

Changes to legislation: The Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018, PART 1A is up to date with all changes known to be in force on or before 11 October 2023. 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) View outstanding changes

SCHEDULE 3

Transitional Provisions

[^{F1}PART 1A

Continuation of authorisation for limited purposes: Electronic Money Regulations 2011

F1 Sch. 3 Pt. 1A inserted (1.3.2019) by [The Financial Services Contracts \(Transitional and Saving Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/405\)](#), regs. 1(2), **10(2)**

Interpretation

12A. The interpretative provisions in paragraph 1 apply also for the purposes of this Part of this Schedule [^{F2}and “PSR 2017” means the Payment Services Regulations 2017].

F2 Words in [Sch. 3 para. 12A](#) inserted (31.1.2020) by [The Financial Services \(Miscellaneous\) \(Amendment\) \(EU Exit\) \(No. 2\) Regulations 2019 \(S.I. 2019/1010\)](#), regs. 1(3), **7(2)**; 2020 c. 1, Sch. 5 para. 1(1)

Continued authorisation for limited purposes

12B.—(1) This paragraph applies to a person in relation to whom the [^{F3}IP completion day] conditions or the transitional authorisation conditions are satisfied.

(2) The “[^{F3}IP completion day] conditions”, in relation to a person, are—

- (a) that immediately before [^{F3}IP completion day] the person was providing electronic money issuance or payment services through a branch or agent in the United Kingdom in the exercise of a passport right as an EEA authorised electronic money institution,
- (b) that immediately after [^{F3}IP completion day] the person is not (apart from under this Part of this Schedule) an authorised electronic money institution, and
- (c) that immediately after [^{F3}IP completion day]—
 - (i) the person has outstanding obligations under contracts which the person entered into through a branch or agent in the United Kingdom as an EEA authorised electronic money institution exercising passport rights, or
 - (ii) any electronic money issued by the person through a branch or agent in the United Kingdom as an EEA authorised electronic money institution exercising passport rights has not been redeemed.

(3) The “transitional authorisation conditions”, in relation to a person, are—

- (a) that on [^{F3}IP completion day] the person became authorised to provide electronic money issuance, redemption, distribution or payment services in the United Kingdom by virtue of paragraph 2,
- (b) that the person has provided any such services in the United Kingdom either—
 - (i) before [^{F3}IP completion day], in the exercise of a passport right as an EEA authorised electronic money institution, or
 - (ii) on or after [^{F3}IP completion day], in accordance with paragraph 2,

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- (c) that immediately after the end of the transition period defined in paragraph 10 the person is not (apart from under this Part of this Schedule) an authorised electronic money institution, and
- (d) that immediately after the end of that period—
 - (i) the person has outstanding obligations under contracts which the person entered into as an EEA authorised electronic money institution exercising passport rights, or
 - (ii) electronic money issued by the person as an EEA authorised electronic money institution exercising passport rights has not been redeemed.
- (4) During the extension period defined in paragraph 12G—
 - (a) a person to whom this paragraph applies is to be taken to be an authorised electronic money institution whose authorisation under regulation 9 of EMR 2011 relates to the permitted services specified in paragraph 12E, ^{F4}...
 - (b) accordingly, references in EMR 2011 [^{F5}and the Payment Services Regulations 2017] to an authorised electronic money institution are to be read as including a person to whom this paragraph applies^{F6}, and
 - (c) a requirement imposed by a home state competent authority and which has effect immediately before [^{F3}IP completion day] continues to have effect on and after that day as if it were imposed by the FCA under regulation 7 of EMR 2011 insofar as it could be imposed by the FCA under that regulation.]
- (5) Sub-paragraph (4) is subject to paragraphs 12C(4), 12H and 12I.
- (6) In this paragraph reference to providing services at a particular time includes where the performance of a pre-existing contract requires, or may require, a service to be provided at another time.

