

2019 No. 1212

EXITING THE EUROPEAN UNION

FINANCIAL SERVICES AND MARKETS

**The Financial Services (Electronic Money, Payment Services
and Miscellaneous Amendments) (EU Exit) Regulations 2019**

Approved by Parliament

Made - - - - at 9.00 a.m. on 5th September 2019

Laid before Parliament at 3.00 p.m. on 5th September 2019

Coming into force in accordance with regulation 1

The Treasury make these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a), and section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018(b).

The Treasury are a government department designated(c) for the purposes of section 2(2) of the European Communities Act 1972 in relation to financial services.

The Treasury are of the opinion that, by reason of urgency, it is necessary to make these Regulations without a draft of the instrument being laid before, and approved by a resolution of, each House of Parliament(d).

(a) 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). Paragraph 1A was inserted into Schedule 2 by section 28 of the Legislative and Regulatory Reform Act 2006. The European Communities Act 1972 is repealed with effect from exit day by section 1 of the European Union (Withdrawal) Act 2018.

(b) 2018 c.16.

(c) S.I. 2012/1759.

(d) Paragraph 5(2) of Schedule 7 to the European Union (Withdrawal) Act 2018. Paragraph 38(1) to (3) of Schedule 7 to the European Union (Withdrawal) Act 2018 allows for regulations under that Act to be combined with regulations, made under other enabling provisions, which are subject to the negative resolution procedure in Parliament.

PART 1

General provision

Citation and commencement

1.—(1) These Regulations may be cited as the Financial Services (Electronic Money, Payment Services and Miscellaneous Amendments) (EU Exit) Regulations 2019.

(2) This regulation and regulations 2 to 7, 9 to 13, 15, 19(1) and (2), and 22(1) and (2) come into force the day after the day on which these Regulations are made.

(3) The other provisions of these Regulations come into force immediately before exit day.

PART 2

Amendment of primary legislation

The Financial Services and Markets Act 2000

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

(2) In section 138S(2) (application of Chapters 1 and 2), for paragraph (i) substitute—

“(i) section 138L (consultation: general exemptions)(b), as if—

(i) in subsection (1), for “425A” there were substituted “1G(c)”;

(ii) references to making rules were references to submitting a standards instrument to the Treasury for approval.”.

(3) In section 417(1) (definitions), in the definition of “capital requirements regulation”, for “the updating point (see subsection (1A))” substitute “the beginning of the day on which the Financial Services (Electronic Money, Payment Services and Miscellaneous Amendments) (EU Exit) Regulations 2019 (S.I. 2019/1212) are made (but see regulation 2 of the European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) Regulations 2019 (S.I. 2019/628), which may further update the reference)”.

The Banking Act 2009

3.—(1) The Banking Act 2009(d) is amended as follows.

(2) In section 3(1) (interpretation: other expressions), in the definition of “the capital requirements regulation”, for “the Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394)” substitute “the Financial Services (Electronic Money, Payment Services and Miscellaneous Amendments) (EU Exit) Regulations 2019 (S.I. 2019/1212)”.

(a) 2000 c.8. Section 138S was inserted by S.I. 2018/1115. Relevant amendments to section 417(1) were made by S.I. 2013/3115 and S.I. 2019/632.

(b) Section 138L was substituted, with the rest of Part 9A, for Part X of the Financial Services and Markets Act 2000 (c. 8) by Schedule 3 to the Financial Services Act 2012 (c. 21).

(c) Section 1G was substituted, with the rest of Part 1A, for the original Part 1 of the financial Services and Markets Act 2000 by section 6(1) of the Financial Services Act 2012.

(d) 2009 c.1; a relevant amendment was made by S.I. 2018/1394.

PART 3

Amendment of secondary legislation: electronic money and payment services

The Electronic Money Regulations 2011

4.—(1) The Electronic Money Regulations 2011(**a**) are amended as follows.

(2) In regulation 63 (prohibition on issuing electronic money by persons other than electronic money issuers)—

(a) in paragraph (1), after sub-paragraph (d) insert—

“(da) a credit institution while it is an exempt person for the purposes of section 19(1)(b) of the Financial Services and Markets Act 2000 by virtue of regulation 47 of the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018(**b**) but only in respect of a service specified in paragraph (3);”;

(b) after paragraph (2) insert—

“(3) A service is specified as one that may be provided by a credit institution under paragraph (1)(da) only to the extent that the credit institution was providing the service in the United Kingdom immediately before exit day in accordance with the exercise of an EEA passport right under Title 5 of Directive 2013/36/EU as in force immediately before exit day and the service is necessary as specified in paragraph (4).

