

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)

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^(a), and section 2(2) of the European Communities Act 1972^(b), make the following Regulations.

The Treasury are designated^(c) 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.

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—

(a) 2018 c.16.

(b) 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 The European Communities Act 1972 is repealed with effect from exit day by section 1 of the European Union (Withdrawal) Act 2018.

(c) S.I. 2012/1759, article 4.

“the 2000 Act” means the Financial Services and Markets Act 2000(a);
“the 1999 Regulations” means the Financial Markets and Insolvency (Settlement Finality) Regulations 1999(b).

PART 2

Amendment of primary legislation

Part 7 of the Companies Act 1989

2.—(1) The Companies Act 1989(c) is amended as follows.

(2) In section 170A(d) (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”;
- (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(e) (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(f) (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)(g) (power to make provision about certain other charges), omit “an EEA CSD or”.

(6) In section 183(3)(h) (insolvency proceedings in other jurisdictions), omit the words “or Regulation” to the end.

(7) In section 190(1)(i) (minor definitions), in the definition which begins “EEA CSD”—

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- (a) 2000 c.8.
 - (b) S.I. 1999/2979.
 - (c) 1989 c.40.
 - (d) Section 170A was inserted by S.I. 2013/504, amended by S.I. 2013/1908 and S.I. 2017/1064.
 - (e) Section 170B was inserted by S.I. 2013/504.
 - (f) Section 170C was inserted by S.I. 2017/1064.
 - (g) Section 176(2)(aa) was inserted by S.I. 2017/1064.
 - (h) Section 183(3) was amended by S.I. 2001/3929 and S.I. 2014/2947.
 - (i) The definition which begins “EEA CSD” was amended by S.I. 2017/1064.

“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(a);”;

(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(b);”;

(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
- (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;”.

(a) S.I. 2011/99.

(b) S.I. 2001/544. Schedule 2 was substituted by S.I. 2006/3384, Part 2 article 29.

- (3) In paragraph (2A)(a)—
- (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”.
- (4) In paragraph (2B)(b), 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(c).”.
- (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)(d).”.
- (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.”.

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.”;

(a) Paragraph (2A) was inserted by S.I. 2014/3348.
 (b) Paragraph (2B) was inserted by S.I. 2014/3348.
 (c) 2013 c.33.
 (d) 2006 c.46.

- (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”.

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”.

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(a) 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”.

(a) 1986 c.45.

(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).

Transitional provision for orders made before exit day

9. After regulation 26 insert—

“Applicable law for orders made and collateral provided before exit day

27. After exit day the provisions of these Regulations as they were in force immediately before exit day continue to apply to—

(a) transfer orders entered into a designated system and collateral security provided, prior to exit day;

(b) equivalent overseas orders entered, prior to exit 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 exit day.”.

Amendments to the Schedule

10. In the Schedule—

(a) omit paragraph 1(1);

(b) in paragraph 5(2), 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)—

(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.”;

(e) 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.”.

The Financial Markets and Insolvency Regulations 1991

11.—(1) The Financial Markets and Insolvency Regulations 1991(a) are amended as follows.

(2) In regulation 7 (interpretation of Part V)(b) 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)(c)—

(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”.

The Financial Collateral Arrangements (No 2) Regulations 2003

12.—(1) The Financial Collateral Arrangements (No 2) Regulations 2003(d) 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)(e), 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)(f), 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”.

PART 4

Temporary Designation Regime

Interpretation

13. In this Part—

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

“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(g) 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.

(a) S.I. 1991/880.

(b) Definition inserted by S.I. 2017/1064 Sch.1(2) para.20(3)(b).

(c) Inserted by S.I. 2017/1064.

(d) S.I. 2003/3226. Paragraph (1A) was inserted by S.I. 2014/3348.

(e) Regulation 15A was inserted by S.I. 2010/2993.

(f) Regulation 18A was inserted by S.I. 2014/3348.

(g) 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 exit 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 exit day, P has complied with the notification requirement in regulation 15.

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 exit 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.

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) A temporarily designated system has temporary designation, from exit 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.

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.

(2) The first condition is that 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 exit 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.

(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.

Temporary designation period duration

18.—(1) The temporary designation period is the period of 3 years beginning on the day after exit 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.

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.

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)(a) 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.

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 exit day.

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

Craig Whittaker
Mike Freer

21st February 2019

Two of the Lords Commissioners of Her Majesty's Treasury

(a) 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.

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.

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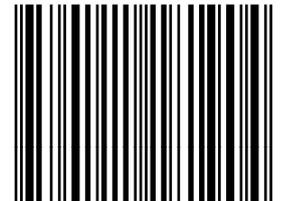
Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

£6.90

UK201902221003 02/2019 19585

<http://www.legislation.gov.uk/id/uksi/2019/341>

ISBN 978-0-11-118190-4



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