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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 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(1) 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”(2),

“auction platform”(3),

“EEA AIFM”(4),

“credit institution”(5),

“emission allowance auctioning regulation”(6),

“greenhouse gas emissions allowances”(7),

“investment services and activities”(8),

“operator”(9),

“reception”, “transmission” and “submission”(10),

“UCITS”(11), and

“UK AIF”(12).

(3) In the definition of “contract of insurance”(13), for paragraph (f) substitute—

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

(2) This definition was inserted by [S.I. 2012/1906](#).

(3) This definition was inserted by [S.I. 2012/1906](#).

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

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

(6) This definition was inserted by [S.I. 2012/1906](#).

(7) This definition was inserted by [S.I. 2012/1906](#).

(8) This definition was substituted by [S.I. 2012/1906](#) and was amended by [S.I. 2017/488](#).

(9) This definition was inserted by [S.I. 2012/1906](#).

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

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

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

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

“(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”(14), 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”(15) 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”(16) 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”(17) substitute—

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

(8) For the definition of “market operator”(18) 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
- (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”(19) substitute—

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

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

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

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

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

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

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

- (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”(20) 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—
    - (i) the Co-operative and Community Benefit Societies Act 2014(21),
    - (ii) the Credit Unions (Northern Ireland) Order 1985(22), or
    - (iii) the Co-operative and Community Benefit Societies Act (Northern Ireland) 1969(23), and

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

(21) [2014 c.14](#).

(22) [S.I. 1985/1205 \(N.I. 12\)](#).

(23) [1969 c. 24 \(N.I.\)](#).

- (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”(24), 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)(25), for “credit institution” (in both places) substitute “qualifying credit institution”.
- (3) In paragraph (4A)(26), in sub-paragraph (a), for “an EEA State” substitute “the United Kingdom”.
- (4) After that paragraph insert—
- “(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)(27), 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

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(24) This definition was substituted by [S.I. 2016/715](#).

(25) Paragraph (4) was substituted by [S.I. 2006/3384](#) and was amended by [S.I. 2017/488](#).

(26) Paragraph (4A) was substituted by [S.I. 2018/546](#).

(27) Paragraph (4B) was inserted by [S.I. 2015/910](#) and was amended by [S.I. 2016/392](#).

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)(28)—

- (a) in the definition of “ancillary insurance intermediary”, after “Schedule 4” insert “, read with the modifications set out in paragraph 3 of Part 6(29) 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)(30).

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

**124.** In article 9B(31) (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(32) (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(33) (bidding in emissions auctions).

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

**127.** Omit article 24B(34) (miscellaneous exclusions).

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

**128.**—(1) Article 33B(35) (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—

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(28) Paragraph (5) was substituted by [S.I. 2018/546](#).

(29) Part 6 is inserted by these Regulations.

(30) Paragraph (x) was amended by [S.I. 2011/1043](#).

(31) Article 9B was inserted by [S.I. 2002/682](#) and was amended by [S.I. 2011/99](#).

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

(33) Article 24A was inserted by [S.I. 2012/1906](#).

(34) Article 24B was inserted by [S.I. 2012/1906](#).

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

- (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)(36) omit “an EEA central counterparty (as defined in section 285(1)(c) of the Act) or”.

(3) In sub-paragraph (bb)(37) 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(38) (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(39), which may further update the reference).”.

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

**131.**—(1) Article 42A(40) (depositories 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”.

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

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

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

(39) S.I. 2019/XXXX.

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

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

- 132.**—(1) Article 51ZA(41) (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(42), 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(43) (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(44) (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—
- “(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(45) (operating a collective investment scheme in relation to a UCITS or an AIF) is amended as follows.

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

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

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

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

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

- (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(46) (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)(47), 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)(48) 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).
- (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.”

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

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

(48) 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](#).



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

**139.** In Article 60E(49), 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(50) (exempt agreements: exemptions relating to the total charge for credit) is amended as follows.

(2) In paragraph (2A)(a)(51), 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)(52), 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(53) (exempt agreements: exemptions relating to the nature of the borrower) is amended as follows.

(2) In paragraph (1)(b)(ii)(54) omit sub-paragraph (bb) and the preceding “or”.

(3) Omit paragraph (2)(55).

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

**142.**—(1) Article 60HA(56) (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)(57), 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”.

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

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

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

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

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

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

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

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

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

- (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(**58**) (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(**59**) (“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(**60**) 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(**61**) (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(**62**) 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)(**63**) omit “in the EEA”.

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

“(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.”.

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

(59) [S.I. 2018/1201](#).

(60) [S.I. 2017/752](#).

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

(62) [S.I. 2011/99](#).

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

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

**146.**—(1) In article 61A(**64**) (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”(65), 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)(66), for “credit institution” substitute “qualifying credit institution”.

(3) In paragraphs (8)(b) and (10)(67) omit “Member”.

(4) In paragraph (9A)(68)—

(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)(69), 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—

(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)(70)—

(a) for “paragraph (11)” substitute “paragraphs (11) and (11A)”;

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

(65) This definition was inserted by [S.I. 2016/392](#).

(66) Paragraph (8) was inserted by [S.I. 2006/3384](#).

(67) Paragraph (10) was inserted by [S.I. 2015/910](#).

(68) Paragraph (9A) was inserted by [S.I. 2017/1064](#).

(69) Paragraph (11) was inserted by [S.I. 2017/488](#).

(70) Paragraph (12) was inserted by [S.I. 2017/488](#).

