
STATUTORY INSTRUMENTS

2019 No. 405

The Financial Services Contracts (Transitional and Saving Provision) (EU Exit) Regulations 2019

PART 4

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

Further transitional provisions relating to electronic money and payment services

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

(2) After paragraph 12 insert—

“PART 1A

Continuation of authorisation for limited purposes: Electronic Money Regulations 2011

Interpretation

12A. The interpretative provisions in paragraph 1 apply also for the purposes of this Part of this Schedule.

Continued authorisation for limited purposes

12B.—(1) This paragraph applies to a person in relation to whom the exit day conditions or the transitional authorisation conditions are satisfied.

(2) The “exit day conditions”, in relation to a person, are—

- (a) that immediately before exit day the person was providing electronic money issuance or payment services through a branch or agent in the United Kingdom in the exercise of a passport right as an EEA authorised electronic money institution,
- (b) that immediately after exit day the person is not (apart from under this Part of this Schedule) an authorised electronic money institution, and
- (c) that immediately after exit day—
 - (i) the person has outstanding obligations under contracts which the person entered into through a branch or agent in the United Kingdom as an EEA authorised electronic money institution exercising passport rights, or

- (ii) any electronic money issued by the person through a branch or agent in the United Kingdom as an EEA authorised electronic money institution exercising passport rights has not been redeemed.
- (3) The “transitional authorisation conditions”, in relation to a person, are—
 - (a) that on exit day the person became authorised to provide electronic money issuance, redemption, distribution or payment services in the United Kingdom by virtue of paragraph 2,
 - (b) that the person has provided any such services in the United Kingdom either—
 - (i) before exit day, in the exercise of a passport right as an EEA authorised electronic money institution, or
 - (ii) on or after exit day, in accordance with paragraph 2,
 - (c) that immediately after the end of the transition period defined in paragraph 10 the person is not (apart from under this Part of this Schedule) an authorised electronic money institution, and
 - (d) that immediately after the end of that period—
 - (i) the person has outstanding obligations under contracts which the person entered into as an EEA authorised electronic money institution exercising passport rights, or
 - (ii) electronic money issued by the person as an EEA authorised electronic money institution exercising passport rights has not been redeemed.
- (4) During the extension period defined in paragraph 12G—
 - (a) a person to whom this paragraph applies is to be taken to be an authorised electronic money institution whose authorisation under regulation 9 of EMR 2011 relates to the permitted services specified in paragraph 12E, and
 - (b) accordingly, references in EMR 2011 to an authorised electronic money institution are to be read as including a person to whom this paragraph applies.
- (5) Sub-paragraph (4) is subject to paragraphs 12C(4), 12H and 12I.
- (6) In this paragraph reference to providing services at a particular time includes where the performance of a pre-existing contract requires, or may require, a service to be provided at another time.

Duty to notify FCA

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

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

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

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

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

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

Agents

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

Permitted services

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

(2) The permitted services are—

(a) where the exit day conditions in paragraph 12B(2) are met, services of the kind mentioned in paragraph 12B(2)(a), but only to the extent that the issue of electronic money, or the provision of payment services, is necessary to enable the person to whom paragraph 12B applies to perform a pre-existing contract, or

(b) where the transitional authorisation conditions in paragraph 12B(3) are met, services of the kind mentioned in paragraph 12B(3)(b)(i) or (ii), but only to the extent that the issue of electronic money, or the provision of payment services, is necessary to enable the person to whom paragraph 12B applies to perform a pre-existing contract.

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

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

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

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

Notification that authorisation no longer required

12F.—(1) A person to whom paragraph 12B applies and who has notified the FCA under paragraph 12C(1) must notify the FCA once it no longer has obligations under pre-existing contracts.

(2) On receiving a notification under sub-paragraph (1), the FCA must, if satisfied that the person giving the notification no longer has obligations under pre-existing contracts—

(a) notify the person of the date on which the person will cease to be an authorised electronic money institution by virtue of this Part of this Schedule, and

(b) remove the person from the register from that date.

- (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.