(4) This paragraph applies where the service is necessary—

(a) for the performance of a contract entered into before exit day and provided for the purposes of performing such a contract or to redeem outstanding electronic money;

(b) for the purpose of reducing the financial risk of a party to a contract entered into before exit day or of a third party affected by the performance of such a contract;

(c) in order to transfer the property, rights or liabilities under a contract entered into before exit day to a person authorised to carry on a regulated activity under section 31(1)(a) of FSMA (other than a person authorised to carry on a regulated activity under that section of FSMA by virtue of the provisions contained in the Financial Services Contracts (Transitional and Saving Provision) (EU Exit) Regulations 2019(**c**)); or

(d) in order to comply with a requirement imposed by or under an enactment.

(5) For the purposes of paragraph (4)(a), the performance of a contract entered into before exit day includes the performance of an obligation under the contract which is contingent or conditional.”.

The Payment Services Regulations 2017

5.—(1) The Payment Services Regulations 2017(**d**) are amended as follows.

(2) In regulation 138 (prohibition on provision of payment services by persons other than payment service providers)—

(a) in paragraph (1)—

(i) after sub-paragraph (e) insert—

“(ea) a credit institution while it is an exempt person for the purposes of section 19(1)(b) of the Financial Services and Markets Act 2000 by virtue of regulation 47 of the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU

(a) S.I. 2011/99. Regulation 63 is amended prospectively by S.I. 2018/1201.

(b) S.I. 2018/1149. Regulation 47 is amended prospectively by S.I. 2019/405.

(c) S.I. 2019/405.

(d) S.I. 2017/752 as amended by S.I. 2018/1201.

Exit) Regulations 2018 but only in respect of a payment service specified in paragraph (3);”;

(ii) after sub-paragraph (f) insert—

“(fa)a relevant electronic money institution while it is exempt from the prohibitions in regulation 63(1) of the Electronic Money Regulations 2011 and this regulation by virtue of paragraph 12L of Schedule 3 to the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018(a) but only in respect of a payment service specified in paragraph (4);”;

(b) after paragraph (2) insert—

“(3) A payment service is specified as one that may be provided by a credit institution under paragraph (1)(ea) only to the extent that the credit institution was providing the service in the United Kingdom immediately before exit day in accordance with the exercise of an EEA passport right under Title 5 of Directive 2013/36/EU as in force immediately before exit day and the service is necessary as specified in paragraph (4).

(4) This paragraph applies where the service is necessary—

- (a) for the performance of a contract entered into before exit day and provided for the purposes of performing such a contract or to redeem outstanding electronic money;
- (b) for the purpose of reducing the financial risk of a party to a contract entered into before exit day or of a third party affected by the performance of such a contract;
- (c) in order to transfer the property, rights or liabilities under a contract entered into before exit day to a person authorised to carry on a regulated activity under section 31(1)(a) of FSMA (other than a person authorised to carry on a regulated activity under that section of FSMA by virtue of the provisions contained in the Financial Services Contracts (Transitional and Saving Provision) (EU Exit) Regulations 2019); or
- (d) in order to comply with a requirement imposed by or under an enactment.

(5) For the purposes of paragraph (4)(a), the performance of a contract entered into before exit day includes the performance of an obligation under the contract which is contingent or conditional.

(6) A payment service is specified as one that may be provided by a relevant electronic money institution under paragraph (1)(fa) only to the extent that—

- (a) the relevant electronic money institution was providing the service in the United Kingdom immediately before exit day in accordance with the exercise of an EEA passport right under article 3(1) of Directive 2009/110/EC as in force immediately before exit day; and
- (b) the services are necessary for the performance of a contract entered into before exit day and provided for the purposes of performing such a contract.

(7) In this regulation, a “relevant electronic money institution” is an EEA authorised electronic money institution which was exercising its EEA passport rights in the United Kingdom immediately before exit day (other than through an establishment in the United Kingdom maintained by it or its agent) while it is exempt from the prohibitions in regulation 63(1) of the Electronic Money Regulations 2011 and this regulation by virtue of paragraph 12L of Schedule 3 to the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018.”.

