

2019 No. 310

EXITING THE EUROPEAN UNION
FINANCIAL SERVICES

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

Made - - - - *18th February 2019*

Coming into force in accordance with regulation 1

The Treasury is a government department designated(a) for the purpose of section 2(2) of the European Communities Act 1972(b) in relation to financial services.

The Treasury, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and section 8(1) of the European Union (Withdrawal) Act 2018(c) make the following Regulations.

A draft of these Regulations has been approved by a resolution of each House of Parliament in accordance with paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018.

PART 1

General

Citation and commencement

1.—(1) These Regulations may be cited as the Market Abuse (Amendment) (EU Exit) Regulations 2019.

(2) This regulation, and regulations 2, 3 and 6, come into force on the day after the day on which these Regulations are made.

(3) The other provisions in these Regulations come into force on exit day.

(a) S.I. 2012/1759.

(b) 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 (“the 1972 Act”) 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 the Agreement signed in Brussels on 17th March 1993 (Cm 2183). Paragraph 1A was inserted into Schedule 2 to the 1972 Act by section 28 of the Legislative and Regulatory Reform Act 2006. The 1972 Act is repealed with effect from exit day by section 1 of the European Union (Withdrawal) Act 2018.

(c) 2018 c.16.

PART 2

Amendment of primary legislation using powers in the European Communities Act 1972

Amendment of the Criminal Justice Act 1993

2. In paragraph 5 of Schedule 1 to the Criminal Justice Act 1993(a)—

- (a) the existing text becomes sub-paragraph (1);
- (b) in paragraph (a) of that sub-paragraph—
 - (i) after “(market abuse regulation)” insert “, as that Article has effect at the time mentioned in sub-paragraph (2),”; and
 - (ii) for “made under that Article” substitute “(a “delegated regulation”) made before that time under that Article, as the delegated regulation has effect at that time”; and
- (c) after that sub-paragraph insert—

“(2) The time is the beginning of the day on which the Market Abuse (Amendment) (EU Exit) Regulations 2018 are made.”

Amendment of the Financial Services and Markets Act 2000

3. In section 122G(7) of the Financial Services and Markets Act 2000 (publication of information and corrective statements by issuers)(b), in the definition of “emission allowance market participant”, for “3.1.19” substitute “3.1.20”.

PART 3

Amendment of primary legislation using powers in the European Union (Withdrawal) Act 2018

Amendment of the Criminal Justice Act 1993

4. In Schedule 1 to the Criminal Justice Act 1993, in paragraph 5(1) (as numbered and amended by regulation 2), in paragraph (a), for the words from “and each” to the end substitute—

- “and—
- (i) each EU regulation, originally made under that Article before that time, which is retained direct EU legislation; and
 - (ii) all subordinate legislation (within the meaning of the Interpretation Act 1978) made under that Article on or after exit day;”.

Amendment of the Financial Services and Markets Act 2000

5.—(1) Part 8 of the Financial Services and Markets Act 2000(c) is amended as follows.

(2) In section 122B (general power to require information)—

- (a) in subsection (2), for “a supplementary EU regulation” substitute “under supplementary market abuse legislation”;
- (b) for subsections (6) and (7), substitute—

(a) 1993 c.36. Paragraph 5 of Schedule 1 was inserted by S.I. 2016/680. There are other amendments but none is relevant.

(b) 2000 c.8. Section 122G was inserted by S.I. 2016/880.

(c) Sections 122B-122H, 122I, 131AA and 131AB of Part 8 were inserted by S.I. 2016/680. Section 122IA was inserted by S.I. 2017/701. Sections 123, 123A, 123B and 129 were substituted by S.I. 2016/680.

“(6) The FCA may exercise its powers under this section at the request of an overseas regulator where the regulator makes the request in the exercise of its relevant functions.

(6A) In subsection (6)—

“overseas regulator” means—

- (a) the competent authority of an EEA State for the purposes of the market abuse regulation, as that regulation has effect in the European Union (the “EU version of the market abuse regulation”); or
- (b) an authority of any other country or territory outside the United Kingdom which exercises functions corresponding to those of a competent authority under the EU version of the market abuse regulation;

“relevant functions” means—

- (a) in relation to the competent authority of an EEA State, its functions under—
 - (i) the EU version of the market abuse regulation; or
 - (ii) a directly applicable EU regulation made under the EU version of the market abuse regulation;
- (b) in relation to an authority of any other country or territory outside the United Kingdom, its functions corresponding to the functions referred to in paragraph (a);

(3) In section 122D (entry of premises under warrant)—

(a) in subsection (10)—

- (i) for “EEA” substitute “overseas”;
- (ii) for “functions under the market abuse regulation or a supplementary EU regulation” substitute “relevant functions”;

(b) after subsection (10), insert—

“(10A) In subsection (10), “overseas regulator” and “relevant functions” have the meaning given in section 122B(6A).”;

(c) omit subsection (11).

(4) In section 122G (publication of information and corrective statements by issuers), in subsection (3)(b), for “a supplementary EU regulation” substitute “under supplementary market abuse legislation”.

(5) In section 122H(3) (publication of corrective statements generally), for “a supplementary EU regulation” substitute “under supplementary market abuse legislation”.

(6) In section 122I(1) (power to suspend trading in financial instruments), for “a supplementary EU regulation” substitute “under supplementary market abuse legislation”.

(7) Omit section 122IA (power to suspend auctioning of auctioned products on a recognised auction platform).

(8) In section 123(1) (power to impose penalties or issue censure)—

- (a) in paragraph (b)(ii) and (c)(ii), for “a supplementary EU regulation” substitute “any supplementary market abuse legislation”;
- (b) in paragraph (c)(i), omit “122IA,”;

(9) In section 123A (power to prohibit individuals from managing or dealing)(a)—

- (a) in subsection (b)(ii), for “a supplementary EU regulation” substitute “any supplementary market abuse legislation”;
- (b) in subsection (1)(c), omit “, 122IA”;
- (c) in subsection (2), omit paragraph (c);

(a) Section 123A(2)(c) and (8) were inserted by S.I. 2017/701.

