of UCITS and AIFs) is amended as follows.
- (2) In the heading, for “UCITS” substitute “UK UCITS”.
- (3) In paragraph (a), for “a UCITS” substitute “a UK UCITS”.

#### **Article 51ZA (managing a UCITS)**

- 132.**—(1) Article 51ZA(**221**) (managing a UCITS) is amended as set out in paragraphs (2) to (4).
- (2) In the heading and in paragraph (1), for “a UCITS” substitute “a UK UCITS”.
- (3) For paragraph (2) substitute—
- “(2) A person manages a UK UCITS when the person carries on collective portfolio management of it.
- (2A) In paragraph (2) “collective portfolio management” includes investment management, administration and marketing; and “administration” here means—
- (a) legal and fund management accounting services;
- (b) customer inquiries;
- (c) valuation and pricing (including tax returns);
- (d) regulatory compliance monitoring;
- (e) maintenance of unit-holder register;
- (f) distribution of income;
- (g) unit issues and redemptions;
- (h) contract settlements (including certificate dispatch);
- (i) record keeping.””
- (4) In paragraph (3), for “a UCITS” substitute “a UK UCITS”.
- (5) In consequence of the amendments made by paragraphs (2) to (4)—
- (a) in article 72H(**222**), in paragraph (2)(m), for “a UCITS” substitute “a UK UCITS”;
- (b) omit Schedule 6.

#### **Article 51ZB (acting as trustee or depositary of a UCITS)**

- 133.**—(1) In article 51ZB(**223**) (acting as trustee or depositary of a UCITS), in the heading and in paragraph (1), for “a UCITS” substitute “a UK UCITS”.
- (2) In consequence of the amendments made by paragraph (1), in article 72H, in paragraph (2) (n), for “a UCITS” substitute “a UK UCITS”.

#### **Article 51ZD (acting as trustee or depositary of an AIF)**

- 134.**—(1) Article 51ZD(**224**) (acting as trustee or depositary of an AIF) is amended as follows.
- (2) In paragraph (2) omit sub-paragraph (b) and the preceding “or”.
- (3) In paragraph (3), for sub-paragraph (a) substitute—

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(220) Article 42A was inserted by [S.I. 2013/1773](#).

(221) Article 51ZA was inserted by [S.I. 2013/1773](#).

(222) Article 72H was inserted by [S.I. 2014/366](#).

(223) Article 51ZB was inserted by [S.I. 2013/1773](#).

(224) Article 51ZD was inserted by [S.I. 2013/1773](#).

- “(a) a person appointed as a depositary by the AIFM in compliance with a requirement imposed by rule 3.11.10, 3.11.12 or 3.11.33 of the Investment Funds sourcebook; or”.

**Article 51ZG (operating a collective investment scheme in relation to a UCITS or an AIF)**

**135.**—(1) Article 51ZG(**225**) (operating a collective investment scheme in relation to a UCITS or an AIF) is amended as follows.

- (2) In the heading and in paragraph (1)(a), for “a UCITS” substitute “a UK UCITS”.
- (3) In paragraph (2)(b) and (c), for “the UCITS or AIF” substitute “the UK UCITS or the AIF”.

**Article 53DA (advising on regulated credit agreements for the acquisition of land)**

**136.** In article 53DA(**226**) (advising on regulated credit agreements for the acquisition of land), for paragraph (2) substitute—

- “(2) In this article—
- (a) a reference to any land or building—
- (i) in relation to an agreement entered into before exit day, is a reference to any land or building in the United Kingdom or within the territory of an EEA State;
- (ii) in relation to an agreement entered into on or after exit day, is a reference to any land or building in the United Kingdom;
- (b) “regulated credit agreement” has the meaning given by article 60B(3).”

**Article 54 (advice given in newspapers etc)**

**137.**—(1) In article 54 (advice given in newspapers etc), in paragraph (1)(b)(va)(**227**), after “land” and after “building” insert “in the United Kingdom”.

(2) The amendment made by paragraph (1) does not apply in relation to any advice published or given before exit day.

**Article 60D (exempt agreements: exemption relating to the purchase of land for non-residential purposes)**

**138.** In article 60D (exempt agreements: exemption relating to the purchase of land for non-residential purposes), for paragraph (4)(**228**) substitute—

- “(4) This article does not apply to an agreement if—
- (a) the agreement is entered into on or after 21st March 2016,
- (b) under the agreement a mortgage creditor grants or promises to grant a credit in the form of a deferred payment, loan or other similar financial accommodation,
- (c) the credit is granted or promised to an individual who is acting for purposes outside those of any trade, business or profession carried on by the individual,
- (d) the purpose of the agreement is to acquire or retain property rights in land or in an existing or projected building, and
- (e) the agreement does not meet the conditions in paragraphs (i) to (iii) of article 61(3)(a) (regulated mortgage contracts).

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(225) Article 51ZG was inserted by [S.I. 2013/1773](#).

(226) Article 53DA was inserted by [S.I. 2015/910](#) and was amended by [S.I. 2016/392](#).

(227) Paragraph (1)(b)(va) was inserted by [S.I. 2015/910](#).

(228) Article 60D was inserted by [S.I. 2013/1881](#), paragraph (4) was inserted by [S.I. 2015/910](#) and was amended by [S.I. 2016/392](#).



- (5) A reference in paragraph (4)(d) to any land or building—
  - (a) in relation to an agreement entered into before exit day, is a reference to any land or building in the United Kingdom or within the territory of an EEA State;
  - (b) in relation to an agreement entered into on or after exit day, is a reference to any land or building in the United Kingdom.”.

#### **Article 60E (exempt agreements: exemptions relating to the nature of the lender)**

**139.** In Article 60E(229), in subsection (6)(a), for “credit institution” substitute “qualifying credit institution”.

#### **Article 60G (exempt agreements: exemptions relating to the total charge for credit)**

**140.**—(1) Article 60G(230) (exempt agreements: exemptions relating to the total charge for credit) is amended as follows.

(2) In paragraph (2A)(a)(231), for “of a type described in Article 3(1) of the mortgages directive” substitute “one to which subsection (2) of section 423A of the Act applies”.

(3) In paragraph (2A)(b)—

- (a) for “of such a type” substitute “one to which that subsection applies”;
- (b) in paragraph (i), for “of a kind to which the mortgages directive does not apply by virtue of Article 3(2) of that directive” substitute “one to which subsection (3) of that section applies”;
- (c) in paragraph (ii) omit “within the meaning of Article 4(23) of the mortgages directive”.

(4) In paragraph (8)(232), for “of a type described in Article 3(1) of the mortgages directive” substitute “to which subsection (2) of section 423A of the Act applies”.

(5) After that paragraph insert—

“(9) In this article “bridging loan” means a mortgage agreement that—

- (a) is of no fixed duration or is due to be repaid within 12 months, and
- (b) is used by a consumer, within the meaning given by section 423A(4) of the Act, as a temporary financing solution while transitioning to another financial arrangement for the immovable property concerned.”.

#### **Article 60H (exempt agreements: exemptions relating to the nature of the borrower)**

**141.**—(1) Article 60H(233) (exempt agreements: exemptions relating to the nature of the borrower) is amended as follows.

(2) In paragraph (1)(b)(ii)(234) omit sub-paragraph (bb) and the preceding “or”.

(3) Omit paragraph (2)(235).

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(229) Article 60E was inserted by [S.I. 2013/1881](#).

(230) Article 60G was inserted by [S.I. 2013/1881](#).

(231) Paragraph (2A) was inserted by [S.I. 2015/910](#) and was amended by [S.I. 2016/392](#).

(232) Paragraph (8) was inserted by [S.I. 2015/910](#) and was amended by [S.I. 2016/392](#).

(233) Article 60H was inserted by [S.I. 2013/1881](#).

(234) Paragraph (1) was amended by [S.I. 2015/910](#) and [S.I. 2016/392](#).

(235) Paragraph (2) was inserted by [S.I. 2015/910](#).

### **Article 60HA (exempt agreements: exemptions not permitted under the mortgages directive)**

**142.**—(1) Article 60HA(**236**) (exempt agreements: exemptions not permitted under the mortgages directive) is amended as follows.

(2) In the heading, for “exemptions not permitted under the mortgages directive” substitute “provision qualifying articles 60E, 60F and 60H”.

(3) In paragraph (1)(**237**), for the words after “article 60E(2) or (5)” substitute “or 60F(4) if it is a mortgage agreement to which paragraph (2) does not apply”.

(4) In paragraph (2)—

- (a) after “This paragraph applies” insert “to an agreement”;
- (b) omit paragraph (a);
- (c) in paragraph (b), for “of Article 4(23) of the mortgages directive” substitute “given by article 60G(9)”.

### **Article 60JA (payment institutions)**

**143.**—(1) Omit article 60JA(**238**) (payment institutions).

(2) In relation to a person who has transitional authorisation by virtue of paragraph 14 of Schedule 3 to the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018(**239**) (“the 2018 Regulations”), the amendment made by paragraph (1) does not apply during the transition period (within the meaning given by paragraph 22 of that Schedule).

(3) Despite the repeal of Schedule 5 to the Payment Services Regulations 2017(**240**) by the 2018 Regulations, that Schedule has effect, with any necessary modifications, in relation to a case where the amendment made by paragraph (1) does not apply because of paragraph (2).

### **Article 60JB (electronic money institutions)**

**144.**—(1) Omit article 60JB(**241**) (electronic money institutions).

(2) In relation to a person who has transitional authorisation by virtue of paragraph 2 of Schedule 3 to the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018 (“the 2018 Regulations”), the amendment made by paragraph (1) does not apply during the transition period (within the meaning given by paragraph 10 of that Schedule).

(3) Despite the repeal of Schedule 2A to the Electronic Money Regulations 2011(**242**) by the 2018 Regulations, that Schedule has effect, with any necessary modifications, in relation to a case where the amendment made by paragraph (1) does not apply because of paragraph (2).

### **Article 61 (regulated mortgage contracts)**

**145.**—(1) Article 61 (regulated mortgage contracts) is amended as follows.

(2) In paragraph (3)(a)(ii)(**243**) omit “in the EEA”.

(3) In paragraph (4), after sub-paragraph (a) insert—

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(**236**) Article 60HA was inserted by [S.I. 2015/910](#).

(**237**) Paragraph (1) was amended by [S.I. 2016/392](#).

(**238**) Article 60JA was inserted by [S.I. 2014/366](#) and was amended by [S.I. 2017/752](#).

(**239**) [S.I. 2018/1201](#).

(**240**) [S.I. 2017/752](#).

(**241**) Article 60JB was inserted by [S.I. 2014/366](#) and was amended by [S.I. 2017/752](#).

(**242**) [S.I. 2011/99](#).

(**243**) Paragraph (3)(a) was substituted by [S.I. 2015/910](#) and amended by [S.I. 2016/392](#).

“(aa) “land”—

- (i) in relation to a contract entered into before exit day, means land in the United Kingdom or within the territory of an EEA State;
- (ii) in relation to a contract entered into on or after exit day, means land in the United Kingdom.”.

#### **Article 61A (mortgage contracts which are not regulated mortgage contracts)**

**146.**—(1) In article 61A(**244**) (mortgage contracts which are not regulated mortgage contracts) paragraph (6) is amended as follows.

(2) In the definition of “bridging loan”, for “Article 4(23) of the mortgages directive” substitute “article 60G(9)”.

(3) In the definition of “exempt consumer buy-to-let mortgage contract”, in paragraph (a), for “of a kind to which the mortgages directive does not apply by virtue of Article 3(2) of that directive” substitute “an agreement to which section 423A(3) of the Act applies”.

(4) In the definition of “exempt housing authority loan”(245), in paragraph (b)—

(a) for sub-paragraph (i) substitute—

“(i) is an agreement to which section 423A(3) of the Act applies,”;

(b) in sub-paragraph (iii), for “exemptions not permitted under the mortgages directive” substitute “provision qualifying articles 60E, 60F and 60H”.

