
DRAFT STATUTORY INSTRUMENTS

2019 No.

**The Financial Services (Miscellaneous)
(Amendment) (EU Exit) Regulations 2019**

PART 3

Amendment and revocation of secondary legislation

Financial Services and Markets Act 2000 (Regulated Activities) Order 2001

6.—(1) In article 7 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001⁽¹⁾—

(a) in paragraph (2)—

- (i) at the end of sub-paragraph (b), insert “or”;
- (ii) omit sub-paragraphs (d) and (e).

(b) in paragraph (3)—

- (i) at the end of sub-paragraph (b) insert “and”;
- (ii) omit sub-paragraph (d) and the preceding “and”.

(2) Until 11 p.m. on 31 December 2020, the amendments made by paragraph (1) do not apply in relation to—

- (a) an individual who was a registered European lawyer immediately before exit day, or
- (b) an individual to whom paragraph (3), (4) or (5) applies.

(3) This paragraph applies to an individual who made an application for registration under regulation 16 of the relevant regulations before exit day, if—

- (a) the application has not been decided before exit day, or
- (b) the application has been rejected (or deemed to be rejected) under regulation 19 of the relevant regulations and—
 - (i) an appeal against the rejection (or deemed rejection) has been made, but not finally determined or withdrawn, before exit day, or
 - (ii) an appeal against the rejection (or deemed rejection) is made on or after exit day.

(4) This paragraph applies to an individual whose registration as a registered European lawyer was suspended before exit day, if—

- (a) the suspension does not end until on or after exit day,
- (b) an application to terminate the suspension or an appeal against the suspension has been made, but not finally determined or withdrawn, before exit day,
- (c) an appeal against a determination of an application to terminate the suspension has been made, but not finally determined or withdrawn, before exit day,

- (d) an appeal against the suspension is made on or after exit day, or
- (e) an appeal against a determination of an application to terminate the suspension is made on or after exit day.

(5) This paragraph applies to an individual whose registration as a registered European lawyer was withdrawn or revoked before exit day by the professional body with whom that individual had been registered, if—

- (a) an appeal against the withdrawal or revocation has been made, but not finally determined or withdrawn, before exit day, or
- (b) an appeal against the withdrawal or revocation is made on or after exit day.

(6) In this regulation, and in article 7 as it has effect by virtue of paragraph (2) above, “registered European lawyer” has the meaning given by regulation 2(1) of the relevant regulations as that regulation had effect immediately before exit day.

(7) In this regulation “the relevant regulations” means—

- (a) the European Communities (Lawyer’s Practice) Regulations 2000(2), or
- (b) the European Communities (Lawyer’s Practice) (Scotland) Regulations 2000(3).

The Financial Services and Markets Act 2000 (Exemption) Order 2001

7.—(1) The Financial Services and Markets Act 2000 (Exemption) Order 2001(4) is amended as follows.

(2) In article 2, omit the definition of “credit institution”(5) and insert in the appropriate place—
 ““qualifying credit institution” has the meaning given by article 3 of the Regulated Activities Order(6);”

(3) In the Schedule in paragraph 40(3)(7), for “credit institution” substitute “qualifying credit institution”.

The Building Societies Act 1986 (Modification of the Lending Limit and Funding Limit Calculations) Order 2004

8. In article 2(1) of the Building Societies Act 1986 (Modification of the Lending Limit and Funding Limit Calculations) Order 2004(8), for the definition of “credit institution”, substitute—

““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;”.

The Financial Services and Markets Act 2000 (Prescribed Financial Institutions) Order 2013

9. In article 1(2) of the Financial Services and Markets Act 2000 (Prescribed Financial Institutions) Order 2013(9) omit the definition of “credit institution”.

(2) S.I. 2000/1119; amended by S.I. 2001/644, 2003/435 (N.I. 10), 2004/1628, 2008/81, 2009/1587, 2009/3348, 2013/1605, 2013/3176, 2015/401 and 2015/2059.

(3) S.S.I. 2000/121; amended by S.S.I. 2004/302, 2007/359, and 2013/177.

(4) S.I. 2001/1201.

(5) The definition of “credit institution” was inserted by S.I. 2007/125.

(6) S.I. 2001/544, as amended by the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/****).

(7) Sub-paragraph (3) was inserted by S.I. 2007/125. There are amendments to this sub-paragraph but none is relevant.

(8) S.I. 2004/3200; amended by S.I. 2006/3221, S.I. 2011/99 and 2013/3115.

(9) S.I. 2013/165, amended by S.I. 2013/3115.