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| F3 | Words in Sch. 3 para. 12B substituted (31.1.2020 immediately before exit day) by The Financial Services (Consequential Amendments) Regulations 2020 (S.I. 2020/56) , regs. 1, 8(2)(g) |
| F4 | Word in Sch. 3 para. 12B(4)(a) omitted (6.9.2019) by virtue of The Financial Services (Electronic Money, Payment Services and Miscellaneous Amendments) (EU Exit) Regulations 2019 (S.I. 2019/1212) , regs. 1(2), 7(4)(a) |
| F5 | Words in Sch. 3 para. 12B(4)(b) inserted (6.9.2019) by The Financial Services (Electronic Money, Payment Services and Miscellaneous Amendments) (EU Exit) Regulations 2019 (S.I. 2019/1212) , regs. 1(2), 7(4)(b) |
| F6 | Sch. 3 para. 12B(4)(c) and preceding word inserted (6.9.2019) by The Financial Services (Electronic Money, Payment Services and Miscellaneous Amendments) (EU Exit) Regulations 2019 (S.I. 2019/1212) , regs. 1(2), 7(4)(c) |

Duty to notify FCA

12C.—(1) A person to whom paragraph 12B or 12L applies must notify the FCA of that fact as soon as reasonably practicable, and in any event not later than one month after the person first becomes aware of an obligation to perform a pre-existing contract.

(2) In this Part a “pre-existing contract”, in relation to a person to whom paragraph 12B applies, means a contract—

- (a) which was entered into before the extension period defined in paragraph 12G through branch or agent in the United Kingdom, and
- (b) under which the person is obliged to issue electronic money or to provide payment services.

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(3) Notification under sub-paragraph (1) must be made in such manner, and be accompanied by such information, as the FCA may direct.

(4) The FCA is not obliged to include a person to whom paragraph 12B applies on the register maintained under regulation 4 of EMR 2011 until the person notifies the FCA under sub-paragraph (1).

(5) During the extension period defined in paragraph 12G, a person to whom paragraph 12B applies must notify the FCA of any of the matters mentioned in paragraph 6(2)(b) to (d).

Agents

12D. If a notification under paragraph 12C includes information as to the use of an agent who is registered with the home state competent authority, the FCA must include the agent on the register maintained under regulation 4 of EMR 2011.

Permitted services

12E.—(1) This paragraph sets out the permitted services for the purposes of paragraph 12B(4)(a).

(2) The permitted services are—

- (a) where the [^{F7}IP completion day] conditions in paragraph 12B(2) are met, services of the kind mentioned in paragraph 12B(2)(a), but only to the extent that the issue of electronic money, or the provision of payment services, is necessary to enable the person to whom paragraph 12B applies to perform a pre-existing contract [^{F8}or to redeem outstanding electronic money], or
- (b) where the transitional authorisation conditions in paragraph 12B(3) are met, services of the kind mentioned in paragraph 12B(3)(b)(i) or (ii), but only to the extent that the issue of electronic money, or the provision of payment services, is necessary to enable the person to whom paragraph 12B applies to perform a pre-existing contract [^{F9}or to redeem outstanding electronic money].

(3) If a pre-existing contract is varied by agreement for the purpose of complying with regulatory requirements or reducing a risk to the person to whom paragraph 12D applies, but without extending the duration of the contract or materially altering its commercial effect, the contract as varied remains a pre-existing contract.

(4) The FCA may, on an application made before the end of the extension period by a person to whom paragraph 12B applies, approve a plan (a “wind-down plan”) under which new contracts may be entered into for the purposes of the orderly winding down of the person’s business of issuing electronic money or payment services in the United Kingdom.

(5) If a wind-down plan is approved by the FCA, the permitted services include services provided in accordance with the wind-down plan.

(6) A person providing permitted services in accordance with this paragraph must, when required by the FCA, provide the FCA with such evidence as the FCA may reasonably require to demonstrate the person’s compliance with the law of the person’s home state implementing Article 7 of the electronic money directive (safeguarding).

