
D R A F T S T A T U T O R Y I N S T R U M E N T S

2023 No. XXXX

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2023 (Consequential Amendments) Regulations 2023

Made - - - -

Coming into force - -

1st January 2024

The Treasury make these Regulations in exercise of the powers conferred by sections 83(1), 83(2) and 84(2) of the Financial Services and Markets Act 2023(a).

In accordance with sections 83(3), 84(3) and 84(5) of the Financial Services and Markets Act 2023, a draft of these Regulations has been laid before and approved by a resolution of each House of Parliament.

PART 1

Introduction

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Financial Services and Markets Act 2023 (Consequential Amendments) Regulations 2023.

(2) These Regulations come into force on 1st January 2024.

(3) These Regulations extend to England and Wales, Scotland and Northern Ireland.

PART 2

Amendment of Primary Legislation

Financial Services and Markets Act 2000

2.—(1) The Financial Services and Markets Act 2000(b) is amended as follows.

(2) In section 55J (variation or cancellation on initiative of regulator)(c)—

(a) 2023 c. 29.

(b) 2000 c. 8.

(c) Section 55J was substituted by section 11 of the Financial Services Act 2012 (c. 21). Subsection (6A) was inserted by S.I. 2013/1773 and paragraph (e)(iv) was substituted by S.I. 2019/632. Subsection (6AA) was inserted by S.I. 2019/632.

- (a) in subsection (6A)(e) (variation or cancellation in respect of UK AIFMs), omit sub-paragraph (iv) but not the “or” immediately following that sub-paragraph;
 - (b) in subsection (6AA) (definition of AIFMD, ELTIF and MMF requirements for the purposes of subsection (6A)(e)), omit paragraph (b).
- (3) In section 143C (duty to make rules applying to FCA investment firms)(a), omit subsection (4).
- (4) In section 143D (duty to make rules applying to parent undertakings), omit subsections (5) and (6).
- (5) In section 143E (powers to make rules applying to parent undertakings)—
- (a) in subsection (5)—
 - (i) for “and (6) apply” substitute “applies”;
 - (ii) for “they apply” substitute “it applies”;
 - (b) in subsection (6), omit “(5), ”.
- (6) In section 398(1A) (misleading FCA or PRA: residual cases)(b), omit paragraph (f).

Enterprise Act 2002

3. In Schedule 13 to the Enterprise Act 2002 (listed enactments)(c), in paragraph 28A—
- (a) for “Parts 2 and 3” substitute “Part 3”;
 - (b) for “Schedules 1 to 6” substitute “Schedules 3 to 6”.

Banking Act 2009

4. In section 3 of the Banking Act 2009 (interpretation: other expressions)(d), in subsection (1), for the definition of ““relevant internal liabilities” of a bank or banking group company” substitute—

““relevant internal liabilities” of a bank or banking group company means eligible liabilities held by a resolution entity in the same resolution group as the bank or banking group company, either directly or indirectly (through other entities in the same resolution group that bought the liabilities from the bank or banking group company),”.

Financial Services and Markets Act 2023

5. In section 50(12) of the Financial Services and Markets Act 2023 (application of the Financial Services and Markets Act 2000 to the Bank of England: annual reports), for “(fa)” substitute “(fb)”.

(a) Sections 143C, 143D and 143E were inserted by paragraph 1 of Schedule 2 to the Financial Services Act 2021 (c. 22).

(b) Section 398(1A) was inserted by S.I. 2013/1773. Paragraph (f) of section 398(1A) was inserted by S.I. 2015/1882 and amended by S.I. 2018/135.

(c) 2002 c. 40. Schedule 13 was substituted by S.I. 2019/203 (as amended by S.I. 2020/1347).

(d) 2009 c. 1. The definition of ““relevant internal liabilities” of a bank or banking group company” in section 3 was inserted by S.I. 2020/1350.

PART 3

Amendment of Secondary Legislation

Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001

6. In article 16 of the Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001 (communications required or authorised by enactments)(a), omit paragraph (4).

Financial Services and Markets Act 2000 (Financial Promotion) Order 2005

7. In article 29 of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (communications required or authorised by enactments)(b), omit paragraph (5).

