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*Status: Point in time view as at 11/07/2023. This version of this Instrument contains provisions that are prospective.*

*Changes to legislation: The Financial Markets and Insolvency (Amendment and Transitional Provision)*

*(EU Exit) Regulations 2019 is up to date with all changes known to be in force on or before 11 April*

*2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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## STATUTORY INSTRUMENTS

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# 2019 No. 341

## EXITING THE EUROPEAN UNION FINANCIAL SERVICES

### The Financial Markets and Insolvency (Amendment and Transitional Provision) (EU Exit) Regulations 2019

*Made - - - - 21st February 2019  
Coming into force in accordance with regulation 1(2)  
and (3)*

<sup>M1M2</sup>The Treasury, in exercise of the powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 , and section 2(2) of the European Communities Act 1972 , make the following Regulations.

<sup>M3</sup>The Treasury are designated for the purpose of section 2(2) of the European Communities Act 1972 in relation to financial services.

A draft of these Regulations has been laid before, and 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 and paragraph 2(2) of Schedule 2 to the European Communities Act 1972.

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#### Modifications etc. (not altering text)

- C1** Regulations modified in part (31.12.2020) by [The Gibraltar \(Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/680\)](#), regs. 1(2), **11(1)(4)(5)** (with reg. 11(8)-(10)) (as amended by S.I. 2020/1301, regs. 1, 3, **Sch. para. 40(f)**); 2020 c. 1, **Sch. 5 para. 1(1)**
- C2** Regulations: power to modify conferred (11.7.2023) by [Financial Services and Markets Act 2023 \(c. 29\)](#), ss. 3, 86(3), **Sch. 1 Pt. 2**; S.I. 2023/779, reg. 2(d)
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#### Marginal Citations

- M1** 2018 c.16.
- M2** 1972 c.68. Section 2(2) was amended by section 27 of the [Legislative and Regulatory Reform Act 2006 \(c.51\)](#) and by section 3 of, and the Schedule to, the [European Union \(Amendment\) Act 2008 \(c.7\)](#). By virtue of the amendment of section 1(2) by section 1 of the [European Economic Area Act 1993 \(c.51\)](#), regulations may be made under section 2(2) of the European Communities Act 1972 to implement obligations of the United Kingdom created or arising by or under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073) and the Protocol adjusting that Agreement signed at Brussels on 17th March 1993 (Cm 2183). The European Communities Act 1972 is repealed with effect from exit day by section 1 of the European Union (Withdrawal) Act 2018.

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**M3** [S.I. 2012/1759, article 4.](#)

## PART 1

### Introduction

#### Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Financial Markets and Insolvency (Amendment and Transitional Provision) (EU Exit) Regulations 2019.

(2) This regulation and Part 4 come into force on the day after the day on which these Regulations are made.

(3) The other provisions of these Regulations come into force on exit day.

(4) In these Regulations—

“the 2000 Act” means the Financial Services and Markets Act 2000 <sup>M4</sup>;

“the 1999 Regulations” means the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 <sup>M5</sup>.

#### Commencement Information

**II** Reg. 1 in force at 22.2.2019, see reg. 1(2)

#### Marginal Citations

**M4** [2000 c.8.](#)

**M5** [S.I. 1999/2979.](#)

## PART 2

### Amendment of primary legislation

#### Part 7 of the Companies Act 1989

2.—(1) The Companies Act 1989 <sup>M6</sup> is amended as follows.

(2) In section 170A <sup>M7</sup> (EEA central counterparties and third country central counterparties)—

(a) in the heading, for “EEA central counterparties and third” substitute “Third”;

(b) in subsection (1)—

(i) omit paragraphs (b) and (c);

(ii) in paragraph (e), for “an EEA central counterparty or” substitute “a”;

(c) in subsection (2), omit “an EEA central counterparty or”;

(d) in subsection (3)—

(i) in subsection (1) of the substituted section 157 (change in default rules), for “An EEA central counterparty or a” substitute “A”;

(ii) in subsection (3) of the substituted section 157, for “an EEA central counterparty or” substitute “, a”;