#### **Article 72 (overseas persons)**

**147.**—(1) Article 72 (overseas persons) is amended as follows.

(2) In paragraph (8)(246), for “credit institution” substitute “qualifying credit institution”.

(3) In paragraphs (8)(b) and (10)(247) omit “Member”.

(4) In paragraph (9A)(248)—

(a) in sub-paragraph (a) omit “23(2) or”;

(b) omit sub-paragraph (b) and the preceding “or”.

(5) After paragraph (10) insert—

“(10A) This article does not apply in the following two cases.”

(6) In paragraph (11)(249), for “This Article does not apply” substitute “The first case is”.

(7) After paragraph (11) insert—

“(11A) The second case is where the overseas person is—

(a) a third-country firm, as defined by Article 2.1.42 of the markets in financial instruments regulation;

(b) established in a county that is the subject of equivalence regulations; and

(c) carrying on an activity a third country firm established in that third country may carry on, by virtue of the equivalence regulations, under—

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(244) Article 61A was inserted by S.I. 2105/910, and the definition of “exempt housing authority loan” was inserted by S.I. 2016/392.

(245) This definition was inserted by S.I. 2016/392.

(246) Paragraph (8) was inserted by S.I. 2006/3384.

(247) Paragraph (10) was inserted by S.I. 2015/910.

(248) Paragraph (9A) was inserted by S.I. 2017/1064.

(249) Paragraph (11) was inserted by S.I. 2017/488.

- (i) Article 46.1 of the markets in financial instruments regulation, if it is registered by the FCA in the register of third country firms established in accordance with Article 48 of that regulation, or
  - (ii) Article 46.5 of that regulation.”.
- (8) In paragraph (12)(**250**)—
- (a) for “paragraph (11)” substitute “paragraphs (11) and (11A)”;
  - (b) in sub-paragraph (a)—
    - (i) after “by the Commission”, in both places, insert “before exit day”;
    - (ii) omit the “and” at the end;
  - (c) after sub-paragraph (b) insert—
    - “(c) “equivalence regulations” means regulations that have been made by the Treasury under Article 47.1 of the markets in financial instruments regulation and not revoked;
    - (d) a country is the subject of equivalence regulations if a period of more than three years has elapsed since the coming into force of the regulations, beginning on the day after the date of their coming into force.”.

#### **Article 72AA (managers of UCITS and AIFs)**

- 148.**—(1) In Article 72AA(**251**) (managers of UCITS and AIFs)—
- (a) in the heading, for “UCITS” substitute “UK UCITS”;
  - (b) in paragraph (2), for “a UCITS” substitute “a UK UCITS”.
- (2) In consequence of the amendments made by paragraph (1), for “UCITS” substitute “UK UCITS” in the following provisions—
- (a) article 9AA(**252**);
  - (b) article 12A(**253**);
  - (c) article 20(**254**);
  - (d) article 24;
  - (e) article 36(1), (2) and (3);
  - (f) article 39;
  - (g) article 39C(**255**);
  - (h) article 44;
  - (i) article 50;
  - (j) article 51A(**256**);
  - (k) article 52A(**257**);
  - (l) article 55(1) and (2);

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(250) Paragraph (12) was inserted by S.I. 2017/488.

(251) Article 72AA was inserted by S.I. 2013/1773.

(252) Article 9AA was inserted by S.I. 2002/1776 and was amended by S.I. 2013/1773.

(253) Article 12A was inserted by S.I. 2002/1776 and was amended by S.I. 2013/1773.

(254) Article 20 was amended (so far as relevant) by S.I. 2014/366.

(255) Article 39C was inserted by S.I. 2003/1476 and was amended (so far as relevant) by S.I. 2013/1773.

(256) Article 51A was inserted by S.I. 2002/1776 and was amended (so far as relevant) by S.I. 2013/1773.

(257) Article 52A was inserted by S.I. 2002/1776 and was amended by S.I. 2013/1773 and 2014/366.

- (m) article 58A(258);
- (n) article 60A(259);
- (o) article 63A(260);
- (p) article 63E(261);
- (q) article 63I(262);
- (r) article 63M(263).

#### **Article 72D (large risks contracts where risk situated outside the EEA)**

149.—(1) Article 72D(264) (large risks contracts where risk situated outside the EEA) is amended as set out in paragraphs (2) to (4).

- (2) In the heading, for “the EEA” substitute “the United Kingdom”.
- (3) In paragraph (1), for “an EEA State” substitute “the United Kingdom”.
- (4) In paragraph (4) omit “(within the meaning of the Seventh Company Law Directive)”.
- (5) In consequence of the amendments made by paragraphs (2) and (3), for “outside the EEA” substitute “outside the United Kingdom” in the following provisions—

- (a) article 24(265);
- (b) article 36(1)(266);
- (c) article 39C(267);
- (d) article 55(1)(268).

#### **Article 72E (Business Angel-led Enterprise Capital Funds)**

150. In article 72E(269) (Business Angel-led Enterprise Capital Funds), in paragraph (8)—

- (a) for “in accordance with the law of an EEA State” substitute “under the law of any part of the United Kingdom”;
- (b) for “within the territory of an EEA State” substitute “in the United Kingdom”.

#### **Article 72G (local authorities)**

151.—(1) Article 72G(270) (local authorities) is amended as follows.

- (2) In paragraph (3B)(b), for paragraph (i) substitute—  
“(i) is an agreement to which section 423A(3) of the Act applies;”.
- (3) In paragraph (4)(a), in paragraph (ii), for the words after “a credit agreement” substitute “falling within paragraph (6A) or within section 423A(2)(a) or (b) or (3)(b), (d), (e) or (f) of the Act;”.

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(258) Article 58A was inserted by S.I. 2002/1776 and was amended by S.I. 2013/1773.

(259) Article 60A was inserted by S.I. 2002/1776 and was amended by S.I. 2013/1773.

(260) Article 63A was substituted by S.I. 2003/1475 and was amended by S.I. 2013/1773 and 2014/366.

(261) Article 63E was inserted by S.I. 2006/2383 and was amended by S.I. 2013/1773 and 2014/366.

(262) Article 63I was inserted by S.I. 2006/2383 and was amended by S.I. 2013/1773 and 2014/366.

(263) Article 63M was inserted by S.I. 2009/1342 and was amended by S.I. 2014/366.

(264) Article 72D was inserted by S.I. 2003/1476.

(265) Article 24 was amended by S.I. 2013/1476, 2013/1773 and 2014/366.

(266) Article 36 was inserted by S.I. 2003/1475 and was amended by S.I. 2003/1476, 2013/1773 and 2014/366.

(267) Article 39C was inserted by S.I. 2003/1476 and was amended by S.I. 2013/1773 and 2014/366.

(268) Article 55 was inserted by S.I. 2003/1475 and was amended by S.I. 2003/1476, 2013/1773 and 2014/366.

(269) Article 72E was inserted by S.I. 2005/1518.

(270) Article 72G was inserted by S.I. 2014/366; paragraph (3B) and (7) were inserted, and paragraph (4) substituted, by S.I. 2015/910; paragraphs (3B) and (4) were amended by S.I. 2016/392.

- (4) In paragraph (4)(b), for paragraph (i) substitute—  
“(i) it is an agreement to which section 423A(3) of the Act applies;”.
- (5) After paragraph (4) insert—  
“(4A) A reference in paragraph (4) to any land or building—  
(a) in relation to an agreement entered into before exit day, is a reference to any land or building in the United Kingdom or within the territory of an EEA State;  
(b) in relation to an agreement entered into on or after exit day, is a reference to any land or building in the United Kingdom.”.
- (6) After paragraph (6) insert—  
“(6A) The following credit agreements fall within this paragraph—  
(a) an agreement involving a total amount of credit of less than 200 euro;  
(b) an agreement that involves a total amount of credit of more than 75,000 euro, other than an unsecured credit agreement the purpose of which is the renovation of a residential immovable property;  
(c) a hiring or leasing agreement under which an obligation to purchase the object of the agreement is not laid down either by the agreement itself or by any separate agreement;  
(d) an agreement under which the credit is granted free of interest and without any other charges;  
(e) an agreement under which the credit has to be repaid within three months and only insignificant charges are payable;  
(f) an agreement concluded with an investment firm or a credit institution for the purposes of allowing an investor to carry out a transaction relating to one or more of the instruments listed in Part 1 of Schedule 2, where the investment firm or credit institution granting the credit is involved in that transaction;  
(g) an agreement under which the consumer’s liability is strictly limited to an item that the consumer is requested to deposit, upon the conclusion of the agreement, as security in the creditor’s safe-keeping;  
(h) an agreement that relates to a restricted public loan.  
(6B) For the purposes of subsection (6A)(c), an obligation to purchase the object of the agreement is deemed to exist if the creditor decides that it does.”
- (7) In paragraph (7)—  
(a) in the definition of “bridging loan”, for “Article 4(23) of the mortgages directive” substitute “article 60G(9)”;  
(b) at the appropriate place insert—  
““consumer” means an individual who is acting for purposes outside those of any trade, business or profession carried on by the individual;”;  
(c) omit the definition of “consumer credit directive”.

#### **Article 77A (alternative finance investment bonds)**

- 152.**—(1) Article 77A(**271**) (alternative finance investment bonds) is amended as follows.  
(2) In paragraph (2), for sub-paragraph (f)(**272**) substitute—

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(271) Article 77A was inserted by [S.I. 2010/86](#).

(272) Paragraph (2)(f) was amended by [S.I. 2018/831](#).

- “(f) the arrangements are—
- (i) a security that is admitted to the official list in accordance with Part 6 of the Act,
  - (ii) a security that is admitted to an official list in the EEA (in accordance with the provisions of [Directive 2001/34/EC](#) of the European Parliament and of the Council on the admission of securities to official stock exchange listing and on information to be published on those securities) and has been so admitted since before exit day,
  - (iii) a security that is admitted to trading on a recognised investment exchange or a UK trading venue, or
  - (iv) a security that is admitted to trading on an EU trading venue and has been so admitted since before exit day.”.

(3) After paragraph (3) insert—

“(3A) In sub-paragraph (2)(f)—

“EU trading venue” has the meaning given by Article 2.1.16B of the markets in financial instruments regulation;

“UK trading venue” has the meaning given by Article 2.1.16A of that regulation.”.

#### **Article 78 (government and public securities)**

**153.** In article 78 (government and public securities), in paragraph (1)(g)(i) and (ii) omit “or another EEA State”.

#### **Article 82A (greenhouse gas emissions allowances)**

**154.** Omit article 82A(273) (greenhouse gas emissions allowances).

#### **Article 82B (emission allowances)**

**155.—**(1) Article 82B(274) (emission allowances) is amended as follows.

(2) In paragraph (1), after “compliance” insert “(by an EEA State)”.

(3) In paragraph (2), for sub-paragraphs (a) to (d) substitute—

- “(a) an investment firm or qualifying credit institution is providing or performing investment services and activities on a professional basis,
- (b) a management company which has a Part 4A permission to do so is providing the investment service specified in paragraph 4 or 5 of Part 3 of Schedule 2 or the ancillary service specified in paragraph 1 of Part 3A of that Schedule,
- (c) a market operator is providing the investment service specified in paragraph 8 or 9 of Part 3 of that Schedule, or
- (d) a full-scope UK AIFM which has a Part 4A permission to do so is providing the investment service specified in paragraph 1, 4 or 5 of Part 3 of that Schedule or the ancillary service specified in paragraph 1 of Part 3A of that Schedule.”.

#### **Article 83 (options)**

**156.—**(1) Article 83 (options) is amended as follows.

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(273) Article 82A was inserted by [S.I. 2012/1906](#).

(274) Article 82B was inserted by [S.I. 2017/488](#).