- (d) omit subsection (8).
- (10) In section 123B(1) (suspending permission to carry on regulated activities etc.)—
 - (a) in paragraph (b)(ii), for “a supplementary EU regulation” substitute “any supplementary market abuse legislation”;
 - (b) in paragraph (c), omit “, 122IA”.
- (11) In section 124(10) (statement of policy)(a), in the definition of “relevant person”—
 - (a) in paragraphs (b)(ii) and (c)(ii), for “a supplementary EU regulation” substitute “any supplementary market abuse legislation”;
 - (b) in paragraph (c)(i), omit “122IA,”.
- (12) In section 129 (power of court to impose administrative sanctions in cases of market abuse)(b)—
 - (a) in subsection (7), in the definition of “temporary prohibition”—
 - (i) at the end of paragraph (a), insert “or”;
 - (ii) omit paragraph (c) and the “or” preceding it;
 - (b) omit subsection (8);
 - (c) in subsection (9)(a), for “a supplementary EU regulation” substitute “by supplementary market abuse legislation”.
- (13) In section 131AA—
 - (a) in subsection (1)(c) (reporting of infringements)(c) omit “, EEA central counterparties,”;
 - (b) in subsection (2), for “EU regulation” substitute “market abuse legislation”.
- (14) In section 131AB (interpretation)(d)—
 - (a) the existing text becomes subsection (1);
 - (b) in subsection (1)—
 - (i) omit the definition of “EEA regulator”;
 - (ii) for the definition of “financial instrument” substitute—

““financial instrument” means any instrument specified in Part 1 of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities) Order(e), read with Part 2 of that Schedule;”;
 - (iii) omit the definition of “recognised auction platform”;
 - (iv) omit the definition of “supplementary EU regulation”;
 - (c) after subsection (1), insert—

“(2) The following are supplementary market abuse legislation for the purposes of this Part—

 - (a) an EU regulation, originally made under the market abuse regulation, which is retained direct EU legislation; and
 - (b) subordinate legislation (within the meaning of the Interpretation Act 1978) made under the market abuse regulation on or after exit day.”.

(a) Section 124(10) was inserted by S.I. 2016/680.
 (b) Paragraph (c) of the definition of “temporary prohibition” in subsection (7), and subsection (8) were inserted by S.I. 2017/701. Subsection (9) was inserted by S.I. 2017/1255.
 (c) Section 131AA was inserted, with section 131AB, by S.I. 2016/680.
 (d) The definitions of “emission allowance” and “recognised auction platform” were inserted by S.I. 2017/701.
 (e) S.I. 2001/544.

PART 4

Amendment of subordinate legislation: European Communities Act 1972

Amendment of the Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016

6. In regulation 2 (interpretation) of the Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016(a), in the definition of “the market abuse regulation”, after “2004/72/EC” insert “, as it has effect on the day on which the Market Abuse (Amendment) (EU Exit) Regulations 2018 are made”.

PART 5

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

Amendment of the Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016

7.—(1) The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016(b) are amended as follows.

(2) In regulation 2 (interpretation)—

- (a) omit the definition of “supplementary EU regulation”;
- (b) after the definition of “the market abuse regulation” insert—
 - ““supplementary market abuse enactment” means—
 - (a) any EU regulation made under the market abuse regulation which is retained direct EU legislation;
 - (b) any instrument made under the market abuse regulation on or after exit day.”.

(3) Regulation 3 (designation of competent authority) is omitted.

(4) In regulation 4(1) (delayed public disclosure of inside information), for “competent authority specified under Article 17.3 only upon the request of that authority” substitute “FCA only upon the FCA’s request”.

(5) In regulations 6(1) and 7 (applications and notifications under the market abuse regulation), for “supplementary EU regulation” substitute “supplementary market abuse enactment”.

(6) In regulation 23 (review), omit paragraph (2).

(7) In the Schedule (reporting of actual or potential contraventions of the market abuse regulation to the FCA)—

- (a) in paragraph 4(2), omit “an EU obligation or”;
- (b) in paragraph 8(2), omit “and that of other competent authorities”.

(a) S.I. 2016/680.
(b) S.I. 2016/680.

PART 6

Amendment of retained direct EU legislation

Market Abuse Regulation

8. Regulation (EU) 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC is amended in accordance with this Part.

General provisions: subject matter and scope

9.—(1) In Article 1 (subject matter)—

- (a) omit “common”;
- (b) for “Union” substitute “United Kingdom”.

(2) In Article 2 (scope)—

- (a) in paragraph 1—
 - (i) in the first subparagraph—
 - (aa) in point (a), for “regulated market”, in both places it occurs, substitute “UK regulated market or an EU regulated market”;
 - (bb) in point (b), for “an MTF”, in each place it occurs, substitute “a UK MTF or an EU MTF”;
 - (cc) in point (c), for “an OTF” substitute “a UK OTF or an EU OTF”;
 - (ii) in the second subparagraph—
 - (aa) omit “on an auction platform authorised as a regulated market”;
 - (bb) omit “, pursuant to Regulation (EU) No 1031/2010”;
- (b) in paragraph 4, for “Union” substitute “United Kingdom”.

General provisions: definitions

10.—(1) Article 3 (definitions) is amended as follows.

(2) In paragraph 1—

- (a) for point (1) (definition of ‘financial instrument’) substitute—

“(1) ‘financial instrument’ means those instruments specified in Part 1 of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(a), read with Part 2 of that Schedule;”;
- (b) in point (2) (definition of ‘investment firm’), for “point (1) of Article 4(1) of Directive 2014/65/EU” substitute “Article 2(1A) of the Markets in Financial Instruments Regulation”;
- (c) for point (4), for the words from “point (26)” to the end, substitute—

“—

 - (a) Regulation (EU) No 575/2013 as that Regulation forms part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018; or
 - (b) Regulation (EU) No 575/2013 as that Regulation applies in the European Union;”

(a) S.I. 2001/544.