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- (e) in subsection (4), omit “an EEA central counterparty or”;
- (f) in subsection (5), for “an EEA central counterparty or” substitute “ a ”.
- (3) In section 170B <sup>M8</sup> (EEA central counterparties and third country central counterparties: procedure)—
  - (a) in the heading, for “EEA central counterparties and third” substitute “ Third ”;
  - (b) in subsection (1), for “An EEA central counterparty or” substitute “ A ”;
  - (c) in subsections (5), (9), and (10) omit “EEA central counterparty or” in each place it occurs;
  - (d) in subsection (11), omit “, the EBA or ESMA”.
- (4) In section 170C <sup>M9</sup> (EEA CSDs and third country CSDs)—
  - (a) in the heading, for “EEA CSDs and third” substitute “ Third ”;
  - (b) omit “an EEA CSD or ” in each place it occurs.
- (5) In section 176(2)(aa) <sup>M10</sup> (power to make provision about certain other charges), omit “an EEA CSD or”.
- (6) In section 183(3) <sup>M11</sup> (insolvency proceedings in other jurisdictions), omit the words “or Regulation” to the end.
- (7) In section 190(1) <sup>M12</sup> (minor definitions), in the definition which begins “EEA CSD”—
  - (a) omit “ “EEA CSD” ”;
  - (b) before “and” insert “ , “third country central counterparty” ”.
- (8) In section 191 <sup>M13</sup> (index of defined expressions), in the table—
  - (a) omit the entry for “EEA CSD”;
  - (b) insert at the appropriate place—

“third country central counterparty

Section 190(1)”.

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#### Commencement Information

- I2** Reg. 2 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(3\)](#)

#### Marginal Citations

- M6** [1989 c.40](#).
- M7** Section 170A was inserted by [S.I. 2013/504](#), amended by [S.I. 2013/1908](#) and [S.I. 2017/1064](#).
- M8** Section 170B was inserted by [S.I. 2013/504](#).
- M9** Section 170C was inserted by [S.I. 2017/1064](#).
- M10** Section 176(2)(aa) was inserted by [S.I. 2017/1064](#).
- M11** Section 183(3) was amended by [S.I. 2001/3929](#) and [S.I. 2014/2947](#).
- M12** The definition which begins “EEA CSD” was amended by [S.I. 2017/1064](#).
- M13** Section 191 was amended by [S.I. 2013/504](#) and [S.I. 2017/1064](#).

### The Banking Act 2009

3.—(1) The Banking Act 2009 <sup>M14</sup> is amended as follows.

(2) In section 48D(1) <sup>M15</sup> (general interpretation of section 48B), for the definition of “designated settlement system” substitute—

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““designated settlement system” means a system which is designated in accordance with the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979);”.

- (3) In section 255 (regulations about financial collateral arrangements)—
- (a) in subsection (3)—
- (i) omit paragraph (a);
- (ii) in paragraph (b), for “provision required in connection with the Directive, and” substitute “ doing things done or purported to be done by the Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003/3226), but ”;
- (b) in subsection (4)(h), for “Directive” substitute “ Financial Collateral Arrangements (No. 2) Regulations 2003 ”.

#### Commencement Information

- I3** Reg. 3 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(3\)](#)

#### Marginal Citations

- M14** [2009 c.1.](#)
- M15** S.48D was inserted by the Financial Services (Banking Reform) Act [2013 c.33, section 17\(1\), Schedule 2, Part 1, paragraphs 1](#) and 4.

## PART 3

### Amendment of secondary legislation

#### The 1999 Regulations

4. The 1999 Regulations are amended in accordance with regulations 5 to 10.

#### Commencement Information

- I4** Reg. 4 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(3\)](#)

#### Interpretation

- 5.—(1) Regulation 2 (interpretation) is amended as follows.
- (2) In paragraph (1)—
- (a) for the definition of “central bank” substitute—
- ““central bank” means—
- (a) the Bank of England; or
- (b) any central bank (or other monetary authority) of a country or territory outside the United Kingdom that is a central bank (or other monetary authority) of an EEA state (including the European Central Bank) or a member of the Bank for International Settlements (including the Bank for International Settlements), as may be notified by the Bank of England to the Treasury from time to time;”;
- (b) for the definition of “credit institution” substitute—

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““credit institution” means a body corporate or unincorporated association whose head office is in the United Kingdom and whose business is to take deposits or other repayable funds from the public and to grant credits for its own account;”;

(c) for the definition of “designated system” substitute—

““designated system” means—

(a) a system which is declared by a designation order for the time being in force to be a designated system for the purposes of these Regulations; or

(b) a system which has temporary designation in accordance with Part 4 of the Financial Markets and Insolvency (Amendment and Transitional Provision) (EU Exit) Regulations 2019;”;

