

*Draft Regulations laid before Parliament under paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.*

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DRAFT STATUTORY INSTRUMENTS

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**2020 No. \***

**EXITING THE EUROPEAN UNION  
FINANCIAL SERVICES AND MARKETS**

**The Over the Counter Derivatives, Central Counterparties  
and Trade Repositories (Amendment, etc., and  
Transitional Provision) (EU Exit) Regulations 2020**

*Made - - - - \*\*\*  
Coming into force in accordance with regulation 1(2)  
and (3)*

The Treasury make the following 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(1).

A draft of these Regulations has been approved by a resolution of each House of Parliament in accordance with paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018.

**PART 1**

**Introduction**

**Citation and commencement**

1.—(1) These Regulations may be cited as the Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020.

(2) The following provisions of these Regulations come into force on the day after the day on which they are made—

- (a) this Part;
- (b) in Part 2, paragraph (2) of regulation 2 (and paragraph (1) in so far as it relates to that paragraph); and

- (c) Part 3.
- (3) The remaining provisions of these Regulations come into force on IP completion day.

## PART 2

### Amendment of primary legislation

#### Amendment of the Financial Services and Markets Act 2000

- 2.—(1) The Financial Services and Markets Act 2000<sup>(2)</sup> is amended as follows.
- (2) In section 138P(6) (technical standards)<sup>(3)</sup>, after paragraph (c) insert—
    - “(d) “the EMIR regulation” has the meaning given in section 313.”.
  - (3) In section 296 (appropriate regulator’s power to give directions)<sup>(4)</sup>—
    - (a) before subsection (2) insert—
      - “(1C) This section also applies if it appears to the Bank of England that a Tier 2 third country central counterparty has failed to comply with an obligation imposed on it by or under this Act, or by or under the EMIR regulation.”;
    - (b) after subsection (2) insert—
      - “(2ZA) Where this section applies by virtue of subsection (1C), the Bank of England may direct the Tier 2 third country central counterparty to take specified steps for the purpose of securing compliance with the obligations referred to in that subsection.”;
    - (c) before subsection (3) insert—
      - “(2C) In the case of a Tier 2 third country central counterparty, those steps may include—
        - (a) the granting to the Bank of England of access to any premises of the Tier 2 third country central counterparty for the purposes of inspecting—
          - (i) those premises; or
          - (ii) any documents on the premises which appear to the Bank of England to be relevant for the purposes mentioned in subsection (2ZA);
        - (b) the suspension for the period specified in the direction of the carrying on in the United Kingdom by the Tier 2 third country central counterparty of any activity in respect of which the third country central counterparty is exempt from the general prohibition.
      - (2D) The Bank of England may not inspect the premises or documents on the premises of a Tier 2 third country central counterparty without first informing the relevant third country competent authority, and inspections must be conducted in accordance with cooperation arrangements established under Article 25.7 of the EMIR regulation.
      - (2E) In subsection (2D), relevant third country competent authority means a regulatory authority of a country other than the United Kingdom which is responsible for the authorisation and supervision of central counterparties in its territory.”;
  - (d) in subsection (3), after “section” insert “(except a direction made under subsection (2ZA))”.

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<sup>(2)</sup> 2000 c. 8.

<sup>(3)</sup> Section 138P is inserted by S.I. 2018/1115.

<sup>(4)</sup> Section 296 is amended by paragraph 14 of Schedule 8 of the Financial Services Act 2012 (c.21) and S.I. 2017/126. Subsections (1B) and (2B) are omitted by S.I. 2019/662.

- (4) In section 313(1) (interpretation of Part 18)—
- (a) in the definition of “recognised body”<sup>(5)</sup> at the end insert “, and in Chapter 3B also includes a third country central counterparty”;
  - (b) in the appropriate place insert—
    - “Tier 2 third country central counterparty” means a third country central counterparty which has been determined by the Bank of England to be systemically important or likely to become systemically important in accordance with Article 25.2a of the EMIR regulation;”.
- (5) In Schedule 17A (further provision in relation to Part 18)<sup>(6)</sup>—
- (a) in paragraph 11(1) (power to require information)<sup>(7)</sup>—
    - (i) after sub-paragraph (ab) insert—
      - “(ac) a third country central counterparty and any person to whom that central counterparty has outsourced operational functions, services or activities.”
    - (ii) in sub-paragraph (b), after “a recognised clearing house” insert “, a third country central counterparty”;
  - (b) in paragraph 13(1) (appointment of persons to carry out general investigations)<sup>(8)</sup>, after “overseas clearing house” insert “or to any Tier 2 third country central counterparty”.
  - (c) in paragraph 14(2) (appointment of persons to carry out investigations in particular cases)<sup>(9)</sup> at the end insert—
    - “(g) a third country central counterparty may be guilty of an offence under section 398(1);
    - (h) a Tier 2 third country central counterparty may have contravened the requirements of the EMIR regulation.”
  - (d) in paragraph 30(a) (offences), after “recognised clearing house” insert “, a third country central counterparty”.