(a) S.I. 2018/1201. Paragraph 12L of Schedule 3 is added prospectively by S.I. 2019/405.

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

6.—(1) The EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018(a) are amended as follows.

(2) In regulation 30 (conditions to be satisfied for regulation 28 to apply: persons who cease to be authorised on exit day)—

- (a) in paragraph (1)(a)(ii), after “carrying on such an activity” insert “or, subject to paragraph (3), providing a payment service”; and
- (b) after paragraph (2) insert—

“(3) The reference to providing a payment service in paragraph (1)(a)(ii) applies only to a credit institution which was providing the service through an establishment in the United Kingdom immediately before exit day in accordance with the exercise of an EEA passport right under Title 5 of Directive 2013/36/EU as in force immediately before exit day.”.

(3) In regulation 36 (conditions to be satisfied for regulation 34 to apply: persons who cease to be authorised on exit day)—

- (a) in paragraph (1)(a)(ii) after “carrying on such an activity” insert “or, subject to paragraph (3), providing a payment service”; and
- (b) after paragraph (2) insert—

“(3) The reference to providing a payment service in paragraph (1)(a)(ii) applies only to a credit institution which was providing the service in the United Kingdom immediately before exit day in accordance with the exercise of an EEA passport right under Title 5 of Directive 2013/36/EU as in force immediately before exit day.”.

(4) In regulation 46 (interpretation), after the definition of “home state regulator” insert—

““payment service” has the same meaning as in regulation 2 of the Payment Services Regulations 2017(b);”.

(5) In regulation 49 (conditions to be satisfied for regulation 47 to apply: persons who cease to be authorised on exit day)—

- (a) in paragraph (a)(ii) after “carrying on such an activity” insert “or, subject to paragraph (3), providing a payment service”;
- (b) after paragraph (2) insert—

“(3) The reference to providing a payment service in paragraph (a)(ii) applies only to a credit institution which was providing the service in the United Kingdom immediately before exit day in accordance with the exercise of an EEA passport right under Title 5 of Directive 2013/36/EU as in force immediately before exit day.”.

(6) In regulation 68 (interpretation of Part 7), after the definition of “home state regulator” insert—

““payment service” has the same meaning as in regulation 2 of the Payment Services Regulations 2017;”.

The Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018

7.—(1) Schedule 3 (transitional provisions) to the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018(c) is amended as follows.

(2) In paragraph 1 (interpretation), after sub-paragraph (b) insert—

(a) S.I. 2018/1149 as amended prospectively by S.I. 2019/405.

(b) S.I. 2017/752 as amended by S.I. 2018/1201.

(c) S.I. 2018/1201 as amended prospectively by S.I. 2019/405.

“(ba) “the 2018 Regulations” means the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018;”.

(3) In paragraph 7, at the beginning of sub-paragraph (1)(d), insert “except where the person is subject to insolvency proceedings (as defined in regulation 24 of EMR 2011) in the United Kingdom.”.

(4) In paragraph 12B (continued authorisation for limited purposes), in sub-paragraph (4)—

- (a) omit “and” at the end of paragraph (a);
- (b) in paragraph (b), after “EMR 2011” insert “and the Payment Services Regulations 2017”;
- (c) at the end of paragraph (b) insert—
 - “, and
 - (c) a requirement imposed by a home state competent authority and which has effect immediately before exit 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) In paragraph 12E (permitted services), in sub-paragraph (2)—

- (a) in paragraph (a) after “pre-existing contract” insert “or to redeem outstanding electronic money”;
- (b) in paragraph (b) after “pre-existing contract” insert “or to redeem outstanding electronic money”.

(6) In paragraph 12F (notification that authorisation no longer required)—

- (a) at the end of sub-paragraph (1) insert “and has redeemed electronic money issued through a branch in the United Kingdom”;
- (b) in sub-paragraph (2), after “pre-existing contracts” insert “and has redeemed electronic money issued through a branch in the United Kingdom”; and
- (c) omit sub-paragraph (3).

