
DRAFT STATUTORY INSTRUMENTS

2019 No. ****

EXITING THE EUROPEAN UNION

FINANCIAL SERVICES AND MARKETS

The Financial Services (Miscellaneous) (Amendment) (EU Exit)
(No. 2) Regulations 2019

Made - - - -

Coming into force in accordance with regulation 1

The Treasury make these Regulations in exercise of the powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018(a).

In accordance with paragraph 1(3) of Schedule 7 to that Act, a draft of this instrument has been laid before, and approved by a resolution of, each House of Parliament.

PART 1

General provision

Citation and commencement

1.—(1) These Regulations may be cited as the Financial Services (Miscellaneous) (Amendment) (EU Exit) (No. 2) Regulations 2019.

(2) This regulation comes into force on the day after the day on which these Regulations are made.

(3) Regulations 2 to 9 come into force on whichever is the later of—

- (a) immediately before exit day; or
- (b) the day after the day on which these Regulations are made.

(4) Regulation 10 comes into force on whichever is the later of—

- (a) exit day; or
- (b) the day after the day on which these Regulations are made.

PART 2

Amendment of the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018

2. The EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018(a) are amended as follows.

Information to be supplied to a party to a contract with a person to whom regulation 47 applies

3. In Part 7, in Chapter 2, after regulation 54(b) (information to be supplied by a person to whom regulation 47 applies), insert—

“Information to be supplied to a party to a contract with a person to whom regulation 47 applies

54A.—(1) A person to whom regulation 47 applies must notify each party to a pre-existing contract with the person that the person is—

- (a) an exempt person for the purposes of section 19(1)(b) of the 2000 Act, and
- (b) not regulated by the FCA or the PRA.

(2) The notification must be made as soon as reasonably practicable following the day on which regulation 47 first applies to the person.

(3) A person to whom regulation 47 applies must notify each party to a pre-existing contract with the person if there is a material change, on or after exit day, in respect of—

- (a) the protection afforded to assets held by the person in relation to the performance of the contract,
- (b) the mechanisms for resolving disputes in connection with the contract, or
- (c) the schemes available for compensation in relation to the contract.

(4) The relevant regulator may issue guidance in respect of compliance with an obligation under this regulation.

(5) For the purposes of paragraph (4), reference to the relevant regulator is a reference to—

- (a) the FCA;
- (b) in a case where the regulated activities to which regulation 47 has effect consist of or include a PRA-regulated activity (within the meaning of section 22A of the 2000 Act), the PRA.”.

Restriction on financial promotion

4. In regulation 58(c) (restriction on financial promotion)—

(a) for paragraph (a) substitute—

“(a) for subsection (2) there were substituted—

“(2) But subsection (1) does not apply if A is a person to whom regulation 47 of the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 applies.””;

(b) in paragraph (b), in the inserted subsection (2A), omit “(a)”.

(a) S.I. 2018/1149, amended by S.I. 2019/405.

(b) Regulation 54 is inserted by S.I. 2019/405.

(c) Regulation 58 is inserted by S.I. 2019/405.

Financial Services Compensation Scheme: a person to whom regulation 28 or 34 applies

5. In regulation 70(a) (Financial Services Compensation Scheme: a person to whom regulation 28 or 34 applies), in paragraph (2)(b)—

- (a) in the inserted subsection (9B), at the end of paragraph (c) insert “or” and omit paragraphs (e) and (f);
- (b) in the inserted subsection (9C), omit the definitions of “AIFM”, “an authorised contractual scheme”, “an authorised open-ended investment company”, “an authorised unit trust scheme”, “collective portfolio management services”, “ELTIF”, “ELTIF Regulation”, “management company”, “UCITS” and “UK AIF”.

Financial Services Compensation Scheme: a person to whom regulation 47 applies

6. In regulation 71(b) (Financial Services Compensation Scheme: a person to whom regulation 47 applies)—

- (a) in paragraph (1), omit subparagraphs (b) and (c);
- (b) in paragraph (2), omit the definitions of “AIFM”, “alternative investment fund managers directive”, “home state regulator”, “UCITS” and “UCITS directive”.

PART 3

Amendment of the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018

7.—(1) Schedule 3 to the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018(c) (transitional provisions) is amended as follows.

(2) At the end of paragraph 12A, insert “and “PSR 2017” means the Payment Services Regulations 2017(d)”.

(3) In paragraph 12L(e), after sub-paragraph (5) insert—

“(6) Where a person (“A”) to whom this paragraph applies issues electronic money to a person (“B”) in pursuance of a pre-existing contract in reliance on the exemption in sub-paragraph (1), A must, as soon as it is reasonably practicable to do so, notify B—

- (a) that A is exempt from the prohibition in regulation 63(1) of EMR 2011 by virtue of sub-paragraph (1) and is not authorised by the FCA under EMR 2011;
- (b) that, as a result of the United Kingdom’s withdrawal from the European Union—
 - (i) it is possible that B’s assets held by A in relation to the performance of the pre-existing contract no longer attract the same protection afforded to them immediately before exit day;
 - (ii) it is possible that recourse to an alternative dispute resolution procedure or compensation scheme that was available to B under the pre-existing contract immediately before exit day is no longer available;
- (c) in so far as it is practicable to do so, of any changes arising as a result of the United Kingdom’s withdrawal from the European Union to—

(a) Regulation 70 is inserted by S.I. 2019/405.