## PART 3

### Amendment of subordinate legislation

#### **Amendment of the Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018**

**3.** In regulation 2 (interpretation) of the Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018<sup>(10)</sup>, at the end of paragraph (e), for “as amended by Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019”, substitute “as last amended by Regulation (EU) 2019/2099 of the European Parliament and of the Council of 23 October 2019”.

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<sup>(5)</sup> The definition of “recognised body” is amended by [S.I. 2017/1064](#).

<sup>(6)</sup> Schedule 17A was inserted by Schedule 7 of the Financial Services Act 2012.

<sup>(7)</sup> Paragraph 11(1) is amended by [S.I. 2017/1064](#).

<sup>(8)</sup> Paragraph 13(1) is amended by [S.I. 2017/1064](#) and [2019/662](#).

<sup>(9)</sup> Paragraph 14 is amended by [S.I. 2017/1064](#) and [2019/662](#).

<sup>(10)</sup> [S.I. 2018/1115](#).

## **Amendment of the Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018**

4.—(1) The Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018<sup>(11)</sup> are amended as follows.

(2) In regulation 1(4) (interpretation), in the definition of “the EMIR Regulation” for “as amended by Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019” substitute “as last amended by Regulation (EU) 2019/2099 of the European Parliament and of the Council of 23 October 2019”.

(3) Omit regulation 8 (recognition of a third country CCP).

(4) In regulation 11 (interpretation) in the appropriate places insert the following definitions—  
 ““clearing member” means an undertaking which participates in a central counterparty and which is responsible for discharging the financial obligations arising from that participation;  
 “client” means an undertaking with a contractual relationship with a clearing member of a central counterparty which enables that undertaking to clear its transactions with that central counterparty;”.

(5) In regulation 13 (deemed recognition pursuant to Article 25 of the EMIR Regulation), after paragraph (5) insert—

“(5A) The fifth condition is that the applicant has not been determined as systemically important or likely to become systemically important in accordance with regulation 13A and is therefore a Tier 1 CCP.”.

(6) After regulation 13, insert—

### **“Determination of systemic importance**

**13A.**—(1) The Bank of England must determine whether the applicant is systemically important or likely to become systemically important for the financial stability of the United Kingdom (a “Tier 2 CCP”) by taking into account all of the following criteria—

- (a) the nature, size and complexity of the applicant’s business in the United Kingdom, and outside the United Kingdom to the extent that its business may have a systemic impact on the United Kingdom, including—
  - (i) the value in aggregate terms and in pounds sterling of transactions cleared by the applicant, or the aggregate exposure of the applicant engaged in clearing activities to its clearing members and, to the extent the information is available, their clients and indirect clients established in the United Kingdom, including where they have been identified by the PRA as other systemically important institutions (O-SIIs) in accordance with regulation 29 of the Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014<sup>(12)</sup>; and
  - (ii) the risk profile of the applicant in terms of, amongst other things, legal, operational and business risk;
- (b) the effect that the failure of, or a disruption to, the applicant would have on—
  - (i) financial markets, including the liquidity of the markets served;
  - (ii) financial institutions;
  - (iii) the broader financial system; or

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<sup>(11)</sup> S.I. 2018/1184.

<sup>(12)</sup> S.I. 2014/894. Regulation 29 is amended by S.I. 2018/1401.

- (iv) the financial stability of the United Kingdom;
  - (c) the applicant's clearing membership structure including, to the extent the information is available, the structure of its clearing members' network of clients and indirect clients, established in the United Kingdom;
  - (d) the extent to which alternative clearing services provided by other central counterparties exist for clearing members and, to the extent the information is available, their clients and indirect clients established in the United Kingdom;
  - (e) the applicant's relationships, interdependencies, or other interactions with other financial market infrastructures, other financial institutions and the broader financial system to the extent that it is likely to have an impact on the financial stability of the United Kingdom.
- (2) Without prejudice to the outcome of determination under regulation 13, the Bank of England must, after conducting the assessment in accordance with paragraph (1), inform the applicant whether it is considered to be a Tier 1 or Tier 2 CCP.
- (3) On and after IP completion day, an assessment under this regulation is to be taken as having been carried out in accordance with Article 25.2a of the EMIR Regulation.