F7 Words in Sch. 3 para. 12E substituted (31.1.2020 immediately before exit day) by [The Financial Services \(Consequential Amendments\) Regulations 2020 \(S.I. 2020/56\)](#), regs. 1, **8(2)(h)**

F8 Words in Sch. 3 para. 12E(2)(a) inserted (6.9.2019) by [The Financial Services \(Electronic Money, Payment Services and Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1212\)](#), regs. 1(2), **7(5)(a)**

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- F9** Words in Sch. 3 para. 12E(2)(b) inserted (6.9.2019) by [The Financial Services \(Electronic Money, Payment Services and Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1212\)](#), regs. 1(2), **7(5)(b)**

Notification that authorisation no longer required

12F.—(1) A person to whom paragraph 12B applies and who has notified the FCA under paragraph 12C(1) must notify the FCA once it no longer has obligations under pre-existing contracts [^{F10}and has redeemed electronic money issued through a branch in the United Kingdom].

(2) On receiving a notification under sub-paragraph (1), the FCA must, if satisfied that the person giving the notification no longer has obligations under pre-existing contracts [^{F11}and has redeemed electronic money issued through a branch in the United Kingdom]—

- (a) notify the person of the date on which the person will cease to be an authorised electronic money institution by virtue of this Part of this Schedule, and
- (b) remove the person from the register from that date.

^{F12}(3)

- F10** Words in Sch. 3 para. 12F(1) inserted (6.9.2019) by [The Financial Services \(Electronic Money, Payment Services and Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1212\)](#), regs. 1(2), **7(6)(a)**
- F11** Words in Sch. 3 para. 12F(2) inserted (6.9.2019) by [The Financial Services \(Electronic Money, Payment Services and Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1212\)](#), regs. 1(2), **7(6)(b)**
- F12** Sch. 3 para. 12F(3) omitted (6.9.2019) by virtue of [The Financial Services \(Electronic Money, Payment Services and Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1212\)](#), regs. 1(2), **7(6)(c)**

Extension period

12G.—(1) The extension period in relation to a person begins—

- (a) where the [^{F13}IP completion day] conditions are met, with the day on which [^{F13}IP completion day] falls, and
- (b) where the transitional authorisation conditions are met, with the end of the transition period defined by paragraph 10.

(2) The extension period in relation to a person ends with the earliest of the following—

- (a) the day before the date stated in accordance with regulation 9(5) of EMR 2011 as that on which the person's authorisation as an electronic money institution (otherwise than by virtue of this Schedule) takes effect;
- (b) the day on which the transfer to another person of the person's business of providing electronic money issuance, redemption, distribution or payment services in the United Kingdom takes effect;
- (c) in a case where the person has notified the FCA under paragraph 12C(1), the day determined by the FCA under paragraph 12F(2);
- (d) in a case where the person has not notified the FCA under paragraph 12C(1), the time when all the person's obligations under relevant contracts have been discharged [^{F14}and the person has redeemed electronic money issued through a branch or an agent in the United Kingdom];

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- (e) the day on which any cancellation under paragraph 12J takes effect;
- (f) the day the person ceases to be authorised by its home state competent authority;
- (g) the end of the period of 5 years beginning with the day on which the extension period began.

[^{F15}(3) “Relevant contract”, in relation to a person to whom paragraph 12B applies, means a contract—

- (a) which—
 - (i) is a pre-existing contract; or
 - (ii) was entered into in accordance with a wind-down plan approved by the FCA under paragraph 12E(4); and
- (b) under which the person is obliged to issue electronic money or payment services.]