Financial Services and Markets Act 2000 (Qualifying Provisions) Order 2013

8.—(1) The Financial Services and Markets Act 2000 (Qualifying Provisions) Order 2013(c) is amended as follows.

(2) In article 1(2) (interpretation), omit the definition of “ELTIF Regulation”.

(3) In article 2 (qualifying provisions: general), in paragraph (2), omit sub-paragraph (i).

(4) In article 3 (qualifying provisions: disciplinary measures)—

(a) in paragraph (2), omit sub-paragraph (j);

(b) in paragraph (3), omit sub-paragraph (h).

(5) In article 5 (qualifying provisions: injunctions and restitution)—

(a) in paragraph (2), omit sub-paragraph (j);

(b) in paragraph (5), omit sub-paragraph (i).

(6) In article 6 (qualifying provisions: fees), in paragraph (2), omit sub-paragraph (l).

Alternative Investment Fund Managers Regulations 2013

9.—(1) The Alternative Investment Fund Managers Regulations 2013(d) are amended as follows.

(2) In regulation 2(1) (interpretation)(e), omit the following definitions—

(a) “EEA ELTIF”;

(b) “ELTIF Regulation”;

(c) “UK LTIF”.

(3) Omit Part 3A (LTIFs)(f).

(4) In regulation 30 (depository liability for loss of financial instruments held in custody), omit paragraph (7)(g).

(5) In regulation 32 (depository liability and third country custodians), omit paragraph (3)(h).

(a) S.I. 2001/1060. Article 16(4) was inserted by S.I. 2015/1882.

(b) S.I. 2005/1529. Article 29(5) was inserted by S.I. 2015/1882.

(c) S.I. 2013/419 was amended by S.I. 2015/1882, S.I. 2019/632 and S.I. 2020/628; there are other amending instruments but none is relevant.

(d) S.I. 2013/1773.

(e) Regulation 2(1) was amended by S.I. 2015/1882 and S.I. 2019/328; there are other amending instruments but none is relevant.

(f) Part 3A was inserted by S.I. 2015/1882 and amended by S.I. 2019/328.

(g) Regulation 30(7) was inserted by S.I. 2015/1882 and amended by S.I. 2019/328.

(h) Regulation 32(3) was inserted by S.I. 2015/1882 and amended by S.I. 2019/328.

(6) In regulation 52 (contravention by unauthorised person), in paragraph (1), omit sub-paragraph (c)(a).

(7) In regulation 53 (contravention by authorised person), in paragraph (1), omit sub-paragraph (c)(b).

Payment Card Interchange Fee Regulations 2015

10. In the Payment Card Interchange Fee Regulations 2015(c), after regulation 4A (directions: payment card schemes)(d), insert—

“Directions: co-operation between regulators

4B. For the purposes of section 98 of the 2013 Act (duty of regulators to ensure co-ordinated exercise of functions)(e), the reference in section 98(6)(a) to the interchange fee regulation(f) is to be read as including a reference to a direction given under regulation 4A.

Power of FCA to require Regulator to refrain from specified action

4C. For the purposes of section 101 of the 2013 Act (power of FCA to require the Regulator to refrain from specified action), in section 101(2) —

- (a) the reference to “this Part” is to be read as including a reference to regulation 4A;
- (b) the reference to “a participant in a regulated payment system” is to be read as a person referred to in regulation 4A(1).”.

Payment Accounts Regulations 2015

11.—(1) The Payment Accounts Regulations 2015(g) are amended as follows.

(2) In regulation 2(1) (interpretation), omit the following definitions—

- (a) “fee information document”;
- (b) “linked services list”;
- (c) “statement of fees”.

(3) In regulation 28(1) (monitoring and enforcement), in sub-paragraph (a), omit “2, ”.

(4) In regulation 29(1) (reporting requirements), omit “2, ”.

(5) In regulation 30(1) (power to direct payment service providers), omit “2, ”.

(6) Omit regulation 40A (technical standards)(h).

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

12. In regulation 47B of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (statements of policy)(i), in paragraph (1)(a), omit paragraph (i).