#### **Conditions for Tier 2 CCPs**

**13B.**—(1) Where the Bank of England determines that the applicant is a Tier 2 CCP in accordance with regulation 13A, it may only determine that the central counterparty should be taken to be recognised pursuant to Article 25 of the EMIR Regulation to provide certain clearing services or activities where, in addition to meeting the conditions in paragraphs (2) to (5) of regulation 13, each of the following conditions are met.

(2) The first condition is that the applicant complies with the requirements set out in Article 16 and in Titles IV and V of the EMIR Regulation, as it has effect in EU law as amended from time to time (taking into account, in accordance with regulation 13C, the extent to which the applicant's compliance with those requirements is satisfied by compliance with comparable requirements applicable in that third country).

(3) The second condition is that the applicant has provided the Bank of England with—

- (a) a written statement, signed by its legal representatives, expressing the unconditional consent of the applicant to—
  - (i) provide within the time specified in a request by the Bank of England, any documents, records or information and data held by the applicant at the time the request is served, and
  - (ii) allow the Bank of England to access any of the applicant's business premises;
- (b) a reasoned legal opinion by an independent legal expert confirming that the consent expressed is valid and enforceable under the relevant applicable laws.

(4) The third condition is that the applicant has implemented all the necessary measures and established all necessary procedures to ensure the effective compliance with the conditions set out in paragraphs (2) and (3).

#### **Comparable compliance**

**13C.**—(1) An applicant which has been determined to be a Tier 2 CCP may request that the Bank of England assesses whether its compliance with the applicable third country framework, taking account of the regulations made under regulation 14, may be deemed to satisfy compliance with the requirements in Article 16 and Titles IV and V of the EMIR Regulation.

(2) The request shall include an explanation of why compliance with the requirements applicable in the third country satisfies the requirements set out in Articles 16 and Titles IV and V of the EMIR Regulation.

(3) On and after IP completion day, a request made under this regulation is to be treated as if it were made in accordance with Article 25a of the EMIR Regulation.

(4) A reference to the EMIR Regulation in this regulation is to the EMIR Regulation as it has effect in EU law as amended from time to time.”.

(7) In regulation 15(2) (Bank’s power to advise Treasury on regulatory equivalence of central counterparties), for “Article 25.6A” substitute “Article 25.6ZA”.

(8) In regulation 16 (co-operation arrangements between the Bank of England and the competent authorities of third countries before IP completion day)(**13**), for paragraph (2) substitute—

“(2) Such arrangements are to specify such matters as the Bank of England considers appropriate, and may include—

- (a) the mechanism for the exchange of information between the Bank of England and the competent authority, including access to all information requested by the Bank of England regarding central counterparties authorised in that third country, such as significant changes to risk models and parameters, extension of central counterparty activities and services, changes in the clients account structure and in the use of payment systems that substantially affect the United Kingdom;
- (b) the mechanism for prompt notification to the Bank of England where the competent authority deems a central counterparty it is supervising to be in breach of the conditions of its authorisation or of other law to which it is subject;
- (c) the mechanism for prompt notification to the Bank of England by the competent authority where a central counterparty it is supervising has been granted the right to provide clearing services to clearing members or clients established in the United Kingdom;
- (d) the procedures concerning the coordination of supervisory activities;
- (e) the procedures necessary for the effective monitoring of regulatory and supervisory developments in a third country;
- (f) the procedures for third-country authorities to assure the effective enforcement of decisions adopted by the Bank of England;
- (g) the procedures for third-country authorities to inform the Bank of England promptly of any emergency situations relating to the recognised central counterparty, including developments in financial markets, which may have an adverse effect on market liquidity and the stability of the financial systems of the United Kingdom and the procedures and contingency measures to address such situations.”.

(9) In regulation 17(7) (eligibility for temporary deemed recognition), for “Article 25.5” substitute “Article 25p”.

### **Amendment of the Trade Repositories (Amendment and Transitional Provision) (EU Exit) Regulations 2018**

5. In regulation 4 (interpretation) of the Trade Repositories (Amendment and Transitional Provision) (EU Exit) Regulations 2018(**14**) for “as amended by Regulation (EU) 2019/834 of the

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(13) The heading to regulation 16 is amended by regulation 7 of [S.I. 2020/56](#).

(14) [S.I. 2018/1318](#). Regulation 4 is amended by [S.I. 2019/1416](#).

European Parliament and of the Council of 20 May 2019” substitute “as last amended by Regulation (EU) 2019/2099 of the European Parliament and of the Council of 23 October 2019”.