(d) omit the definition of “ESMA”;

(e) in the definition of “institution”—

(i) for sub-paragraph (aa) substitute—

“(aa) an electronic money institution within the meaning of regulation 2(1) of the Electronic Money Regulations 2011<sup>M16</sup>;”;

(ii) in sub-paragraph (ab) omit “, or a person whose head office, registered office or place of residence, as the case may be, is outside the United Kingdom and whose functions correspond to those of such an institution”;

(iii) for paragraph (b) substitute—

“(b) an investment firm as defined in Article 2.1A of Regulation (EU) No. 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012;”;

(iv) for sub-paragraph (d), substitute—

“(d) any undertaking whose head office, registered office or place of residence is outside the United Kingdom and whose functions correspond to those of a credit institution, an electronic money institution, an authorised payment institution, a small payment institution, or an investment firm as defined in sub-paragraphs (a), (aa), (ab), and (b) respectively above; or”;

(f) for the definition of “securities” substitute—

““securities” means (except for the purposes of the definition of “charge”) any instruments referred to in Part 1 of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001<sup>M17</sup>;”;

(g) in the appropriate place, insert new definitions as follows—

““insolvency proceedings” means any collective measure provided for in the law applicable within the United Kingdom or any part of the United Kingdom, or a third country, either to wind up the participant or to reorganise it, where such measure involves the suspending of, or imposing limitations on, transfers or payments;”;

““system” means a formal arrangement—

(a) between two or more participants, without counting a settlement agent, a central counterparty, a clearing house or an indirect participant, with common rules and standardised arrangements for the clearing, whether or not through a central counterparty, or execution of transfer orders between the participants; and

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(b) governed by the law of a country or territory chosen by the participants; the participants may, however, only choose the law of a country or territory in which at least one of them has its head office;”;

““third country” means a country or territory other than the United Kingdom;”.

(3) In paragraph (2A) <sup>M18</sup>—

(a) omit “under the recovery and resolution directive”;

(b) in sub-paragraph (a) for the words “a contract to which that undertaking is a party” substitute “the rules of the system in which the undertaking is a participant”.

[<sup>F1</sup>(c) in sub-paragraph (b), for the word “contract” substitute “rules”.]

(4) In paragraph (2B) <sup>M19</sup>, omit sub-paragraph (b).

(5) Omit paragraph (3).

(6) In paragraph (5), insert a sub-paragraph (d) as follows—

“(d) section 121 of, and Schedule 6 to, the Financial Services (Banking Reform) Act 2013 <sup>M20</sup>”.

(7) Insert a new paragraph (6) as follows—

“(6) For the purposes of these Regulations—

(a) a reference to a system governed by the law of the United Kingdom is a reference to a system of which the governing law is the law of England and Wales, Northern Ireland, or Scotland;

(b) a reference to a system being designated in Gibraltar means designated under a Gibraltar law corresponding to these Regulations;

(c) a participant is regarded as established in the United Kingdom if its head office, registered office or place of residence is in the United Kingdom or if it has a branch in the United Kingdom (within the meaning of section 1046(3) of the Companies Act 2006) <sup>M21</sup>”.

(8) After new paragraph (6) insert—

“(7) For the purposes of sub-paragraph (b) of the definition of “central bank”, the designating authority must publish on its website a list of central banks.”.

#### Textual Amendments

**F1** Reg. 5(3)(c) inserted (31.12.2020 immediately before IP completion day) by [The Financial Services \(Miscellaneous\) \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/710\)](#), regs. 1(2), **20(2)**; 2020 c. 1, Sch. 5 para. 1(1)

#### Commencement Information

**I5** Reg. 5 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(3\)](#)

#### Marginal Citations

**M16** [S.I. 2011/99](#).

**M17** [S.I. 2001/544](#). Schedule 2 was substituted by [S.I. 2006/3384](#), **Part 2 article 29**.

**M18** Paragraph (2A) was inserted by [S.I. 2014/3348](#).

**M19** Paragraph (2B) was inserted by [S.I. 2014/3348](#).

**M20** [2013 c.33](#).

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M21 2006 c.46.