- (d) in point (5) (definition of ‘market operator’), for “point (18) of Article 4(1) of Directive 2014/65/EU” substitute “Article 2(1)(10) of the Markets in Financial Instruments Regulation”;
- (e) for points (6) to (8) (definitions of ‘regulated market’, ‘multilateral trading facility’ and ‘organised trading facility’) substitute—
 - “(6) ‘regulated market’ has the meaning given in Article 2(1)(13) of the Markets in Financial Instruments Regulation;
 - (6A) ‘UK regulated market’ has the meaning given in Article 2(1)(13A) of the Markets in Financial Instruments Regulation;
 - (6B) ‘EU regulated market’ has the meaning given in Article 2(1)(13B) of the Markets in Financial Instruments Regulation;
 - (7) ‘multilateral trading facility’ or ‘MTF’ has the meaning given in Article 2(1)(14) of the Markets in Financial Instruments Regulation;
 - (7A) ‘UK multilateral trading facility’ or ‘UK MTF’ has the meaning given in Article 2(1)(14A) of the Markets in Financial Instruments Regulation;
 - (7B) ‘EU multilateral trading facility’ or ‘EU MTF’ has the meaning given in Article 2(1)(14B) of the Markets in Financial Instruments Regulation;
 - (8) ‘organised trading facility’ or ‘OTF’ has the meaning given in Article 2(1)(15) of the Markets in Financial Instruments Regulation;
 - (8A) ‘UK organised trading facility’ or ‘UK OTF’ has the meaning given in Article 2(1)(15A) of the Markets in Financial Instruments Regulation;
 - (8B) ‘EU organised trading facility’ or ‘EU OTF’ has the meaning given in Article 2(1)(15B) of the Markets in Financial Instruments Regulation;”;
- (f) in point (9) (definition of ‘accepted market practice’), for “a competent authority” substitute “the FCA”;
- (g) for point (10) (definition of ‘trading venue’) substitute—
 - “(10) ‘trading venue’ means a regulated market, an MTF or an OTF;
 - (10A) ‘UK trading venue’ means a UK regulated market, a UK MTF or a UK OTF;
 - (10B) ‘EU trading venue’ means an EU regulated market, an EU MTF or an EU OTF;”;
- (h) in point (11) (definition of ‘SME growth market’) for “point (12) of Article 4(1) of Directive 2014/65/EU” substitute “regulation 2(1) of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017(a)”;
- (i) for point (12) (definition of ‘competent authority’) substitute—
 - “(12) ‘competent authority’ means—
 - (a) in relation to an EEA state, the authority which has been designated by that Member State as its competent authority for the purposes of Article 22 of this Regulation as it was in force before exit day; and
 - (b) in relation to a third country which is not an EEA state, the supervisory authority which exercises functions equivalent to those exercised by competent authorities in Member States in accordance with this Regulation as it was in force before exit day;”;
- (j) in point (17) (definition of ‘buy-back programme’), at the end insert “or the law of the United Kingdom which was relied on by the United Kingdom immediately before exit day to implement those Articles”;
- (k) in point (18) (definition of ‘algorithmic trading’), for “point (39) of Article 4(1) of Directive 2013/65/EU” substitute “regulation 2(1) of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017(b)”;

(a) S.I. 2017/701, as amended by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018.

(b) S.I. 2017/701.

- (l) in point (19) (definition of ‘emission allowance’), for “point (11) of Section C of Annex 1 to Directive 2014/65/EU” substitute “paragraph 11 of Part 1 of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001”;
- (m) in point (25) (definition of ‘person discharging managerial responsibilities’)—
 - (i) for “issuer,” substitute “issuer or”;
 - (ii) omit “or another entity referred to in Article 19(10),”;
- (n) for point (27) (definition of ‘data traffic records’), substitute—

“(27) ‘data traffic records’ means records of any data processed for the purpose of the conveyance of a communication on an electronic communications network or for the billing thereof;”
- (o) in point (30) (definition of ‘market maker’), for “point (7) of Article 4(1) of Directive 2014/65/EU” substitute “Article 2(1)(6) of the Markets in Financial Instruments Regulation”;
- (p) in point (33) (definition of ‘high-frequency trading’), for “point (40) of Article 4(1) of Directive 2014/65/EU” substitute “regulation 2(1) of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017”;
- (q) after point (35) (definition of ‘investment recommendations’) insert—

“(36) ‘FCA’ means the Financial Conduct Authority;

(37) ‘the Markets in Financial Instruments Regulation’ means 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, as it forms part of domestic law by virtue of section 3 of the EU (Withdrawal) Act 2018, and as it is modified by domestic law from time to time;

(38) ‘the EU Market Abuse Regulation’ means Regulation (EU) No 596/2014 of the European Parliament and of the Council on market abuse as it has effect in European law(a);

(39) references to a ‘third country’ (including in expressions including the words ‘third country’) are to be read as references to a country other than the United Kingdom.”.
- (3) In paragraph 2(b), for “trading venue” substitute “UK trading venue or an EU trading venue”, in both places it occurs.
- (4) In Article 4 (notification and list of financial instruments)—
 - (a) in paragraph 1—
 - (i) in the first subparagraph—
 - (aa) before “regulated markets” insert “UK”;
 - (bb) for “an MTF or an OTF” substitute “a UK MTF or a UK OTF”;
 - (cc) for “competent authority of the trading venue” substitute “FCA”;
 - (ii) in the second subparagraph, for “competent authority of the trading venue” substitute “FCA”;
 - (iii) omit the fourth subparagraph;
 - (b) for paragraph 2 substitute—

“2. The FCA shall publish notifications received under paragraph 1 on its website in the form of a list without delay. The FCA shall update that list without delay following receipt of a notification received under paragraph 1. The list shall not limit the scope of this Regulation.”;
 - (c) in paragraph 3—