F13 Words in Sch. 3 para. 12G substituted (31.1.2020 immediately before exit day) by [The Financial Services \(Consequential Amendments\) Regulations 2020 \(S.I. 2020/56\)](#), regs. 1, **8(2)(i)**

F14 Words in Sch. 3 para. 12G(2)(d) inserted (6.9.2019) by [The Financial Services \(Electronic Money, Payment Services and Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1212\)](#), regs. 1(2), **7(7)(a)**

F15 Sch. 3 para. 12G(3) substituted (6.9.2019) by [The Financial Services \(Electronic Money, Payment Services and Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1212\)](#), regs. 1(2), **7(7)(b)**

[^{F16}**Supervision and enforcement of persons to whom paragraph 12B applies**

12H.—(1) In relation to a person to whom paragraph 12B applies, the provisions of EMR 2011 (other than those disapplied by paragraph 7(1)) apply while the person is an authorised electronic money institution by virtue of paragraph 12B(4).

- (2) Paragraph 7(2) applies in relation to that person as if the reference—
 - (a) to a person’s transitional authorisation were a reference to authorisation by virtue of paragraph 12B(4);
 - (b) to the transition period were a reference to the extension period in paragraph 12G.

F16 Sch. 3 paras. 12H, 12HA substituted for Sch. 3 para. 12H (6.9.2019) by [The Financial Services \(Electronic Money, Payment Services and Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1212\)](#), regs. 1(2), **7(8)**

Supervision and enforcement of persons to whom paragraph 12L (exemption from prohibition) applies

12HA.—(1) The following sub-paragraphs apply in relation to a person to whom paragraph 12L applies.

(2) Sections 165, 166, 175 and 177 of the 2000 Act, as modified by Schedule 3 to EMR 2011, apply as if the references to an electronic money issuer were references to a person who is exempt from the prohibition in regulation 63(1) of those Regulations by virtue of paragraph 12L.

- (3) If the FCA considers that a person—
 - (a) has not notified the FCA in accordance with paragraph 12C; or
 - (b) has acted in a manner which the FCA considers contrary to the advancement of its objectives under EMR 2011 or the 2018 Regulations,

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the FCA may publish a statement to that effect.

(4) The procedure in regulation 53 of EMR 2011 applies to the publication of a statement under sub-paragraph (3) as if the references to regulation 50 were references to this paragraph.

(5) Section 393(4) of the 2000 Act applies to notices issued in accordance with this paragraph in the same way as it applies to notices issued in accordance with regulation 53 in relation to the publication of statements under regulation 50 of EMR 2011 by virtue of paragraph 8 of Schedule 3 to EMR 2011.

(6) The FCA may, if it considers it appropriate to do so, publish information provided under paragraph 12C in respect of a person.

(7) Publication under sub-paragraph (6) is to be in such a manner as the regulator considers appropriate.]

F16 Sch. 3 paras. 12H, 12HA substituted for Sch. 3 para. 12H (6.9.2019) by [The Financial Services \(Electronic Money, Payment Services and Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1212\)](#), regs. 1(2), 7(8)

Variation and cancellation of authorisation

12I.—(1) In respect of a person to whom paragraph 12B applies, the FCA may—

- (a) cancel the person's authorisation by virtue of that paragraph as an authorised electronic money institution, or
- (b) limit the permitted services to which the authorisation relates.

(2) The FCA may only exercise the power in sub-paragraph (1) where—

- (a) the person's authorisation by the person's home state competent authority is cancelled,
- (b) the person has failed to comply with the terms of the person's authorisation by the person's home state competent authority,
- (c) the person does not issue electronic money in the United Kingdom during the 12 months beginning with [F17IP completion day],
- (d) the person ceases to engage in business activity in the United Kingdom for more than six months,
- (e) the person's notification under paragraph 12C contains false statements,
- (f) the person has not taken adequate measures for the purposes of safeguarding electronic money holders' funds in accordance with regulation 20 of EMR 2011 [F18and the 2018 Regulations],
- (g) the person would constitute a threat to the stability of, or trust in, a payment system by continuing the person's electronic money or payment services business,
- (h) the cancellation is desirable in order to protect the interests of electronic money holders or payment service users, F19 ...
- (i) the person's provision of payment services [F20or issuance of electronic money] is otherwise unlawful, including where such provision of services is unlawful because the person's registration in a register maintained under regulation 54 or 55 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 has been cancelled under regulation 60 of those Regulations,[F21or
- (j) the person has not submitted a notification in accordance with paragraph 12C.]