## Designated systems

- 6.—(1) Omit regulation 4(6) (grant and refusal of designation).
- (2) In regulation 6 (certain bodies deemed to satisfy requirements for designation)—
- (a) in paragraph (1), omit “, an EEA central counterparty” and “, an EEA CSD”;
  - (b) in paragraph (3), omit “ “EEA central counterparty” ,” and “, “EEA CSD””.
- (3) In regulation 8(1)(b) (undertakings treated as institutions), omit “and through which securities transfer orders are effected”.
- (4) Regulation 10 (provision of information by designated systems) is amended as follows—
- (a) in paragraph (1), after the first reference to “designated system” insert “ governed by the law of the United Kingdom ”;
  - (b) after paragraph (1), insert—
    - “(1A) The system operator of a designated system governed by the law of a third country must, when that system is declared to be a designated system—
    - (a) provide to the designating authority in writing a list of any participants in the designated system that are established in the United Kingdom (including any indirect participants in the designated system that are established in the United Kingdom); and
    - (b) give written notice to the designating authority of any amendment to that list within 7 days of such amendment.”;
  - (c) in paragraph (4), after the first reference to “designated system” insert “ governed by the law of the United Kingdom ”;
  - (d) after paragraph (4A), insert—
    - “(4B) When the system operator of a designated system governed by the law of a third country amends, revokes or adds to its default arrangements, it must within 7 days give written notice to the designating authority of the amendment, revocation or addition.”;
  - (e) in paragraph (5), after the first reference to “designated system” insert “ governed by the law of the United Kingdom ”.

### Commencement Information

**I6** Reg. 6 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(3\)](#)

## Modification of the law of insolvency

7. For regulation 13(2)(b) (modifications of the law of insolvency) substitute—
- “(b) insolvency proceedings in respect of a provider of collateral security, in so far as the proceedings affect the rights of the collateral-taker; and”.

### Commencement Information

**I7** Reg. 7 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(3\)](#)

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## General

- 8.—(1) In regulation 20 (transfer order entered into designated system following insolvency)—
- (a) after paragraph (1)(a) insert—
    - “(aa) the appointment of an administrator under paragraph 14 or paragraph 22 of Schedule B1 to the Insolvency Act 1986<sup>M22</sup> has taken effect;”;
  - (b) in paragraphs (2)(a) and 3, after “paragraph (1)(a),” insert “ (aa), ”;
  - (c) in paragraph (4)(a), omit “, EEA central counterparty”;
  - (d) in paragraph (5)(a), omit “, “EEA central counterparty””.
- (2) In regulation 22 (notification of insolvency order or passing of resolution for creditors' voluntary winding up)—
- (a) in paragraph (2)—
    - (i) in sub-paragraph (b), after “protected trust deed,” insert “ or the appointment of an administrator taking effect ”;
    - (ii) in the words following sub-paragraph (b), omit “, the Board, ESMA and other EEA states”;
  - (b) omit paragraph (3).
- (3) In regulation 23 (applicable law relating to securities held as collateral security)—
- (a) in sub-paragraph (a), for the words “a system operator”, to the end, substitute “ or a system operator, in each case in a system designated for the purposes of these Regulations or designated in Gibraltar, or a central bank (including any nominee, agent or third party acting on behalf of the participant, the system operator or the central bank), and ”;
  - (b) in paragraph (b), omit “located in an EEA State”;
  - (c) for the text following paragraph (b), substitute—
 

“the rights of that person as a holder of collateral security in relation to those securities are governed by the domestic law of the country or territory or, where appropriate, the law of the part of the country or territory, where the register, account, or centralised deposit system is maintained.”.
- (4) In regulation 24 (applicable law where insolvency proceedings are brought)—
- (a) for “participants” substitute “ participates ”;
  - (b) for “the Settlement Finality Directive” substitute “ these Regulations or designated in Gibraltar ”.
- (5) In regulation 25(3) (insolvency proceedings in other jurisdictions) omit the words “or Regulation” to the end.
- (6) In regulation 26 (systems designated in other EEA States and Gibraltar)—
- (a) for the heading, substitute “ Systems designated in Gibraltar ”;
  - (b) for paragraph (2)(a), substitute—
 

“(a) “equivalent overseas order” means an order having the like effect as a transfer order which is effected through a system designated in Gibraltar and which is governed by the law of Gibraltar; and”;
  - (c) in paragraph (2)(b)
    - (i) omit the “or” in paragraph (i);
    - (ii) omit paragraph (ii).