(a) OJ L173, 12.6.2014, p.1,

- (i) in point (a), for “regulated markets, MTFs and OTFs” substitute “UK regulated markets, UK MTFs and UK OTFs”;
 - (ii) in point (c), for “trading venues” substitute “UK trading venues”;
- (d) for paragraphs 4 and 5 substitute—
- “4. The FCA may make technical standards specifying—
- (a) the content of the notifications referred to in paragraph 1;
 - (b) the manner and conditions of the compilation, publication and maintenance of the list referred to in paragraph 2.
5. The FCA may make technical standards specifying the timing, format and template of the submission of notifications under paragraph 1.”;
- (5) In Article 5 (exemption for buy-back programmes and stabilisation)—
- (a) in paragraph 1—
 - (i) in point (b), for “competent authority of the trading venue” substitute “FCA or European competent authority”;
 - (ii) in point (d), omit “regulatory”;
 - (b) for paragraph 3 substitute—

“3. In order to benefit from the exemption in paragraph 1—

 - (a) where shares have been admitted to trading or are traded on a UK trading venue, the issuer must report to the FCA each transaction relating to the buy-back programme including the information specified in Article 25(1) and (2) and Article 26(1), (2) and (3) of the Markets in Financial Instruments Regulation (and for these purposes, Article 26 of that Regulation applies as if the obligation in paragraph (2)(a) only applied to financial instruments which are admitted to trading or traded on a UK trading venue);
 - (b) where shares have been admitted to trading or are traded on an EU trading venue, the issuer must make the reports to the competent authority of the trading venue on which the shares have been admitted to trading or are traded which are required in accordance with Article 5(3) of the EU Market Abuse Regulation.”;
 - (c) in paragraph 4—
 - (i) for point (b) substitute—

“(b) relevant information about the stabilisation is disclosed and notified—

 - (i) where the securities or associated instruments are traded on a UK trading venue, to the FCA in accordance with paragraph 5;
 - (ii) where the securities or associated instruments are traded on an EU trading venue, to the European competent authority of the trading venue in accordance with Article 5(5) of the EU Market Abuse Regulation.”;
 - (ii) in point (d), omit “regulatory”;
 - (d) in paragraph 5—
 - (i) omit “Without prejudice to Article 23(1),”;
 - (ii) for “competent authority of the trading venue” substitute “FCA (where the securities or associated instruments are traded on a UK trading venue)”;
 - (e) for paragraph 6 substitute—

“6. The technical standards referred to in this paragraph are—

 - (a) Commission Delegated Regulation (EU) 2016/1052 of 8 March 2016 supplementing Regulation (EU) 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the conditions applicable to buy-back programmes and stabilisation measures—

- (i) as that Regulation forms part of domestic law, where the trading takes place on a UK trading venue; or
- (ii) as that Regulation applies in the European Union, where the trading takes place on an EU trading venue;
- (b) any technical standards made by the FCA under paragraph 7, where the trading takes place on a UK trading venue;
- (c) any other regulatory technical standards adopted by the Commission under Article 5(6) of Regulation (EU) No 596/2014 of the European Parliament and of the Council on market abuse as it has effect in the European Union, where the trading takes place on an EU trading venue.

7. The FCA may make technical standards to specify the conditions that buy-back programmes and stabilisation measures referred to in paragraphs 1 and 4 must meet, including conditions for trading, restrictions regarding time and volume, disclosure and reporting obligations, and price conditions.

8. In this Article, ‘European competent authority’ means the authority which has been designated by a Member State as its competent authority for the purposes of Article 22 of this Regulation as it had effect before exit day.”.

(6) In Article 6 (exemption for monetary and public debt management activities and climate policy activities)—

(a) in paragraph 1—

- (i) in point (a), for “a Member State”, substitute “the United Kingdom (including any government department of the United Kingdom)”;
- (ii) in point (b), for “members of the ESCB”, substitute “Bank of England”;
- (iii) for point (c), substitute—

“(ba) the Treasury or a person acting on its behalf;

(c) a ministry, any other agency or a special purpose vehicle of—

- (i) the United Kingdom; or
- (ii) the United Kingdom and one or more Member States;

(ca) a person acting on behalf of a ministry, agency or special purpose vehicle referred to in point (c);

(cb) a subsidiary or special purpose vehicle of the Bank of England;”;

(iv) for point (d) substitute—

“(d) the Scottish Government, the Welsh Government, or the Northern Ireland Executive.”;

(b) in paragraph 2—

- (i) omit the first subparagraph;
- (ii) in the second subparagraph, in the opening words, for “such transactions, orders or behaviour carried out” substitute “transactions, orders or behaviour carried out in pursuit of public debt management policy”;
- (iii) also in the second subparagraph—
 - (aa) omit points (a) to (e);
 - (bb) in point (f), for “two or more Member States” substitute “the United Kingdom and one or more Member States”;

(c) after paragraph 2 insert—

“2A. This Regulation does not apply to the activities of the Secretary of State, the Scottish Ministers, the Welsh Ministers, a Northern Ireland department or any other officially designated body, or of any person acting on their behalf, that are undertaken in pursuit of agricultural policy, or of fisheries and aquaculture policy, in accordance with retained EU law or with any international agreement to which the United Kingdom is a party.”;

- (d) in paragraph 3, for “This Regulation does not apply to the activity” substitute “The Treasury may by regulations make provision for this Regulation not to apply to the activity”;
- (e) in paragraph 4, for “This Regulation does not apply to the activities” substitute “The Treasury may by regulations make provision for this Regulation not to apply to the activities”;
- (f) for paragraph 5 substitute—
 - “5. The Treasury may by regulations extend the exemption referred to in paragraph 1 to transactions, orders or behaviour which are carried out by—
 - (a) a Member State;
 - (b) members of the ESCB;
 - (c) a ministry, agency or special purpose vehicle of one or more Member States, or a person acting on their behalf;
 - (d) in the case of a Member State that is a federal state, a member making up the federation;
 - (e) certain public bodies and central banks of third countries.”;
- (g) after paragraph 5 insert—
 - “5A. The Treasury may by regulations extend the exemption referred to in paragraph 2 to transactions, orders or behaviour which are carried out by—
 - (a) the Commission or any other officially designated body, or any person acting on their behalf;
 - (b) the Union;
 - (c) a special purpose vehicle of one or more Member States;
 - (d) the European Investment Bank;
 - (e) the European Financial Stability Facility;
 - (f) the European Stability Mechanism;
 - (g) an international financial institution established by two or more Member States which has the purpose of mobilising funding and providing financial assistance for the benefit of its members that are experiencing or threatened by severe financial problems.”;
- (h) omit paragraph 6.

