

---

DRAFT STATUTORY INSTRUMENTS

---

**2018 No.**

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

PART 3

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

CHAPTER 2

The Financial Services and Markets Act 2000  
(Markets in Financial Instruments) Regulations 2017

**Exempt and third country investment firms**

- 8.**—(1) Omit regulation 5.
- (2) In regulation 6—
- (a) in paragraph (3)(c)—
- (i) for paragraph (i), substitute—
- “(i) an investment firm which—
- (aa) has a Part 4A permission to carry on regulated activities relating to investment services and activities; or
- (bb) is authorised in accordance with the markets in financial instruments directive;”;
- (ii) for paragraph (ii), substitute—
- “(ii) a credit institution which—
- (aa) has a Part 4A permission to carry on the regulated activity of accepting deposits and falls within paragraph (3A); or
- (bb) is authorised in accordance with [Directive 2013/36/EU](#) of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and investment firms;”;
- (iii) in paragraph (iv), after “the law of” insert “the United Kingdom or of”;
- (iv) in paragraph (v), after “dealt in on” insert “ a UK regulated market or”;
- (b) after paragraph (3), insert—
- “(3A) A credit institution falls within this paragraph if—
- (a) it has its head office in the United Kingdom; and

- (b) it is not a credit union within the meaning of the Credit Unions Act 1979<sup>(1)</sup> or the Credit Unions (Northern Ireland) Order 1985<sup>(2)</sup>, or a friendly society within the meaning of section 417(1) of the Act.”;
- (c) for paragraph (4), substitute—
  - “(4) In paragraph (3), “investment company with fixed capital” means a company—
    - (a) the exclusive object of which is to invest its funds in various stocks and shares, land or other assets with the sole aim of spreading investment risks and giving its shareholders the benefit of the results of the management of their assets; and
    - (b) which offers its own shares for subscription by the public.”;
  - (d) omit paragraph (5).
- (3) In regulation 8, for the words after paragraph (b) substitute—
 

“but to whom the appropriate regulator has granted exemption from authorisation and operating conditions which usually apply to investment firms.”.
- (4) Omit regulations 9 and 10.
- (5) In regulation 11—
  - (a) in the heading, for “ESMA” substitute “the FCA”;
  - (b) renumber the existing paragraph as paragraph (1);
  - (c) in paragraph (1) as renumbered, for “ESMA” substitute “the FCA”;
  - (d) after paragraph (1) insert—
    - “(2) For the purposes of this regulation, third country firms which are included on the register with ESMA immediately before exit day under Article 46.2 of the markets in financial instruments regulation are to be treated after exit day as being registered with the FCA.”.
- (6) In regulation 12—
  - (a) in the heading, for “ESMA” substitute “the FCA”;
  - (b) in paragraph (1)—
    - (i) in the opening words, for “with ESMA” substitute “with it”;
    - (ii) for sub-paragraph (b)(ii), substitute—
      - “(ii) on the basis of which—
        - (aa) the Commission has adopted a decision in relation to the country under paragraph 1 of Article 47 of the markets in financial instruments regulation before exit day; or
        - (bb) the Treasury have made regulations in relation to the country under that paragraph after exit day;”
  - (c) in paragraph (2)—
    - (i) for “as it does” substitute “as it applied”;
    - (ii) after the second reference to “FCA” insert “before exit day”;
  - (d) in paragraph (3)—
    - (i) in the opening words, for “with ESMA” substitute “with it”;
    - (ii) omit sub-paragraph (a);

---

(1) 1979 c.34.  
 (2) 1985 No.1205 (N.I. 12)