(b) Regulation 71 is inserted by S.I. 2019/405.

(c) S.I. 2018/1201.

(d) S.I. 2017/752.

(e) Paragraph 12L was inserted, together with the rest of Part 1A (comprising paragraphs 12A to 12M), by regulation 10 of S.I. 2019/405.

- (i) the protection afforded to B’s assets held by A in relation to the performance of the pre-existing contract; or
- (ii) the availability to B of an alternative dispute resolution procedure or compensation scheme under the pre-existing contract.

(7) If at any time after A has provided B with any information under sub-paragraph (6)—

- (a) there is, or is likely to be, a material change affecting that information; or
- (b) it becomes apparent to the applicant that the information is incomplete or contains a material inaccuracy,

A must provide B with details of the change, the complete information or a correction of the inaccuracy (as the case may be) as soon as it is reasonably practicable to do so.

(8) The FCA may issue guidance in respect of compliance with an obligation under sub-paragraph (6) or (7).”.

(4) After paragraph 20(1)(j) insert—

“(ja)in the case of a person carrying on account information services, the person does not hold professional indemnity insurance, or a comparable guarantee, of the kind mentioned in regulation 6(7)(f) of PSR 2017,”.

(5) In paragraph 36(a), after sub-paragraph (5) insert—

“(6) Where a person (“A”) to whom this paragraph applies provides payment services to a person (“B”) in pursuance of a pre-existing contract in reliance on the exemption in sub-paragraph (1), A must, as soon as it is reasonably practicable to do so, notify B—

- (a) that A is exempt from the prohibition in regulation 138(1) of PSR 2017 by virtue of sub-paragraph (1) and is not authorised by the FCA under PSR 2017;
- (b) that, as a result of the United Kingdom’s withdrawal from the European Union—
 - (i) it is possible that B’s assets held by A in relation to the performance of the pre-existing contract no longer attract the same protection afforded to them immediately before exit day;
 - (ii) it is possible that recourse to an alternative dispute resolution procedure or compensation scheme that was available to B under the pre-existing contract immediately before exit day is no longer available;
- (c) in so far as it is practicable to do so, of any changes arising as a result of the United Kingdom’s withdrawal from the European Union to—
 - (i) the protection afforded to B’s assets held by A in relation to the performance of the pre-existing contract; or
 - (ii) the availability to B of an alternative dispute resolution procedure or compensation scheme under the pre-existing contract.

(7) If at any time after A has provided B with any information under sub-paragraph (6)—

- (a) there is, or is likely to be, a material change affecting that information; or
- (b) it becomes apparent to the applicant that the information is incomplete or contains a material inaccuracy,

A must provide B with details of the change, the complete information or a correction of the inaccuracy (as the case may be) as soon as it is reasonably practicable to do so.

(8) The FCA may issue guidance in respect of compliance with an obligation under sub-paragraph (6) or (7).”.

(a) Paragraph 36 was inserted, together with the rest of Part 3 (comprising paragraphs 25 to 37), by regulation 10 of S.I. 2019/405.

PART 4

Amendment of the Financial Conglomerates and Other Financial Groups (Amendment etc.) (EU Exit) Regulations 2019

Transitional provision: group supervision

8. After Part 5 of the Financial Conglomerates and Other Financial Groups (Amendment etc.) (EU Exit) Regulations 2019(a), insert—

“Part 6

Transitional provision in relation to group supervision

Interpretation of Part 6

8. In this Part—

“2004 Regulations” means the Financial Conglomerates and Other Financial Groups Regulations 2004(b);

“2019 Regulations” means the Financial Conglomerates and Other Financial Groups (Amendment etc.) (EU Exit) Regulations 2019;

“conglomerates directive” means Directive 2002/87/EC of the European Parliament and the Council of 16th December 2002 on the supplementary supervision of credit institutions, insurance undertakings, and investment firms in a financial conglomerate;

“EEA co-ordinator” means a co-ordinator for a financial conglomerate as referred to in Article 10 of the conglomerates directive, which is not a competent authority of the United Kingdom;

“FCA” means the Financial Conduct Authority;

“financial conglomerate” means a group or subgroup which immediately before exit day was a financial conglomerate for the purposes of the conglomerates directive;

“PRA” means the Prudential Regulation Authority;

“third-country financial conglomerate” has the meaning given by regulation 7 of the 2004 Regulations (as amended by the 2019 Regulations).