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- F17** Words in Sch. 3 para. 12I substituted (31.1.2020 immediately before exit day) by [The Financial Services \(Consequential Amendments\) Regulations 2020 \(S.I. 2020/56\)](#), regs. 1, **8(2)(j)**
- F18** Words in Sch. 3 para. 12I(2)(f) inserted (6.9.2019) by [The Financial Services \(Electronic Money, Payment Services and Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1212\)](#), regs. 1(2), **7(9)(a)**
- F19** Word in Sch. 3 para. 12I(2)(h) omitted (6.9.2019) by virtue of [The Financial Services \(Electronic Money, Payment Services and Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1212\)](#), regs. 1(2), **7(9)(b)**
- F20** Words in Sch. 3 para. 12I(2)(i) inserted (6.9.2019) by [The Financial Services \(Electronic Money, Payment Services and Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1212\)](#), regs. 1(2), **7(9)(c)**
- F21** Sch. 3 para. 12I(2)(j) and preceding word inserted (6.9.2019) by [The Financial Services \(Electronic Money, Payment Services and Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1212\)](#), regs. 1(2), **7(9)(d)**

Variation and cancellation: procedure

12J.—(1) If the FCA proposes to exercise the power in paragraph 12I or 12L(3) in relation to a person, it must give the person a warning notice.

(2) If the FCA decides to exercise the power in paragraph 12I or 12L(3) in relation to a person, it must give the person a decision notice.

(3) Part 26 of the 2000 Act (notices) applies to a notice under sub-paragraph (1) or (2) as it applies (by virtue of Schedule 3 to EMR 2011) in relation to a notice under EMR 2011.

(4) A person in respect of whom the power in paragraph 12I or 12L(3) is exercised may refer the decision to exercise the power to the Upper Tribunal.

(5) Part 9 of the 2000 Act (hearings and appeals) applies to a reference to the Upper Tribunal under sub-paragraph (4) as it applies (by virtue of Schedule 3 to EMR 2011) in relation to a reference under EMR 2011.

Power to charge fees

12K.—(1) The FCA may make rules providing for the payment to it of fees in connection with the discharge of a function under this Part of this Schedule.

(2) Rules under sub-paragraph (1) may not provide for the payment of a fee greater than an amount equal to the expenses incurred, or expected to be incurred, in the discharge of the function.

(3) Sections 138F to 138O of the 2000 Act (procedural provisions) apply to rules made under sub-paragraph (1) as they apply to rules made by the FCA under the 2000 Act.

Exemption from prohibition

12L.—^[F22](1) A person to whom this paragraph applies is, subject to sub-paragraph (6), exempt from the prohibitions in regulation 138(1) of the Payment Services Regulations 2017 and in regulation 63(1) of EMR 2011 for a period of five years beginning with the ^[F23]IP completion day], but only to the extent that it is necessary for the person to provide payment services or electronic money services in the United Kingdom to perform a pre-existing contract or to redeem outstanding electronic money.]

(2) This paragraph applies to an EEA authorised electronic money institution exercising its passport rights in the United Kingdom immediately before ^[F23]IP completion day] other than through a branch in the United Kingdom or a UK-based agent.

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(3) The FCA may cancel the exemption of a person to whom this paragraph applies, or direct that paragraph 12B is to apply to the person, if it considers that doing so is necessary—

- (a) for the prevention, detection, investigation or prosecution of a criminal offence;
- (b) for the protection of electronic money holders or payment service users; or
- (c) for the protection of trust in, or the stability of, a payment system.

(4) In exercising the power in paragraph (3), the FCA must take into account—

- (a) the person's conduct,
- (b) the practicality of supervision by the FCA,
- (c) the size of the person's undertaking, and
- (d) the nature of the services the person provides.