(a) Regulation 52(1)(c) was inserted by S.I. 2015/1882.
(b) Regulation 53(1)(c) was inserted by S.I. 2015/1882.
(c) S.I. 2015/1911.
(d) Regulation 4A was inserted by S.I. 2023/790.
(e) 2013 c. 33. Section 98(6)(a) was amended by S.I. 2015/1911.
(f) EUR 2015/751.
(g) S.I. 2015/2038.
(h) Regulation 40A was inserted by S.I. 2019/661.
(i) S.I. 2017/701. Regulation 47B was inserted by S.I. 2018/1403.

Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018

13. In Part 1 of the Schedule to the Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (EU Regulations for which the FCA is the appropriate regulator)(a), omit paragraph 6A.

EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018

14. In regulation 24 of the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 (Financial Services Compensation Scheme - modifications of Part 15 of the Financial Services and Markets Act 2000)(b), in paragraph (2)(b), in the modification of section 213 of the Financial Services and Markets Act 2000—

- (a) in subsection (9B)(f)—
 - (i) after sub-paragraph (i) omit “, or”;
 - (ii) omit sub-paragraph (ii);
- (b) in subsection (9C), omit the following definitions—
 - (i) “ELTIF”;
 - (ii) “ELTIF Regulation”.

Gibraltar (Miscellaneous Amendments) (EU Exit) Regulations 2019

15. In regulation 11 of the Gibraltar (Miscellaneous Amendments) (EU Exit) Regulations 2019 (saving for certain financial services legislation relating to Gibraltar)(c), in paragraph (5), omit sub-paragraph (m).

PART 4

Amendment of Retained Direct EU Legislation

Regulation (EU) No 575/2013

16.—(1) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012(d) is amended as follows.

(2) In Article 6 (general principles)(e), in paragraph 1a, omit the words from “material subsidiaries” to the end of the paragraph.

(3) In Article 11 (general treatment)(f), in paragraph 3a, omit the words from “only UK parent undertakings” to the end of the paragraph.

(4) In Article 18 (methods of prudential consolidation)(g), in paragraph 1, omit “or 92b”.

(5) In Article 49 (requirement for deduction where consolidation or supplementary supervision is applied)(h), in paragraph 2, for “Articles 92a and 92b” substitute “Article 92a”.

(a) S.I. 2018/1115. Paragraph 6A was inserted by S.I. 2019/336. S.I. 2019/576 purported to make the same insertion at a later date.

(b) S.I. 2018/1149. Regulation 24 was amended by S.I. 2020/1301.

(c) S.I. 2019/680.

(d) EUR 575/2013.

(e) Article 6 was amended by S.I. 2018/1401, S.I. 2019/1232 and S.I. 2021/1078.

(f) Article 11 was amended by S.I. 2020/1385 and S.I. 2021/1078.

(g) Article 18 was amended by Schedule 1 to the Financial Services Act 2021 (c. 22), S.I. 2020/1385 and S.I. 2021/1078.

(h) Article 49 was amended by Schedule 1 to the Financial Services Act 2021, S.I. 2018/1401, S.I. 2019/264 and S.I. 2021/1376.

Regulation (EU) No 600/2014

17.—(1) 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(a) is amended as follows.

(2) In Article 4 (waivers for equity instruments)—

- (a) in paragraph 1(a), omit the final sentence;
- (b) in paragraph 1(b)(i), omit “, subject to the conditions set out in Article 5”.

(3) In the following provisions, for “5(3A)”, in each place where it occurs, substitute “14(6D)”(b)—

- (a) in Article 9 (waivers for non-equity instruments), paragraph 4A;
- (b) in Article 11 (authorisation of deferred publication), paragraph 2A;
- (c) in Article 21 (post-trade disclosure by investment firms, including systematic internalisers, in respect of bonds, structured finance products, emission allowances and derivatives), paragraph 4A.

Commission Delegated Regulation (EU) 2015/35

18. In Article 168 of Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)(c), in paragraph 6 (general provisions: equities considered as type 1), omit point (d).

Commission Delegated Regulation (EU) 2017/565

19.—(1) Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive(d) is amended as follows.

(2) In Article 12 (systematic internalisers for shares, depositary receipts, ETFs, certificates and other similar financial instruments)—

- (a) in paragraph 2, omit “5, ”;
- (b) in paragraph 3, for “5(3A)” substitute “14(6D)”.