(2) In paragraph (1)(e)(275), for the words after “an option to which” substitute “paragraph 5, 6, 7 or 10 of Part 1 of Schedule 2 (read with Articles 5, 6, 7, and 8 of the Commission Regulation) applies”.

(3) In paragraph (2)(d)(276)—

- (a) in paragraph (i) omit “Section C of Annex I to the markets in financial instruments directive, the text of which is set out in”;
- (b) in paragraph (ii), for “Section C of Annex I to the markets in financial instruments directive” substitute “Part 1 of that Schedule”.

(4) In paragraph (3)(c)(277), for “Section C of Annex I to the markets in financial instruments directive” substitute “Part 1 of Schedule 2”.

(5) In paragraph (4)(278), for sub-paragraphs (a) to (d) substitute—

- “(a) an investment firm or qualifying credit institution is providing or performing investment services and activities on a professional basis,
- (b) a management company which has a Part 4A permission to do so is providing the investment service specified in paragraph 4 or 5 of Part 3 of Schedule 2 or the ancillary service specified in paragraph 1 of Part 3A of that Schedule,
- (c) a market operator is providing the investment service specified in paragraph 8 or 9 of Part 3 of that Schedule, or
- (d) a full-scope UK AIFM which has a Part 4A permission to do so is providing the investment service specified in paragraph 1, 4 or 5 of Part 3 of that Schedule or the ancillary service specified in paragraph 1 of Part 3A of that Schedule.”.

(6) Omit paragraph (5)(279).

#### **Article 84 (futures)**

**157.**—(1) Article 84 (futures) is amended as follows.

(2) In paragraph (1A)(d), (1B)(e) and (1C)(c)(280), for “Section C of Annex I to the markets in financial instruments directive” substitute “Part 1 of Schedule 2”.

(3) In paragraph (1CA)(281)—

- (a) for “Section C of Annex I to the markets in financial instruments directive” substitute “Part 1 of Schedule 2”;
- (b) for “the texts of which are set out in Parts 1 and 2 of Schedule 2” substitute “the text of which is set out in Part 2 of Schedule 2”.

(4) In paragraph (1D)(282), for sub-paragraphs (a) to (d) substitute—

- “(a) an investment firm or qualifying credit institution is providing or performing investment services and activities on a professional basis,
- (b) a management company which has a Part 4A permission to do so is providing the investment service specified in paragraph 4 or 5 of Part 3 of Schedule 2 or the ancillary service specified in paragraph 1 of Part 3A of that Schedule,

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(275) Paragraph (1)(e) was inserted by S.I. 2006/3384 and was amended by S.I. 2017/488.

(276) Paragraph (2) was inserted by S.I. 2006/3384 and was amended by S.I. 2017/488.

(277) Paragraph (3) was inserted by S.I. 2006/3384 and was amended by S.I. 2017/488.

(278) Paragraph (4) was inserted by S.I. 2006/3384 and was amended by S.I. 2011/1613 and S.I. 2017/488.

(279) Paragraph (5) was inserted by S.I. 2006/3384.

(280) Paragraph (1A), (1B) and (1C) were inserted by S.I. 2006/3384 and amended by S.I. 2017/488.

(281) Paragraph (1CA) was inserted by S.I. 2017/488.

(282) Paragraph (1D) was inserted by S.I. 2006/3384 and was amended by S.I. 2011/1613 and S.I. 2017/488.



- (c) a market operator is providing the investment service specified in paragraph 8 or 9 of Part 3 of that Schedule, or
  - (d) a full-scope UK AIFM which has a Part 4A permission to do so is providing the investment service specified in paragraph 1, 4 or 5 of Part 3 of that Schedule or the ancillary service specified in paragraph 1 of Part 3A of that Schedule.”.
- (5) Omit paragraph (1E)(283).

#### **Article 85 (contracts for differences etc)**

**158.**—(1) Article 85 (contracts for differences etc) is amended as follows.

(2) In paragraph (3)(b)(284), for “Section C of Annex I to the markets in financial instruments directive” substitute “Part 1 of Schedule 2”.

(3) In paragraphs (4)(285) and (4B)(286), for sub-paragraphs (a) to (d) substitute—

- “(a) an investment firm or qualifying credit institution is providing or performing investment services and activities on a professional basis,
- (b) a management company which has a Part 4A permission to do so is providing the investment service specified in paragraph 4 or 5 of Part 3 of Schedule 2 or the ancillary service specified in paragraph 1 of Part 3A of that Schedule,
- (c) a market operator is providing the investment service specified in paragraph 8 or 9 of Part 3 of that Schedule,
- (d) a full-scope UK AIFM which has a Part 4A permission to do so is providing the investment service specified in paragraph 1, 4 or 5 of Part 3 of that Schedule or the ancillary service specified in paragraph 1 of Part 3A of that Schedule.”.

(4) In paragraph (4A)(c)(287)—

- (a) for “Section C of Annex I to the markets in financial instruments directive” substitute “Part 1 of Schedule 2”;
- (b) for “the texts of which are set out in Parts 1 and 2 of Schedule 2” substitute “the text of which is set out in Part 2 of Schedule 2”.

(5) Omit paragraph (5)(288).

#### **Article 95 (exclusion from record where not fit and proper to carry on insurance distribution)**

**159.** In article 95 (exclusion from record where not fit and proper to carry on insurance distribution) omit paragraph (1A)(289).

#### **Schedule 4 (relevant text of the insurance distribution directive)**

**160.** In Schedule 4(290) (relevant text of the insurance distribution directive), after Part 5 insert—

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(283) Paragraph (1E) was inserted by S.I. 2006/3384 and was amended by S.I. 2017/488.

(284) Paragraph (3) was inserted by S.I. 2006/3384.

(285) Paragraph (4) was inserted by S.I. 2006/3384 and was amended by S.I. 2017/488.

(286) Paragraph (4B) was inserted by S.I. 2017/488.

(287) Paragraph (4A) was inserted by S.I. 2017/488.

(288) Paragraph (5) was inserted by S.I. 2006/3384.

(289) Article 95 was inserted by S.I. 2003/1476, and paragraph (1A) was inserted by S.I. 2018/546.

(290) Schedule 4 was inserted by S.I. 2003/1476 and was amended by S.I. 2018/546.

## “PART 6

### Modifications of Article 1.3, 2.1(2) and (4) and 2.2

1. This Part has effect for the purposes of article 4(5).
2. Article 2.1(2) of the insurance distribution directive has effect—
  - (a) as if “within the meaning of the Financial Services and Markets Act 2000” were inserted after “a reinsurance undertaking”, and
  - (b) as if “within the meaning given by article 33B(4) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001” were inserted after “a reinsurance intermediary”.
3. Article 2.1(4) of the insurance distribution directive has effect as if “within the meaning of the Financial Services and Markets Act 2000” were substituted for “as defined in points (1) and (2) of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council”.
4. Article 2.2 of the insurance distribution directive has effect as if, as the end, there were inserted—
 

““In points (b), (c) and (d) “insurance undertaking” and “reinsurance undertaking” have the same meaning as in the Financial Services and Markets Act 2000.”””

### Schedule 8 (persons excluded from regulated activity of managing an AIF)

**161.**—(1) Schedule 8(**291**) (persons excluded from regulated activity of managing an AIF) is amended as follows.

(2) In paragraph 1, after “the alternative investment fund managers directive” insert “, and not referred to in paragraph 1B,”.

(3) After paragraph 1 insert—

**1A.** For the purposes of paragraph 1, in Article 4(1)(o) of the alternative investment fund managers directive (definition of “holding company”) the reference to the Union is to be read as a reference to the United Kingdom.

**1B.** In this Schedule—

“parent undertaking” has the meaning given by section 1162 of the Companies Act 2006(**292**) (read with Schedule 7 to that Act);

“subsidiary” has the meaning given to “subsidiary undertaking” by that section (read with that Schedule)”.

(4) For paragraph 4 substitute—

**4.** The trustees and managers of an occupational pension scheme within the meaning of section 1(1) of the Pension Schemes Act 1993(**293**).”.

(5) In paragraph 5—

(a) omit “The European Central Bank,”;

(b) for “, any other” substitute “or any other”;

(c) omit “or a European Development Finance Institution,”.

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(**291**) Schedule 8 was inserted by S.I. 2013/1773.

(**292**) 2006 c.46.

(**293**) 1993 c.48.

- (6) In paragraph 11(**294**)—
- (a) for “an EEA State” substitute “the United Kingdom”;
  - (b) for the words after “in accordance with” substitute “Part 3 of the Alternative Investment Fund Managers Regulations 2013(**295**).”.

## PART 4

### Amendments to the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005

#### **Introduction and transitional provision**

**162.**—(1) The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005(**296**) is amended as set out in this Part.

(2) Nothing in this Part causes a communication to constitute a breach of the prohibition in subsection (1) of section 21 of the Financial Services and Markets Act 2000(**297**) (restrictions on financial promotion) if—

- (a) a contract entered into before exit day required the communication to be made, and
- (b) the communication would not have constituted a breach of the prohibition had it been made before exit day.

#### **Article 2 (interpretation: general)**

**163.** In article 2 (interpretation: general), in paragraph (1), in the definition of “international organisation”, in paragraphs (a) and (b) omit “or another EEA State”.

#### **Article 6 (interpretation: communications)**

**164.** In article 6 (interpretation: communications) omit paragraphs (g) and (h).

#### **Article 8A (interpretation: outgoing electronic commerce communication)**

**165.** Omit article 8A(**298**) (interpretation: outgoing electronic commerce communication).

#### **Article 10 (application to qualifying contracts of insurance)**

**166.** In article 10 (application to qualifying contracts of insurance), in paragraph 1—

- (a) omit sub-paragraph (c);
- (b) omit sub-paragraph (d).

#### **Article 12 (communications to overseas recipients)**

**167.** In article 12 (communications to overseas recipients) omit paragraph 7.

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(**294**) Paragraph 11 is prospectively revoked by [S.I. 2013/1797](#).

(**295**) [S.I. 2013/1773](#).

(**296**) [S.I. 2005/1529](#).

(**297**) 2000 c.8.

(**298**) Article 8A was amended by [S.I. 2011/1265](#).

### **Article 18A (electronic commerce communications: mere conduits, caching and hosting)**

**168.**—(1) Article 18A (electronic commerce communications: mere conduits, caching and hosting) is amended as follows.

(2) In paragraph (a), for “paragraph 1 of Article 12, 13 or 14 of the electronic commerce directive” substitute “regulation 17(1), 18 or 19 of the Electronic Commerce (EC Directive) Regulations 2002(299)”.

(3) In paragraph (b), for “the conditions mentioned in the paragraph in question, to the extent” substitute “the conditions mentioned in—

- “(i) regulation 17(1)(a) to (c) of those Regulations (where regulation 17 is the relevant regulation),
- (ii) regulation 18(b)(i) to (v) of those Regulations (where regulation 18 is the relevant regulation), or
- (iii) regulation 19(a)(i) and (ii) of those Regulations (where regulation 19 is the relevant regulation),

to the extent”.

### **Article 20B (incoming electronic commerce communications)**

**169.** Omit article 20B (incoming electronic commerce communications).

### **Article 25 (relevant insurance activity: non-real time communications: reinsurance and large risks)**

**170.** In article 25 (relevant insurance activity: non-real time communications: reinsurance and large risks), in paragraph (4) omit “(within the meaning of the Seventh Company Law Directive)”.

### **Article 29 (communications required or authorised by enactments)**

**171.** In article 29 (communications required or authorised by enactments), after paragraph (4)(300) insert—

“(4A) The reference in paragraph (4) to Regulation (EU) 345/2013 is a reference to that instrument as it has effect at the beginning of the day on which the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 are made (but see regulation 2 of the European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) Regulations 2019(301), which may further update the reference).”.