(7) In paragraph 12G (extension period)—

- (a) at the end of sub-paragraph (2)(d) insert “and the person has redeemed electronic money issued through a branch or an agent in the United Kingdom”; and
- (b) for sub-paragraph (3) substitute—
 - “(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.”.

(8) For paragraph 12H (supervision and enforcement) substitute—

“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.

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,

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.”.

(9) In paragraph 12I (variation and cancellation of authorisation), in sub-paragraph (2)—

(a) at the end of paragraph (f) insert “and the 2018 Regulations”;

(b) omit “or” at the end of paragraph (h);

(c) in paragraph (i), after “provision of payment services” insert “or issuance of electronic money”; and

(d) at the end of paragraph (i), insert—

“or

(j) the person has not submitted a notification in accordance with paragraph 12C.”.

(10) In paragraph 12L (exemption from prohibition)—

(a) for sub-paragraph (1) substitute—

“(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 exit 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.”.

(b) after sub-paragraph (5) insert—

“(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 exit day in accordance with the exercise of an EEA passport right under Title 5 of Directive (EU) 2015/2366 as in force immediately before exit day.”.

(11) In paragraph 19 (exclusion of certain provisions of Payment Services Regulations 2017)—

- (a) at the beginning of sub-paragraph (1)(d) insert “except where the person is subject to insolvency proceedings (as defined in regulation 23 of the PSR 2017) in the United Kingdom,”;
- (b) in sub-paragraph (2), for “any application for authorisation made by the person”, substitute “any application for registration made by a person to whom paragraph 14(2)(a)(ii) applies”.

(12) In paragraph 26 (continued authorisation for limited purposes), after sub-paragraph (4)(b) insert—

“(c) a requirement imposed by a home state competent authority and which has effect immediately before exit day continues to have effect on and after that day as if it were imposed by the FCA under regulation 7 of the PSR 2017 insofar as it could be imposed by the FCA under that regulation.”.

(13) In paragraph 30, omit sub-paragraph (3).

(14) In paragraph 31, for sub-paragraph (3) substitute—

“(3) “Relevant contract”, in relation to a person to whom paragraph 26 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 29(4); and
- (b) under which the person is obliged to issue electronic money or provide payment services.”.

(15) For paragraph 32 (supervision and enforcement) substitute—

“Supervision and enforcement of persons to whom paragraph 26 applies

32.—(1) In relation to a person to whom paragraph 26 applies, the provisions of the PSR 2017 (other than those disapplied by paragraph 19(1)) apply while the person is an authorised payment institution by virtue of paragraph 26(4)(a)(i) or a registered account information service provider by virtue of paragraph 26(4)(a)(ii).

(2) Paragraph 19(2) applies to that person as if the reference—

- (a) to a person’s transitional authorisation were a reference to authorisation by virtue of paragraph 26(4)(a);
- (b) to the transition period is a reference to the extension period in paragraph 31.

Supervision and enforcement of persons to whom paragraph 36 applies

32A.—(1) The following sub-paragraphs apply in relation to a person to whom paragraph 36 applies.

(2) Sections 165, 166, 175 and 177 of the 2000 Act, as modified by paragraph 4 of Schedule 6 to the PSR 2017, apply as if the references to a payment service provider were to a person who is exempt from the prohibition in regulation 138(1) of those Regulations by virtue of paragraph 36.

(3) If the FCA considers that a person—

- (a) has not notified the FCA in accordance with paragraph 27; or
- (b) has acted in a manner which the FCA considers contrary to the advancement of its objectives under the PSR 2017 or the 2018 Regulations,

the FCA may publish a statement to that effect.

(4) The procedure in regulation 112 of the PSR 2017 applies to the publication of a statement under sub-paragraph (3) as if the references to regulation 110 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 110 of the PSR 2017 by virtue of paragraph 10 of Schedule 6 to the PSR 2017.

(6) The FCA may, if it considers it appropriate to do so, publish information provided under paragraph 27 in respect of a person.

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

(16) In paragraph 33 (variation and cancellation of authorisation), in sub-paragraph (2)(f), after “PSR 2017” insert “and the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018”.

(17) In paragraph 36 (exemption from prohibition), after sub-paragraph (2) insert—

“(2A) A person to whom this paragraph applies is exempt from the prohibition in regulation 138(1) of the PSR 2017 only to the extent that it was providing the payment service in the United Kingdom immediately before exit day in accordance with the exercise of an EEA passport right under article 3(1) of Directive 2009/110/EC as in force immediately before exit day.”.

The Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019

8.—(1) The Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019(a) are amended as follows.

(2) In regulation 143 (Article 60JA (payment institutions))—

(a) after paragraph (2) insert—

“(2A) In relation to a person who has a continued authorisation for a limited purpose in accordance with paragraph 26 of Schedule 3 to the 2018 Regulations or is exempt from the prohibition in regulation 138(1) of Payment Services Regulations 2017 by virtue of paragraph 36 of Schedule 3 to the 2018 Regulations, the amendment made by paragraph (1) does not apply during the extension period (within the meaning given by paragraph 31 of that Schedule) or the period of exemption (within the meaning given by paragraph 36 of that Schedule).”; and

(b) in paragraph (3), after “paragraph (2)”, insert “or (2A)”.

(3) In regulation 144 (Article 60JB (electronic money institutions))—

(a) after paragraph (2) insert—

“(2A) In relation to a person who has continued authorisation for limited purposes in accordance with paragraph 12B of Schedule 3 to the 2018 Regulations or is exempt from the prohibition in regulation 63(1) of Electronic Money Regulations 2011 by virtue of paragraph 12L of Schedule 3 to the 2018 Regulations, the amendment made by paragraph (1) does not apply during the extension period (within the meaning given by paragraph 12G of that Schedule) or the period of exemption (within the meaning given by paragraph 12L of that Schedule).”; and

(b) in paragraph (3), after “paragraph (2)”, insert “or (2A)”.

(a) S.I. 2019/632.

PART 4

Other amendments to secondary legislation

The Credit Institutions (Reorganisation and Winding up) Regulations 2004

9.—(1) Regulation 2(1A) of the Credit Institutions (Reorganisation and Winding up) Regulations 2004(a) (interpretation) is amended as follows.

(2) For “the Credit Institutions and Insurance Undertakings Reorganisation and Winding Up (Amendment) (EU Exit) Regulations 2019” substitute “the Financial Services (Electronic Money, Payment Services and Miscellaneous Amendments) (EU Exit) Regulations 2019”.

The Banking Act 2009 (Restriction of Partial Property Transfers) Order 2009

10.—(1) Article 1(6) of the Banking Act 2009 (Restriction of Partial Property Transfers) Order 2009(b) (interpretation) is amended as follows.

(2) For “the Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018” substitute “the Financial Services (Electronic Money, Payment Services and Miscellaneous Amendments) (EU Exit) Regulations 2019”.

The Banking Act 2009 (Banking Group Companies) Order 2014

11.—(1) Article 2(2) of the Banking Act 2009 (Banking Group Companies) Order 2014(c) (interpretation) is amended as follows.

(2) In the definition of “the Capital Requirements Regulation” for “the Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018” substitute “the Financial Services (Electronic Money, Payment Services and Miscellaneous Amendments) (EU Exit) Regulations 2019”.

The Bank Recovery and Resolution (No. 2) Order 2014

12.—(1) Article 2(4) of the Bank Recovery and Resolution (No. 2) Order 2014(d) (interpretation) is amended as follows.

(2) For “the Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018” substitute “the Financial Services (Electronic Money, Payment Services and Miscellaneous Amendments) (EU Exit) Regulations 2019”.

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

13.—(1) In the Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018(e), the Schedule is amended as follows.

(2) In paragraph 67, omit “Article 30 (3) and (5) of”.

(3) After paragraph 69, insert—

“**69ZA.** Commission Delegated Regulation (EU) 2019/979 of 14 March 2019 supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council with regard to regulatory technical standards on key financial information in the summary of a prospectus, the publication and classification of prospectuses, advertisements for

(a) S.I. 2004/1045; a relevant amendment was made by S.I. 2019/38.

(b) S.I. 2009/322; a relevant amendment was made by S.I. 2018/1394.

(c) S.I. 2014/1831; a relevant amendment was made by S.I. 2018/1394.

(d) S.I. 2014/3348; a relevant amendment was made by S.I. 2018/1394.

(e) S.I. 2018/1115, so far as material, amended by The Financial Services (Miscellaneous) (Amendment) (EU Exit) (No. 3) Regulations 2019.

securities, supplements to a prospectus, and the notification portal, and repealing Commission Delegated Regulation (EU) No 382/2014 and Commission Delegated Regulation (EU) 2016/301(a).”.