- (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(71) (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(72);
- (b) article 12A(73);
- (c) article 20(74);
- (d) article 24;
- (e) article 36(1), (2) and (3);
- (f) article 39;
- (g) article 39C(75);
- (h) article 44;
- (i) article 50;
- (j) article 51A(76);
- (k) article 52A(77);
- (l) article 55(1) and (2);
- (m) article 58A(78);
- (n) article 60A(79);
- (o) article 63A(80);
- (p) article 63E(81);

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(71) Article 72AA was inserted by [S.I. 2013/1773](#).

(72) Article 9AA was inserted by [S.I. 2002/1776](#) and was amended by [S.I. 2013/1773](#).

(73) Article 12A was inserted by [S.I. 2002/1776](#) and was amended by [S.I. 2013/1773](#).

(74) Article 20 was amended (so far as relevant) by [S.I. 2014/366](#).

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

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

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

(78) Article 58A was inserted by [S.I. 2002/1776](#) and was amended by [S.I. 2013/1773](#).

(79) Article 60A was inserted by [S.I. 2002/1776](#) and was amended by [S.I. 2013/1773](#).

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

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

- (q) article 63I(82);
- (r) article 63M(83).

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

**149.**—(1) Article 72D(84) (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(85);
- (b) article 36(1)(86);
- (c) article 39C(87);
- (d) article 55(1)(88).

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

**150.** In article 72E(89) (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(90) (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;”.
- (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;

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

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

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

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

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

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

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

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

(90) 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.

(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(91) (alternative finance investment bonds) is amended as follows.

(2) In paragraph (2), for sub-paragraph (f)(92) 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,

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(91) Article 77A was inserted by [S.I. 2010/86](#).

(92) Paragraph (2)(f) was amended by [S.I. 2018/831](#).

- (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(93) (greenhouse gas emissions allowances).

### **Article 82B (emission allowances)**

**155.**—(1) Article 82B(94) (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.

(2) In paragraph (1)(e)(95), 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)(96)—

- (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”;

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(93) Article 82A was inserted by [S.I. 2012/1906](#).

(94) Article 82B was inserted by [S.I. 2017/488](#).

(95) Paragraph (1)(e) was inserted by [S.I. 2006/3384](#) and was amended by [S.I. 2017/488](#).

(96) Paragraph (2) was inserted by [S.I. 2006/3384](#) and was amended by [S.I. 2017/488](#).

- (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)(**97**), for “Section C of Annex I to the markets in financial instruments directive” substitute “Part 1 of Schedule 2”.
- (5) In paragraph (4)(**98**), 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)(**99**).

#### Article 84 (futures)

**157.**—(1) Article 84 (futures) is amended as follows.

- (2) In paragraph (1A)(d), (1B)(e) and (1C)(c)(**100**), for “Section C of Annex I to the markets in financial instruments directive” substitute “Part 1 of Schedule 2”.
- (3) In paragraph (1CA)(**101**)—
- (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)(**102**), 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.”.
- (5) Omit paragraph (1E)(**103**).

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(**97**) Paragraph (3) was inserted by [S.I. 2006/3384](#) and was amended by [S.I. 2017/488](#).

(**98**) Paragraph (4) was inserted by [S.I. 2006/3384](#) and was amended by [S.I. 2011/1613](#) and [S.I. 2017/488](#).

(**99**) Paragraph (5) was inserted by [S.I. 2006/3384](#).

(**100**) Paragraph (1A), (1B) and (1C) were inserted by [S.I. 2006/3384](#) and amended by [S.I. 2017/488](#).

(**101**) Paragraph (1CA) was inserted by [S.I. 2017/488](#).

(**102**) Paragraph (1D) was inserted by [S.I. 2006/3384](#) and was amended by [S.I. 2011/1613](#) and [S.I. 2017/488](#).

(**103**) Paragraph (1E) was inserted by [S.I. 2006/3384](#) and was amended by [S.I. 2017/488](#).



### Article 85 (contracts for differences etc)

**158.**—(1) Article 85 (contracts for differences etc) is amended as follows.

(2) In paragraph (3)(b)(**104**), for “Section C of Annex I to the markets in financial instruments directive” substitute “Part 1 of Schedule 2”.

(3) In paragraphs (4)(**105**) and (4B)(**106**), 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)(**107**)—

- (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)(**108**).

### 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)(**109**).

### Schedule 4 (relevant text of the insurance distribution directive)

**160.** In Schedule 4(**110**) (relevant text of the insurance distribution directive), after Part 5 insert—

## “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

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(**104**) Paragraph (3) was inserted by [S.I. 2006/3384](#).

(**105**) Paragraph (4) was inserted by [S.I. 2006/3384](#) and was amended by [S.I. 2017/488](#).

(**106**) Paragraph (4B) was inserted by [S.I. 2017/488](#).

(**107**) Paragraph (4A) was inserted by [S.I. 2017/488](#).

(**108**) Paragraph (5) was inserted by [S.I. 2006/3384](#).

(**109**) Article 95 was inserted by [S.I. 2003/1476](#), and paragraph (1A) was inserted by [S.I. 2018/546](#).

(**110**) Schedule 4 was inserted by [S.I. 2003/1476](#) and was amended by [S.I. 2018/546](#).

(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(**111**) (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(**112**) (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(**113**).”.

(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,”.

(6) In paragraph 11(**114**)—

(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(**115**).”.

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(**111**) Schedule 8 was inserted by [S.I. 2013/1773](#).

(**112**) [2006 c.46](#).

(**113**) [1993 c.48](#).

(**114**) Paragraph 11 is prospectively revoked by [S.I. 2013/1797](#).

(**115**) [S.I. 2013/1773](#).