

STATUTORY INSTRUMENTS

2019 No. 632

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

PART 4

Amendments to the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005

Modifications etc. (not altering text)

- C1** Pts. 3-6 modified in part (31.12.2020) by [The Gibraltar \(Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/680\)](#), regs. 1(2), **11(1)(4)(5)** (with reg. 11(8)-(10)) (as amended by [S.I. 2020/1301](#), regs. 1, 3, Sch. para. 40(f)); 2020 c. 1, Sch. 5 para. 1(1)

Introduction and transitional provision

162.—(1) The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 ^{F1} is amended as set out in this Part.

(2) Nothing in this Part causes a communication to constitute a breach of the prohibition in subsection (1) of section 21 of the Financial Services and Markets Act 2000 ^{F2} (restrictions on financial promotion) if—

- (a) a contract entered into before [^{F3}IP completion day] required the communication to be made, and
- (b) the communication would not have constituted a breach of the prohibition had it been made before [^{F4}IP completion day].

F1 [S.I. 2005/1529](#).

F2 [2000 c.8](#).

F3 Words in reg. 162(2)(a) substituted (30.12.2020) by [The Financial Services and Economic and Monetary Policy \(Consequential Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1301\)](#), regs. 1, 3, **Sch. para. 33(u)**

F4 Words in reg. 162(2)(b) substituted (30.12.2020) by [The Financial Services and Economic and Monetary Policy \(Consequential Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1301\)](#), regs. 1, 3, **Sch. para. 33(u)**

Commencement Information

- I1** Reg. 162 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1](#), **Sch. 5 para. 1(1)**), see reg. 1(3)

Status: This version of this part contains provisions that are prospective.

Changes to legislation: The Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019, PART 4 is up to date with all changes known to be in force on or before 10 October 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Article 2 (interpretation: general)

163. In article 2 (interpretation: general), in paragraph (1), in the definition of “international organisation”, in paragraphs (a) and (b) omit “or another EEA State”.

Commencement Information

I2 Reg. 163 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see reg. 1(3)

Article 6 (interpretation: communications)

164. In article 6 (interpretation: communications) omit paragraphs (g) and (h).

Commencement Information

I3 Reg. 164 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see reg. 1(3)

Article 8A (interpretation: outgoing electronic commerce communication)

165. Omit article 8A ^{F5} (interpretation: outgoing electronic commerce communication).

F5 Article 8A was amended by [S.I. 2011/1265](#).

Commencement Information

I4 Reg. 165 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see reg. 1(3)

Article 10 (application to qualifying contracts of insurance)

166. In article 10 (application to qualifying contracts of insurance), in paragraph 1—

- (a) omit sub-paragraph (c);
- (b) omit sub-paragraph (d).

Commencement Information

I5 Reg. 166 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see reg. 1(3)

Article 12 (communications to overseas recipients)

167. In article 12 (communications to overseas recipients) omit paragraph 7.

Commencement Information

I6 Reg. 167 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see reg. 1(3)

Status: This version of this part contains provisions that are prospective.

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Article 18A (electronic commerce communications: mere conduits, caching and hosting)

168.—(1) Article 18A (electronic commerce communications: mere conduits, caching and hosting) is amended as follows.

(2) In paragraph (a), for “paragraph 1 of Article 12, 13 or 14 of the electronic commerce directive” substitute “regulation 17(1), 18 or 19 of the Electronic Commerce (EC Directive) Regulations 2002 F6 ”.

(3) In paragraph (b), for “the conditions mentioned in the paragraph in question, to the extent” substitute “the conditions mentioned in—

- “(i) regulation 17(1)(a) to (c) of those Regulations (where regulation 17 is the relevant regulation),
- (ii) regulation 18(b)(i) to (v) of those Regulations (where regulation 18 is the relevant regulation), or
- (iii) regulation 19(a)(i) and (ii) of those Regulations (where regulation 19 is the relevant regulation),

to the extent”.

F6 [S.I. 2002/2013](#).

Commencement Information

I7 Reg. 168 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see reg. 1(3)

Article 20B (incoming electronic commerce communications)

169. Omit article 20B (incoming electronic commerce communications).

Commencement Information

I8 Reg. 169 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see reg. 1(3)

Article 25 (relevant insurance activity: non-real time communications: reinsurance and large risks)

170. In article 25 (relevant insurance activity: non-real time communications: reinsurance and large risks), in paragraph (4) omit “(within the meaning of the Seventh Company Law Directive)”.