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

14.—(1) The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018(b) are amended as follows.

(2) In regulation 26(2)(a) (definitions), in new paragraph (15A)—

- (a) after “multilateral system” insert “operated by a UK investment firm or market operator”;
- (b) at the end insert—

“and for the purposes of this definition, an investment firm or market operator is a UK investment firm or market operator if it has its head office in the United Kingdom;”.

(3) In regulation 28(10)(d) (transparency for systematic internalisers and investment firms trading OTC)—

- (a) in new paragraph 4(a), omit “, as those provisions are amended from time to time”;
- (b) after new paragraph 5, insert—

“6. For the purposes of paragraph 4, references to requirements resulting from provisions of the law of the United Kingdom relied upon before exit day to implement Title III of Directive 2014/65/EU and Directive 2004/109/EC are to those requirements as they apply on the day on which regulations are made by the Treasury under this Article.”.

(4) In regulation 30(1)(c) (derivatives)—

- (a) in paragraph (i)(bb), for “United Kingdom legislation which implemented or replaced” substitute “United Kingdom law which was relied on by the United Kingdom before exit day to implement”;
- (b) after paragraph (ii), insert—

“(iii) after the fourth subparagraph, insert—

“In this paragraph, references to requirements of United Kingdom law which was relied on by the United Kingdom before exit day to implement Directive 2014/65/EU are to those requirements as they apply on the day on which regulations are made by the Treasury under this Article.”.

(5) In regulation 31(2)(d) (non-discriminatory clearing access for financial instruments), after paragraph (iii), insert—

“(iv) in the third subparagraph, for “Union” substitute “United Kingdom”.

(6) In regulation 33(2)(b) (provision of services and performance of activities by third-country firms following an equivalence decision), after paragraph (ii), insert—

“(iii) after the second subparagraph, insert—

“For the purposes of this paragraph, references to requirements resulting from the law of the United Kingdom which was relied upon by the United Kingdom before exit day to implement Directives 2013/36/EU and 2014/65/EU are to those requirements as they apply on the day on which regulations are made by the Treasury under this Article.”.

(7) In regulation 37(1) (transfer of Functions), in paragraph 8 of new Schedule 3, after point (2), insert—

“(3) For the purposes of this paragraph, references to requirements resulting from the law of the United Kingdom which was relied on by the United Kingdom immediately before

(a) OJ L 166, 21.6.2019, p. 1–25.

(b) S.I. 2018/1403.

exit day to implement Title III of Directive 2014/65/EU and Directive 2004/109/EC are to those requirements as they apply on the day on which regulations are made by the Treasury under this paragraph.”.

(8) In regulation 49, in paragraph (e), omit “3(b), (c), (d) and”.

The Market Abuse (Amendment) (EU Exit) Regulations 2019

15.—(1) The Market Abuse (Amendment) (EU Exit) Regulations 2019(a) are amended as follows.

(2) In regulation 9(2) (general provisions: subject matter and scope), for sub-paragraph (b), substitute—

“(b) in paragraph 4, for “in the Union and in a third country” substitute “wherever those actions and omissions take place, whether in the United Kingdom or another country or territory”.”.

(3) In regulation 10(2)(q) (general provisions: definitions), in the definition of ‘the EU Market Abuse Regulation’, for “European law” substitute “the European Union”.

(4) In regulation 10(5)(e), in substituted paragraph 6, for “in this paragraph” substitute “in this Article”.

The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019

16. In regulation 9(4)(a) (AIFs and control) of the Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019(b), for “Article 20.1(b) to 20.1(h)”, substitute “Article 20.1(b) to 20.1(h) of the second company law directive”.

The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019

17. In regulation 12 (equivalence decisions for the purposes of the definition of OTC derivatives) of the Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019(c), after paragraph (4), insert—

“(5) After paragraph 3, insert—

“4. In this Article, references to requirements resulting from provisions of United Kingdom law which was relied on before exit day to implement Title 3 of Directive 2014/65/EU are to those requirements as they apply on the day on which the regulations are made by the Treasury under this Article.”.”.