(5) Paragraph 3 of Schedule 3 to EMR 2011 has effect in relation to the FCA's exercise of its powers under this paragraph.

[
^{F24}(6) A person to whom paragraph applies is exempt from the prohibition in regulation 138(1) of the Payment Services Regulations 2017 only to the extent that it was providing the payment service in the United Kingdom immediately before [^{F23}IP completion day] in accordance with the exercise of an EEA passport right under Title 5 of Directive (EU) 2015/2366 as in force immediately before [^{F23}IP completion day].]

[
^{F25}(6) Where a person ("A") to whom this paragraph applies issues electronic money to a person ("B") in pursuance of a pre-existing contract in reliance on the exemption in sub-paragraph (1), A must, as soon as it is reasonably practicable to do so, notify B—

- (a) that A is exempt from the prohibition in regulation 63(1) of EMR 2011 by virtue of sub-paragraph (1) and is not authorised by the FCA under EMR 2011;
- (b) that, as a result of the United Kingdom's withdrawal from the European Union—
 - (i) it is possible that B's assets held by A in relation to the performance of the pre-existing contract no longer attract the same protection afforded to them immediately before IP completion day;
 - (ii) it is possible that recourse to an alternative dispute resolution procedure or compensation scheme that was available to B under the pre-existing contract immediately before IP completion day is no longer available;
- (c) in so far as it is practicable to do so, of any changes arising as a result of the United Kingdom's withdrawal from the European Union to—
 - (i) the protection afforded to B's assets held by A in relation to the performance of the pre-existing contract; or
 - (ii) the availability to B of an alternative dispute resolution procedure or compensation scheme under the pre-existing contract.

(7) If at any time after A has provided B with any information under sub-paragraph (6)—

- (a) there is, or is likely to be, a material change affecting that information; or
- (b) it becomes apparent to the applicant that the information is incomplete or contains a material inaccuracy,

A must provide B with details of the change, the complete information or a correction of the inaccuracy (as the case may be) as soon as it is reasonably practicable to do so.

(8) The FCA may issue guidance in respect of compliance with an obligation under sub-paragraph (6) or (7).]

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- F22** Sch. 3 para. 12L(1) substituted (6.9.2019) by [The Financial Services \(Electronic Money, Payment Services and Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1212\)](#), regs. 1(2), **7(10)(a)**
- F23** Words in Sch. 3 para. 12L substituted (31.1.2020 immediately before exit day) by [The Financial Services \(Consequential Amendments\) Regulations 2020 \(S.I. 2020/56\)](#), regs. 1, **8(2)(k)**
- F24** Sch. 3 para. 12L(6) inserted (6.9.2019) by [The Financial Services \(Electronic Money, Payment Services and Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1212\)](#), regs. 1(2), **7(10)(b)**
- F25** Sch. 3 para. 12L(6)-(8) inserted (31.1.2020) by [The Financial Services \(Miscellaneous\) \(Amendment\) \(EU Exit\) \(No. 2\) Regulations 2019 \(S.I. 2019/1010\)](#), regs. 1(3), **7(3)** (as amended by S.I. 2020/1301, regs. 1, 3, [Sch. para. 44\(b\)\(i\)](#)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)

Duration of extension period

12M.—(1) The Treasury may by regulations made by statutory instrument amend paragraph 12G so as to extend the extension period referred to in that paragraph, if the Treasury consider it necessary to do so.

(2) The Treasury may make regulations under sub-paragraph (1) only if, no later than 6 months before the end of the period to be increased, the FCA has submitted to the Treasury an assessment as to the effect of extending, or not extending, the period in paragraph 12G.

(3) Regulations under sub-paragraph (1) may not extend the period for the time being by more than 12 months.

(4) A statutory instrument containing regulations under sub-paragraph (1) is subject to annulment in pursuance of a resolution of either House of Parliament.]

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Changes and effects yet to be applied to :

- Regulations revoked by [2023 c. 29 Sch. 1 Pt. 2](#)