The Payment to Treasury of Penalties (Enforcement Costs) Order 2013

10.—(1) In article 2 of the Payment to Treasury of Penalties (Enforcement Costs) Order 2013(**10**), omit paragraph (1)(i).

(2) The omission of paragraph (1)(i) of article 2 does not affect the ability of the Financial Conduct Authority to deduct expenses incurred before exit day in connection with the exercise, or the consideration of the possible exercise, of its powers under regulation 5A of the Recognised Auction Platforms Regulations 2011 in accordance with paragraph 20(1) of Schedule 1ZA to the Financial Services and Markets Act 2000(**11**).

The Small and Medium Sized Business (Credit Information) Regulations 2015

11. In regulation 7(3) of the Small and Medium Sized Business (Credit Information) Regulations 2015(**12**), in sub-paragraph (b)—

- (a) in paragraph (iv), after “elsewhere;” insert “or”;
- (b) omit paragraph (vi), and the “or” preceding it.

The Financial Services and Markets Act 2000 (Benchmarks) Regulations 2018

12.—(1) The Financial Services and Markets Act 2000 (Benchmarks) Regulations 2018(**13**) are amended as follows.

(2) In regulation 2—

- (a) in paragraph (1), for the definition of “third country” substitute—

““third country” means a country other than the United Kingdom.”;

- (b) in paragraph (2), at the end of the definition of “senior management” insert “as it had effect immediately before exit day”.

(3) For the heading to regulation 3, substitute “Retained direct EU legislation”.

(4) In regulation 3, for “directly applicable EU regulation” substitute “retained direct EU legislation”.

(5) Omit regulation 4.

(6) In regulation 8, in paragraphs (2), (3) and (5), for “an EU obligation” substitute “a retained EU obligation”.

(7) In regulation 34, for paragraph (2) substitute—

“(2) The FCA must determine the application within 90 working days of receipt of the completed application.”

(8) In regulation 35(1), for “outside the EU” substitute “in a third country”.

(9) In regulation 61(**14**)—

- (a) in paragraph (1), after “does not”, the second time it occurs, insert “, subject to paragraph (3),”;
- (b) after paragraph (2) insert—

“(3) Paragraph (1) does not apply if the benchmark may not be used by virtue of Article 51(1C) of the EU Benchmarks Regulation 2016.”.

(10) [S.I. 2013/418](#). Article 2 has been amended but none is relevant.

(11) [2000 c.8](#). Paragraph 20(4) was inserted by paragraph 4 of Schedule 10 to the Financial Services (Banking Reform) Act [2013 \(c.33\)](#).

(12) [S.I. 2015/1945](#). Paragraph (3)(b) has been amended by [S.I. 2017/80](#).

(13) [S.I. 2018/135](#).

(14) Regulation 61 is amended by [S.I. 2018/204](#).

(10) In regulation 62—

(a) in paragraph (1), after “does not”, the second time it occurs, insert “, subject to paragraph (3).”;

(b) after paragraph (2) insert—

“(3) Paragraph (1) does not apply if the benchmark may not be used by virtue of Article 51(1C) of the EU Benchmarks Regulation 2016.”

The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019

13. In the Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019—

(a) in regulation 10(8)(b), omit paragraph (ii);

(b) in regulation 20(3)(a)(v), for paragraph (aa), substitute—

“(aa) for paragraph (b) of the new definition of “UK AIFM” substitute—

“(b) has its registered office in a third country but has been given permission by the FCA under Part 4A of the Act to carry on the regulated activity of managing an AIF.””

(c) in regulation 36(8)(c)(i), before subparagraph (aa) insert—

“(zaa) for “EU AIFs” substitute “UK and EU AIFs”.

The Bank of England (Amendment) (EU Exit) Regulations 2018

14. In regulation 8 of the Bank of England (Amendment) (EU Exit) Regulations 2018⁽¹⁵⁾, omit paragraph (4).

The Central Securities Depositories (Amendment) (EU Exit) Regulations 2018

15. In regulation 8(b)(ii) of the Central Securities Depositories (Amendment) (EU Exit) Regulations 2018⁽¹⁶⁾, for “authorities competent for” substitute “authorities competent”.

The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018

16.—(1) The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018⁽¹⁷⁾ are amended as follows.

(2) In regulation 4—

(a) in paragraph (3)(c), after “regulation)” insert “that must be physically settled”;

(b) in paragraph (4)—

(i) in sub-paragraph (a)(i) and (ii), for “paragraph 6”, each time it occurs, substitute “paragraphs 6 and 7”;

(ii) for sub-paragraph (b), substitute—

“(b) in Article 6—

⁽¹⁵⁾ S.I. 2018/1297

⁽¹⁶⁾ S.I. 2018/1320.