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#### Commencement Information

**I8** Reg. 8 in force at 31.12.2020 on IP completion day (in accordance with 2020 c. 1, **Sch. 5 para. 1(1)**), see **reg. 1(3)**

#### Marginal Citations

**M22** 1986 c.45.

### Transitional provision for orders made before exit day

9. After regulation 26 insert—

#### “Applicable law for orders made and collateral provided before [<sup>F2</sup>IP completion day]

27.—[<sup>F3</sup>(1)] After [<sup>F2</sup>IP completion day] the provisions of these Regulations as they were in force immediately before [<sup>F2</sup>IP completion day] continue to apply to—

- (a) transfer orders entered into a designated system and collateral security provided, prior to [<sup>F2</sup>IP completion day];
- (b) equivalent overseas orders entered, prior to [<sup>F2</sup>IP completion day], into a system designated for the purposes of the Settlement Finality Directive in an EEA state or designated in Gibraltar; and
- (c) equivalent overseas security provided prior to [<sup>F2</sup>IP completion day].

[<sup>F4</sup>(2) Expressions used in sub-paragraphs (a) to (c) above have the meanings given to them in these Regulations as they were in force immediately before IP completion day.”]

#### Textual Amendments

**F2** Words in reg. 9 substituted (30.12.2020) by [The Financial Services and Economic and Monetary Policy \(Consequential Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1301\)](#), regs. 1, 3, **Sch. para. 23(a)**

**F3** Word in reg. 9 inserted (31.12.2020 immediately before IP completion day) by [The Financial Services \(Miscellaneous\) \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/710\)](#), regs. 1(2), **20(3)(a)**; 2020 c. 1, **Sch. 5 para. 1(1)**

**F4** Words in reg. 9 inserted (31.12.2020 immediately before IP completion day) by [The Financial Services \(Miscellaneous\) \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/710\)](#), regs. 1(2), **20(3)(b)** (as amended by [S.I. 2020/1301](#), regs. 1, 3, **Sch. para. 43(e)**); 2020 c. 1, **Sch. 5 para. 1(1)**

#### Commencement Information

**I9** Reg. 9 in force at 31.12.2020 on IP completion day (in accordance with 2020 c. 1, **Sch. 5 para. 1(1)**), see **reg. 1(3)**

### Amendments to the Schedule

10. In the Schedule—

- (a) omit paragraph 1(1);
- [<sup>F5</sup>(b) in paragraph 5(2)—

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- (i) for the first reference to “the system” substitute “a system governed by the law of the United Kingdom”;
- (ii) after “institution” insert “whose head office is in the United Kingdom”;
- (c) in paragraph 5(3)(a), for “the Settlement Finality Directive” substitute “these Regulations”;
- (d) in paragraph 5(4)—
  - [<sup>F6</sup>(ai) for the first reference to “the system” substitute “a system governed by the law of the United Kingdom”;
  - (i) after “participant” insert “established in the United Kingdom”;
  - (ii) omit the “or” at the end of sub-paragraph (a);
  - (iii) at the end of sub-paragraph (b) insert “or” and insert a new sub-paragraph (c) as follows—
    - “(c) the appointment of an administrator under paragraph 14 or paragraph 22 of Schedule B1 to the Insolvency Act 1986 taking effect.”;
  - [<sup>F7</sup>(iv)] for the text following the new sub-paragraph (c) substitute—
    - “to notify forthwith both the system and the designating authority that such a resolution has been passed, that such a trust deed has become a protected trust deed or, as the case may be, that such appointment has taken effect.”.

#### Textual Amendments

- F5** Reg. 10(b) substituted (31.12.2020 immediately before IP completion day) by [The Financial Services \(Miscellaneous\) \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/710\)](#), regs. 1(2), **20(4)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F6** Reg. 10(d)(ai) inserted (31.12.2020 immediately before IP completion day) by [The Financial Services \(Miscellaneous\) \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/710\)](#), regs. 1(2), **20(4)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F7** Reg. 10(e) renumbered as reg. 10(d)(iv) (31.12.2020 immediately before IP completion day) by [The Financial Services \(Miscellaneous\) \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/710\)](#), regs. 1(2), **20(4)(c)**; 2020 c. 1, Sch. 5 para. 1(1)

#### Commencement Information

- I10** Reg. 10 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(3\)](#)

### The Financial Markets and Insolvency Regulations 1991

- 11.**—(1) The Financial Markets and Insolvency Regulations 1991 <sup>M23</sup> are amended as follows.
- (2) In regulation 7 (interpretation of Part V) <sup>M24</sup> omit the definition of “EEA CSD”.
  - (3) In regulation 11A (extent to which charge granted in favour of recognised CSD to be treated as market charge) <sup>M25</sup>—
    - (a) in the opening words of paragraph (2), for “an EEA CSD or” substitute “ a ”;
    - (b) in paragraphs (2)(a) and (b) omit “EEA CSD or”.