### **Article 34 (governments, central banks etc)**

**172.** In article 34 (governments, central banks etc) omit sub-paragraph (b)(v).

### **Article 36 (nationals of EEA States other than United Kingdom)**

**173.** Omit article 36 (nationals of EEA States other than United Kingdom).

### **Article 59 (annual accounts and directors’ report)**

**174.**—(1) Article 59 (annual accounts and directors’ report) is amended as follows.

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(299) S.I. 2002/2013.

(300) Paragraph (4) was inserted by S.I. 2013/1773.

(301) S.I. 2019/XXXX.

- (2) In paragraph (1)(b)—
  - (a) at the end of sub-paragraph (ai)(302) insert “or”;
  - (b) at the end of sub-paragraph (i)(303) omit “or”;
  - (c) omit sub-paragraph (iii)(304).
- (3) In paragraph (7) omit sub-paragraph (e).
- (4) The amendments made by this regulation do not apply in relation to any report for a financial year beginning before exit day.

#### **Article 70 (promotions included in listing particulars etc)**

- 175.—(1) Article 70 (promotions included in listing particulars etc) is amended as follows.
- (2) In paragraph (1)—
    - (a) in sub-paragraph (c)(305) omit sub-paragraph (ii) and the preceding “or”;
    - (b) in sub-paragraph (d), after “the prospectus directive” insert “as it had effect immediately before exit day”.
  - (3) In paragraph (1A)(306), in sub-paragraph (b), for “Articles 5(4), 8(1) and 14(2) of the prospectus directive” substitute “rules 2.2.7 to 2.2.9A, 2.3.2, 3.2.4 and 3.2.4A of the prospectus rules.”.
  - (4) After paragraph (2) insert—
    - “(3) The reference in paragraph (1A) to the prospectus rules is a reference to those rules as they have effect on exit day.”.

#### **Schedule 1 (controlled activities and controlled investments)**

- 176.—(1) In Schedule 1, Part 2 (controlled investments) is amended as follows.
- (2) In paragraph 14 (shares or stock)—
    - (a) in sub-paragraph (2)(b)(307) omit “or in a body constituted under the law of another EEA State for purposes equivalent to those of such a body”;
    - (b) omit sub-paragraph (3)(d).
  - (3) In paragraph 15A(308) (alternative finance investment bonds), for sub-paragraph (f)(309) of paragraph (2) substitute—
    - “(f) the arrangements are—
      - (i) a security that is admitted to the official list in accordance with Part 6 of the Act,
      - (ii) a security that is admitted to an official list in the EEA (in accordance with the provisions of [Directive 2001/34/EC](#) of the European Parliament and of the Council on the admission of securities to official stock exchange listing and on information to be published on those securities) and has been so admitted since before exit day,
      - (iii) a security that is admitted to trading on a recognised investment exchange or a UK trading venue, or

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(302) Sub-paragraph (ai) was inserted by [S.I. 2015/352](#).

(303) Sub-paragraph (i) was amended by [S.I. 2011/1265](#).

(304) Sub-paragraph (iii) was amended by [S.I. 2011/1265](#) and [S.I. 2015/352](#).

(305) Sub-paragraph (c) was amended by [S.I. 2007/2615](#).

(306) Paragraph (1A) was inserted by [S.I. 2007/2615](#).

(307) Sub-paragraph (2)(b) was amended by [S.I. 2014/1815](#).

(308) Paragraph 15A was inserted by [S.I. 2010/86](#).

(309) Sub-paragraph (2)(f) was amended by [2017/488](#).

(iv) a security that is admitted to trading on an EU trading venue and has been so admitted since before exit day.”.

(4) In paragraph 21**(310)** (options)—

- (a) in sub-paragraph (1)(e)**(311)**, for the words after “an option to which” substitute “paragraph 5, 6, 7 or 10 of Part 1 of Schedule 2 (read with Articles 5, 6, 7, and 8 of the Commission Regulation) applies”;
- (b) in sub-paragraph (2)(d)(i)**(312)**, for “Section C of Annex I to the markets in financial instruments directive” substitute “Part 1 of Schedule 2”;
- (c) in sub-paragraph (2)(d)(ii), for “Section C of Annex I to the markets in financial instruments directive” substitute “Part 1 of that Schedule”;
- (d) in sub-paragraph (3)(c)**(313)**, for “Section C of Annex I to the markets in financial instruments directive” substitute “Part 1 of Schedule 2”;
- (e) in sub-paragraph (4), for sub-paragraphs (a) to (d)**(314)** substitute—
  - “(a) an investment firm or qualifying credit institution is providing or performing investment services and activities on a professional basis;
  - (b) a management company which has a Part 4A permission to do so is providing the investment service specified in paragraph 4 or 5 of Part 3 of Schedule 2 or the ancillary service specified in paragraph 1 of Part 3A of that Schedule;
  - (c) a market operator is providing the investment service specified in paragraph 8 or 9 of Part 3 of that Schedule;
  - (d) a full-scope UK AIFM which has a Part 4A permission to do so is providing the investment service specified in paragraph 1, 4 or 5 of Part 3 of that Schedule or the ancillary service specified in paragraph 1 of Part 3A of that Schedule.”;
- (f) omit sub-paragraph (5)**(315)**.

(5) In paragraph 22 (futures)—

- (a) in sub-paragraph (1A)(d), (1B)(e) and (1C)(c)**(316)**, for “Section C of Annex I to the markets in financial instruments directive” substitute “Part 1 of Schedule 2”;
- (b) in sub-paragraph (1CA)**(317)**, for “Section C of Annex I to the markets in financial instruments directive” substitute “Part 1 of Schedule 2”;
- (c) in sub-paragraph (1D), for sub-paragraphs (a) to (d)**(318)** substitute—
  - “(a) an investment firm or qualifying credit institution is providing or performing investment services and activities on a professional basis;
  - (b) a management company which has a Part 4A permission to do so is providing the investment service specified in paragraph 4 or 5 of Part 3 of Schedule 2 or the ancillary service specified in paragraph 1 of Part 3A of that Schedule;
  - (c) a market operator is providing the investment service specified in paragraph 8 or 9 of Part 3 of that Schedule;

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**(310)** Paragraph 21 was amended by [S.I. 2006/3384](#).

**(311)** Sub-paragraph (1)(e) was inserted by [S.I. 2006/3384](#) and was amended by [S.I. 2017/488](#).

**(312)** Sub-paragraph (2)(d) was inserted by [S.I. 2006/3384](#) and was amended by [S.I. 2017/488](#).

**(313)** Sub-paragraph (3)(c) was inserted by [S.I. 2006/3384](#) and was amended by [S.I. 2017/488](#).

**(314)** Sub-paragraph (4)(b) was inserted by [S.I. 2006/3384](#) and was amended by [S.I. 2011/1613](#) and [S.I. 2017/488](#); sub-paragraphs (4)(c) and (d) were inserted by [S.I. 2006/3384](#) and were amended by [S.I. 2017/488](#).

**(315)** Sub-paragraph (5) was inserted by [S.I. 2006/3384](#).

**(316)** Sub-paragraphs (1A), (1B) and (1C) were inserted by [S.I. 2006/3384](#); and (1A)(d) and (1C)(c) were amended by [S.I. 2017/488](#).

**(317)** Sub-paragraph (1CA) was inserted by [S.I. 2017/488](#).

**(318)** Sub-paragraph (1D) was inserted by [S.I. 2006/3384](#), sub-paragraphs (1D)(b), (c) and (d) were amended by [S.I. 2017/488](#).

- (d) a full-scope UK AIFM which has a Part 4A permission to do so is providing the investment service specified in paragraph 1, 4 or 5 of Part 3 of that Schedule or the ancillary service specified in paragraph 1 of Part 3A of that Schedule.”;
- (d) omit sub-paragraph (1E)(**319**).
- (6) In paragraph 23 (contracts for differences etc)—
  - (a) in sub-paragraphs (3)(b)(**320**) and (4A)(c)(**321**), for “Section C of Annex I to the markets in financial instruments directive” substitute “Part 1 of Schedule 2”;
  - (b) in sub-paragraphs (4) and (4B)(**322**), for paragraphs (a) to (d) substitute—
    - “(a) an investment firm or qualifying credit institution is providing or performing investment services and activities on a professional basis;
    - (b) a management company which has a Part 4A permission to do so is providing the investment service specified in paragraph 4 or 5 of Part 3 of Schedule 2 or the ancillary service specified in paragraph 1 of Part 3A of that Schedule;
    - (c) a market operator is providing the investment service specified in paragraph 8 or 9 of Part 3 of that Schedule;
    - (d) a full-scope UK AIFM which has a Part 4A permission to do so is providing the investment service specified in paragraph 1, 4 or 5 of Part 3 of that Schedule or the ancillary service specified in paragraph 1 of Part 3A of that Schedule.”;
  - (c) omit sub-paragraph (5)(**323**).
- (7) In paragraph 23A(**324**) (emission allowances)—
  - (a) in sub-paragraph (1), after “compliance” insert “(by an EEA State)”;
  - (b) in sub-paragraph (2), for paragraphs (a) to (d) substitute—
    - “(a) an investment firm or qualifying credit institution is providing or performing investment services and activities on a professional basis;
    - (b) a management company which has a Part 4A permission to do so is providing the investment service specified in paragraph 4 or 5 of Part 3 of Schedule 2 or the ancillary service specified in paragraph 1 of Part 3A of that Schedule;
    - (c) a market operator is providing the investment service specified in paragraph 8 or 9 of Part 3 of that Schedule;
    - (d) a full-scope UK AIFM which has a Part 4A permission to do so is providing the investment service specified in paragraph 1, 4 or 5 of Part 3 of that Schedule or the ancillary service specified in paragraph 1 of Part 3A of that Schedule.”.
- (8) In paragraph 28 (interpretation) omit the definition of “credit institution” and insert at the appropriate places—
  - ““EU trading venue” has the meaning given by Article 2.1.16B of the markets in financial instruments regulation;”;
  - ““qualifying credit institution” has the meaning given in the Regulated Activities Order;”;
  - ““UK trading venue” has the meaning given by Article 2.1.16 of the markets in financial instruments regulation.”.

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(319) Sub-paragraph (1E) was inserted by S.I. 2006/3384 and was amended by S.I. 2017/488.

(320) Sub-paragraph (3) was inserted by S.I. 2006/3384.

(321) Sub-paragraph (4A) was inserted by S.I. 2017/488.

(322) Sub-paragraphs (4)(b) to (d) were amended by S.I. 2017/488; sub-paragraph (4B) was inserted by S.I. 2017/488.

(323) Sub-paragraph (5) was inserted by S.I. 2006/3384.

(324) Paragraph 23A was inserted by S.I. 2017/488.

## PART 5

### Amendments to other secondary legislation

#### **The Financial Services and Markets Act 2000 (Exemption) Order 2001**

**177.**—(1) The Financial Services and Markets Act 2000 (Exemption) Order 2001(**325**) is amended as follows.

(2) In Part 1 of the Schedule(**326**) (persons exempt in respect of any regulated activity other than insurance business) omit paragraphs 2 to 6.

(3) In Part 4 of the Schedule (persons exempt in respect of particular regulated activities), in paragraph 48 (social housing)—

- (a) in sub-paragraph (1A)(b)(i), for “the mortgages directive does not apply by virtue of Article 3(2) of that directive” substitute “section 423A(3) of the Act applies”;
- (b) in sub-paragraph (4), in the definition of “bridging loan”, for “Article 4(23) of the mortgages directive” substitute “article 60G(9) of the Regulated Activities Order”.

#### **The Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001**

**178.**—(1) The Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001(**327**) are amended as follows.

(2) In regulation 1 (citation, commencement and interpretation), in paragraph (2)(**328**) omit the definitions of “EEA credit institution” and “EEA investment firm”.