Extension period

- 12G.**—(1) The extension period in relation to a person begins—
- (a) where the exit day conditions are met, with the day on which exit day falls, and
 - (b) where the transitional authorisation conditions are met, with the end of the transition period defined by paragraph 10.
- (2) The extension period in relation to a person ends with the earliest of the following—
- (a) the day before the date stated in accordance with regulation 9(5) of EMR 2011 as that on which the person’s authorisation as an electronic money institution (otherwise than by virtue of this Schedule) takes effect;
 - (b) the day on which the transfer to another person of the person’s business of providing electronic money issuance, redemption, distribution or payment services in the United Kingdom takes effect;
 - (c) in a case where the person has notified the FCA under paragraph 12C(1), the day determined by the FCA under paragraph 12F(2);
 - (d) in a case where the person has not notified the FCA under paragraph 12C(1), the time when all the person’s obligations under relevant contracts have been discharged;
 - (e) the day on which any cancellation under paragraph 12J takes effect;
 - (f) the day the person ceases to be authorised by its home state competent authority;
 - (g) the end of the period of 5 years beginning with the day on which the extension period began.
- (3) “Relevant contract” has the same meaning as in paragraph 12F(3).

Supervision and enforcement

- 12H.** In relation to a person to whom paragraph 12B or 12L applies, regulations 48 to 53 of EMR 2011 apply, but the following provisions do not apply—
- (a) the provisions mentioned in paragraph 7(1), and
 - (b) regulations 54 to 58 of EMR 2011.

Variation and cancellation of authorisation

- 12I.**—(1) In respect of a person to whom paragraph 12B applies, the FCA may—
- (a) cancel the person’s authorisation by virtue of that paragraph as an authorised electronic money institution, or
 - (b) limit the permitted services to which the authorisation relates.
- (2) The FCA may only exercise the power in sub-paragraph (1) where—

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

Variation and cancellation: procedure

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

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

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

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

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

Power to charge fees

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

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

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

Exemption from prohibition

12L.—(1) A person to whom this paragraph applies is exempt from the prohibition in regulation 63(1) of EMR 2011, for a period of five years beginning with exit day, but only to

the extent that it is necessary for the person to provide electronic money services in the United Kingdom to perform a pre-existing contract.

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

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

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

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

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

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

Duration of extension period

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

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

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

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

(3) After paragraph 24 insert—

“PART 3

Continuation of authorisation for limited purposes: Payment Services Regulations 2017

Interpretation

25. The interpretative provisions in paragraph 13 apply also for the purposes of this Part of this Schedule.

Continued authorisation for limited purposes

26.—(1) This paragraph applies to a person in relation to whom the exit day conditions or the transitional authorisation conditions are satisfied.

(2) The “exit day conditions”, in relation to a person, are—

- (a) that immediately before exit day the person was providing payment services through a branch or agent in the United Kingdom in the exercise of a passport right—
 - (i) as an EEA authorised payment institution, or
 - (ii) as an EEA registered account information service provider,
 - (b) that immediately after exit day the person is not (apart from under this Part of this Schedule) an authorised payment institution or a registered account information service provider, and
 - (c) that immediately after exit day the person has outstanding obligations under contracts which the person entered into as an EEA authorised payment institution or an EEA registered account information service provider exercising passport rights.
- (3) The “transitional authorisation conditions”, in relation to a person, are—
- (a) that on exit day the person became authorised to provide payment services in the United Kingdom by virtue of paragraph 14,
 - (b) that the person has provided any such services in the United Kingdom either—
 - (i) before exit day, in the exercise of a passport right as an EEA authorised payment institution or an EEA registered account information service provider, or
 - (ii) on or after exit day, in accordance with paragraph 14, and
 - (c) that immediately after the end of that period the person has outstanding obligations under contracts which the person entered into through branch or agent in the United Kingdom as an EEA authorised payment institution or an EEA registered account information service provider exercising passport rights.
- (4) During the extension period defined in paragraph 31—
- (a) a person to whom this paragraph applies is to be taken—
 - (i) in the case of a person who was an EEA authorised payment institution, to be an authorised payment institution whose authorisation under regulation 6 of PSR 2017 relates to the permitted services specified in paragraph 29, or
 - (ii) in the case of a person who was an EEA registered account information service provider, to be a registered account information service provider whose registration under regulation 18 of PSR 2017 relates to the permitted services specified in paragraph 29;
 - (b) accordingly, references in PSR 2017 to an authorised payment institution or a registered account information service provider are to be read as including a person who is taken by virtue of this paragraph to be an authorised payment institution or a registered account information service provider (as the case may be).
- (5) Sub-paragraph (4) is subject to paragraphs 27(4), 32 and 33.
- (6) In this paragraph reference to providing services at a particular time includes where the performance of a pre-existing contract requires, or may require, a service to be provided at another time.