Commencement Information

I9 Reg. 170 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see reg. 1(3)

Article 29 (communications required or authorised by enactments)

171. In article 29 (communications required or authorised by enactments), after paragraph (4) ^{F7} insert—

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“(4A) The reference in paragraph (4) to Regulation (EU) 345/2013 is a reference to that instrument as it has effect at the beginning of the day on which the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 are made (but see regulation 2 of the European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) Regulations 2019^{F8}, which may further update the reference).”.

F7 Paragraph (4) was inserted by [S.I. 2013/1773](#).

F8 [S.I. 2019/628](#).

Commencement Information

I10 Reg. 171 in force at 23.3.2019, see reg. 1(2)(f)

Article 34 (governments, central banks etc)

172. In article 34 (governments, central banks etc) omit sub-paragraph (b)(v).

Commencement Information

I11 Reg. 172 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see reg. 1(3)

Article 36 (nationals of EEA States other than United Kingdom)

173. Omit article 36 (nationals of EEA States other than United Kingdom).

Commencement Information

I12 Reg. 173 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see reg. 1(3)

Article 59 (annual accounts and directors' report)

174.—(1) Article 59 (annual accounts and directors' report) is amended as follows.

(2) In paragraph (1)(b)—

(a) at the end of sub-paragraph (ai)^{F9} insert “ or ”;

(b) at the end of sub-paragraph (i)^{F10} omit “or”;

(c) omit sub-paragraph (iii)^{F11}.

(3) In paragraph (7) omit sub-paragraph (e).

(4) The amendments made by this regulation do not apply in relation to any report for a financial year beginning before [^{F12}IP completion day].

F9 Sub-paragraph (ai) was inserted by [S.I. 2015/352](#).

F10 Sub-paragraph (i) was amended by [S.I. 2011/1265](#).

F11 Sub-paragraph (iii) was amended by [S.I. 2011/1265](#) and [S.I. 2015/352](#).

F12 Words in reg. 174(4) substituted (30.12.2020) by [The Financial Services and Economic and Monetary Policy \(Consequential Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1301\)](#), regs. 1, 3, [Sch. para. 33\(v\)](#)

Status: This version of this part contains provisions that are prospective.

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Commencement Information

- I13** Reg. 174 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see reg. 1(3)

PROSPECTIVE

Article 70 (promotions included in listing particulars etc)

F13 175.

- F13** Reg. 175 omitted (6.9.2019) by virtue of [The Prospectus \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1234\)](#), [regs. 1\(2\)](#), 28 (with savings in [S.I. 2019/680](#), [reg. 11](#) (as amended by [S.I. 2019/1234](#), [reg. 29\(2\)](#)))

Schedule 1 (controlled activities and controlled investments)

176.—(1) In Schedule 1, Part 2 (controlled investments) is amended as follows.

(2) In paragraph 14 (shares or stock)—

- (a) in sub-paragraph (2)(b) **F14** omit “or in a body constituted under the law of another EEA State for purposes equivalent to those of such a body”;
- (b) omit sub-paragraph (3)(d).

(3) In paragraph 15A **F15** (alternative finance investment bonds), for sub-paragraph (f) **F16** of paragraph (2) substitute—

“(f) the arrangements are—

- (i) a security that is admitted to the official list in accordance with Part 6 of the Act,
- (ii) a security that is admitted to an official list in the EEA (in accordance with the provisions of Directive [2001/34/EC](#) of the European Parliament and of the Council on the admission of securities to official stock exchange listing and on information to be published on those securities) and has been so admitted since before **F17** IP completion day],
- (iii) a security that is admitted to trading on a recognised investment exchange or a UK trading venue, or
- (iv) a security that is admitted to trading on an EU trading venue and has been so admitted since before **F17** IP completion day].”.

