
STATUTORY INSTRUMENTS

2019 No. 1416

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

PART 4

AMENDMENT OF RETAINED DIRECT EU LEGISLATION

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

25. 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 is amended as follows.

26. In Article 2, for point (10) substitute—

“(10) ‘pension scheme arrangement’ means:

- (a) an occupational pension scheme within the meaning of section 1(1) of the Pension Schemes Act 1993⁽¹⁾ which has its main administration in the United Kingdom, including the trustees and managers of such a scheme, and any legal entity set up for the purpose of investment of such a scheme acting solely and exclusively in its interest;
- (b) occupational retirement provision businesses of insurance and reinsurance undertakings within the meaning of section 417 of FSMA, provided that all assets and liabilities corresponding to the businesses are ring-fenced, managed and organised separately from the other activities of the insurance or reinsurance undertaking, without any possibility of transfer;
- (c) any other authorised and supervised entities, or arrangements, established in the United Kingdom, provided that:
 - (i) they are recognised under the law applying to any part of the United Kingdom; and
 - (ii) their primary purpose is to provide retirement benefits;”.

27. In Article 4a—

- (a) in paragraph 1, in the second sub-paragraph, for point (a) substitute—

“(a) immediately notify the FCA of that fact and, where relevant, the period used for the calculation;”;
- (b) in paragraphs 2 and 3, for “relevant competent authority” wherever it appears substitute “FCA”;
- (c) in paragraph 3, in the fourth sub-paragraph, after “shall” insert “seek to”.

28. For Article 6a, substitute—

“Article 6a

Suspension of the clearing obligation

1. The Bank of England may, with the consent of the Treasury, direct that the clearing obligation referred to in Article 4(1) be suspended for specific classes of OTC derivatives or for a specific type of counterparty if one of the following conditions is met:

- (a) the specific classes of OTC derivatives are no longer suitable for central clearing in accordance with the criteria referred to in the first sub-paragraph of Article 5(4) and in Article 5(5);
- (b) a CCP is likely to cease clearing those specific classes of OTC derivatives and no other CCP is able to clear those specific classes of OTC derivatives without interruption;
- (c) the suspension of the clearing obligation for those specific classes of OTC derivatives or for a specific type of counterparty is necessary to avoid or address a serious threat to financial stability or to the orderly functioning of financial markets in the United Kingdom and the suspension is proportionate to those aims.

The Bank of England must inform the FCA of its intention to make a direction as soon as is reasonably practicable after making the decision to make a direction.

2. The FCA may inform the Bank of England that, in its opinion, there is evidence that one of the conditions for suspension of the clearing obligation set out in paragraph 1 has been met. The Bank shall consider the FCA’s information, and respond as appropriate within a reasonable time from the receipt of that information.

3. A direction under paragraph 1 to suspend the clearing obligation for specific classes of OTC derivatives shall also trigger a suspension of the trading obligation laid down in Article 28(1) and (2) of Regulation (EU) No 600/2014 for the same classes of OTC derivatives that are subject to the suspension of the clearing obligation.

4. The Bank shall set the period for the suspension of the clearing obligation and the trading obligation. The suspension shall be for a period of no more than twelve months beginning with the day the decision was published on the Bank of England’s website in accordance with paragraph 5.

5. A direction to suspend the clearing and trading obligations must be published on the websites of the Bank of England and the FCA and be included within the public register referred to in Article 6. The FCA must also update the register of derivatives that are subject to the trading obligation referred to in Article 34 of Regulation (EU) No 600/2014.”.

29.—(1) Article 9 is amended as follows.

(2) In paragraph 1—

- (a) in the first sub-paragraph, omit “in accordance with paragraphs 1a to 1f of this Article”;
- (b) in the third sub-paragraph, for “Union” substitute “United Kingdom”;
- (c) in the fourth sub-paragraph—
 - (i) for “their competent authorities” substitute “the FCA”;
 - (ii) for “notified competent authorities do” substitute “FCA does”;
- (d) at the end insert—

“For the purposes of this Article, counterparties shall be considered to be included in the same consolidation if they both meet either of the criteria set out in Article 3(3).”.

(3) In paragraph 6—

(a) for the opening words in the first sub-paragraph, substitute—

“6. The Bank of England may make technical standards for CCPs, and the FCA may make technical standards in all other cases specifying:”;

(b) omit the second, third and fourth sub-paragraphs.

30. In Article 10, in paragraph 2a, after “shall” insert “seek to”.

31. In Article 76a—

(a) in paragraph 1—

(i) for “Union” substitute “United Kingdom”;

(ii) for “the Commission has adopted an implementing act” substitute “the Treasury has made regulations”;

(b) in paragraph 2, in the opening words, for the words from “Commission” to “determining” substitute “Treasury may by regulations determine”.

32. In Article 80, in paragraph 5a, omit “counterparties that are not required to report the details of their OTC derivative contracts pursuant to Article 9(1a) to (1d) and”.

33. In Article 81—

(a) in paragraph 3(2), at the end insert—

“(f) the relevant authorities of a third country in respect of which the Treasury has made regulations under Article 76a.”;

(b) in paragraph 5—

(i) in the first sub-paragraph, from the beginning to “regulatory” substitute “The FCA may make”;

(ii) omit the second, third and fourth sub-paragraphs.

34. In Article 89—

(a) in paragraph 1, in the first sub-paragraph—

(i) for “18 June 2021” substitute “18 June 2023”; and

(ii) after “pension scheme arrangements” insert “or EEA pension scheme arrangements”;

(b) at the end of paragraph 1 insert—

“The Treasury may make regulations extending the exemption referred to in the first sub-paragraph by a period of up to two years at a time where it concludes that no appropriate technical solution has been developed for the transfer by pension scheme arrangements and EEA pension scheme arrangements of cash and non-cash collateral as variation margins and that the adverse effect of centrally clearing derivative contracts on the retirement benefits of future pensioners remains.

In this paragraph, and in paragraph 2, “EEA pension scheme arrangement” means a pension scheme arrangement as defined by Article 2(10) of Regulation (EU) No 648/2012

(2) Regulation 3 of S.I. 2018/1318 (as amended by regulation 8 of this instrument) substitutes paragraphs (a) to (c) for paragraphs (a) to (q) in Article 81(3), and regulation 56(15) of S.I. 2019/335 inserts paragraphs (d) and (e) into Article 81(3).

of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories as it has effect in EU law.”;

(c) for paragraph 2 substitute—

“2. This paragraph applies to:

- (a) pension scheme arrangements that fall within point (c) of Article 2(10); and
- (b) EEA pension scheme arrangements that fall within points (c) or (d) of Article 2(10) 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 as it has effect in EU law.

For the pension scheme arrangements and EEA pension scheme arrangements to which this paragraph applies, the exemption referred to in the first sub-paragraph of paragraph 1 shall only apply where it is granted by the FCA for types of entities or types of arrangements. The FCA shall only grant an exemption where it is satisfied that the type of entities or the type of arrangements fall within the description of those arrangements to which this paragraph applies, and that they encounter difficulties in meeting the variation margin requirements. The FCA must grant or refuse an exemption within 30 calendar days of receipt of a request for an exemption.

The FCA shall publish on its website a list of types of entities and types of arrangements which have been granted an exemption in accordance with this paragraph.”.