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

6.—(1) The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019(15) are amended as follows.

(2) In regulation 1(2) (interpretation), in the definition of “EMIR regulation”, for “as amended by Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019” substitute “as last amended by Regulation (EU) 2019/2099 of the European Parliament and of the Council of 23 October 2019”.

(3) For regulation 16(3)(a) (public register) substitute—

“(a) in point (b) for “Article 17” substitute “Article 14 or 15”.”.

(4) Omit regulation 28(4) (procedure for granting and refusing authorisation).

(5) After regulation 32(3) (review and evaluation) insert—

“(3A) In paragraph 3—

(a) in the second subparagraph omit the words from “Upon ESMA’s request,” to the end;

(b) omit the third subparagraph.”.

(6) In regulation 34 (cooperation) after “Articles 23” insert “, 23a”.

(7) In regulation 50(2) (review of models, stress testing and back testing)—

(a) for sub-paragraph (a) substitute—

“(a) for “its competent authority and ESMA” substitute “the Bank of England”.”

(b) after sub-paragraph (b) insert—

“(ba) omit “1b, 1c.”.”

### **Amendment of the Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc.) (EU Exit) Regulations 2019**

7. In regulation 1(4)(g) (interpretation) of the Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc.) (EU Exit) Regulations 2019(16) for “as amended by Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019” substitute “as last amended by Regulation (EU) 2019/2099 of the European Parliament and of the Council of 23 October 2019”.

### **Amendment of the Transparency of Securities Financing Transactions and of Reuse (Amendment) (EU Exit) Regulations 2019**

8. In regulation 7(a) of the Transparency of Securities Financing Transactions and of Reuse (Amendment) (EU Exit) Regulations 2019(17), in the new paragraph (3)(g) to be substituted into Article 3 of Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015, after “Regulation (EU) No 648/2012” insert “as last amended by Regulation (EU) 2019/2099 of the European Parliament and of the Council of 23 October 2019”.

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(15) [S.I. 2019/335](#) and [2019/1416](#).

(16) [S.I. 2019/541](#). Regulation 1 is amended by [S.I. 2019/1416](#).

(17) [S.I. 2019/542](#).

### **Amendment of the Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019**

9. In regulation 4(b)(i) (scope) of the Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019(18), in the words to be inserted into point (c) of paragraph 2 of Article 2 of Regulation (EU) 2016/1011, for “as amended by Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019” substitute “as last amended by Regulation (EU) 2019/2099 of the European Parliament and of the Council of 23 October 2019”.

### **Amendment of the Securitisation (Amendment) (EU Exit) Regulations 2019**

10. In regulation 2 (interpretation) of the Securitisation (Amendment) (EU Exit) Regulations 2019(19), in the definition of “the EMIR regulation” for “as amended by Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019” substitute “as last amended by Regulation (EU) 2019/2099 of the European Parliament and of the Council of 23 October 2019”.

### **Amendment of the Investment Exchanges, Clearing Houses and Central Securities Depositories (Amendment) (EU Exit) Regulations 2019**

11.—(1) The Investment Exchanges, Clearing Houses and Central Securities Depositories (Amendment) (EU Exit) Regulations 2019(20) are amended as follows.

(2) For regulation 8(2)(c)(i) (amendments to Part 18, Chapter 3B: disciplinary measures), substitute—

“(i) in paragraph (a), for “, a recognised CSD or an EEA CSD” substitute “, third country central counterparty or a recognised CSD”;

(3) In regulation 13 (amendments to Schedule 17A: information gathering and investigations), for paragraph (1) substitute—

“(1) In paragraph 12, for the words from “recognised clearing house” to the end substitute “recognised clearing house, third country central counterparty or a recognised CSD”.”

### **Amendment of the Gibraltar (Miscellaneous Amendments) (EU Exit) Regulations 2019**

12.—(1) Regulation 11 (saving for certain financial services legislation relating to Gibraltar) of the Gibraltar (Miscellaneous Amendments) (EU Exit) Regulations 2019(21) is amended as follows.

(2) In paragraph (5), after sub-paragraph (z4)(22), insert—

“(z5) the Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020.”.

(3) In paragraph (7)(d), for “and (z4)” substitute “, (z4) and (z5)”.

### **Amendment of the International Accounting Standards and European Public Limited-Liability Company (Amendment etc.) (EU Exit) Regulations 2019**

13. In paragraph 63 of Schedule 1 (consequential amendments) to the International Accounting Standards and European Public Limited-Liability Company (Amendment etc.) (EU Exit)

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(18) [S.I. 2019/657](#). Regulation 4 is amended by [S.I. 2019/1416](#).