⁽¹⁷⁾ S.I. 2018/1403.

- (i) in paragraphs 1 and 2, for “Section C(6) of Annex 1 to [Directive 2014/65/EU](#)” substitute “paragraph 6 of Part 1 of Schedule 2 to this Order”;
 - (ii) in paragraph 3, for “Section C(6) of Annex 1 to [Directive 2014/65/EU](#)” substitute “paragraphs 6 and 7 of Schedule 2 to this Order”;
 - (iii) in sub-paragraph (c), omit paragraph (iv);
- (c) in paragraph (8), in new Schedule 3, in paragraph 6, for “paragraph 1(e)”, substitute “paragraph 1(d)”.
- (3) In regulation 6, for paragraph (b), substitute—
 - “(b) in paragraph (3)(b)—
 - (i) for “directly applicable EU regulation”, both times it occurs, substitute “retained EU law”;
 - (ii) in paragraph (i), at the beginning insert “any UK legislation which was relied on by the United Kingdom before exit day to implement”;
- (4) In regulation 7(1)(s), in the new definition of “multilateral trading facility”—
 - (a) after “UK multilateral trading facility” insert “or “UK MTF””;
 - (b) after “EU multilateral trading facility” insert “or “EU MTF””.
- (5) In regulation 8(13)(a), omit “(“a more restrictive position limit”)”.
- (6) In regulation 15—
 - (a) after paragraph (3), insert—
 - “(3A) In the heading to regulation 47, omit “the markets in financial instruments directive or”.”;
 - (b) in paragraph (5), in new regulation 47B(3)(b), for “standards” substitute “obligations”.
- (7) In regulation 18—
 - (a) in paragraph (1)(n), in the new definition of “senior management”, after “a market operator” insert “(as defined in Article 2(1)(10) of the markets in financial instruments regulation)”;
 - (b) after paragraph (2), insert—
 - “(3) In regulation 4—
 - (a) for the heading, substitute “Retained EU law”;
 - (b) in paragraph (1), for “directly applicable EU regulation” substitute “retained EU law”;
 - (c) in paragraph (2)(a), for “a directly applicable EU regulation” substitute “any retained EU law”.
- (8) In regulation 19—
 - (a) for paragraph (6), substitute—
 - “(6) In regulation 9(1)—
 - (a) in sub-paragraph (b), for “European Union” substitute “United Kingdom”;
 - (b) in sub-paragraph (c)(iii), for “directly applicable EU regulations” substitute “retained EU law”.
 - (b) in paragraph (8), after sub-paragraph (b), insert—
 - “(c) in paragraph (iv), for “a directly applicable EU regulation” substitute “any retained EU law”.

(9) For regulation 23, substitute—

“Miscellaneous

23.—(1) In regulation 45(b), for “directly applicable EU regulations” substitute “retained EU law”.

(2) Omit regulation 46.

(3) In regulation 48, omit paragraph (2).”.

(10) In regulation 25—

(a) in paragraph (3), in the substituted paragraph 2D(a), for “this Regulation as it applies in the EEA” substitute “Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments⁽¹⁸⁾ as it has effect in EU law”;

(b) in paragraph (4), omit sub-paragraph (c);

(c) in paragraph (6)(a), for “Debt Management Office” substitute “Treasury”.

(11) In regulation 27—

(a) in paragraph (2)(d), in the new paragraph 3D(a)(ii) for “this Regulation as it has effect in the European Union” substitute “Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments as it has effect in EU law”;

(b) in paragraph (5)(c), in the new paragraph 2B(a)(ii), for “Article 13” substitute “Article 16”.

(12) In regulation 28(10)(b)(i), before “authorised” insert “is”.

(13) In regulation 29(3)—

(a) in sub-paragraph (b), after “UK” insert “, Gibraltar”;

(b) in sub-paragraph (g)(i), after sub-paragraph (bb), insert—

“(cc) in point (f), for “Member States” substitute “the United Kingdom;”;

(c) after sub-paragraph (h), insert—

“(i) after paragraph 10, insert—

“**11.** For the purposes of paragraph 2—

(a) ‘Gibraltar trading venue’ means a Gibraltar regulated market, a Gibraltar multilateral trading facility or a Gibraltar organised trading facility;

(b) for the purposes of subparagraph (a)—

(i) ‘Gibraltar regulated market’ means a regulated market which is authorised and functions regularly and in accordance with Part 3 of the Financial Services (Markets in Financial Instruments) Act 2018 of Gibraltar (as amended from time to time)⁽¹⁹⁾;

(ii) ‘Gibraltar multilateral trading facility’ means a multilateral system, operated by an investment firm or a market operator, which brings together multiple third-party buying and selling interests in financial instruments (in the system and in accordance with non-discretionary rules) in a way which results in a contract in accordance with Part 2 of

⁽¹⁸⁾ OJ L123, 12.6.1014, p.84.

