
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement certain Articles of Regulation (EU) 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ No L 201, 27.7.2012, p1) (“the EMIR regulation”).

Part 2 amends Part 18 of the Financial Services and Markets Act 2000 (c.8) (recognised investment exchanges and clearing houses), in order to make the provisions concerning clearing houses compatible with the EMIR regulation. The Regulations create a new category of clearing house, known as a “recognised central counterparty”, which are those central counterparties which are subject to, and recognised pursuant to the provisions of, the EMIR regulation. Some provisions of Part 18 of the Financial Services and Markets Act 2000 will no longer apply to these bodies and in many cases the requirements are replaced by requirements emanating from the EMIR regulation.

Part 3 amends the Companies Act 1989 to implement and facilitate the provisions on segregation and portability of accounts in Articles 39 and 48 of the EMIR regulation.

Part 4 amends the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001 (S.I. 2001/995). The requirements relating to clearing houses in Part 3 of the Schedule are disapplied in relation to recognised central counterparties, and new Parts 5 and 6 are created which provide that the requirements of the EMIR regulation must be met in order for a body to gain recognition as a recognised central counterparty, together with the additional requirements set out in those Parts.

In Part 5, regulation 6 designates the Bank of England as the competent authority under the EMIR regulation for central counterparties. In most cases the Financial Conduct Authority (“FCA”) is designated as competent authority under the EMIR regulation for financial and non-financial counterparties, trading venues, trade repositories and clearing members of central counterparties, but the Prudential Regulation Authority has certain competent authority functions in relation to persons authorised by it. Regulation 7 grants powers to the FCA to obtain information, and regulation 9 gives the FCA power to impose penalties for contravening the EMIR regulation and certain provisions of the Regulations in order to implement Articles 12 and 22(3) of the EMIR regulation. Part 5 also makes provision with regard to applications and notifications to the FCA under the EMIR regulation.

Part 6 gives the Bank of England enforcement powers in relation to the requirements in Article 31 of the EMIR regulation (acquisition of control over central counterparties).

Part 7 makes provision to enable the European Securities and Markets Authority to gain access to telephone and data traffic records and make on-site inspections so that it may carry out its obligations under Title 6 of the EMIR regulation (registration and supervision of trade repositories). In each case the Authority must first obtain authorisation from the High Court, or in Scotland the Court of Session.

Part 8 contains consequential amendments to primary and secondary legislation, and Part 9 makes transitional and saving provisions. Part 10 provides for these Regulations to be reviewed before 1st April 2018 and subsequently at intervals of not more than five years.

A Tax Information and Impact Note has not been prepared for this Instrument as it contains no substantive changes to tax policy.

Changes to legislation:

There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013. Any changes that have already been made by the team appear in the content and are referenced with annotations.

[View outstanding changes](#)

Changes and effects yet to be applied to :

- Regulations power to modify conferred by [2023 c. 29 s. 3Sch. 1 Pt. 2](#)
- Regulations revoked by [2023 c. 29 Sch. 1 Pt. 2](#)