(3) In regulation 2 (descriptions of business for which appointed representatives are exempt)—

- (a) in paragraph (1) omit sub-paragraph (zb)(**329**);
- (b) in paragraph (1A)(**330**), for “a person who has a Part 4A permission for the purposes of the capital requirements directive or the markets in financial instruments directive, an EEA investment firm, or an EEA credit institution,” substitute “a CRR firm, or a relevant investment firm or credit institution,”;
- (c) for paragraph (1B)(**331**) substitute—

“(1B) In paragraph (1A)—

“clients” has the meaning given in Article 2.1.7 of the markets in financial instruments regulation;

“CRR firm” has the meaning given in Article 4.1.2A of the capital requirements regulation, except that it does not include an investment firm;

“financial instruments” has the meaning given in Article 2.1.9 of the markets in financial instruments regulation;

“relevant investment firm or credit institution” means a person falling within Article 1.2(a)(i) of the markets in financial instruments regulation.”

(4) In regulation 3 (requirements applying to contracts between authorised persons and appointed representatives)—

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(**325**) S.I. 2001/1201.

(**326**) Part 1 was amended by S.I. 2003/47, 2009/118 and 2011/1043.

(**327**) S.I. 2001/1217.

(**328**) Regulation 1(2) was amended by S.I. 2003/1475, 2003/1476, 2004/453, 2006/2383, 2006/3414, 2013/3115 and 2017/488.

(**329**) Regulation 2(1)(zb) was inserted by S.I. 2012/1906.

(**330**) Regulation 2(1A) was inserted by S.I. 2006/3414 and amended by S.I. 2017/488 and 2017/701.

(**331**) Regulation 2(1B) was inserted by S.I. 2006/3414 and amended by S.I. 2017/701.



- (a) in paragraph (1)(**332**), for the words before “must” substitute “It is a prescribed requirement for the purposes of section 39(1)(a)(ii) of the Act that a contract between a principal and a representative”;
- (b) omit paragraph (1A)(**333**);
- (c) in paragraph (6)(**334**)—
  - (i) in the words before sub-paragraph (a) omit “, except where paragraph (1A) applies.”;
  - (ii) in sub-paragraph (a), for “Article 4.1.29 (definitions) of the markets in financial directive” substitute “Part 3 of Schedule 2 to the Regulated Activities Order(**335**)”;
  - (iii) in sub-paragraph (b), for “Article 4.1.43 of that directive” substitute “Article 2.1.23 of the markets in financial instruments regulation”.

#### **The Financial Services and Markets Act 2000 (Professions) (Non-Exempt Activities) Order 2001**

**179.**—(1) The Financial Services and Markets Act 2000 (Professions) (Non-Exempt Activities) Order 2001(**336**) is amended as follows.

- (2) In article 4(**337**), omit paragraph (ca) (bidding in emissions auctions).
- (3) In article 8(**338**), for “(d)”, substitute “(da) to (de)”.

#### **The Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001**

**180.**—(1) The Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001(**339**) are amended as follows.

- (2) In regulation 1(2)(**340**) (interpretation) omit the definition of “host state regulator”.
- (3) In regulation 6(**341**) (deemed service), in paragraph (1), in the table for “in any EEA State (other than the United Kingdom)” substitute “outside the United Kingdom”.
- (4) Omit regulation 11 (day of service on a host state regulator).

#### **The Financial Services and Markets Act 2000 (Variation of Threshold Conditions) Order 2001**

**181.**—(1) The Financial Services and Markets Act 2000 (Variation of Threshold Conditions) Order 2001(**342**) is amended as follows.

- (2) In article 2A (non-EEA insurers: specified regulator), in the heading, for “Non-EEA” substitute “Non-UK”.
- (3) In article 3(**343**) (non-EEA insurers)—
  - (a) in paragraph (1), for “non-EEA” substitute “non-UK”;
  - (b) omit paragraph (2);

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(332) Regulation 3(1) was amended by [S.I. 2006/3414](#).

(333) Regulation 3(1A) was inserted by [S.I. 2006/3414](#).

(334) Regulation 3(6) was inserted by [S.I. 2017/701](#).

(335) [S.I. 2001/544](#).

(336) [S.I. 2001/1227](#).

(337) Article 4(ca) was inserted by [S.I. 2012/1906](#).

(338) Article 8 was amended by [S.I. 2002/682](#).

(339) [S.I. 2001/1420](#).

(340) Regulation 1(2) was amended by [S.I. 2013/472](#) and [2014/549](#).

(341) Regulation 6 was amended by [S.I. 2005/274](#) and [2013/472](#).

(342) [S.I. 2001/2507](#) as amended by [S.I. 2005/680](#) and [S.I. 2013/472](#).

(343) Article 3 was amended by [S.I. 2005/680](#) and [2013/472](#).

- (c) in the heading, for “Non-EEA” substitute “Non-UK”.

### **The Financial Services and Markets Act 2000 (Own-initiative Power) (Overseas Regulators) Regulations 2001**

**182.** In the Financial Services and Markets Act 2000 (Own-initiative Power) (Overseas Regulators) Regulations 2001(**344**), omit regulation 3 (Duty to consider EU obligation).

### **The Financial Services and Markets Act 2000 (Control of Business Transfers) (Requirements on Applicants) Regulations 2001**

**183.**—(1) The Financial Services and Markets Act 2000 (Control of Business Transfers) (Requirements on Applicants) Regulations 2001(**345**) are amended as follows.

(2) In regulation 1(2) (citation, commencement and interpretation) omit the definitions of “State of the commitment” and “State in which the risk is situated”.

(3) Omit regulation 2 (meaning of “commitment”).

(4) For regulation 3(2)(a) (transfer of an insurance business) substitute—

“(a) published in—

(i) the London, Edinburgh and Belfast Gazettes, and

(ii) two national newspapers in the United Kingdom;”.

(5) In regulation 4 (transfer of an insurance business)—

(a) in paragraph (2) for “regulation 3(2)(a)(ii), (iii) and (iv), (b) and (c)” substitute “regulation 3(2)(a)(ii), (b) and (c)”;

(b) omit paragraph 3.

### **The Financial Services and Markets Act 2000 (Control of Business Done at Lloyd’s) Order 2001**

**184.**—(1) The Financial Services and Markets Act 2000 (Control of Business Done at Lloyd’s) Order 2001(**346**) is amended as follows.

(2) In article 3(a) for “114A” substitute “113”.

(3) In article 4(a) for “an EEA State” substitute “the United Kingdom”.

(4) In article 5—

(a) omit paragraph (2);

(b) in paragraph (2A) for “Paragraphs 2, 3, 4 and 5 of Part 1 of Schedule 12” substitute “Paragraph 2 of Part 1 of Schedule 12”.

### **The Financial Services and Markets Act 2000 (Controllers) (Exemption) Order 2009**

**185.** In the Financial Services and Markets Act 2000 (Controllers) (Exemption) Order 2009(**347**), in article 2 (interpretation), in the definition of “relevant UK authorised person”(b), for paragraphs (a) to (c) substitute—

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(344) S.I. 2001/2639; as amended by S.I. 2011/1265, 2011/1043 and 2013/472.

(345) S.I. 2001/3625; as amended by S.I. 2007/3255, 2008/1467, 2009/1390, 2011/1265, 2013/472 and 2015/575.

(346) S.I. 2001/3626; as amended by S.I. 2008/1725, 2013/472, 2013/1765.

(347) S.I. 2009/774.

(348) The definition of “relevant UK authorised person” in Article 2 was amended by S.I. 2011/1613 and 2013/3115.

- “(a) a credit institution which has permission under Part 4A of the Act to carry on the regulated activity of accepting deposits;
- (b) an investment firm (as defined in section 424A of the Act);
- (c) a management company (as defined in section 237(2) of the Act);”.

### **The Financial Services and Markets Act 2000 (Prescribed Financial Institutions) Order 2013**

**186.**—(1) The Financial Services and Markets Act 2000 (Prescribed Financial Institutions) Order 2013(**349**) is amended as follows.

(2) In article 1(2)(**350**) (interpretation)—

(a) for the definition of “insurance holding company” substitute—

““insurance holding company” has the same meaning as in regulation 2(1) of the Solvency 2 Regulations 2015(**351**);”;

(b) for the definition of “mixed financial holding company” substitute—

““mixed financial holding company” has the meaning given in regulation 1(2) of the Financial Conglomerates and Other Financial Groups Regulations 2004(**352**);”;

(c) omit the following definitions—

- (i) “credit institution”;
- (ii) “insurance undertaking”;
- (iii) “reinsurance undertaking”;
- (iv) “third-country insurance undertaking”;
- (v) “third-country reinsurance undertaking”.

(3) In article 2(**353**) (prescribed financial institutions)—

(a) in paragraph (4)(**354**) omit “(within the meaning given in Article 32.4 of the recovery and resolution directive)”; and

(b) after paragraph (4) insert—

“(4A) For the purposes of paragraph (4) a company is failing or likely to fail where, if the company were a bank (within the meaning given in section 2 of the Banking Act 2009(**355**)), it would be failing or likely to fail by virtue of meeting any of the circumstances in section 7(5C)(b) to (e) of that Act.”.

### **The Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013**

**187.**—(1) The Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013(**356**) is amended as follows.

(2) In the title and in article 1(1) (citation) for “(Qualifying EU Provisions)” substitute “(Qualifying Provisions)”.

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(349) S.I. 2013/165.

(350) Article 1(2) was amended by S.I. 2013/3115 and 2014/3348.

(351) S.I. 2015/575, prospectively amended by S.I. 2018/XXXX [the Solvency 2 and Insurance (Amendment etc.) (EU Exit) Regulations 2018].

(352) S.I. 2004/1862.

(353) Article 2 was amended by S.I. 2014/3348.

(354) Paragraph (4) was inserted by S.I. 2014/3348.

(355) 2009 c.1. Relevant amendments to section 2 were made by S.I. 2011/2832 and by paragraph 3 of Schedule 17 to the Financial Services Act 2012. Section 7(5C) was inserted by S.I. 2014/3329, and was amended by S.I. 2016/1239.

(356) S.I. 2013/419.

(3) In article 1, after paragraph (2)(357) (interpretation) insert—

“(3) In this Order a reference to a specific EU regulation is to be treated as a reference to that EU regulation as it has effect at the beginning of the day on which the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 are made (but see regulation 2 of the European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) Regulations 2019(358), which may further update the reference).

(4) In this Order a reference to any directly applicable regulation made under an EU directive (“the parent EU Directive”) is a reference to—

- (a) any EU regulation, originally made under the parent EU Directive, which is retained direct EU legislation,
- (b) any technical standards made in relation to the parent EU Directive in accordance with Chapter 2A of Part 9A of the Act(359), and
- (c) any subordinate legislation (within the meaning of the Interpretation Act 1978(360)) which is made under a power substituted for a power of an EU entity to make a directly applicable regulation under the parent EU Directive by regulations made under section 8 of the European Union (Withdrawal) Act 2018.

(5) In this Order a reference to any directly applicable regulation (or EU regulation) made under an EU regulation (“the parent Regulation”) is a reference to—

- (a) any EU regulation, originally made under the parent Regulation, which is retained direct EU legislation;
- (b) technical standards made in relation to the parent Regulation in accordance with Chapter 2A of Part 9A of the Act, and
- (c) any subordinate legislation (within the meaning of the Interpretation Act 1978) which is made under a power substituted for a power of an EU entity to make a directly applicable regulation under the parent Regulation by regulations made under section 8 of the European Union (Withdrawal) Act 2018.

(6) In this Order a reference to any directly applicable regulation made under Article 4(9) or 4(10) of the SFT Regulation(361) is a reference to—

- (a) any EU regulation, originally made under those Articles, which is retained direct EU legislation;
- (b) technical standards made in relation to those Articles in accordance with Chapter 2A of Part 9A of the Act, and
- (c) any subordinate legislation (within the meaning of the Interpretation Act 1978) which is made under a power substituted for a power of an EU entity to make a directly applicable regulation under those Articles by regulations made under section 8 of the European Union (Withdrawal) Act 2018.