⁽¹⁹⁾ L.N. 2017/135.

the Financial Services (Markets in Financial Instruments) Act 2018 of Gibraltar (as amended from time to time);

- (iii) ‘Gibraltar organised trading facility’ means a multilateral system—
- (aa) which is not a regulated market or an MTF;
 - (bb) in which multiple third-party buying and selling interests in bonds, structured finance products, emission allowances or derivatives are able to interact in the system in a way that results in a contract, in accordance with Part 2 of the Financial Services (Markets in Financial Instruments) Act 2018 of Gibraltar (as amended from time to time).”

(14) In regulation 30(7), in paragraph 2 of the substituted Article 34, for “this Article as it applies in the European Union” substitute “Article 34 of Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments as it has effect in EU law”.

(15) In regulation 33—

(a) in paragraph (1)—

(i) in sub-paragraph (b), for paragraph (ii), substitute—

“(ii) in point (a), insert at the end “before exit day which has not been revoked before exit day, or paragraph 2A applies;””;

(ii) after sub-paragraph (b), insert—

“(ba) after paragraph 2, insert—

“**2A.** This paragraph applies if, after exit day, the Treasury has adopted a decision in accordance with—

(a) Article 47(1) of this Regulation, or

(b) regulation 2 of the Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019.””

(b) in paragraph (2)(b)(ii), after “this Regulation”, insert “, the first time it occurs”.

(16) In regulation 34, in new Article 50B(3)(b), for “standards” substitute “obligations”.

(17) In regulation 37, in new Schedule 3, in paragraph 8(1)—

(a) after “regulated market” insert “or other trading venue”;

(b) for “requirements resulting” substitute “requirements applicable to that trading venue which result”;

(c) for “2004/65/EU” substitute “2014/65/EU”.

(18) In regulation 39—

(a) in paragraph (2)(d), in the substituted paragraph 5(a), for “this Regulation as it applies in the EEA” substitute “Commission Delegated Regulation (EU) 2017/565 supplementing [Directive 2014/65/EU](#) of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that directive⁽²⁰⁾ as it has effect in EU law”;

(b) in paragraph (5)(b), for “paragraph 1(c)” substitute “paragraph 1(d)”;

(c) in paragraph (6)(b) and (c), for “paragraph 6”, both times it occurs, substitute “paragraphs 6 and 7”.

(d) in paragraph (7)—

(20) OJ L87, 31.3.2017, p.1.

- (i) in sub-paragraph (b), for “paragraphs, 1, 2 and 3” substitute “paragraphs 1 and 2”;
- (ii) after sub-paragraph (b), insert—

“(c) in paragraph 3, for “Section C(6) of Annex 1 to [Directive 2014/65/EU](#)” substitute “paragraphs 6 and 7 of Part 1 of Schedule 2 to the Regulated Activities Order”.”

(19) In regulation 41(3)(b), for ““direct electronic access” substitute ““direct electronic access””.

The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018

17. In Schedule 1 to the Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018(21), omit paragraph 21(3).

The Credit Institutions and Insurance Undertakings Reorganisation and Winding Up (Amendment) (EU Exit) Regulations 2019

18. In regulation 1 of the Credit Institutions and Insurance Undertakings Reorganisation and Winding Up (Amendment) (EU Exit) Regulations 2019(22), at paragraph (2), for “on [date]” substitute “when these Regulations are made”.

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

19.—(1) Regulation 147 of the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 is amended as follows.

- (2) In paragraph (7), in the new paragraph (11A)—
 - (a) in subparagraph (b), for “equivalence regulations”, substitute “an equivalence determination”;
 - (b) in subparagraph (c), for “equivalence regulations” substitute “equivalence determination”.
- (3) In paragraph (8)(c)—
 - (a) for the new paragraph (c), substitute—
 - “(c) “equivalence determination” means a determination made by the Treasury—
 - (i) in regulations under Article 47.1 of the markets in financial instruments regulation and not revoked; or
 - (ii) by direction under regulation 2 of the Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019 and not revoked;”;
 - (b) for new sub-paragraph (d), substitute—
 - “(d) a country is the subject of an equivalence determination if a period of more than three years has elapsed since—
 - (i) the date on which the equivalence determination came into force, or
 - (ii) where two or more equivalence determinations have been made in succession in relation to the country concerned, the date on which the first equivalence determination came into force;

(21) S.I. 2018/1394.