Transitional provision

9.—(1) This regulation applies where—

(a) immediately before exit day—

(i) the co-ordinator appointed in accordance with Article 10 of the conglomerates directive in respect of a financial conglomerate is an EEA co-ordinator;

(ii) the FCA or PRA is the competent authority for the purposes of the conglomerates directive in relation to a regulated entity in that financial conglomerate; and

(b) after exit day the FCA or PRA, as the case may be, is the co-ordinator of that financial conglomerate in accordance with regulation 2 of the 2004 Regulations (as amended by the 2019 Regulations).

(2) This regulation also applies where on or after exit day—

(a) S.I. 2019/264.

(b) S.I. 2004/1862 as amended by S.I. 2013/1162.

- (a) a financial conglomerate becomes a third-country financial conglomerate only by virtue of the amendments made to the definition of “third-country financial conglomerate” in regulation 7(1) of the 2004 Regulations by regulation 2(7)(c) of the 2019 Regulations; and
 - (b) the FCA or PRA is the regulator to whom regulation 8 of the 2004 Regulations (as amended by the 2019 Regulations) applies in relation to a regulated entity in that third-country financial conglomerate.
- (3) Where this regulation applies, regulations 2, 8, 22 and 23 of the 2004 Regulations (as amended by the 2019 Regulations), which would otherwise apply to the FCA or PRA, do not apply for a period of two years beginning with exit day—
- (a) unless the FCA or PRA, as appropriate, decides that it is appropriate for those regulations to be applied in a particular case; or
 - (b) unless or until the financial conglomerate in question ceases to be supervised by an EEA co-ordinator.”.

PART 5

Amendment of the Long-term Investment Funds (Amendment) (EU Exit) Regulations 2019

9. In regulation 8(2)(b) (application for authorisation as an LTIF) of the Long-term Investment Funds (Amendment) (EU Exit) Regulations 2019(a) for “both places” substitute “each place”.

PART 6

Amendment of Commission Delegated Regulation (EU) 2015/61 of 10 October 2014 to supplement Regulation (EU) No 575/2013 of the European Parliament and the Council with regard to liquidity coverage requirement for Credit Institutions

10. In Article 29 of Commission Delegated Regulation (EU) 2015/61 of 10 October 2014 to supplement Regulation (EU) No 575/2013 of the European Parliament and the Council with regard to liquidity coverage requirement for Credit Institutions, omit paragraph 2.

	<i>Name</i>
	<i>Name</i>
Date	Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers in section 8 of the European Union (Withdrawal) Act 2018 (c.16) in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union (and in particular, the deficiencies under paragraphs (a), (b), (c), (d) and (e) of section 8(2)).

Part 2 of these Regulations amends the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 (S.I. 2018/1149) (“the 2018 Regulations”) as follows:

(a) S.I. 2019/336.

- regulation 3 inserts provision into Chapter 2 of Part 7 of the 2018 Regulations to make provision for the notification of certain matters to a party to a contract with a person to whom regulation 47 of those Regulations applies;
- regulation 4 amends regulation 58 of the 2018 Regulations to modify section 21 of the Financial Services and Markets Act 2000 (c. 8) (restrictions on financial promotion), in its application to a person to whom regulation 47 of those Regulations applies, in order to remove the reference to an authorised person;
- regulation 5 amends regulation 70 of the 2018 Regulations to modify section 213 of that Act (the compensation scheme), in its application to a person to whom regulation 28 or 34 of those Regulations applies, to remove inapplicable references to funds;
- regulation 6 amends regulation 71 of the 2018 Regulations to modify section 213 of that Act (the compensation scheme), in its application to a person to whom regulation 47 of those Regulations applies, to remove inapplicable references to funds.

Part 3 of these Regulations amends Schedule 3 to the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018 (S.I. 2018/1201). Regulations 7(2) and (4) insert new sub-paragraphs (6) and (7) into paragraphs 12L and 36, respectively, of Schedule 3 to make provision for the notification of certain matters to a party to a contract with a person whom paragraph 12L or 36, as the case may be, applies. Regulation 7(3) inserts a new paragraph (ja) into paragraph 20(1) to give the Financial Conduct Authority a power to cancel the transitional authorisation of a person carrying on account information services, similar to the power it has under paragraph 20(1)(j) in relation to a person carrying on payment initiation services.

Part 4 of these Regulations inserts a new Part 6 into the Financial Conglomerates and Other Financial Groups (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/264) to make transitional provision in relation to the supervision of financial conglomerates.

Part 5 makes a minor amendment to the Long-term Investment Funds (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/336).

Part 6 of these Regulations makes a minor amendment to Commission Delegated Regulation (EU) 2015/61 of 10 October 2014 to supplement Regulation (EU) No 575/2013 of the European Parliament and the Council with regard to liquidity coverage requirement for Credit Institutions.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

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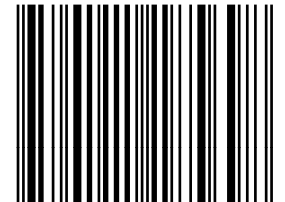
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