(7) In articles 2(2)(m), 3(2)(p) and (3)(n), 5(2)(p) and (5)(o) and 6(2)(r) the reference to any directly applicable decision made under an EU regulation is a reference to—

- (a) a decision made under that regulation which is retained direct EU legislation, and
- (b) any subordinate legislation (within the meaning of the Interpretation Act 1978) which is made under a power substituted for a power of an EU entity to make

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(357) Article 1(2) was amended by S.I. 2013/1773, 2014/3348, 2015/1882, 2017/1127, 2018/134, 2018/135 and 2018/698.

(358) S.I. 2018/XXXX.

(359) Chapter 2A was inserted by S.I. 2018/1115.

(360) 1978 c.30.

(361) OJ No L 337, 23.12.2015, p1.

a directly applicable decision under that regulation by regulations made under section 8 of the European Union (Withdrawal) Act 2018.”.

(4) In the following provisions for “qualifying EU provisions” substitute “qualifying provisions”—

- (a) in article 2(362) (qualifying EU provisions: general), in that heading and in paragraphs (1), (3), (4A), (5), (7) and (9) to (11);
- (b) in article 3(363) (qualifying EU provisions: disciplinary measures), in that heading and in paragraphs (1) and (3);
- (c) in article 4(364) (qualifying EU provisions etc), in that heading and in paragraphs (4), (6), (8) and (10) to (12);
- (d) in article 5(365) (qualifying EU provisions: injunctions and restitution), in that heading and in paragraphs (1), (3), (4A) and (6); and
- (e) in article 6(366) (qualifying EU provisions: fees), in that heading and in paragraphs (1), (3) and (5).

(5) In article 2(12)(367) and (13)(368) for “qualifying EU provision” substitute “qualifying provision”.

(6) In article 5 at the end insert—

“(7) In paragraphs (2)(n) and (5)(m) the reference to any directly applicable measure of the EU Benchmarks Regulation 2016 is a reference to—

- (a) any measure, originally adopted under that regulation, which is retained direct EU legislation,
- (b) technical standards made under that regulation in accordance with Chapter 2A of Part 9A of the Act, and
- (c) any subordinate legislation (within the meaning of the Interpretation Act 1978) which is made under a power substituted for a power of an EU entity to adopt a measure under that regulation by regulations made under section 8 of the European Union (Withdrawal) Act 2018.”.

(7) In article 6—

- (a) in paragraph (1) after “Act” insert “and regulation 206(1)(a) of the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019;
- (b) in paragraph (3) after “Act” insert “and regulation 206(1)(a) of the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019;
- (c) in paragraph (5) after “Act” insert “and regulation 206(1)(a) of the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019.

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(362) Article 2 was amended by S.I. 2013/1773, 2014/2879, 2014/3348, 2015/1882, 2016/680, 2016/715, 2016/936, 2016/1023, 2017/701, 2017/1127, 2018/135, 2018/546, 2018/698.

(363) Article 3 was amended by S.I. 2013/1773, 2014/2879, 2014/3348, 2015/1882, 2016/715, 2016/936, 2017/701, 2017/1127, 2018/135, 2018/546 and 2018/698.

(364) Article 4 was amended by S.I. 2014/2879, 2016/680, 2016/715, 2017/701, 2017/1064, and 2018/135.

(365) Article 5 was amended by S.I. 2013/1773, 2014/2879, 2014/3348, 2015/1882, 2016/680, 2016/715, 2016/936, 2017/701, 2017/1127, 2018/135, 2018/546 and 2018/698.

(366) Article 6 was amended by S.I. 2013/1773, 2014/2879, 2014/3348, 2015/1882, 2016/680, 2016/715, 2016/936, 2017/701, 2017/1127, 2018/135, 2018/546 and 2018/698.

(367) Sub-paragraph (12) was inserted by S.I. 2018/135.

(368) Sub-paragraph (13) was inserted by S.I. 2018/135.

**The Financial Services and Markets Act 2000 (Exercise of Powers under Part 4A) (Consultation with Home State Regulators) Regulations 2013**

**188.** The Financial Services and Markets Act 2000 (Exercise of Powers under Part 4A) (Consultation with Home State Regulators) Regulations 2013(**369**) are revoked.

**The Financial Services and Markets Act 2000 (PRA-regulated Activities) Order 2013**

**189.**—(1) Article 3 of the Financial Services and Markets Act 2000 (PRA-regulated Activities) Order 2013(**370**) (dealing in investments as principal: designation by the PRA) is amended as follows.

(2) In paragraph (2)(**371**)—

- (a) at the end of sub-paragraph (a) insert “or”;
- (b) omit sub-paragraph (c) and the preceding “or”.

(3) In paragraph (3)(**372**)—

(a) for sub-paragraph (a)(**373**) substitute—

“(a) is an investment firm that is required to have initial capital of 730,000 euro or would be required to do so if it had a Part 4A permission;”;

(b) for sub-paragraph (c) substitute—

“(c) is established in a country other than the United Kingdom but would meet the requirement specified in sub-paragraph (a) if P were established in the United Kingdom and had obtained the necessary authorisation in the United Kingdom for its business.”.

**The Financial Services and Markets Act 2000 (Qualifying EU Provisions) (No. 2) Order 2013**

**190.**—(1) The Financial Services and Markets Act 2000 (Qualifying EU Provisions) (No. 2) Order 2013(**374**) is amended as follows.

(2) In the title and in article 1(1) for “(Qualifying EU Provisions)” substitute “(Qualifying Provisions)”.

(3) In article 1, after paragraph (2) insert—

“(3) In paragraph (2) the references to the CRA Regulation and the capital requirements regulation are to be treated as references to those regulations as they have effect at the beginning of the day on which the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 are made (but see regulation 2 of the European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) Regulations 2019(**375**), which may further update the references).

(4) In paragraph (2) in the definition of “the CRD4 instruments”—

- (a) the reference to any directly applicable regulation made under the capital requirements regulation is a reference to—
  - (i) any EU regulation, originally made under the capital requirements regulation, which is retained direct EU legislation,

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(369) [S.I. 2013/431](#).

(370) [S.I. 2013/556](#).

(371) Article 3(2) was amended by [S.I. 2017/701](#).

(372) Article 3(3) was amended by [S.I. 2013/3115](#).

(373) Paragraph (3)(a) was substituted by [S.I. 2013/3115](#).

(374) [S.I. 2013/3116](#).

(375) [S.I. 2018/XXXX](#).

- (ii) any technical standards made in relation to the capital requirements regulation in accordance with Chapter 2A of Part 9A of the Act, and
  - (iii) any subordinate legislation (within the meaning of the Interpretation Act 1978) which is made under a power substituted for a power of an EU entity to make a directly applicable regulation under the capital requirements regulation by regulations made under section 8 of the European Union (Withdrawal) Act 2018;
- (b) the reference to any directly applicable regulation made under the capital requirements directive is a reference to—
- (i) any EU regulation, originally made under the capital requirements directive, which is retained direct EU legislation,
  - (ii) any technical standards made in relation to the capital requirements directive in accordance with Chapter 2A of Part 9A of the Act, and
  - (iii) any subordinate legislation (within the meaning of the Interpretation Act 1978) which is made under a power substituted for a power of an EU entity to make a directly applicable regulation under the capital requirements directive by regulations made under section 8 of the European Union (Withdrawal) Act 2018.”.
- (4) In articles 2 and 3(376) (qualifying EU provisions) and in the heading of article 2 for “qualifying EU provisions” substitute “qualifying provisions”.
- (5) In article 2 after “for the purposes of” insert “regulation 206(1)(a) of the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 and”.
- (6) In article 3, after “for the purposes of” insert “regulation 206(1)(a) of the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 and”.

### **The Financial Services and Markets Act 2000 (Ring-fenced Bodies and Core Activities) Order 2014**

**191.**—(1) The Financial Services and Markets Act 2000 (Ring-fenced Bodies and Core Activities) Order 2014(377) is amended as follows.

- (2) In article 1 (interpretation), in paragraph (3), after the definition of “securities” insert—
- ““UK account” has the meaning given in article 2(3)(ba);
  - “UK account holder” means the holder of a UK account;”.
- (3) In article 2 (circumstances in which accepting a deposit is not a core activity)—
- (a) in paragraph (2), in the words before sub-paragraph (a), after “in” insert “a UK account or”;
  - (b) in paragraph (3), after sub-paragraph (b) insert—
- “(ba) an account is a UK account if it was opened at a branch of the UK deposit-taker located in the United Kingdom;”.
- (4) In article 10 (declaration of eligibility: determining assets held by individual), in paragraph (5) (b), for the words from “Article 4.1(44)” to the end substitute “Article 2.1(24) of the markets in financial instruments regulation”.
- (5) In article 14 (rules about information to be provided by a non ring-fenced body to individual account-holders), in paragraph (1)—
- (a) in sub-paragraph (a), after “open” insert “a UK account or”;

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(376) Articles 2 and 3 were amended by [S.I. 2016/1023](#).

(377) [S.I. 2014/1960](#), amended by [S.I. 2016/1032](#) and [2018/897](#).

- (b) in sub-paragraph (b), at the beginning insert “UK account holders or”.

### **The Financial Services and Markets Act 2000 (Excluded Activities and Prohibitions) Order 2014**

**192.**—(1) The Financial Services and Markets Act 2000 (Excluded Activities and Prohibitions) Order 2014(**378**) is amended as follows.

(2) In article 1(4) (interpretation)—

(a) for the definition of “alternative investment fund” substitute—

““alternative investment fund” has the meaning given in regulation 3 of the Alternative Investment Fund Managers Regulations 2013(**379**), but as if in paragraph (1)(b) of that regulation for “UK UCITS” there were substituted “UCITS;”;

(b) for the definition of “alternative investment fund manager” substitute—

““alternative investment fund manager” means a legal person whose regular business is managing one or more alternative investment funds;”;

(c) after the definition of “alternative investment fund manager” insert—

““Annex 1 activities” has the meaning given in article 4.1(26A) of the prudential requirements regulation;”;

(d) for the definition of “derivative instrument” substitute—

““derivative instrument” includes any instruments within the meaning of article 2.1(29) of the markets in financial instruments regulation;”;

(e) after the definition of “exposure” insert—

““financial conglomerate” means—

(a) a financial conglomerate within the meaning of regulation 1(2) of the Financial Conglomerates and Other Financial Groups Regulations 2004(**380**) (but disregarding any decision taken under Article 3(3) of the conglomerates directive(**381**) as applied and modified by those Regulations), or

(b) a financial conglomerate within the meaning of Article 2.14 of [Directive 2002/87/EC](#) of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate(**382**) (but disregarding any decision taken under Article 3(3) of that directive);”;

(f) in the definition of “financial holding company”, for the words from “Annex I” to the end substitute “the Annex 1 activities”;

(g) omit the definition of “insurance undertaking”;

(h) in the definition of “liquid assets”, for the words from “delegated acts” to the end substitute “Commission Delegated Regulation (EU) 2015/61 of 10 October 2014 to supplement Regulation (EU) No 575/2013 of the European Parliament and Council with regard to liquidity coverage requirement for Credit Institutions”;

(i) for the definition of “management company” substitute—

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(**378**) [S.I. 2014/2080](#), amended by [S.I. 2016/1032](#) and [2017/1167](#).

(**379**) [S.I. 2013/1773](#), to which there are amendments not relevant to these Regulations.

(**380**) [S.I. 2004/1862](#), to which there are amendments not relevant to these Regulations.

(**381**) The term “conglomerates directive” is defined in regulation 1(2) of [S.I. 2004/1862](#).

(**382**) OJ No. L 35, 11.02.2003, p.1, amended by [Directive 2011/89/EU](#) (OJ No. L 326, 8.12.2011, p.113); there are other amending instruments but none is relevant.