- (e) in paragraph (4)—
    - (i) in sub-paragraph (a)—
      - (aa) for “notices” substitute “notice”;
      - (bb) at the end, insert “and”;
    - (ii) omit sub-paragraph (c) and (d);
  - (f) omit paragraphs (5) and (6).
- (7) In regulation 14—
- (a) in paragraph (2)—
    - (i) in sub-paragraph (a)—
      - (aa) for “ESMA” substitute “the FCA”;
      - (bb) at the end, insert “or”;
    - (ii) in sub-paragraph (b), at the end, omit “or”;
    - (iii) omit sub-paragraph (c);
  - (b) in paragraph (3)(b)(i), for “decision” substitute “determination”;
  - (c) in paragraph (4)—
    - (i) for sub-paragraph (a), substitute—
      - “(a) “equivalence determination” means—
        - (i) a decision adopted by the Commission in relation to a country under paragraph 1 of Article 47 of the markets in financial instruments regulation before exit day which has not been withdrawn by a subsequent decision adopted by the Commission under that Article before exit day; or
        - (ii) regulations made by the Treasury in relation to a country under that paragraph after exit day which have not subsequently been revoked;”;
      - (ii) for sub-paragraph (b), substitute—
        - “(b) a country is subject to an equivalence determination if a period of more than three years has elapsed since—
          - (i) the adoption of the decision by the Commission, beginning on the day after the date of the adoption of the decision; or
          - (ii) the making of the regulations by the Treasury, beginning on the day after the day on which the regulations were made;”.
- (8) In regulation 15—
  - (a) in the definition of “clients considered to be professionals”—
    - (i) for “Article 4.1.10 of the markets in financial instruments directive” substitute “Article 2(1)(8) of the markets in financial instruments regulation”;
    - (ii) for “Section I of Annex II to the directive” substitute “Part 2 of Schedule 1 to that regulation”;
  - (b) for the definition of “power of intervention”, substitute—
    - ““power of intervention” means the power of the regulator to impose any requirement in relation to the firm in respect of which the power is exercisable which the regulator could impose if—

- (a) the firm’s permission was a Part 4A permission, within the meaning of the Act; and
  - (b) the regulator was entitled to exercise its power under section 55L(3) or 55M(3) of the Act;”;
  - (c) in the definition of “third country firm”, for “Article 4.1.57 of the markets in financial instruments directive” substitute “Article 2.1.42 of the markets in financial instruments regulation”;
  - (d) in the definition of “third country firm registered with ESMA”, for “ESMA” both times it appears, substitute “the FCA”;
  - (e) omit the definition of “third country firm with an EEA branch”.
- (9) In regulation 16(5)—
- (a) for the definition of “group”, substitute—
    - ““group” means a parent undertaking and all its subsidiary undertakings, and for these purposes, “parent undertaking” and “subsidiary undertaking” have the same meanings as in section 420 of the Act;”
  - (b) in the definition of “the relevant methods”, for the words from “regulatory technical standards” to the end, substitute “Article 4 of Regulation (EU) 2017/591.”.
- (10) In regulation 17(5)—
- (a) in the definition of “the relevant criteria and methods” for the words from “regulatory technical standards” to the end, substitute “Article 7 of Regulation (EU) 2017/591; and”;
  - (b) in the definition of “the relevant procedure” for the words from “regulatory technical standards” to the end, substitute “Article 8 of Regulation (EU) 2017/591.”.
- (11) In regulation 19—
- (a) in the heading, for “ESMA methodology” substitute “Regulation (EU) 2017/591”
  - (b) in paragraph (1), for “the ESMA methodology” substitute “Regulation (EU) 2017/591”.
- (12) Omit regulations 20 to 22 and 24.
- (13) In regulation 25—
- (a) in paragraph (1), for “the ESMA methodology mentioned in regulation 19(1) (“a more restrictive position limit”)” substitute “Regulation (EU) 2017/591”;
  - (b) omit paragraphs (5) to (7).
- (14) In regulation 26—
- (a) in the heading, omit “or other competent authorities in the EEA”;
  - (b) omit paragraph (2).
- (15) In regulation 28—
- (a) in paragraph (1), for “the markets in financial instruments directive” substitute “these Regulations”;
  - (b) in paragraph (2), omit “or an EEA position limit relating to the commodity derivative”.
- (16) Omit regulation 28A.
- (17) In regulation 29—
- (a) in paragraph (1), for the words from “regulatory technical standards” to the end of the paragraph, substitute “Article 6 of Regulation (EU) 2017/591.”;
  - (b) in paragraph (2)—
    - (i) omit the definition of “EEA position limit”;

- (ii) omit the definition of “the ESMA methodology”;
- (iii) in the definition of “position” for the words from “regulatory technical standards” to the end of the definition, substitute “Articles 3 and 4 of Regulation (EU) 2017/591;”;
- (iv) in the definition of “significant volumes” **(3)** for the words from “regulatory technical standards” to the end of the definition, substitute “Article 5 of Regulation (EU) 2017/591”.

---

**(3)** The definition of “significant volumes” was inserted by [S.I. 2017/1255](#).