The Solvency 2 and Insurance (Amendment, etc.) (EU Exit) Regulations 2019

18.—(1) The Solvency 2 and Insurance (Amendment, etc.) (EU Exit) Regulations 2019(d) are amended as follows.

(2) In regulation 11 (amendments of Commission Delegated Regulation (EU) No 2015/35)—

(a) in paragraph (2)(f), in new paragraph 61, for words “References” to “implementing measures”, substitute—

“References to the United Kingdom law which implemented a Directive, or any provision of a Directive, are, except in Title III, to the law of the United Kingdom which was relied

(a) S.I. 2019/310.
(b) S.I. 2019/328.
(c) S.I. 2019/335.
(d) S.I. 2019/407.

on by the United Kingdom immediately before exit day to implement the Directive in question and its implementing measures (if any)—”;

- (b) after paragraph (90), insert—
“(90A) Before Article 378, insert—

“Article 377A

References to United Kingdom law

In this Title, references to United Kingdom law which implemented the Solvency 2 Directive, or any provisions in that Directive, are to the law of the United Kingdom which was relied on by the United Kingdom immediately before exit day to implement Directive 2009/138/EU and its implementing provisions, as such law applies on the day on which regulations are made by the Treasury under this Title.”

The Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019

19.—(1) The Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019(a) are amended as follows.

(2) In Schedule 1, in paragraph 4(1)(a), for “EMIR” substitute “Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU”;

(3) In Schedule 2, in sub-paragraph (b) of paragraphs 6(b), 7(b), 8(b) and 9(b), in each of the new Articles inserted by those sub-paragraphs, omit points (a) and (b) and the preceding dash.

The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019

20.—(1) The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (b) are amended as follows.

(2) In regulation 42 (transitional provisions)—

(a) in paragraph (2), in new paragraph 1B(a)(ii), for “transition period” substitute “period beginning with exit day and ending with 31 December 2019”;

(b) in paragraph (6)—

(i) in new paragraph 5(a), for “transition period” substitute “period beginning with exit day and ending with 31 December 2022”;

(ii) in new paragraph 5(b)—

(aa) for “1 January 2020” substitute “1 January 2023”;

(bb) for “31 December 2019” substitute “31 December 2022”;

(iii) in new paragraph 5A(b), for the words from “in accordance with” to the end substitute “in accordance with Article 36 of this Regulation”;

(c) in paragraph (8), omit the definition of “transition period”.

(3) Omit Chapter 2 of Part 3 (transitional provision – temporary registration).

(4) In regulation 65 (interpretation of Part 3), omit the definitions of “temporary information”, “temporary registration period” and “working day”.

(a) S.I. 2019/541.

(b) S.I. 2019/657.

The Securitisation (Amendment) (EU Exit) Regulations 2019

21. In regulation 30(6) (Article 43 (transitional provisions)) of the Securitisation (Amendment) (EU Exit) Regulations 2019(**a**), for “Article 6(7)” substitute “Article 7(3)”.

The Gibraltar (Miscellaneous Amendments) (EU Exit) Regulations 2019

22.—(1) The Gibraltar (Miscellaneous Amendments) (EU Exit) Regulations 2019(**b**) are amended as follows.

(2) Omit regulation 8(2)(b) (the Market Abuse (Amendment) (EU Exit) Regulations 2019).

(3) In regulation 11(5)(z) (saving for certain financial services legislation relating to Gibraltar), for “regulations 127, 128, 155, 180(2), 188 and 191” substitute “regulations 126, 127, 154, 179(2), 187 and 190”.

Mike Freer
Rebecca Harris

At 9.00 a.m. on 5th September 2019 Two of the Lords Commissioners of Her Majesty’s Treasury

(a) S.I. 2019/660.
(b) S.I. 2019/680.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers in section 2(2) of the European Communities Act 1972 (c. 68) and section 8(1) of the European Union (Withdrawal) Act 2018 (c. 16) to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union (in particular, the deficiencies under paragraphs (a), (b), (c), (d) and (g) of section 8(2)).

Regulations 2(2), 3, and 9 to 12 are made using the power in section 2(2) of the European Communities Act 1972 (c. 68), and all other provisions (except regulation 1) are made under the powers in section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 (c. 16). Regulation 1 (citation and commencement) is made under a combination of the aforementioned powers in both Acts.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

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