- ““management company” means—
- (a) an undertaking, within the meaning of section 1161 of the Companies Act 2006(383), whose regular business is the management of UK UCITS, or
  - (b) a company within the meaning of Article 2.1(b) of the UCITS directive;”;
- (j) in the definition of “mixed financial holding company”—
- (i) after “insurance undertaking” in each place it occurs insert “a third country insurance undertaking whose head office is located in an EEA state”,
  - (ii) omit the words from “(within” to the end;
- (k) in the definition of “payment exposures”, in paragraph (d) omit—
- (i) “, an EEA central counterparty”,
  - (ii) “, an EEA CSD”,
  - (iii) “, EEA central counterparty”,
  - (iv) “, EEA CSD”;
- (l) omit the definition of “reinsurance undertaking”;
- (m) omit the definition of “solvency II directive”;
- (n) in the definition of “third country insurance undertaking”, for the words from “Article” to the end substitute “regulation 2(1) of the Solvency 2 Regulations 2015(384)”;
- (o) in the definition of “third country reinsurance undertaking”, for the words from “Article” to the end substitute “regulation 2(1) of the Solvency 2 Regulations 2015”;
- (p) in the definition of “UCITS”, for the words from “Article” to the end substitute “section 236A of the Act”;
- (q) after the definition of “UK deposit-taker”, insert—
- ““UK UCITS” has the meaning given in section 237(3) of the Act;”.
- (3) In article 2 (relevant financial institution), in paragraph (3)—
- (a) in sub-paragraph (c)(ii), omit the words from “other” to the end;
  - (b) in sub-paragraph (e), omit “, EEA central counterparties”;
  - (c) in sub-paragraph (ea), omit “, EEA CSDs”;
  - (d) in sub-paragraph (g), for “EEA firm” in each place it occurs substitute “undertaking located in an EEA state”.
- (4) In article 6 (excluded activities: general exceptions), in paragraph (4)—
- (a) in sub-paragraph (e)(iii), omit “, an EEA central counterparty”;
  - (b) in sub-paragraph (f), omit “or an EEA central counterparty”.
- (5) In article 12 (derivatives: general conditions)—
- (a) in paragraph (1)(e), for paragraphs (i) and (ii) substitute—
    - “(i) a UK trading venue,
    - (ii) a trading venue in the EEA, or
    - (iii) a non-EEA trading venue.”;
  - (b) in paragraph (2)—

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(383) 2006 c.46.  
(384) S.I. 2015/575.

- (i) in sub-paragraph (c), for the words from “Article 4.1(24)” to the end substitute “Article 2.1(16) of the markets in financial instruments regulation”,
- (ii) after sub-paragraph (c) insert—
  - “(ca) “non-EEA trading venue” means a trading venue—
    - (i) which is not a UK trading venue or a trading venue in the EEA, and
    - (ii) which satisfies paragraph 1(d) of Article 28 of the markets in financial instruments regulation;
  - (cb) “UK trading venue” has the meaning given in Article 2.1(16A) of the markets in financial instruments regulation;”.
- (6) In article 19A(**385**) (financial institution exposures: financing of infrastructure projects), in paragraph (2)(b) after “within” insert “the United Kingdom or”.
- (7) In article 20 (prohibitions: non-EEA branches and subsidiaries)—
  - (a) in the heading, for “Non-EEA” substitute “Non-UK and non-EEA”;
  - (b) in paragraph (1)(a), after “not” insert “the United Kingdom or”;
  - (c) in paragraph (1)(b)—
    - (i) after “not” insert “the United Kingdom or”, and
    - (ii) for “(a “non-EEA undertaking”)” substitute “(a “non-UK and non-EEA undertaking”)”;
  - (d) in paragraph (2), after “interest in a” insert “non-UK and”.

### **The Financial Services and Markets Act 2000 (Relevant Authorised Persons) Order 2015**

**193.** In article 2(2) and (3)(b) of the Financial Services and Markets Act 2000 (Relevant Authorised Persons) Order 2015(**386**) (relevant authorised persons) omit, in both places it occurs, “or resulting from Schedule 3 or 4 to the Act”.

## **PART 6**

### **Minor and consequential amendments**

#### **Consumer Credit Act 1974**

**194.**—(1) In consequence of the amendments made by regulation 89 and other provisions of these Regulations, section 8 of the Consumer Credit Act 1974(**387**) (consumer credit agreements) is amended as follows.

(2) In subsection (3)(b)(**388**), for the words after “an agreement” substitute “the purpose of which is the acquisition or retention, by an individual acting for purposes outside those of any trade, business or profession carried on by the individual, of property rights in land or in an existing or projected building”.

(3) After subsection (3) insert—

“(3A) A reference in paragraph (3)(b) to any land or building—

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(**385**) Article 19A was inserted by [S.I. 2016/1032](#).

(**386**) [S.I. 2015/1865](#).

(**387**) 1974 c.39.

(**388**) Subsection (3) was substituted by [S.I. 2015/910](#) and was amended by [S.I. 2016/392](#).

- (a) in relation to an agreement entered into before exit day, is a reference to any land or building in the United Kingdom or within the territory of an EEA State;
- (b) in relation to an agreement entered into on or after exit day, is a reference to any land or building in the United Kingdom.”.

### **Electronic Money Regulations 2011**

**195.** In consequence of the amendment made by regulation 144, in Schedule 2A(**389**) to the Electronic Money Regulations 2011(**390**), in paragraph 1 omit sub-paragraph (13).

### **Payment Services Regulations 2017**

**196.** In consequence of the amendment made by regulation 143, in Schedule 5 to the Payment Services Regulations 2017(**391**), in paragraph 1 omit sub-paragraph (13).

## **PART 7**

### **Transitional Powers of the Financial Regulators**

#### **Interpretation**

**197.**—(1) In this Part—

- “transitional direction” means a direction under regulation 198(1);
- “relevant obligation” has the meaning given by regulation 199.

(2) For the purposes of this Part, each of the following is a “regulator”—

- (a) the Bank of England;
- (b) the Prudential Regulation Authority;
- (c) the Financial Conduct Authority.

#### **Power of the regulators to give transitional directions**

**198.**—(1) A regulator may direct that a relevant obligation to which a person is subject—

- (a) is not to apply to the person, or
- (b) is to apply to the person with modifications specified in the direction.

(2) Power under paragraph (1) is subject to regulation 200.

(3) Power of a regulator under paragraph (1) is exercisable on the regulator’s own initiative.

(4) Power of a regulator under paragraph (1), so far as it relates to rules made by the regulator, is in addition to (and does not limit) power of the regulator under section 138A of the Act(**392**).

#### **Meaning of “relevant obligation”**

**199.**—(1) An obligation is a “relevant obligation”, in relation to a regulator and a person, if—

- (a) the obligation is imposed by or under an enactment,
- (b) the obligation is not an excluded obligation,

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(389) Schedule 2A was inserted by [S.I. 2014/366](#).

(390) [S.I. 2011/99](#).

(391) [S.I. 2017/752](#).

(392) Section 138A was inserted by section 24 of the Financial Services Act 2012.

- (c) the regulator has responsibility for supervising, or has other functions relating to, the person's compliance with the obligation, and
  - (d) as a result of the operation of an exit instrument, the obligation—
    - (i) begins to apply in the person's case, or
    - (ii) applies in the person's case differently from how it would, but for the exit instrument, apply in the person's case.
- (2) In this regulation—
- “enactment” means—
- (a) an enactment contained in—
    - (i) an Act, or
    - (ii) subordinate legislation (within the meaning of the Interpretation Act 1978),
  - (b) an enactment which is retained direct EU legislation, or
  - (c) an enactment contained in, or in an instrument made under, Northern Ireland legislation;
- “excluded obligation”, in relation to a regulator, means—
- (a) an obligation to satisfy the threshold conditions in relation to a regulated activity, or
  - (b) an obligation imposed by or under rules made under section 64A or 137O of the Act<sup>(393)</sup>;
- “exit instrument” means—
- (a) regulations under section 8 of the European Union (Withdrawal) Act 2018, or
  - (b) an instrument under regulation 3 of the Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018<sup>(394)</sup>;
- “regulated activity” and “threshold conditions” have the same meaning as in the Act (see, in particular, sections 22 and 55B)<sup>(395)</sup>.

### Giving, and effect, of transitional directions

- 200.**—(1) A transitional direction—
- (a) may not be given more than 2 years after exit day,
  - (b) may specify the period in relation to which it has effect, subject to paragraph (2),
  - (c) may be given subject to conditions, and
  - (d) may be given to a particular person or particular persons, or to persons of a description specified in the direction.
- (2) A transitional direction—
- (a) is of no effect in relation to times before it is given,
  - (b) is of no effect in relation to times before exit day, and
  - (c) is of no effect in relation to times more than 2 years after exit day (without prejudice to any continuing effect in relation to earlier times).
- (3) A regulator may not give a transitional direction, or a set of two or more transitional directions, to any person or persons unless the regulator is satisfied that the direction, or the directions viewed collectively, will prevent or mitigate disruption that could reasonably be expected to arise—
- (a) for the person, or

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<sup>(393)</sup> Section 64A was inserted by section 30 of the Financial Services (Banking Reform) Act 2013; section 137O was inserted by section 24 of the Financial Services Act 2012.

<sup>(394)</sup> S.I. 2018/1115.

<sup>(395)</sup> Section 22 was amended by section 7 of the Financial Services Act 2012; section 55B was inserted by section 11 of that Act.

(b) (as the case may be) for the persons viewed collectively, from compliance with the unmodified obligation, or with the unmodified obligations viewed collectively, at times in relation to which the direction is, or the directions are, to have effect.

(4) The Financial Conduct Authority may not give a transitional direction, or a set of two or more transitional directions, unless the Authority is satisfied that doing so would not adversely affect the advancement of its key objectives viewed collectively; and here the reference to the Authority's key objectives is to its objectives set out in section 1B of the Act, read with section 11A of the Act(**396**).

(5) The Prudential Regulation Authority may not give a transitional direction, or a set of two or more transitional directions, unless the Authority is satisfied that doing so would not adversely affect the advancement of its objectives under the Act(**397**).

(6) The Bank of England may not give a transitional direction, or a set of two or more transitional directions, unless the Bank is satisfied that doing so would not adversely affect the advancement of the Bank's financial stability objective set out in section 2A(1) of the Bank of England Act 1998(**398**).

(7) For the purposes of this regulation, two or more transitional directions given by a regulator are a "set" if the regulator declares them to be a set.

### **Variation of transitional directions**

**201.**—(1) A regulator's power under regulation 198(1) includes power to give a direction varying (or further varying) a transitional direction already given by that regulator, subject to paragraph (2).

(2) The way in which the power to vary is exercised must be such that the resulting—

(a) varied direction, or

(b) where the earlier direction was part of a set of transitional directions, set of directions as varied,

could be given by revoking existing, and giving new, transitional directions.

(3) Where a transitional direction has been given to two or more particular persons, or to persons of a description specified in the direction, the power to vary it may be exercised in relation to all, some or any one of those persons.

(4) Regulation 200(7) (meaning of "set") applies also for the purposes of paragraph (2).

### **Consultation**

**202.**—(1) A regulator, before it gives a transitional direction in which another regulator has an interest, must consult that other regulator.

(2) For the purposes of paragraph (1)—

(a) the Prudential Regulatory Authority has an interest in a transitional direction if the direction—

(i) might affect the Authority's discharge of functions conferred on it by or under—

(aa) the Act, or

(bb) retained EU law, or

(ii) would apply to a PRA-*authorised* person, or to a person connected with a PRA-*authorised* person;

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**(396)** Section 1B was inserted by section 6 of the Financial Services Act 2012; section 11A was inserted by section 2 of the Financial Services (Banking Reform) Act 2013.

**(397)** See sections 2B to 2D of the Act, which were inserted by section 6 of the Financial Services Act 2012. Section 2B was amended by section 1 of the Financial Services (Banking Reform) Act 2013.