Inside information, insider dealing, unlawful disclosure of inside information and market manipulation

- 11.—(1) In Article 7 (inside information)—
 - (a) in paragraph 1(b), for “at the Union or national level” substitute “applicable in the United Kingdom, the European Union or a Member State”;
 - (b) in paragraph 4, in the second subparagraph, for “second subparagraph” substitute “second or fourth subparagraphs”;
 - (c) omit paragraph 5.
- (2) In Article 8 (insider dealing)—
 - (a) in paragraph 1, omit “that are held pursuant to Regulation (EU) No 1031/2010”;
 - (b) in paragraph 5, omit “, in accordance with national law,”.
- (3) In Article 9 (legitimate behaviour), in paragraph 6, for “competent authority” substitute “FCA”.
- (4) In Article 11 (market soundings)—
 - (a) for “competent authority” substitute “FCA”, in each place it occurs;

(b) for paragraphs 9 and 10 substitute—

“9. The FCA may make technical standards to determine appropriate arrangements, procedures and record keeping requirements for persons to comply with the requirements laid down in paragraphs 4, 5, 6 and 8.

10. The FCA may make technical standards to specify the systems and notification templates to be used by persons to comply with the requirements established by paragraphs 4, 5, 6 and 8, particularly the precise format of the records referred to in paragraphs 4 to 8 and the technical means for appropriate communication of the information referred to in paragraph 6 to the person receiving the market sounding.”;

(c) omit paragraph 11.

(5) In Article 12 (market manipulation)—

(a) in paragraph 2—

(i) in subparagraph (c)—

(aa) in the opening words, for “trading venue” substitute “UK trading venue or an EU trading venue”;

(bb) in paragraphs (i) and (ii), for “trading venue” substitute “UK trading venue or the EU trading venue (as applicable);

(ii) in subparagraph (e), for “held pursuant to Regulation (EU) No 1031/2010” substitute “of such emission allowances or related derivatives”;

(b) in paragraph 4, omit “, in accordance with national law.”;

(c) in paragraph 5, for “Commission shall be empowered to adopt delegated acts in accordance with Article 35 specifying” substitute “Treasury may by regulations specify”.

(6) In Article 13 (accepted market practices)—

(a) in paragraph 1, for “in accordance with this Article” substitute—

“—

(a) in relation to a UK market in accordance with this Article; or

(b) in relation to a market in an EEA state, in accordance with Article 13 of the EU Market Abuse Regulation.”;

(b) in paragraph 2—

(i) in the opening words, for “A competent authority” substitute “The FCA”;

(ii) in sub-paragraph (a), for “to the market” substitute “to the UK market”;

(iii) in sub-paragraph (b), after “market forces” insert “operating in UK markets”;

(iv) in sub-paragraph (c), before “market liquidity” insert “UK”;

(v) in sub-paragraph (d), for “relevant market” substitute “relevant UK market”;

(vi) in sub-paragraph (e), for “Union” substitute “United Kingdom”;

(vii) in sub-paragraph (f)—

(aa) for “any competent authority or by another authority” substitute “the FCA”;

(bb) for “concerns the relevant market” substitute “concerns the relevant UK market”;

(cc) for “Union” substitute “United Kingdom”;

(viii) in subparagraph (g), for “relevant market” substitute “relevant UK market”, in both places it occurs;

(ix) omit the final sentence;

(c) omit paragraphs 3 to 6;

(d) for paragraph 7 substitute—

“7. The FCA may make technical standards specifying the criteria, the procedure and the requirements for establishing an accepted market practice under paragraph 2 and the requirements for maintaining it, terminating it, or modifying the conditions for its acceptance.”;

(e) in paragraph 8—

(i) for “Competent authorities” substitute “The FCA”;

(ii) for “they have” substitute “it has”;

(iii) for “relevant market” substitute “relevant UK market”;

(f) in paragraph 9—

(i) for “ESMA” substitute “The FCA”;

(ii) omit “and in which Member States they are applicable”;

(g) omit paragraphs 10 and 11 and the final paragraph.

(7) In Article 16 (prevention and detection of market abuse)—

(a) in paragraph 1—

(i) before the words “trading venue” insert “UK”;

(ii) for “Articles 31 and 54 of Directive 2014/65/EU.”, substitute—

“the law of the United Kingdom or any part of the United Kingdom which was relied on immediately before exit day to implement Articles 31 and 54 of Directive 2014/65/EU and those Articles’ implementing measures—

(a) as they have effect on exit day, in the case of rules made by the Financial Conduct Authority or by the Prudential Regulation Authority under the Financial Services and Markets Act 2000, and

(b) as amended from time to time, in all other cases.”;

(iii) for “competent authority of the trading venue” substitute “FCA”;

(b) in paragraph 2—

(i) before the words “trading venue” insert “UK”;

(ii) for “competent authority as referred to in paragraph 3” substitute “FCA”;

(c) in paragraph 3—

(i) omit “Without prejudice to Article 22”;

(ii) for the words from “of the Member State” to the end substitute “of the United Kingdom where they are registered or have their head office in the United Kingdom or, in the case of a branch, where the branch is situated in the United Kingdom. The notification shall be addressed to the FCA.”;

(d) omit paragraph 4;

(e) for paragraph 5 substitute—

“5. The FCA may make technical standards to determine:

(a) appropriate arrangements, systems and procedures for persons to comply with the requirements established in paragraphs 1 and 2;

(b) the notification templates to be used by persons to comply with the requirements established in paragraphs 1 and 2.”.