(22) S.I. 2019/38.

- (e) for the purposes of sub-paragraph (d), an equivalence determination is not made in succession to an earlier determination if the earlier determination ceased to have effect before the later determination came into force.”

The Financial Markets and Insolvency (Amendment and Transitional Provision) (EU Exit) Regulations 2019

20.—(1) The Financial Markets and Insolvency (Amendment and Transitional Provision) (EU Exit) Regulations 2019⁽²³⁾ are amended as follows.

(2) In regulation 5(3), after sub-paragraph (b), insert—

“(c) in sub-paragraph (b), for the word “contract” substitute “rules”.”

(3) In regulation 9—

(a) renumber the new regulation 27 inserted by that provision as paragraph (1);

(b) after the renumbered paragraph (1), insert—

“(2) Expressions used in sub-paragraphs (a) to (c) above have the meanings given to them in these Regulations as they were in force immediately before exit day.”

(4) In regulation 10—

(a) for paragraph (b), substitute—

“(b) in paragraph 5(2)—

(i) for the first reference to “the system” substitute “a system governed by the law of the United Kingdom”;

(ii) after “institution” insert “whose head office is in the United Kingdom”;

(b) in paragraph (d), before sub-paragraph (i), insert—

“(ai) for the first reference to “the system” substitute “a system governed by the law of the United Kingdom”;

(c) renumber paragraph (e) as sub-paragraph (iv) in paragraph (d).

(5) After regulation 18, insert—

“Transitional provisions: bank stabilisation

18A.—(1) A temporarily designated system is to be treated as a “designated settlement system” for the purposes of section 48B (special bail-in provision) of the Banking Act 2009⁽²⁴⁾.

(2) An operator of a temporarily designated system is to be treated as an “excluded person” for the purposes of sections 70A to 70C (suspension of obligations, restriction of security interests, suspension of termination rights) of the Banking Act 2009⁽²⁵⁾.”

The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019

21. In the Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019⁽²⁶⁾—

⁽²³⁾ S.I. 2019/****.

⁽²⁴⁾ 2009 c.1. Section 48B was inserted by paragraph 4 of Schedule 2 to the Financial Services (Banking Reform) Act 2013 (c.33).

⁽²⁵⁾ Sections 70A to 70C were inserted by S.I. 2014/3329.

⁽²⁶⁾ S.I. 2019/****.

- (a) in regulation 11(7), in the new definition of “financial counterparty”, for subparagraph (e), substitute—
 - “(e) an occupational pension scheme within the meaning given in section 1(1) of the Pension Schemes Act 1993⁽²⁷⁾ which is established in the United Kingdom;”.
- (b) in regulation 80(1)(c)(ii), for “or paragraph 3 of” substitute “, or paragraph 3 of Article 37, of”.

The Solvency 2 and Insurance (Amendment etc.) (EU Exit) Regulations 2019

22. In the Solvency 2 and Insurance (Amendment etc.) (EU Exit) Regulations 2019⁽²⁸⁾ omit paragraphs (25) and (39) of regulation 11.

The Credit Rating Agencies (Amendment, etc.) (EU Exit) Regulations 2019

23. In the Credit Rating Agencies (Amendment, etc.) (EU Exit) Regulations 2019⁽²⁹⁾ omit regulation 64.

The Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019

24. In regulation 2(2) of the Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019⁽³⁰⁾, for sub-paragraph (b), substitute—

- “(b) ceases to have effect on the date on which—
 - (i) it is revoked by a direction under paragraph (1) or by any other enactment; or
 - (ii) regulations made by the Treasury, which contain a determination to the same effect, come into force.”

Revocation of UK instruments

- 25.** The following instruments are revoked—
- (a) the European Cooperative Society Regulations 2006⁽³¹⁾;
 - (b) the Recognised Auction Platforms Regulations 2011⁽³²⁾;
 - (c) the Community Emissions Trading Scheme (Allocation of Allowances for Payment) Regulations 2012⁽³³⁾.

⁽²⁷⁾ 1993 c.48. Section 1 is substituted by section 239 of the Pensions Act 2004 (c.35).

⁽²⁸⁾ S.I. 2019/****.

⁽²⁹⁾ S.I. 2019/****.

⁽³⁰⁾ S.I. 2019/****.

⁽³¹⁾ S.I. 2006/2078.

⁽³²⁾ S.I. 2011/2699.

⁽³³⁾ S.I. 2012/2661.