
DRAFT STATUTORY INSTRUMENTS

2019 No.

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

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⁽¹⁾ 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⁽²⁾ (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⁽³⁾ (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).

⁽¹⁾ [S.I. 2005/1529](#).

⁽²⁾ [2000 c.8](#).

⁽³⁾ Article 8A was amended by [S.I. 2011/1265](#).

Article 12 (communications to overseas recipients)

167. In article 12 (communications to overseas recipients) omit paragraph 7.

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(4)”.

(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)(5) 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(6), 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).

(4) S.I. 2002/2013.

(5) Paragraph (4) was inserted by S.I. 2013/1773.

(6) S.I. 2019/XXXX.

Article 59 (annual accounts and directors' report)

174.—(1) Article 59 (annual accounts and directors' report) is amended as follows.

(2) In paragraph (1)(b)—

- (a) at the end of sub-paragraph (ai)(7) insert “or”;
- (b) at the end of sub-paragraph (i)(8) omit “or”;
- (c) omit sub-paragraph (iii)(9).

(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)(10) 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)(11), 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)(12) 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(13) (alternative finance investment bonds), for sub-paragraph (f)(14) 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,

(7) Sub-paragraph (ai) was inserted by [S.I. 2015/352](#).

(8) Sub-paragraph (i) was amended by [S.I. 2011/1265](#).

(9) Sub-paragraph (iii) was amended by [S.I. 2011/1265](#) and [S.I. 2015/352](#).

(10) Sub-paragraph (c) was amended by [S.I. 2007/2615](#).

(11) Paragraph (1A) was inserted by [S.I. 2007/2615](#).

(12) Sub-paragraph (2)(b) was amended by [S.I. 2014/1815](#).

(13) Paragraph 15A was inserted by [S.I. 2010/86](#).

(14) Sub-paragraph (2)(f) was amended by 2017/488.

- (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.”.
- (4) In paragraph 21**(15)** (options)—
- (a) in sub-paragraph (1)(e)**(16)**, 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)**(17)**, 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)**(18)**, 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)**(19)** 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)**(20)**.
- (5) In paragraph 22 (futures)—
- (a) in sub-paragraph (1A)(d), (1B)(e) and (1C)(c)**(21)**, for “Section C of Annex I to the markets in financial instruments directive” substitute “Part 1 of Schedule 2”;
 - (b) in sub-paragraph (1CA)**(22)**, 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)**(23)** 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;

(15) Paragraph 21 was amended by [S.I. 2006/3384](#).

(16) Sub-paragraph (1)(e) was inserted by [S.I. 2006/3384](#) and was amended by [S.I. 2017/488](#).

(17) Sub-paragraph (2)(d) was inserted by [S.I. 2006/3384](#) and was amended by [S.I. 2017/488](#).

(18) Sub-paragraph (3)(c) was inserted by [S.I. 2006/3384](#) and was amended by [S.I. 2017/488](#).

(19) 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](#).

(20) Sub-paragraph (5) was inserted by [S.I. 2006/3384](#).

(21) 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](#).

(22) Sub-paragraph (1CA) was inserted by [S.I. 2017/488](#).

(23) Sub-paragraph (1D) was inserted by [S.I. 2006/3384](#), sub-paragraphs (1D)(b), (c) and (d) were amended by [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;
- (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)(**24**).
- (6) In paragraph 23 (contracts for differences etc)—
 - (a) in sub-paragraphs (3)(b)(**25**) and (4A)(c)(**26**), 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)(**27**), 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)(**28**).
- (7) In paragraph 23A(**29**) (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;”;

(24) Sub-paragraph (1E) was inserted by [S.I. 2006/3384](#) and was amended by [S.I. 2017/488](#).

(25) Sub-paragraph (3) was inserted by [S.I. 2006/3384](#).

(26) Sub-paragraph (4A) was inserted by [S.I. 2017/488](#).

(27) Sub-paragraphs (4)(b) to (d) were amended by [S.I. 2017/488](#); sub-paragraph (4B) was inserted by [S.I. 2017/488](#).

(28) Sub-paragraph (5) was inserted by [S.I. 2006/3384](#).

(29) Paragraph 23A was inserted by [S.I. 2017/488](#).

““UK trading venue” has the meaning given by Article 2.1.16 of the markets in financial instruments regulation.”.