Duty to notify FCA

27.—(1) A person to whom paragraph 26 or 36 applies must notify the FCA of that fact as soon as reasonably practicable, and in any event not later than one month after the person first becomes aware of an obligation to perform a pre-existing contract.

(2) In this Part of this Schedule a “pre-existing contract”, in relation to a person to whom paragraph 26 applies, means a contract—

(a) which was entered into before the extension period defined in paragraph 31 through an agent or branch in the United Kingdom, and

(b) under which the person is obliged to provide payment services.

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

(4) The FCA is not obliged to include a person to whom paragraph 26 applies on the register maintained under regulation 4 of PSR 2017 until the person notifies the FCA under sub-paragraph (1).

(5) During the extension period defined in paragraph 31, a person to whom paragraph 26 applies must notify the FCA of any of the matters mentioned in paragraph 18(2)(b) to (d).

Agents

28. If a notification under paragraph 27 includes information as to the use of an agent who is registered with the home state competent authority, the FCA must include the agent on the register maintained under regulation 4 of PSR 2017.

Permitted services

29.—(1) This paragraph sets out the permitted services for the purposes of paragraph 26(4) (a).

(2) The permitted services are—

(a) where the exit day conditions in paragraph 26(2) are met, payment services of the kind mentioned in paragraph 26(2)(a), but only to the extent that the provision of the services is necessary to enable the person to whom paragraph 26 applies to perform a pre-existing contract, or

(b) where the transitional authorisation conditions in paragraph 26(3) are met, payment services of the kind mentioned in paragraph 26(3)(b)(i) or (ii), but only to the extent that the provision of the services is necessary to enable the person to whom paragraph 12B applies to perform a pre-existing contract.

(3) If a pre-existing contract is varied by agreement for the purpose of complying with regulatory requirements or reducing a risk to the person to whom paragraph 26 applies, but without extending the duration of the contract or materially altering its commercial effect, the contract as varied remains a pre-existing contract.

(4) The FCA may, on an application made before the end of the extension period by a person to whom paragraph 26 applies, approve a plan (a “wind-down plan”) under which new contracts may be entered into for the purposes of the orderly winding down of the person’s business of providing payment services in the United Kingdom.

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

(6) A person providing permitted services in accordance with this paragraph must, when required by the FCA, provide the FCA with such evidence as the FCA may reasonably require to demonstrate the person’s compliance with the law of the person’s home state implementing Article 10 of the payment services directive (safeguarding).

Notification that authorisation no longer required

30.—(1) A person to whom paragraph 26 applies and who has notified the FCA under paragraph 27(1) must notify the FCA once it no longer has obligations under pre-existing contracts.

- (2) On receiving a notification under sub-paragraph (1), the FCA must, if satisfied that the person giving the notification no longer has obligations under pre-existing contracts—
- (a) notify the person of the date on which the person will cease to be an authorised payment institution, or a registered account information service provider, by virtue of this Part of this Schedule, and
 - (b) remove the person from the register from that date.
- (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 provide payment services.

Extension period

- 31.**—(1) The extension period in relation to a person begins—
- (a) where the exit day conditions are met, with the day on which exit day falls, and
 - (b) where the transitional authorisation conditions are met, with the end of the transition period defined by paragraph 22.
- (2) The extension period in relation to a person ends with the earliest of the following—
- (a) the day before the date stated in accordance with regulation 9(6) of PSR 2017 (or that provision as applied by regulation 15 of those Regulations) as the date on which the person’s authorisation as a payment institution or registration as an account information service provider (otherwise than by virtue of this Schedule) takes effect;
 - (b) the day on which the transfer to another person of the person’s business of providing payment services in the United Kingdom takes effect;
 - (c) in a case where the person has notified the FCA under paragraph 27(1), the day determined by the FCA under paragraph 29(2);
 - (d) in a case where the person has not notified the FCA under paragraph 27(1), the time when all the person’s obligations under relevant contracts have been discharged;
 - (e) the day on which any cancellation under paragraph 33 takes effect;
 - (f) the day the person ceases to be authorised by its home state competent authority;
 - (g) the end of the period of 5 years beginning with the day on which the extension period began.
- (3) “Relevant contract” has the same meaning as in paragraph 30.