Disclosure requirements

12.—(1) In Article 17 (public disclosure of inside information)—

(a) in paragraph 1—

(i) in the second subparagraph, for “the officially appointed mechanism referred to in Article 21 of Directive 2004/109/EC of the European Parliament and of the Council”

substitute “a mechanism referred to in section 89W of the Financial Services and Markets Act 2000(a)”;

(ii) for the third subparagraph substitute—

“This Article shall apply to—

- (a) issuers who have requested or approved admission of their financial instruments to trading on a UK regulated market;
- (b) in the case of instruments only traded on a UK MTF or on a UK OTF, issuers who have approved trading of their financial instruments on a UK MTF or a UK OTF or have requested admission to trading of their financial instruments on a UK MTF; and
- (c) emission allowance market participants registered in the United Kingdom.”;

(b) in paragraph 2—

(i) in the third subparagraph, for the words from “The Commission” to “Article 35” substitute “The Treasury may make regulations”;

(ii) after the third subparagraph, insert—

“For the purposes of the second subparagraph, “minimum threshold” means—

- (a) the thresholds set out in regulations made by the Treasury under this paragraph, or
- (b) if the Treasury have not made such regulations, the thresholds set out in Article 5 of Commission Delegated Regulation (EU) 2016/522 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council as regards an exemption for certain third countries public bodies and central banks, the indicators of market manipulation, the disclosure thresholds, the competent authority for notifications of delays, the permission for trading during closed periods and types of notifiable managers’ transactions.”

(c) omit paragraph 3;

(d) in paragraph 4, for the last subparagraph substitute—

“Where an issuer or emission allowance market participant has delayed the disclosure of inside information under this paragraph, it shall inform the FCA that disclosure of the information was delayed, immediately after the information is disclosed to the public. Upon the request of the FCA, the issuer or emission allowance market participant shall provide a written explanation of how the conditions set out in this paragraph were met.”;

(e) in paragraph 5, in point (d), for “competent authority specified under paragraph 3” substitute “FCA”;

(f) in paragraph 6—

(i) for “competent authority specified under paragraph 3” substitute “FCA”, in each place it occurs;

(ii) in the opening words, for “the national central bank or the macro-prudential authority, where instituted” substitute “the Bank of England”;

(iii) in point (a), for the words “the authority” to the end of the point, substitute “which is a “PRA-authorised person” within the meaning of section 2B(5) of the Financial Services and Markets Act 2000(b), the Prudential Regulation Authority”;

(iv) in point (b), for “national authority” substitute “authority in the United Kingdom”;

(v) omit the last subparagraph;

(g) in paragraph 9—

(i) for “the trading venue’s” substitute “the UK trading venue’s”;

(ii) for “the trading venue” substitute “the UK trading venue”;

(a) Section 89W was inserted by S.I. 2015/1755.

(b) Section 2B was substituted, with the rest of Part 1A of the Financial Services and Markets Act 2000, by section 6(1) of the Financial Services Act 2012 (c.21).

(h) for paragraph 10 substitute—

“10. The FCA may make technical standards to determine:

(a) the technical means for appropriate public disclosure of inside information as referred to in paragraphs 1, 2, 8 and 9; and

(b) the technical means for delaying the public disclosure of inside information as referred to in paragraphs 4 and 5.”;

(i) omit paragraph 11.

(2) In Article 18 (insider lists)—

(a) in paragraph 1, in point (c), for “competent authority” substitute “FCA”;

(b) in paragraph 6, in point (b), for “competent authority” substitute “FCA”;

(c) in paragraph 7—

(i) for “regulated market in a Member State” substitute “UK regulated market”;

(ii) for “an MTF or an OTF” substitute “a UK MTF or a UK OTF”, in both places it occurs;

(iii) for “an MTF in a Member State” substitute “a UK MTF”;

(d) in paragraph 8—

(i) in point (a), after “market participants” insert “registered in the United Kingdom”;

(ii) omit point (b);

(e) for paragraph 9 substitute—

“9. The FCA may make technical standards to determine the precise format of insider lists and the format for updating insider lists referred to in this Article.”.

(3) In Article 19 (managers’ transactions)—

(a) in paragraph 1, in the opening words, for “competent authority referred to in the second subparagraph of paragraph 2” substitute “FCA”;

(b) for paragraph 2 substitute—

“2. For the purposes of paragraph 1, and without prejudice to notification obligations in the law of the United Kingdom other than those referred to in this Article, all transactions conducted on the own account of the persons referred to in paragraph 1 shall be notified by those persons to the FCA.

Notifications shall be made to the FCA within three working days of the transaction date.”;

(c) in paragraph 3—

(i) in the first subparagraph, for the words from “the implementing technical standards” to the end of the subparagraph, substitute—

“—

(a) Commission Implementing Regulation (EU) 2016/1055 of 29 June 2016 laying down implementing technical standards with regard to the technical means for appropriate public disclosure of inside information and for delaying the public disclosure of inside information in accordance with Regulation (EU) 596/2014 of the European Parliament and of the Council; and

(b) technical standards made by the FCA under Article 17(10)(a).”;

(ii) in the second subparagraph—

(aa) for “Union” substitute “United Kingdom”;