(19) [S.I. 2019/660](#). Regulation 2 is amended by [S.I. 2019/1416](#).

(20) [S.I. 2019/662](#).

(21) [S.I. 2019/680](#).

(22) Paragraphs (5)(z4) and (7)(d) of regulation 11 are inserted by [the Financial Services (Miscellaneous Amendments) (EU Exit) Regulations 2020].



Regulations 2019(23), in sub-paragraph (1), for “as amended by Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019” substitute “as last amended by Regulation (EU) 2019/2099 of the European Parliament and of the Council of 23 October 2019”.

#### **Amendment of the Financial Services (Miscellaneous) (Amendment) (EU Exit) Regulations 2019**

14. In regulation 26 of the Financial Services (Miscellaneous) (Amendment) (EU Exit) Regulations 2019(24), for “as amended by Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019” substitute “as last amended by Regulation (EU) 2019/2099 of the European Parliament and of the Council of 23 October 2019”.

#### **Amendment of the Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment etc., and Transitional Provision) (EU Exit) (No.2) Regulations 2019**

15.—(1) The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment etc., and Transitional Provision) (EU Exit) (No.2) Regulations 2019(25) are amended as follows.

(2) Omit regulation 2 (amendment of the Financial Services and Markets Act 2000).

(3) In regulation 25, after “trade repositories” insert “as amended by Regulation (EU) 2019/2099 of the European Parliament and of the Council of 23 October 2019”.

## **PART 4**

### **Amendment of Regulation (EU) No. 648/2012**

#### **Introduction**

16. Regulation (EU) No. 648/2012 of the European Parliament and Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories is amended by the following provisions of this Part.

#### **Article 15**

17. In paragraph 3 of Article 15 (extension of activities and services)—

(a) in the first subparagraph—

(i) for the words from the beginning to “draft regulatory technical standards” substitute “The Bank of England may make technical standards”;

(ii) omit the words from “and also specifying” to the end;

(b) omit the second and third subparagraphs.

#### **Article 17**

18. In paragraph 3 of Article 17 (procedure for granting and refusing authorisation)—

(a) omit the sentence beginning “Upon receipt”;

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(23) [S.I. 2019/685](#). Paragraph 63 is amended by [S.I. 2019/1416](#).

(24) [S.I. 2019/710](#). Regulation 26 is amended by [S.I. 2019/1416](#).

(25) [S.I. 2019/1416](#).

- (b) omit the words from “and the members of the college” to the end.

### Chapter 3A

19. Omit Chapter 3A (Articles 24a to 24e).

### Article 25: general amendments

- 20.—(1) Article 25 (recognition of a third-country CCP) is amended as follows.

- (2) In paragraph 1—

- (a) for “Union” substitute “United Kingdom”;
- (b) for “ESMA” substitute “the Bank of England”.

- (3) In paragraph 2—

- (a) for the words “ESMA after consulting the authorities referred to in paragraph 3,” substitute “The Bank of England”;
- (b) in point (a) for the words “the Commission has adopted an implementing act” substitute “the Treasury has made regulations”;
- (c) in point (d) for the words “considered” to the end substitute “a high-risk third country within the meaning of regulation 33 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017<sup>(26)</sup>”.

- (4) In the first subparagraph of paragraph 2a—

- (a) for the words from the beginning to “paragraph 3,” substitute “The Bank of England must”;
- (b) for the words “Union or of one or more of its Member States” substitute “United Kingdom”;
- (c) in point (a)—
- (i) for the first two references to “Union” substitute “United Kingdom”;
- (ii) for “Union or on one or more of its Member States” substitute “United Kingdom”;
- (d) in point (a)(i)—
- (i) for “each Union currency” substitute “pounds sterling”
- (ii) for the words “in the Union” to the end substitute “in the United Kingdom, including where they have been identified by the PRA as other systemically important institutions (O-SIIs) in accordance with regulation 29 of the Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014<sup>(27)</sup>; and;”;
- (e) in point (b)(iv) for the words “Union or of one or more of its Member States” substitute “United Kingdom”;
- (f) in points (c) and (d) for “Union” substitute “United Kingdom”;
- (g) in point (d) omit “in financial instruments denominated in Union currencies”;
- (h) in point (e) for “Union or one or more of its Member States” substitute “United Kingdom”.

- (5) For the second subparagraph of paragraph 2a substitute—

“The Bank of England may make technical standards specifying further the criteria set out in the first subparagraph.”;

- (6) In the third subparagraph of paragraph 2a for “ESMA shall” substitute “the Bank of England must”.

