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DRAFT STATUTORY INSTRUMENTS

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**2019 No.**

**The Electronic Commerce and Solvency 2  
(Amendment etc.) (EU Exit) Regulations 2019**

**PART 4**

Transitional provisions: temporary exclusion from general prohibition

*Regulation*

**Cancellation or variation of the exclusion under regulation 11**

- 15.**—(1) The FCA may determine that the exclusion in regulation 11—
- (a) does not apply to a particular activity carried on by a relevant incoming provider;
  - (b) no longer applies to any of the activities carried on by a relevant incoming provider.
- (2) The FCA may only exercise the power in paragraph (1), if it considers that the exercise of the power is necessary—
- (a) for the prevention, detection, investigation or prosecution of a criminal offence;
  - (b) for the protection of consumers;
  - (c) in order for the FCA to advance its objectives under Part 1A of the 2000 Act.

**Cancellation or variation: procedure**

- 16.**—(1) In an urgent case, if the FCA decides to exercise the power under regulation 15(1), it must give a decision notice to the relevant incoming provider to whom the decision relates.
- (2) A decision notice under paragraph (1) must state when the decision takes effect (and this may be immediately upon receipt).
- (3) In any other case—
- (a) if the FCA proposes to exercise the power under regulation 15(1), it must give the provider a warning notice specifying the activity;
  - (b) if the FCA decides to exercise the power under regulation 15(1), it must give the provider a decision notice specifying the activity.
- (4) Part 26 of the 2000 Act (notices) applies to a notice under paragraph (3) as it applies to a notice given under that Act.
- (5) For the purposes of this regulation, an urgent case is one in which the FCA reasonably considers it necessary for the decision to take effect as stated in the decision notice.

**Cancellation or variation: appeal**

- 17.**—(1) A relevant incoming provider in respect of whom the power in regulation 15(1) is exercised may refer the decision to exercise the power to the Upper Tribunal.

(2) Part 9 of the 2000 Act (hearings and appeals) applies to a reference under paragraph (1) as it applies to a reference under the 2000 Act.

### **Restriction on Financial Promotion**

**18.** In respect of a relevant incoming provider carrying on any activity to which regulation 11 applies, section 21 of the 2000 Act (restrictions on financial promotion) has effect as if—

(a) in subsection (2), for paragraph (a) there were substituted—

“(a) A is a relevant incoming provider carrying on an activity to which regulation 11 of the 2019 Regulations applies;”;

(b) in that subsection, paragraph (b) were omitted;

(c) after that subsection there were inserted—

“(2A) Subsection (2)(a) only applies to a person in so far as the communication is necessary for the performance of a pre-existing contract (within the meaning of regulation 12 of the 2019 Regulations).

(2B) For the purpose of subsections (2)(a) and (2A)—

“the 2019 Regulations” means the Electronic Commerce and Solvency 2 (Amendment etc.) (EU Exit) Regulations 2019;

“relevant incoming provider” has the meaning given in regulation 28 of the 2019 Regulations.”

### **Product intervention rules**

**19.**—(1) Product intervention rules (within the meaning of section 137D of the 2000 Act) apply to a relevant incoming provider carrying on activity to which regulation 11 applies as they apply to an authorised person.

(2) A prohibition or restriction under Article 42 of Regulation (EU) No. 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments applies to a relevant incoming provider carrying on an activity to which regulation 11 applies as it applies to a person to whom that Regulation applies.

(3) A prohibition or restriction under Article 17 of Regulation (EU) No. 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products applies to a relevant incoming provider carrying on an activity to which regulation 11 applies as it applies to a person to whom that Regulation applies

### **Information gathering**

**20.** The following provisions of the 2000 Act apply in respect of a relevant incoming provider carrying on an activity to which regulation 11 applies, as they apply to an authorised person (within the meaning of section 31 of the 2000 Act)—

(a) section 165;

(b) section 166;

(c) section 175;

(d) section 177.

### **Publication of information provided under regulation 13 or 14**

21.—(1) The FCA may, if it considers it is appropriate to do so, publish information that it receives under regulation 13 or 14.

(2) Publication under this regulation is to be in such manner as the FCA considers appropriate.

### **Public censure**

22.—(1) If the FCA considers that a relevant incoming provider—

- (a) has not notified it in accordance with regulation 13 or 14, or
- (b) has acted in a manner which it considers contrary to the advancement of its objectives under Part 1A of the 2000 Act,

the FCA may publish a statement to that effect.

(2) If the FCA proposes to publish a statement under paragraph (1), it must give the provider a warning notice.

(3) The warning notice must—

- (a) set out the terms of the proposed statement;
- (b) state that the relevant incoming provider may make representations in response to the notice.

(4) If, having considered any representations made in response to a warning notice, the FCA decides to publish a statement under paragraph (1) (whether or not in the terms proposed), it must without delay give the person a decision notice.

(5) The decision notice must set out the terms of the statement.

(6) Section 393 of the 2000 Act (third party rights) applies in respect of giving notices under this regulation as it applies in respect of giving notices under the 2000 Act.