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*Changes to legislation: The Financial Markets and Insolvency (Amendment and Transitional Provision) (EU Exit) Regulations 2019 is up to date with all changes known to be in force on or before 11 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

#### Commencement Information

**I11** Reg. 11 in force at 31.12.2020 on IP completion day (in accordance with 2020 c. 1, Sch. 5 para. 1(1)), see reg. 1(3)

#### Marginal Citations

**M23** S.I. 1991/880.  
**M24** Definition inserted by S.I. 2017/1064 Sch.1(2) para.20(3)(b).  
**M25** Inserted by S.I. 2017/1064.

### The Financial Collateral Arrangements (No 2) Regulations 2003

12.—(1) The Financial Collateral Arrangements (No 2) Regulations 2003<sup>M26</sup> are amended as follows.

(2) In regulation 3 (interpretation)—

- (a) in paragraph (1), omit the definition of “recovery and resolution directive”;
- (b) in paragraph (1A)(b), omit “under the recovery and resolution directive”.

(3) In regulation 15A(3) (insolvency proceedings in other jurisdictions)<sup>M27</sup>, omit the words “or Council Regulation (EC) No 44/2001” to the end of the paragraph.

(4) In regulation 18A(2) (restrictions on enforcement of financial collateral arrangements, etc)<sup>M28</sup>, for the words “has the meaning given” to the end, substitute “ means an arrangement under which two or more debts, claims or obligations can be set off against each other ”.

(5) In regulation 19 (standard test regarding the applicable law to book entry securities financial collateral arrangements)—

- (a) in paragraph (2), after “country” insert “, or territory, or where appropriate, the law of the part of the country or territory, ”;
- (b) in paragraph (3), after “country” insert “ or territory ”.

#### Commencement Information

**I12** Reg. 12 in force at 31.12.2020 on IP completion day (in accordance with 2020 c. 1, Sch. 5 para. 1(1)), see reg. 1(3)

#### Marginal Citations

**M26** S.I. 2003/3226. Paragraph (1A) was inserted by S.I. 2014/3348.  
**M27** Regulation 15A was inserted by S.I. 2010/2993.  
**M28** Regulation 18A was inserted by S.I. 2014/3348.

## PART 4

### Temporary Designation Regime

#### Interpretation

13. In this Part—

“designating authority” has the same meaning as in the 1999 Regulations;

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*Changes to legislation: The Financial Markets and Insolvency (Amendment and Transitional Provision)*

*(EU Exit) Regulations 2019 is up to date with all changes known to be in force on or before 11 April*

*2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

“Settlement Finality Directive” means Directive [98/26/EC](#) of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems <sup>M29</sup> as it has effect in EU law as amended from time to time;

“system” has the same meaning as in the 1999 Regulations;

“temporary designation” in respect of a system means that such system is taken to be the subject of a designation order under regulation 4(1) of the 1999 Regulations;

“temporary designation period” means the period determined by regulation 18.

#### Commencement Information

**I13** Reg. 13 in force at 22.2.2019, see reg. 1(2)

#### Marginal Citations

**M29** OJ L 166, 11.6.1998, p. 45–50

### Application of Part 4

**14.** This Part applies to a system (“S”) and a body corporate or unincorporated body of persons (“P”) that is the operator of S, where—

- (a) immediately before [<sup>F8</sup>IP completion day], S is specified as a system and P is specified as the system operator in relation to S, by an EEA state (other than the United Kingdom), to be included within the scope of the Settlement Finality Directive in accordance with article 10 of that directive; and
- (b) before [<sup>F8</sup>IP completion day], P has complied with the notification requirement in regulation 15.