- (bb) for “the officially appointed mechanism referred to in Article 21 of Directive 2004/109/EC” substitute “a mechanism referred to in section 89W of the Financial Services and Markets Act 2000(a)”;
- (iii) omit the third subparagraph;
- (d) for paragraph 4, substitute—
 - “4. This Article applies to—
 - (a) issuers who—
 - (i) have requested or approved admission of their financial instruments to trading on a UK regulated market; or
 - (ii) in the case of an instrument only traded on a UK MTF or a UK OTF, have approved trading of their financial instruments on a UK MTF or a UK OTF or have requested admission to trading of their financial instruments on a UK MTF;
 - (b) emission allowance market participants registered in the United Kingdom.”
- (e) in paragraph 7(c), for “defined in accordance with” substitute “referred to in Article 2(3)(a) of”;
- (f) for paragraphs 9 and 10 substitute—
 - “9. The FCA may increase the threshold set out in paragraph 8 to EUR 20 000 and must inform the Treasury of its decision and the justification for its decision, with specific reference to market conditions, to adopt the higher threshold.
 - 10. The FCA must publish the thresholds which apply in accordance with this Article and the justification for any decision taken under paragraph 9 on its website.”;
- (g) in paragraph 11(b), for “national law” substitute “the law of the United Kingdom”;
- (h) in paragraph 13, for the words from “Commission” to “specifying” substitute “Treasury may by regulations specify”;
- (i) in paragraph 14, for the words from “Commission” to “specifying” substitute “Treasury may by regulations specify”;
- (j) in paragraph 15—
 - (i) for the words from “In order” to “implementing” substitute “The FCA may make”;
 - (ii) omit the second and third subparagraphs.
- (4) In Article 20 (investment recommendations and statistics), for paragraph 3 substitute—
 - “3.—(1) The FCA may make technical standards to determine the technical arrangements for the categories of person referred to in paragraph 1, for objective presentation of investment recommendations or other information recommending or suggesting an investment strategy and for disclosure of particular interests or indications of conflicts of interest.
 - (2) The technical arrangements laid down in—
 - (a) Commission Delegated Regulation (EU) 2016/958 of 9 March 2016 supplementing Regulation (EU) 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the technical arrangements for objective presentation of investment recommendations or other information recommending or suggesting an investment strategy and for disclosure of particular interests or indications of conflicts of interest; and
 - (b) technical standards made by the FCA under the first sub-paragraph,

shall not apply to journalists who are subject to equivalent appropriate regulation in the United Kingdom or in the European Union, including equivalent appropriate self-

(a) Section 89W was inserted by S.I. 2015/1755.

regulation, provided that such regulation achieves similar effects as those technical arrangements.”

ESMA and competent authorities

13.—(1) For the heading of Chapter 4 substitute “Cooperation, professional secrecy and data protection”.

(2) In Article 22 (competent authorities)—

- (a) for the heading, substitute “Functions of the FCA”;
- (b) omit the first two sentences;
- (c) in the third sentence—
 - (i) for “competent authority” substitute “FCA”;
 - (ii) for “on its territory”, in both places it occurs, substitute “in the United Kingdom”;
 - (iii) omit the words “auctioned on an auction platform”;
 - (iv) for “its territory”, the third time it occurs, substitute “the United Kingdom”.

(3) In Article 23 (powers of competent authorities)—

- (a) for the heading substitute “Interaction with other provisions”;
- (b) omit paragraphs 1 and 2;
- (c) in paragraph 3—
 - (i) omit the first subparagraph;
 - (ii) in the second subparagraph, for the words from “supervisory authorities” to the end of the paragraph, substitute “Panel on Takeovers and Mergers that impose requirements in addition to the requirements of this Regulation.”;
- (d) in paragraph 4, after “available to”, insert “the FCA or”.

(4) Omit Article 24 (cooperation with ESMA).

(5) In Article 25 (obligation to cooperate)—

- (a) omit paragraphs 1 to 7;
- (b) in paragraph 8—
 - (i) in the first subparagraph—
 - (aa) for “Competent authorities shall” substitute “The FCA may”;
 - (bb) for “they have” substitute “it has”;
 - (ii) in the second subparagraph—
 - (aa) in the opening words, for “shall also be ensured” substitute “may also take place”;
 - (bb) in point (b), after “public bodies” insert “in the EU”;
 - (iii) omit the last subparagraph;
- (c) omit paragraph 9.

(6) In Article 26 (cooperation with third countries)—

- (a) in paragraph 1—
 - (i) for “competent authorities of Member States” substitute “FCA”;
 - (ii) for “competent authorities to carry out their” substitute “FCA to carry out its”;
 - (iii) omit the second subparagraph;
- (b) omit paragraph 2;
- (c) in paragraph 3—
 - (i) for “competent authorities shall” substitute “FCA may”;

- (ii) for “those competent authorities” substitute “the FCA”.
- (7) In Article 27 (professional secrecy)—
- (a) in paragraph 2—
 - (i) for “exchanged between the competent authorities” substitute “exchanged between the FCA and competent authorities”;
 - (ii) for “competent authority” substitute “authority from whom the information is received”;
 - (b) in paragraph 3—
 - (i) for “competent authority” substitute “FCA”, in each place it occurs;
 - (ii) for “Union or national law” substitute “the law of the United Kingdom, or any part of the United Kingdom”.
- (8) For Article 28 (data protection) substitute—

“Article 28

Data protection

Nothing in this Regulation is to be taken as authorising a disclosure of personal data in contravention of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, or of the Data Protection Act 2018(a).

Personal data is to be retained for a maximum period of five years.”

- (9) In Article 29 (disclosure of personal data to third countries)—
- (a) in paragraph 1—
 - (i) for the first sentence substitute “The FCA may transfer personal data to a third country where the transfer does not contravene Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, or the Data Protection Act 2018; but such transfer may only be made on a case-by-case basis.”;
 - (ii) in the second sentence—
 - (aa) for “competent authority” substitute “FCA”, in both places it occurs;
 - (bb) omit “of the Member State”;
 - (b) omit paragraph 2;
 - (c) in paragraph 3, for “the national laws, regulations or administrative provisions transposing Directive 95/46/EC” substitute “Regulation (EU) 2016/679 and the Data Protection Act 2018”.