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<sup>(26)</sup> S.I. 2017/692, to which there are amendments not relevant to these Regulations.

<sup>(27)</sup> S.I. 2014/894, amended by S.I. 2018/1401.

- (7) In paragraph 2b—
- (a) for “ESMA”, in each place it occurs apart from in point (a), substitute “the Bank of England”;
  - (b) in point (a) for the words from “With regard to the CCP’s compliance” to “Article 24b(1). ESMA” substitute “The Bank of England”;
  - (c) omit point (b);
  - (d) in point (c) for “three working days after service of” substitute “the time specified in”;
  - (e) for point (e) substitute—
    - “(e) the Treasury have not made location regulations under paragraph 2c in relation to the CCP.”.
- (8) Omit paragraph 3.
- (9) In paragraph 4—
- (a) in the first subparagraph for “ESMA” substitute “the Bank of England”;
  - (b) in the second subparagraph—
    - (i) for “ESMA”, in each place it occurs, substitute “the Bank of England”;
    - (ii) omit the final sentence;
  - (c) in the third subparagraph for the words “Within 180 working days” to “ESMA” substitute “Before the end of the relevant period (see paragraph 4A), the Bank of England”;
  - (d) in the subparagraph beginning “ESMA shall publish” for “ESMA” substitute “The Bank of England”.
- (10) After paragraph 4 insert—
- 4A.** In paragraph 4 “the relevant period” means—
- (a) where the applicant CCP has submitted an application before the end of the period of six months beginning with IP completion day, the period of one year beginning with the first day on which—
    - (i) the applicant CCP has submitted a complete application, and
    - (ii) the conditions in paragraph 2(a) and (c) are met, or
  - (b) in any other case, the period of 180 working days beginning with the first day on which—
    - (i) the applicant CCP has submitted a complete application, and
    - (ii) the conditions in paragraph 2(a) and (c) are met.
- 4B.** A CCP must, without undue delay, notify the Bank of England of any material changes affecting the conditions for recognition—
- (a) in point (b) of paragraph 2;
  - (b) in points (a), (c)(ii) and (d) of the first subparagraph of paragraph 2b.”.
- (11) In paragraph 5—
- (a) for the words from “ESMA shall after consulting” to “five years” substitute “The Bank of England must, as it considers appropriate, review the recognition of a CCP established in a third country.”;
  - (b) in the third subparagraph—
    - (i) for “ESMA” substitute, in each place it occurs, “the Bank of England”;
    - (ii) omit “which shall not exceed 18 months”;

- (iii) omit the words from “ESMA may extend” to the end.
- (12) In paragraph 6—
  - (a) in the first subparagraph—
    - (i) for the words from the beginning to “determining” substitute “The Treasury may by regulations specify”;
    - (ii) in point (c) for “third-country legal regimes” substitute “legal regimes of other countries”;
  - (b) omit the second subparagraph.
- (13) After paragraph 6 insert—
 

“**6ZA.** The Bank of England may provide advice to the Treasury in connection with any regulations made or to be made by the Treasury under paragraph 6.”.
- (14) Omit paragraphs 6a and 6b.
- (15) In paragraph 7—
  - (a) for “ESMA” substitute—
    - (i) in the first place it occurs, “The Bank of England”;
    - (ii) in each subsequent place it occurs, “the Bank of England”;
  - (b) in the first subparagraph—
    - (i) for “shall establish” substitute “must take such steps as it considers appropriate to establish”;
    - (ii) for “Such arrangements shall specify at least:” substitute “Such arrangements are to specify such matters as the Bank of England considers appropriate. Without limiting the scope to specify matters, such matters may include:”;
  - (c) in point (a)—
    - (i) omit “, the central banks of issue referred to in point (f) of paragraph 3”;
    - (ii) for “Union” substitute “United Kingdom”;
  - (d) in point (c) for “Union” substitute “United Kingdom”;
  - (e) in point (d) omit the words from “, including the agreement” to the end;
  - (f) in point (f) omit the words from “, in accordance with” to the end;
  - (g) in point (g)—
    - (i) omit the words from “, the third-country CCP college” to “paragraph 3”;
    - (ii) for “Union or one of its Member States” substitute “United Kingdom”;
  - (h) omit point (h);
  - (i) in the final subparagraph—
    - (i) for “Commission”, in the first place it occurs, substitute “Treasury”;
    - (ii) omit the words from “In such a case” to the end.
- (16) In paragraph 8—
  - (a) in the first subparagraph—
    - (i) for the words “ESMA shall develop draft regulatory technical standards” substitute “the Bank of England may make technical standards”;
    - (ii) for the words “provide ESMA” substitute “provide the Bank of England”;
  - (b) omit the second and third subparagraphs.