Supervision and enforcement

- 32.** In relation to a person to whom paragraph 26 or 36 applies, regulations 108 to 112 of PSR 2017 apply, but the following provisions do not apply—
- (a) the provisions mentioned in paragraph 19(1), and
 - (b) regulations 113 to 117 of PSR 2017.

Variation and cancellation of authorisation

- 33.**—(1) In respect of a person to whom paragraph 26 applies, the FCA may—

- (a) cancel the person's authorisation by virtue of that paragraph as an authorised payment institution or a registered account information service provider, or
 - (b) limit the permitted services to which the authorisation relates.
- (2) The FCA may only exercise the power in sub-paragraph (1) where—
- (a) the person's authorisation by the person's home state competent authority is cancelled,
 - (b) the person has failed to comply with the terms of the person's authorisation by the person's home state competent authority,
 - (c) the person does not provide payment services in the United Kingdom during the 12 months beginning with exit day,
 - (d) the person ceases to engage in business activity in the United Kingdom for more than six months,
 - (e) the person's notification under paragraph 27 contains false statements,
 - (f) the person has not taken adequate measures for the purposes of safeguarding electronic money holders' funds in accordance with regulation 23 of PSR 2017,
 - (g) the person would constitute a threat to the stability of, or trust in, a payment system by continuing the person's electronic money or payment services business,
 - (h) the cancellation is desirable in order to protect the interests of payment service users, or
 - (i) the person's provision of payment services is otherwise unlawful, including where such provision of services is unlawful because the person's registration in a register maintained under regulation 54 or 55 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 has been cancelled under regulation 60 of those Regulations.

Variation and cancellation: procedure

34.—(1) If the FCA proposes to exercise the power in paragraph 33 or 36(3) in relation to a person, it must give the person a warning notice.

(2) If the FCA decides to exercise the power in paragraph 33 or 36(3) in relation to a person, it must give the person a decision notice.

(3) Part 26 of the 2000 Act (notices) applies to a notice under sub-paragraph (1) or (2) as it applies (by virtue of Schedule 6 to PSR 2017) in relation to a notice under PSR 2017.

(4) A person in respect of whom the power in paragraph 33 or 36(3) is exercised may refer the decision to exercise the power to the Upper Tribunal.

(5) Part 9 of the 2000 Act (hearings and appeals) applies to a reference to the Upper Tribunal under sub-paragraph (4) as it applies (by virtue of Schedule 6 to PSR 2017) in relation to a reference under PSR 2017.

Power to charge fees

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

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

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

Exemption from prohibition

36.—(1) A person to whom this paragraph applies is exempt from the prohibition in regulation 138(1) of PSR 2017, for a period of five years beginning with exit day, but only to the extent that it is necessary for the person to provide payment services in the United Kingdom to perform a pre-existing contract.

(2) This paragraph applies to an EEA authorised payment institution or an EEA registered account information service provider exercising its passport rights in the United Kingdom immediately before exit day other than through a branch in the United Kingdom or a UK-based agent.

(3) The FCA may cancel the exemption of a person to whom this paragraph applies, or direct that paragraph 26 is to apply to the person, if it considers that doing so is necessary—

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

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

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

(5) Paragraph 4 of Schedule 5 to PSR 2017 has effect in relation to the exercise of the FCA's powers under this paragraph.

Duration of extension period

37.—(1) The Treasury may by regulations made by statutory instrument amend paragraph 31 so as to extend the extension period referred to in that paragraph, if the Treasury consider it necessary to do so.

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

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

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

PART 4

Supplementary provision

38.—(1) The reference in regulation 61 of the Electronic Money Regulations 2011 (FCA's indemnity from liability in damages) to the functions of the FCA under those Regulations is to be read as including a reference to its functions under Parts 1 and 1A of this Schedule.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (2) The reference in regulation 121 of the Payment Services Regulations 2017 (FCA's indemnity from liability in damages) to the functions of the FCA under those Regulations is to be read as including a reference to its functions under Parts 2 and 3 of this Schedule.
- (3) "The FCA" means the Financial Conduct Authority."