**(398)** 1998 c.11; section 2A was inserted by section 238 of the Banking Act 2009 (c.1).

- (b) the Financial Conduct Authority has an interest in all transitional directions;
  - (c) the Bank of England has an interest in a transitional direction if the direction—
    - (i) might affect the Bank’s discharge of functions conferred on it by or under—
      - (aa) the Act,
      - (bb) the Banking Act 2009<sup>(399)</sup>, or
      - (cc) retained EU law, or
    - (ii) would apply to—
      - (aa) a central counterparty or a central securities depository, or
      - (bb) a financial counterparty, or a non-financial counterparty, within the meaning of the EMIR regulation.
- (3) A regulator, before it gives a transitional direction, must consult the Treasury on a draft of the proposed direction.
- (4) Paragraphs (1) and (3) do not apply in the case of a transitional direction if the regulator assesses that the urgency of the situation is such that the direction should be given before the required consultation is begun or completed, but in that event the regulator must (as the case may be)—
- (a) begin the consultation required by those paragraphs in the case of the direction as soon as the direction is given, or
  - (b) complete the consultation.
- (5) In paragraph (2)—
- “central counterparty”, and “the EMIR regulation”, have the same meaning as in Part 18 of the Act (see section 313(1) of the Act<sup>(400)</sup>);
- “central securities depository” has the same meaning as in the Act (see section 417(1) of the Act<sup>(401)</sup>);
- “PRA-authorised person” has the same meaning as in the Act (see section 2B(5) of the Act<sup>(402)</sup>).
- (6) For the purposes of paragraph (2), a person is connected with another person if the first person is connected with the other person for the purposes of section 165 of the Act (see subsection (11) of that section<sup>(403)</sup>).

### Notification and publication of transitional directions

- 203.**—(1) Where a transitional direction is given by a regulator, the regulator—
- (a) must prepare—
    - (i) an explanation of the purpose of the direction,
    - (ii) such guidance in connection with the direction as the regulator considers appropriate, and
    - (iii) a statement to the effect that the regulator is satisfied as required by paragraph (4), or (as the case may be) paragraph (5) or (6), of regulation 200, and
  - (b) must publish the direction and the matters listed in sub-paragraph (a).

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<sup>(399)</sup>2009 c.1.

<sup>(400)</sup>The definitions of “central counterparty” and “the EMIR regulation” were inserted by S.I. 2013/504.

<sup>(401)</sup>The definition of “central securities depository” was inserted by S.I. 2017/1064.

<sup>(402)</sup>Section 2B was inserted by section 6 of the Financial Services Act 2012.

<sup>(403)</sup>Section 165(11) was amended by paragraph 1(8) of Schedule 12 to the Financial Services Act 2012.

(2) Paragraph (1)(b) does not apply if the regulator is satisfied that it is inappropriate to publish the direction.

(3) Where a transitional direction is given by a regulator and the direction is not published on the regulator’s website, the regulator must take the steps appearing to the regulator to be best calculated to bring the direction, and the matters listed in paragraph (1)(a), to the attention of—

- (a) in the case of a direction given to a particular person or particular persons, that person or those persons, or
- (b) in the case of a direction given to persons of a description specified in the direction, any persons who are likely to be affected by the direction.

(4) Where a regulator gives a transitional direction, the regulator must without delay provide the Treasury with a copy of the direction.

(5) Section 139A(5) of the Act(404) (consultation) does not apply to guidance under paragraph (1)(a)(ii).

### **Revocation of transitional directions**

**204.**—(1) A regulator may revoke a transitional direction given by the regulator, either wholly or in relation to one or some of the persons to whom it was given.

(2) Power of a regulator to revoke a transitional direction is exercisable on the regulator’s own initiative.

(3) Where a regulator revokes a transitional direction in relation to a particular person or particular persons, the regulator must provide the person, or each of the persons, with a copy of the revocation.

(4) Where a regulator revokes a transitional direction in relation to persons of a description specified in the revocation, the regulator must take the steps appearing to the regulator to be best calculated to bring the revocation to the attention of any persons likely to be affected by it.

(5) Where a regulator revokes a transitional direction, the regulator must without delay provide the Treasury with a copy of the revocation.

### **Annual reports and complaints**

**205.**—(1) Power to give a transitional direction is treated as a “relevant sub-delegated power” for the purposes of paragraph 32 of Schedule 7 to the European Union (Withdrawal) Act 2018.

(2) Functions under this Part are to be treated as not being “relevant functions” for the purposes of section 84 of the Financial Services Act 2012 (arrangements for the investigation of complaints relating to exercise of relevant functions of regulators).

## **PART 8**

### **Regulators’ fees**

#### **Meaning of “qualifying functions” in this Part**

**206.**—(1) For the purposes of this Part, the “qualifying functions” of the Bank of England, or of the Financial Conduct Authority or the Prudential Regulation Authority, are—

- (a) its functions under or as a result of a qualifying provision that is specified, or of a description specified, for the purposes of this paragraph by the Treasury by order, and

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(404) Section 139A was inserted by section 24 of the Financial Services Act 2012.

- (b) its functions under or as a result of regulations made under section 8 of the European Union (Withdrawal) Act 2018.
- (2) In paragraph (1)(a) “qualifying provision” has the meaning given by section 425C of the Act (as substituted by these Regulations).
- (3) An order under paragraph (1) may—
  - (a) contain such incidental, supplemental, consequential and transitional provision as the person making it considers appropriate, and
  - (b) make different provision for different cases.
- (4) Power to make an order under paragraph (1) is exercisable by statutory instrument.
- (5) A statutory instrument containing an order under paragraph (1) is subject to annulment in pursuance of a resolution of either House of Parliament.

### **Fees: Bank of England**

- 207.**—(1) The Bank of England may, in connection with the discharge of any of its qualifying functions, require recognised clearing houses, third country central counterparties, recognised CSDs or settlement internalisers to pay fees to the Bank.
- (2) The power of the Bank to set fees includes power to set fees for the purpose of meeting expenses incurred by it or the Financial Conduct Authority—
- (a) in preparation for the exercise by the Bank of its qualifying functions, or
  - (b) for the purpose of facilitating the exercise by the Bank of those functions or otherwise in connection with their exercise by it.
- (3) It is irrelevant when the expenses were incurred.
- (4) Any fee which is owed to the Bank under this regulation may be recovered as a debt due to the Bank.
- (5) In this regulation—
- “CSD regulation” has the meaning given by section 417 of the Act,
  - “recognised clearing house”, “recognised CSD” and “third country central counterparty” have the meaning given by section 285 of the Act, and
  - “settlement internaliser” has the meaning given by Article 2(1)(11) of the CSD regulation.

### **Fees: Financial Conduct Authority**

- 208.**—(1) The Financial Conduct Authority (“the FCA”) may make rules providing for the payment to it of such fees, in connection with the discharge of any of its qualifying functions, as it considers will (taking account of its expected income from fees and charges provided for by any provision of the Act other than sections 137SA, 137SB and 333T~~(405)~~) enable it—
- (a) to meet expenses incurred in carrying out the functions conferred on it by or under the Act~~(406)~~, other than its excepted functions, or for any incidental purpose,
  - (b) to repay the principal of, and pay any interest on, any relevant borrowing and to meet relevant commencement expenses, and

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**(405)** Sections 137SA and 137SB was inserted by sections 13 and 14 of the Financial Guidance and Claims Act 2018 (c.10). Section 333T was inserted by section 29 of the Bank of England and Financial Services Act 2016 (c.14).

**(406)** The reference to the FCA’s functions conferred by or under the Act is to be read in accordance with section 1A(6) of the Act (see section 3T(a) of the Act). Sections 1A and 3T were inserted by section 6 of the Financial Services Act 2012 and section 1A(6) was amended by S.I. 2013/1773, S.I. 2018/1115, these Regulations and paragraph 6 of Schedule 3 to the Financial Guidance and Claims Act 2018.



- (c) to maintain adequate reserves.
- (2) It is irrelevant when the expenses mentioned in paragraph (1)(a) were incurred.
- (3) The “excepted functions” of the FCA are—
  - (a) its functions under sections 137SA and 137SB of the Act, and
  - (b) its functions under section 333T of the Act so far as relating to the collection of payments.
- (4) In paragraph (1)(b) “relevant borrowing” and “relevant commencement expenses” have the meaning given by paragraph 23(3) and (5) of Schedule 1ZA to the Act(407).
- (5) In fixing the amount of any fee which is to be payable to the FCA, no account is to be taken of any sums which the FCA receives, or expects to receive, by way of penalties imposed by it under the Act.
- (6) Any fee which is owed to the FCA under any provision made under this regulation may be recovered as a debt due to the FCA.
- (7) Chapter 2 of Part 9A of the Act(408) (rules: procedural provisions etc) applies in relation to rules under this regulation as it applies in relation to rules under paragraph 23 of Schedule 1ZA to the Act.
- (8) The requirements of sections 138I and 138K of the Act(409) in so far as they apply to a proposal to make rules under this regulation may be satisfied by things done (wholly or in part) before the date on which this regulation comes into force.

#### **Fees: Prudential Regulation Authority**

**209.**—(1) The Prudential Regulation Authority (“the PRA”) may make rules providing for the payment to it of such fees, in connection with the discharge of any of its qualifying functions, as it considers will (taking account of its expected income from fees and charges provided for by any provision of the Act) enable it—

- (a) to meet expenses incurred in carrying out the functions conferred on it by or under the Act(410) or for any incidental purpose,
- (b) to repay the principal of, and pay any interest on, any relevant borrowing and to meet relevant commencement expenses, and
- (c) to maintain adequate reserves.
- (2) It is irrelevant when the expenses mentioned in paragraph (1)(a) were incurred.
- (3) In paragraph (1)(b) “relevant borrowing” and “relevant commencement expenses” have the meaning given by paragraph 31(3) and (5) of Schedule 1ZB to the Act(411).
- (4) In fixing the amount of any fee which is to be payable to the PRA, no account is to be taken of any sums which the PRA receives, or expects to receive, by way of penalties imposed by it under the Act.

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(407) Schedule 1ZA was inserted by section 6 of, and Schedule 3 to, the Financial Services Act 2012 (c.21). Paragraph 23(3) and (5) of Schedule 1ZA are to be read in accordance with paragraph 1 of Schedule 1ZA and section 1A(6) of the Act.

(408) Part 9A was inserted by the Financial Services Act 2012 (c.21).

(409) Section 138I was amended by paragraph 8 of Schedule 3 to the Pension Schemes Act 2015, sections 29 and 33 of the Bank of England and Financial Services Act 2016 and paragraph 14 of Schedule 3 to the Financial Guidance and Claims Act 2018. Section 138K was amended by paragraphs 68 and 69 of Part 2 of Schedule 4 to the Co-operative and Community Benefit Societies Act 2014.

(410) The reference to the PRA’s functions conferred by or under the Act is to be read in accordance with section 2AB(3) of the Act (see section 3T(a) of the Act). Sections 2AB and 3T were inserted by section 6 of the Financial Services Act 2012, and section 2AB(3) is amended by S.I. 2018/1115 and these Regulations.

(411) Schedule 1ZB was inserted by section 6 of, and Schedule 3 to, the Financial Services Act 2012. Paragraph 31(3) and (5) of Schedule 1ZB are to be read in accordance with paragraph 1 of Schedule 1ZB and section 2AB(3) of the Act.

(5) Any fee which is owed to the PRA under any provision made under this regulation may be recovered as a debt due to the PRA.

(6) Chapter 2 of Part 9A of the Act (rules: procedural provisions etc) applies in relation to rules under this regulation as it applies in relation to rules under paragraph 31 of Schedule 1ZB to the Act.

(7) The requirements of sections 138J and 138K of the Act(412) in so far as they apply to a proposal to make rules under this regulation may be satisfied by things done (wholly or in part) before the date on which this regulation comes into force.

*name*

*name*

Two of the Lords Commissioners of Her  
Majesty's Treasury

Date

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(412) Section 138J was amended by paragraph 15 of Schedule 3 to the Financial Guidance and Claims Act 2018.