
STATUTORY INSTRUMENTS

2018 No. 1403

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

PART 3

Amendment of secondary legislation: European Union (Withdrawal) Act 2018

CHAPTER 3

The Data Reporting Services Regulations 2017

Temporary authorisation

20. After regulation 12, insert—

“Deemed authorisation to provide a data reporting service

12A.—(1) A person to whom this regulation applies is to be treated, for the period determined in accordance with regulation 12C, as if that person is authorised to provide a data reporting service under these Regulations.

(2) This regulation applies to a person—

(a) who immediately before exit day—

(i) is established in an EEA state other than the United Kingdom;

(ii) is authorised in that EEA state in accordance with Title V of the markets in financial instruments directive or is permitted to provide a data reporting service in accordance with Article 59.2 of that directive; and

(b) who has taken the steps set out in paragraph (3).

(3) The steps referred to in this paragraph are that the person has, on or after the day on which this regulation comes into force and no later than 30 working days before the day on which exit day occurs, notified the FCA that the person wishes to be treated in accordance with paragraph (1) by—

(a) making an application for authorisation to provide a data reporting service under these Regulations; or

(b) making a statement to that effect and tendering the fee (if any) prescribed under paragraph 23 of Schedule 1ZA to the Act.

(4) For the purposes of paragraph (3)(b), the statement must—

(a) be made in such manner, and during such period, as the FCA may direct; and

(b) contain, or be accompanied by, such other information as the FCA may direct.

(5) The FCA’s powers under these Regulations are exercisable in respect of a person to whom this regulation applies as they are in respect of a person who is authorised to provide

a data reporting service under these Regulations, in particular in relation to the variation or cancellation of an authorisation to provide such a service.

- (6) The power to give directions under this regulation includes the power—
 - (a) to give different directions in relation to different statements or categories of statements;
 - (b) to vary or revoke previous directions.

Regulator response

12B.—(1) Within 28 days beginning with the date of receipt of a notification made in accordance with regulation 12A(3)(a), the FCA must—

- (a) if it considers that the requirements of regulation 7 have been satisfied, confirm in writing to the person making the application that it constitutes a valid notification;
- (b) if it considers that those requirements are not satisfied, confirm in writing to the person making the application—
 - (i) that it does not constitute a valid application, and
 - (ii) the details of any requirements that have not been satisfied.

(2) Within 28 days beginning with the date of receipt of a notification made in accordance with regulation 12A(3)(b), the FCA must—

- (a) if it considers that the steps in regulation 12A(3) have been taken (in accordance with any direction), confirm in writing to the person making the statement that it constitutes a valid notification;
- (b) subject to paragraph (3), if it considers that the steps in regulation 12A(3) have not been taken (in accordance with any direction), confirm in writing to the person making the statement that—
 - (i) the notification was not valid; and
 - (ii) as applicable, the steps that have not been taken, or the directions that have not been complied with.

(3) Within 28 days beginning with the day of receipt of a notification made in accordance with regulation 12A(3)(b), the FCA may, if—

- (a) it considers that a direction given in accordance with regulation 12A(4) has not been complied with; and
- (b) it would not be possible or practicable for the applicant to comply with the direction in time,

waive the requirement to comply with the direction and confirm in writing to the person submitting the statement that it nevertheless constitutes a valid notification.

Period during which regulation 12A is to apply

12C.—(1) For the purpose of regulation 12A(1), the period is one that begins with exit day and ends—

- (a) after one year beginning with the day on which exit day occurs, or
- (b) if earlier, with a day determined as follows.

(2) Paragraph (3) applies to a person who has applied for authorisation to provide a data reporting service under these Regulations on or after the date on which this regulation comes into force, and not withdrawn that application.

- (3) Where this paragraph applies—
 - (a) if the application is granted, the period ends with the day before the date stated in the written notice (issued in accordance with regulation 10(6));
 - (b) if the application is refused, the period ends with the day before the day stated in the decision notice (issued in accordance with regulation 10(9)(c)).
- (4) Paragraph (5) applies to a person who has not applied for authorisation to provide a data reporting service under these Regulations on or after the date on which this regulation comes into force (or has made such an application but withdrawn it without submitting another).
- (5) Where this paragraph applies, the period ends with the day before the day on which the decision notice (issued in accordance with regulation 11) takes effect.”