(17) After paragraph 8 insert—

“**9.** This Article is subject to Part 6 of the Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018(**28**) (which contains transitional provisions).

**10.** In this Article “competent authority” means a regulatory authority which is responsible for the authorisation and supervision of central counterparties in its territory.”.

## Article 25: location regulations

**21.** For paragraph 2c of Article 25 (recognition of a third-country CCP) substitute—

“**2c.** The Treasury may make regulations in respect of a third-country CCP to be known as location regulations.

Location regulations may be made for the purpose of requiring that some or all of the clearing services of the third-country CCP may only be provided to clearing members and trading venues established in the United Kingdom by the CCP after it has been authorised in accordance with Article 14.

The Treasury may only make location regulations—

- (a) having received a recommendation from the Bank of England (see paragraph 2ca);
- (b) following compliance with the procedural requirements of paragraph 2cb.

Where a third-country CCP is already providing clearing services to clearing members or trading venues established within the United Kingdom, the requirement which may be imposed by virtue of the second subparagraph may only come into force after a period of time specified in the location regulations has elapsed (“adaptation period”).

Location regulations including an adaptation period may specify—

- (a) conditions with which the third-country CCP must comply in order to continue to provide clearing services or activities described in the location regulations during the adaptation period;
- (b) measures that must be taken during the adaptation period, in order to limit the potential costs to clearing members and their clients, in particular those established in the United Kingdom.

**2ca.** The Bank of England may recommend that the Treasury make location regulations under paragraph 2c if it considers that a third-country CCP, or some of its clearing services, are of such substantial systemic importance to the United Kingdom that the CCP should not be recognised under paragraph 1.

The recommendation must be in writing.

The recommendation must include advice—

- (a) explaining how compliance with the conditions set out in paragraph 2b would not sufficiently address the financial stability risk for the United Kingdom;
- (b) describing the characteristics of the clearing services provided by the CCP, including the liquidity and physical settlement requirements associated with the provision of such services;

- (c) providing a quantitative technical assessment of the costs and benefits and consequences of a decision not to recognise the CCP to provide certain clearing services or activities, taking into account—
  - (i) the existence of potential alternative substitutes for the provision of the clearing services concerned in the currencies concerned to clearing members, and to the extent the information is available, their clients and indirect clients established in the United Kingdom;
  - (ii) the potential consequences of including the outstanding contracts held at the CCP within the scope of the location direction;
- (d) where relevant, addressing the duration of the adaptation period mentioned in the fourth subparagraph of paragraph 2c and any conditions or measures the Bank of England proposes to be included in the location regulations (see the fifth subparagraph of paragraph 2c).

**2cb.** Before the Treasury make location regulations under paragraph 2c, they must send a statement in writing to the third-country CCP concerned.

The statement must—

- (a) state that the Treasury propose to make location regulations in respect of the CCP;
- (b) provide a summary of the Treasury’s reasons for proposing to make the regulations;
- (c) be accompanied by a copy of the Bank of England’s recommendation given under paragraph 2ca;
- (d) specify a reasonable period within which the CCP may make representations.

The Treasury must have regard to any representations made within the period specified in the statement.

Where the Treasury make location regulations, they must—

- (a) send a copy of the regulations to—
  - (i) the third-country CCP concerned;
  - (ii) the Bank of England;
  - (iii) the Financial Conduct Authority, and
- (b) publish the regulations on their website.”.

## Article 25a

**22.** In Article 25a—

- (a) in paragraph 1—
  - (i) for “ESMA” in first place it occurs, substitute “the Bank of England”;
  - (ii) for “implementing act adopted in accordance with” substitute “regulations made under”;
  - (iii) omit the final sentence;
- (b) in paragraph 3—
  - (i) in the first subparagraph—
    - (aa) for “Commission” substitute “Bank of England”;
    - (bb) for “Union’s” substitute “United Kingdom’s”
    - (cc) for “shall adopt a delegated act” substitute “may make technical standards”;

- (ii) omit the second subparagraph.

## Article 25b

### 23. In Article 25b—

- (a) in each place where it occurs, for “ESMA” substitute “The Bank of England”;
- (b) in paragraph 1—
  - (i) in the first subparagraph, omit the final sentence;
  - (ii) omit the third subparagraph;
- (c) in paragraph 2—
  - (i) omit “or where ESMA receives a notification pursuant to the third subparagraph of paragraph 1”;
  - (ii) for “(2), (3) and (4)” substitute “(2) and (3)”;
- (d) for paragraph 3 substitute—

“3. The Bank of England shall carry out assessments of the resilience of recognised Tier 2 CCPs to adverse market developments.”