Administrative measures and sanctions

- 14.**—(1) Omit Article 30 (administrative sanctions and other administrative measures).
- (2) In Article 31 (exercise of supervisory powers and imposition of sanctions)—
- (a) in paragraph 1—
 - (i) in the opening words—
 - (aa) omit “Member States shall ensure that”;
 - (bb) for “competent authorities” substitute “the FCA must”;
 - (ii) in point (e), for “competent authority” substitute “FCA”;
 - (b) omit paragraph 2.

(a) 2018 c.12.

(3) For Article 32 (reporting of infringements) substitute—

“Article 32

Reporting of infringements

1. The Treasury may by regulations specify procedures to enable reporting of actual or potential infringements of this Regulation to the FCA, including—

- (a) the arrangements for reporting and for following-up reports;
- (b) measures for the protection of persons working under a contract of employment; and
- (c) measures for the protection of personal data.

2. Regulations made under paragraph 1 may amend the Financial Services and Markets Act 2000 (Markets Abuse) Regulations 2016(a).”

(4) Omit Article 33 (exchange of information with ESMA).

(5) In Article 34 (publication of decisions)—

(a) in paragraph 1—

(i) in the opening words—

(aa) for “competent authorities” substitute “the FCA”;

(bb) for “their website” substitute “its website”;

(ii) in the third subparagraph—

(aa) in the opening words, for “a competent authority” substitute “the FCA”;

(bb) in point (b), for “national law” substitute “the law of the United Kingdom”;

(cc) in point (c), for “competent authority” substitute “FCA”;

(iii) in the final subparagraph, for “a competent authority” substitute “the FCA”;

(b) in paragraph 2—

(i) for “competent authorities” substitute “the FCA”

(ii) for “their website” substitute “its website”;

(c) in paragraph 3—

(i) for “Competent authorities” substitute “The FCA”;

(ii) for “their website” substitute “its website”;

(iii) for “competent authority” substitute “FCA”.

Delegated acts and implementing acts

15.—(1) For the heading of Chapter 6 substitute “Regulations”.

(2) For Article 35 (exercise of the delegation) substitute—

“Article 35

Regulations made by the Treasury

1. Any power to make regulations conferred on the Treasury by this Regulation is exercisable by statutory instrument.

2. Such regulations may—

- (a) contain incidental, supplemental, consequential and transitional provision; and
- (b) make different provision for different purposes.

3. No regulations may be made under Article 19 or 38 unless a draft of the regulations has been laid before Parliament and approved by a resolution of each House.

(a) S.I. 2016/680.

4. A statutory instrument containing regulations made under any other provision of this Regulation is subject to annulment in pursuance of a resolution of either House of Parliament.”

(3) Omit Article 36 (committee procedure).

Final provisions

16.—(1) In Article 38 (report)—

(a) in the first subparagraph—

(i) for the first sentence, substitute “By 3 July 2019, the FCA shall submit a report to the Treasury on the application of this Regulation.”;

(ii) omit point (a);

(iii) in point (b), for “competent authorities” substitute “the FCA”;

(iv) omit point (d);

(b) omit the second subparagraph;

(c) in the third subparagraph, for the words from “the Commission” to “the Council” substitute “the FCA must submit a report to the Treasury”;

(d) for the fourth subparagraph, substitute—

“The Treasury may by regulations adjust the thresholds in Article 19(1a)(a) and (b), if the FCA determines in that report that those thresholds should be adjusted.”.

(2) In Article 39 (entry into force and application), omit paragraphs 3 and 4.

(3) Omit the words “This Regulation shall be binding in its entirety and directly applicable in all Member States” following Article 39.

Annex 1 (indicators of manipulative behaviour)

17. In Annex 1, for “competent authorities” substitute “the FCA”, in each place it occurs.

Amendment of Commission Delegated Regulation (EU) 2016/522

18.—(1) Commission Delegated Regulation (EU) 2016/522 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council as regards an exemption for certain third countries public bodies and central banks, the indicators of market manipulation, the disclosure thresholds, the competent authority for notifications of delays, the permission for trading during closed periods and types of notifiable managers’ transactions^(a) is amended as follows.

(2) In Article 1 (subject-matter and scope), omit point (4).

(3) Omit Article 2 (definitions).

(4) Omit Article 6 (determination of the competent authorities).

(5) In Article 10 (notifiable transactions)—

(a) in paragraph 1, for “competent authority” substitute “FCA”;

(b) in paragraph 2, in point (m), for “Article 1 of Directive 2011/61/EU of the European Parliament and of the Council” substitute “regulation 3 of the Alternative Investment Fund Managers Regulations 2013^(b)”.

(6) Omit the words “This Regulation shall be binding in its entirety and directly applicable in all Member States” following Article 11 (entry into force and application).

(a) OJ No. L 88, 5.4.2016, p. 1-18.

(b) S.I. 2013/1773.

*Jeremy Quin
Rebecca Harris*

18th February 2019

Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers in section 8(1) of the European Union (Withdrawal) Act 2018 in order 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 (and in particular the deficiencies referred to in paragraphs (a), (b), (c), (d), (e) and (g) of section 8(2) of that Act). They amend the Criminal Justice Act 1993, Part 8 of the Financial Services and Markets Act 2000, the Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016, Regulation (EU) 596/2014 of the European Parliament and of the Council on market abuse and Commission delegated regulation (EU) 2016/522 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council as regards an exemption for certain third countries public bodies and central banks, the indicators or market manipulation, the disclosure thresholds, the competent authority for notifications of delays, the permission for trading during closed periods and types of notifiable managers' transactions.

An impact assessment of the effect that this instrument, and other instruments made by HM Treasury under the European Union (Withdrawal) Act 2018 at or about the same time, will have on the costs of business, the voluntary sector and the public sector will be available from HM Treasury, 1 Horse Guards Road, London SW1A 2HQ and published alongside this instrument at www.legislation.gov.uk.

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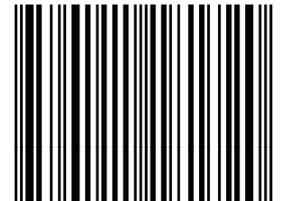
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