#### Textual Amendments

**F8** Words in reg. 14 substituted (31.1.2020 immediately before exit day) by [The Financial Services \(Consequential Amendments\) Regulations 2020 \(S.I. 2020/56\)](#), regs. 1, **13(a)**

#### Commencement Information

**I14** Reg. 14 in force at 22.2.2019, see reg. 1(2)

### Notification requirement

**15.—(1)** Where P intends S to have temporary designation, it must notify the designating authority.

- (2) For the purposes of paragraph (1), the notification must—
  - (a) be made no later than [<sup>F9</sup>IP completion day];
  - (b) be made in such manner as the designating authority may direct; and
  - (c) contain, or be accompanied by, such information as the designating authority may direct.
- (3) The designating authority must confirm receipt of the notification promptly to P.

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#### Textual Amendments

- F9** Words in reg. 15 substituted (31.1.2020 immediately before exit day) by [The Financial Services \(Consequential Amendments\) Regulations 2020 \(S.I. 2020/56\)](#), regs. 1, **13(b)**

#### Commencement Information

- I15** Reg. 15 in force at 22.2.2019, see reg. 1(2)

### Effect of acknowledgment of notification

**16.**—(1) Where P has made a notification under paragraph (1) of regulation 15, which has been acknowledged by the designating authority in accordance with paragraph (3) of regulation 15, S is a temporarily designated system.

(2) [<sup>F10</sup>Subject to regulation 17,] a temporarily designated system has temporary designation, from [<sup>F11</sup>IP completion day] to the end of the temporary designation period.

(3) Regulations 5 (fees) and 10 (provision of information by designated systems) of the 1999 Regulations do not apply to a temporarily designated system until such time as it makes an application under regulation 3 (application for designation) of the 1999 Regulations.

(4) The designating authority must publish on its website a list of temporarily designated systems.

#### Textual Amendments

- F10** Words in [reg. 16\(2\)](#) inserted (1.7.2021) by [The Financial Markets and Insolvency \(Transitional Provision\) \(EU Exit\) \(Amendment\) Regulations 2021 \(S.I. 2021/782\)](#), regs. 1(2), **2(2)**

- F11** Words in reg. 16 substituted (31.1.2020 immediately before exit day) by [The Financial Services \(Consequential Amendments\) Regulations 2020 \(S.I. 2020/56\)](#), regs. 1, **13(c)**

#### Commencement Information

- I16** Reg. 16 in force at 22.2.2019, see reg. 1(2)

### Cessation of temporary designation

**17.**—(1) A temporarily designated system ceases to be a temporarily designated system where any of the following conditions are met.

[<sup>F12</sup>(2) The first condition is that—

- (a) P has not submitted an application under regulation 3(1) of the 1999 Regulations by the end of the period of 6 months beginning on the day after IP completion day; and
- (b) a period of 2 years and 6 months has passed since IP completion day.]

(3) The second condition is that the temporarily designated system ceases to be specified as included within the scope of the Settlement Finality Directive in accordance with article 10 of that Directive.

(4) The third condition is that P has submitted an application to the designating authority under regulation 3(1) of the 1999 Regulations and—

- (a) withdraws its application; or
- (b) the application is determined by the designating authority.

(5) The fourth condition is that the Bank of England directs that the system is to cease to be a temporarily designated system.

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- (6) A direction may only be given under paragraph (5) where—
- (a) the Bank of England considers that there would otherwise be an adverse effect on financial stability in the United Kingdom;
  - (b) P has expressly renounced the temporary designation; or
  - (c) P has submitted an application to the designating authority under regulation 3(1) of the 1999 Regulations, and has made false statements in relation to the application or has sought to obtain designation by any other irregular means.

#### Textual Amendments

**F12** Reg. 17(2) substituted (1.7.2021) by [The Financial Markets and Insolvency \(Transitional Provision\) \(EU Exit\) \(Amendment\) Regulations 2021 \(S.I. 2021/782\)](#), regs. 1(2), **2(3)**

#### Commencement Information

**I17** Reg. 17 in force at 22.2.2019, see reg. 1(2)

### Temporary designation period duration

**18.**—(1) The temporary designation period is the period of 3 years beginning on the day after <sup>[F13]</sup>IP completion day].

(2) If the Treasury is satisfied that it is necessary and proportionate to avoid disruption to the financial stability of the United Kingdom, it may by regulations amend paragraph (1) to extend the temporary designation period by a period not exceeding 12 months.

(3) If the Treasury is satisfied that the conditions in paragraph (2) are met, it may exercise the power to extend the temporary designation period by regulations as described there on more than one occasion.