## Articles 25c to 25o

### 24. Omit Articles 25c to 25o.

## Article 25p

### 25. In Article 25p—

- (a) for the opening words in the first subparagraph of paragraph 1 substitute—

“1. The Bank of England may withdraw a recognition decision adopted in accordance with Article 25 where:”;
- (b) in paragraph 1, in the first subparagraph—
  - (i) in point (c)—
    - (aa) for “ESMA” substitute “the Bank of England”;
    - (bb) omit “within an appropriately set timeframe of up to a maximum of six months”;
  - (ii) in point (d), in each place where it occurs, for “ESMA” substitute “the Bank of England”;
  - (iii) in point (e) substitute—

“(e) the regulations made under Article 25(6) have been revoked, or the conditions specified in the regulations are no longer satisfied.”;
- (c) in paragraph 1, in the second subparagraph, for “ESMA” substitute “The Bank of England”;
- (d) in paragraph 1, in the third subparagraph, for “ESMA” substitute “the Bank of England”;
- (e) in paragraph 2—
  - (i) for the first subparagraph—
    - (aa) for “ESMA” substitute “the Bank of England”;

- (bb) for the words from “measures under points (a),” to the end, substitute “disciplinary measures in accordance with Chapter 3B of Part 18 of the Financial Services and Markets Act 2000”;
- (ii) for the second subparagraph, substitute—
  - “If the Bank of England determines that remedial action has not been taken or that the action taken is not appropriate, the Bank of England shall withdraw the recognition decision.”;
- (f) in paragraph 3, for “ESMA” substitute “The Bank of England”;
- (g) omit paragraph 4.

#### **Article 25q**

- 26. Omit Article 25q.

#### **Article 32**

- 27. In Article 32, paragraph 1, omit the fourth subparagraph.

#### **Article 35**

- 28. In Article 35, paragraph 1, in the second subparagraph omit the final sentence.

#### **Article 49**

- 29. In Article 49—
  - (a) in paragraph 1a—
    - (i) in both places it occurs, for “competent authority and ESMA” substitute “Bank of England”;
    - (ii) omit “each”;
  - (b) omit paragraphs 1b and 1c;
  - (c) in paragraph 1d, for “competent authority and ESMA shall each inform the CCP and each other” substitute “Bank of England shall inform the CCP”;
  - (d) in paragraph 1e—
    - (i) for “its competent authority and ESMA” substitute “the Bank of England”;
    - (ii) for “competent authority, in agreement with ESMA,” substitute “Bank of England”;
- (2) for paragraph 5 substitute—
  - “(5) The Bank of England may make technical standards specifying the conditions under which changes to the models and parameters referred to in paragraph 1 are significant.”.

#### **Article 81**

- 30. In Article 81(3)(29) at the end insert—
  - “,
  - (g) the body known as the Panel on Takeovers and Mergers.”.

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(29) Regulation 3 of S.I. 2018/1318 (as amended by regulation 8 of S.I. 2019/1416) substitutes points (a) to (c) for points (a) to (q) of Article 81(3), regulation 56(15) of S.I. 2019/335 inserts points (d) and (e) into Article 81(3) and regulation 33(a) of S.I. 2019/1416 inserts point (f) into Article 81(3).



**Article 89**

31. In Article 89, omit paragraphs 3a to 3c.

**Annexes III and IV**

32. Omit Annexes III and IV.

Date

*Name*  
*Name*  
Two of the Lords Commissioners of Her  
Majesty's Treasury

**Draft Legislation:** This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: *The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 No. 646*

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations are made in exercise of the powers in section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 (c.16) in order to address failures of retained EU law to operate effectively (see in particular paragraphs (a), (b) and (g) of section 8(2) of that Act) and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

These Regulations are made following the amendment of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (“the EMIR regulation”) by Regulation (EU) 2019/2099 of the European Parliament and of the Council of 23 October 2019 (OJ L 322/1, 12.12.2019) (“the EMIR CCP Supervision regulation”).

The Regulations make amendments to primary legislation, existing regulations made under section 8 of the European Union (Withdrawal) Act 2018 and the EMIR regulation to take account of the fact that the EMIR regulation has been amended by the EMIR CCP Supervision regulation.

Part 2 amends the Financial Services and Markets Act 2000 (c.8).

Part 3 amends subordinate legislation.

Part 4 amends the EMIR regulation.

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.