(3) In the following provisions, for “5(3A)”, in each place where it occurs, substitute “14(6D)”—

- (a) in Article 13 (systematic internalisers for bonds), paragraph 2;
- (b) in Article 14 (systematic internalisers for structured finance products), paragraph 2;
- (c) in Article 15 (systematic internalisers for derivatives), paragraph 2;
- (d) in Article 16 (systematic internalisers for emission allowances), paragraph 2;
- (e) in Article 16ZA (transitional period: data for calculations)(e), paragraph 1.

Commission Delegated Regulation (EU) 2017/567

20. In Article 5 of Commission Delegated Regulation (EU) 2017/567 of 18 May 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to definitions, transparency, portfolio compression and supervisory measures on product

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- (a) EUR 600/2014 was amended by Schedule 2 to the Financial Services and Markets Act 2023 (c. 29) and S.I. 2018/1403; there are other amending instruments but none is relevant.
 - (b) Paragraph (6D) of Article 14 was inserted by paragraph 6 of Schedule 2 to the Financial Services and Markets Act 2023.
 - (c) EUR 2015/35. Paragraph 6(d) of Article 168 was amended by S.I. 2019/407.
 - (d) EUR 2017/565 was amended by S.I. 2018/1403 and S.I. 2021/774.
 - (e) Article 16ZA was inserted by S.I. 2018/1403 (as amended by S.I. 2020/1301).

intervention and positions (assessment of liquidity of equity instruments by the competent authorities (Article 2(1)(17)(b) of Regulation (EU) No 600/2014))(a)—

- (a) in paragraph 1A, for “5(3A)” substitute “14(6D)”;
- (b) in paragraph 6, omit “5, ”.

Name
Name

Date Two of the Lords Commissioners of His Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of these Regulations)

Section 1 of the Financial Services and Markets Act 2023 (c. 29) (“the Act”) revokes (or, where appropriate, repeals) retained EU law which is referred to in Schedule 1 to the Act.

These revocations and repeals include—

- the revocation of Article 92b of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012;
- the revocation of legislation relating to Long-Term Investment Funds (“LTIFs”);
- Part 2 of, and Schedules 1 and 2 to, the Payment Accounts Regulations 2015 (S.I. 2015/2038); and
- the repeal of legislation containing certain restrictions on powers of the Financial Conduct Authority to make rules that modify, amend or revoke retained direct EU legislation.

Those particular revocations and repeals take effect on 1st January 2024 by virtue of regulation 5 of the Financial Services and Markets Act 2023 (Commencement No. 1) Regulations 2023 (S.I. 2023/779 (C. 40)).

Regulations 2 to 4, 6 to 9, 11, 13 to 16 and 18 make consequential amendments in connection with those revocations and repeals.

These Regulations also make various other amendments that are consequential on the Act or provision made under it.

Regulation 5 amends section 50(12) of the Act in consequence of section 21(4)(b) of the Act, to provide that the required content of the Bank of England’s annual report on its regulation of financial market infrastructure is consistent with its regulatory obligations.

Regulation 10 amends the Payment Card Interchange Fee Regulations 2015 (S.I. 2015/1911) (“the PCIFRs”) in consequence of the amendments made to the PCIFRs by regulation 3 of the Electronic Money, Payment Card Interchange and Payment Services (Amendment) Regulations 2023 (S.I. 2023/790), which were made under section 3 of the Act.

Regulations 12, 17, 19 and 20 amend the Financial Services and Markets Act 2000 (Markets in Financial Instruments Regulations) 2017 (S.I. 2017/701), 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 (“MiFIR”) and two related delegated Regulations. The amendments to these instruments are consequential on the omission of Article 5 of MiFIR by paragraph 5 of Schedule 2 to the Act.

An impact assessment has not been produced for these Regulations as no, or no significant, impact on the private, voluntary or public sector is foreseen.

(a) EUR 2017/567 was amended by S.I. 2018/1403.

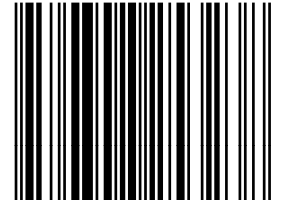
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