#### Textual Amendments

**F13** Words in reg. 18 substituted (31.1.2020 immediately before exit day) by [The Financial Services \(Consequential Amendments\) Regulations 2020 \(S.I. 2020/56\)](#), regs. 1, **13(e)**

#### Commencement Information

**I18** Reg. 18 in force at 22.2.2019, see reg. 1(2)

### <sup>[F14]</sup>Transitional provisions: bank stabilisation

**18A.**—(1) A temporarily designated system is to be treated as a “designated settlement system” for the purposes of section 48B (special bail-in provision) of the Banking Act 2009.

(2) An operator of a temporarily designated system is to be treated as an “excluded person” for the purposes of sections 70A to 70C (suspension of obligations, restriction of security interests, suspension of termination rights) of the Banking Act 2009.]

#### Textual Amendments

**F14** Reg. 18A inserted (31.12.2020 immediately before IP completion day) by [The Financial Services \(Miscellaneous\) \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/710\)](#), regs. 1(2), **20(5)**; 2020 c. 1, Sch. 5 para. 1(1)

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**Changes to legislation:** The Financial Markets and Insolvency (Amendment and Transitional Provision)

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## Regulations under this Part

**19.**—(1) Any power to make regulations conferred on the Treasury by this Part is exercisable by statutory instrument.

(2) Such regulations may—

(a) contain incidental, supplemental, consequential and transitional provision; and

(b) make different provision for different purposes.

(3) A statutory instrument containing regulations made under this Part is subject to annulment in pursuance of a resolution of either House of Parliament.

### Commencement Information

**I19** Reg. 19 in force at 22.2.2019, see reg. 1(2)

## Application of the 2000 Act to the Bank of England in relation to its functions under this Part

**20.** Section 398 (misleading FCA or PRA: residual cases) <sup>M30</sup> of the 2000 Act applies to information given to the Bank of England in purported compliance with a requirement that is imposed by or under this Part.

### Commencement Information

**I20** Reg. 20 in force at 22.2.2019, see reg. 1(2)

### Marginal Citations

**M30** Section 398 was amended by paragraph 36 of Schedule 9 to the [Financial Services Act 2012 \(c.21\)](#), [S.I. 2013/1773](#), [S.I. 2015/1882](#), [S.I. 2016/680](#), [S.I. 2017/701](#) and [S.I. 2018/135](#).

PROSPECTIVE

## PART 5

### Existing designation orders

#### Existing designation orders

**21.**—(1) Nothing in these Regulations affects any designation order, or any other decision of a designating authority, made under the 1999 Regulations in relation to a designated system, which order or decision is in force immediately before [<sup>F15</sup>IP completion day].

(2) Expressions used in paragraph (1) have the same meanings as in the 1999 Regulations.

### Textual Amendments

**F15** Words in reg. 21(1) substituted (30.12.2020) by [The Financial Services and Economic and Monetary Policy \(Consequential Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1301\)](#), regs. 1, 3, [Sch. para. 23\(b\)](#)

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2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

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### Commencement Information

**I21** Reg. 21 in force on IP completion day (in accordance with 2020 c. 1, **Sch. 5 para. 1(1)**), see reg. 1(3)

*Craig Whittaker*

*Mike Freer*

Two of the Lords Commissioners of Her  
Majesty's Treasury



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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 and other deficiencies (in particular the deficiencies under paragraphs (b), (c), (e) and (g) of section 8(2) of the Act) arising from the withdrawal of the United Kingdom from the European Union. These Regulations are also made in exercise of the powers in section 2(2) of the European Communities Act 1972 (c.68).

These Regulations make amendments to legislation in the field of financial services. Part 2 amends primary legislation. Part 3 amends subordinate legislation. Part 4 introduces a temporary designation regime. Part 5 saves designations and other decisions of a designating authority that are in effect immediately before exit day.

An impact assessment of the effect that this instrument, and other instruments made by HM Treasury under the European Union (Withdrawal) Act 2018 at or about the same time, will have on the costs of business, the voluntary sector and the public sector will be available from HM Treasury, 1 Horse Guards Road, London SW1A 2HQ and will be published alongside this instrument at [www.legislation.gov.uk](http://www.legislation.gov.uk).

**Status:**

Point in time view as at 11/07/2023. This version of this Instrument contains provisions that are prospective.

**Changes to legislation:**

The Financial Markets and Insolvency (Amendment and Transitional Provision) (EU Exit) Regulations 2019 is up to date with all changes known to be in force on or before 11 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.