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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 2

Amendments to the Act

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”(1), at the end insert “, as it has effect at the updating point (see subsection (1A))”.

(4) In the definition of “central securities depository”(2), 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”(3), at the end insert “, as it has effect at the updating point (see subsection (1A))”.

(7) For the definition of “insurance undertaking”(4) 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”(5), at the end insert “, as it has effect at the updating point (see subsection (1A))”.

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(1) This definition was inserted by [S.I. 2013/3115](#).  
(2) This definition was inserted by [S.I. 2017/1064](#).  
(3) This definition was inserted by [S.I. 2014/2879](#).  
(4) This definition was inserted by [S.I. 2015/575](#).  
(5) This definition was inserted by [S.I. 2016/680](#).

(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
  - (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”(6) 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”(7), at the end insert “, as it has effect at the updating point (see subsection (1A))”.

(12) In the definition of “third country insurance undertaking”(8), 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”(9),
- “EIOPA”(10),
- “mortgage creditor”(11),
- “mortgage intermediary”(12), and
- “tied mortgage intermediary”(13).

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(6) This definition was inserted by S.I. 2015/575.  
 (7) This definition was inserted by S.I. 2012/2554.  
 (8) This definition was inserted by S.I. 2015/575.  
 (9) This definition was inserted by S.I. 2012/916.  
 (10) This definition was inserted by S.I. 2018/546.  
 (11) This definition was inserted by S.I. 2015/910.  
 (12) This definition was inserted by S.I. 2015/910.  
 (13) This definition was inserted by S.I. 2015/910.

(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).”.

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

**86.**—(1) Section 418(14) (carrying on regulated activities in the United Kingdom) is amended as follows.

(2) In subsection (1)(15), for the words before “described” substitute “In the cases”.

(3) Omit subsections (2) and (3)(16).

(4) In subsection (5AA)(17)—

(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)(18).

(7) For subsection (8)(19) 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](#)”(20).

### **Section 422A (disregarded holdings)**

**88.** In section 422A(21) (disregarded holdings)—

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

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

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

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

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

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

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

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

- (a) in subsection (4)—
  - (i) in paragraph (a)(22), 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)(23), for “Article 2.1(b) of the UCITS Directive” substitute “section 237(2)”;
- (e) in subsection (9A)(24), 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)(25).

### **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;

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

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

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

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

- (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
- (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(26) (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)(27) and (4).

(5) In subsection (5)(28), 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(29) (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)(30)—

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

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

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

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

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

- (a) omit the definition of “credit institution”(31);
- (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(32) (“qualifying EU provision”) substitute—

##### **““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.”.

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(31) The definition of “credit institution” was amended by S.I. 2013/3115.

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