(4) In paragraph 21 **F18** (options)—

- (a) in sub-paragraph (1)(e) **F19**, for the words after “an option to which” substitute “ paragraph 5, 6, 7 or 10 of Part 1 of Schedule 2 (read with Articles 5, 6, 7, and 8 of the Commission Regulation) applies ”;
- (b) in sub-paragraph (2)(d)(i) **F20**, for “Section C of Annex I to the markets in financial instruments directive” substitute “ Part 1 of Schedule 2 ”;
- (c) in sub-paragraph (2)(d)(ii), for “Section C of Annex I to the markets in financial instruments directive” substitute “ Part 1 of that Schedule ”;
- (d) in sub-paragraph (3)(c) **F21**, for “Section C of Annex I to the markets in financial instruments directive” substitute “ Part 1 of Schedule 2 ”;

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- (e) in sub-paragraph (4), for sub-paragraphs (a) to (d) ^{F22} substitute—
 - “(a) an investment firm or qualifying credit institution is providing or performing investment services and activities on a professional basis;
 - (b) a management company which has a Part 4A permission to do so is providing the investment service specified in paragraph 4 or 5 of Part 3 of Schedule 2 or the ancillary service specified in paragraph 1 of Part 3A of that Schedule;
 - (c) a market operator is providing the investment service specified in paragraph 8 or 9 of Part 3 of that Schedule;
 - (d) a full-scope UK AIFM which has a Part 4A permission to do so is providing the investment service specified in paragraph 1, 4 or 5 of Part 3 of that Schedule or the ancillary service specified in paragraph 1 of Part 3A of that Schedule.”;
- (f) omit sub-paragraph (5) ^{F23}.
- (5) In paragraph 22 (futures)—
 - (a) in sub-paragraph (1A)(d), (1B)(e) and (1C)(c) ^{F24}, for “Section C of Annex I to the markets in financial instruments directive” substitute “ Part 1 of Schedule 2 ”;
 - (b) in sub-paragraph (1CA) ^{F25}, for “Section C of Annex I to the markets in financial instruments directive” substitute “ Part 1 of Schedule 2 ”;
 - (c) in sub-paragraph (1D), for sub-paragraphs (a) to (d) ^{F26} substitute—
 - “(a) an investment firm or qualifying credit institution is providing or performing investment services and activities on a professional basis;
 - (b) a management company which has a Part 4A permission to do so is providing the investment service specified in paragraph 4 or 5 of Part 3 of Schedule 2 or the ancillary service specified in paragraph 1 of Part 3A of that Schedule;
 - (c) a market operator is providing the investment service specified in paragraph 8 or 9 of Part 3 of that Schedule;
 - (d) a full-scope UK AIFM which has a Part 4A permission to do so is providing the investment service specified in paragraph 1, 4 or 5 of Part 3 of that Schedule or the ancillary service specified in paragraph 1 of Part 3A of that Schedule.”;
 - (d) omit sub-paragraph (1E) ^{F27}.
- (6) In paragraph 23 (contracts for differences etc)—
 - (a) in sub-paragraphs (3)(b) ^{F28} and (4A)(c) ^{F29}, for “Section C of Annex I to the markets in financial instruments directive” substitute “ Part 1 of Schedule 2 ”;
 - (b) in sub-paragraphs (4) and (4B) ^{F30}, for paragraphs (a) to (d) substitute—
 - “(a) an investment firm or qualifying credit institution is providing or performing investment services and activities on a professional basis;
 - (b) a management company which has a Part 4A permission to do so is providing the investment service specified in paragraph 4 or 5 of Part 3 of Schedule 2 or the ancillary service specified in paragraph 1 of Part 3A of that Schedule;
 - (c) a market operator is providing the investment service specified in paragraph 8 or 9 of Part 3 of that Schedule;
 - (d) a full-scope UK AIFM which has a Part 4A permission to do so is providing the investment service specified in paragraph 1, 4 or 5 of Part 3 of that Schedule or the ancillary service specified in paragraph 1 of Part 3A of that Schedule.”;
 - (c) omit sub-paragraph (5) ^{F31}.

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(7) In paragraph 23A ^{F32} (emission allowances)—

(a) in sub-paragraph (1), after “compliance” insert “ (by an EEA State) ”;

(b) in sub-paragraph (2), for paragraphs (a) to (d) substitute—

- “(a) an investment firm or qualifying credit institution is providing or performing investment services and activities on a professional basis;
- (b) a management company which has a Part 4A permission to do so is providing the investment service specified in paragraph 4 or 5 of Part 3 of Schedule 2 or the ancillary service specified in paragraph 1 of Part 3A of that Schedule;
- (c) a market operator is providing the investment service specified in paragraph 8 or 9 of Part 3 of that Schedule;
- (d) a full-scope UK AIFM which has a Part 4A permission to do so is providing the investment service specified in paragraph 1, 4 or 5 of Part 3 of that Schedule or the ancillary service specified in paragraph 1 of Part 3A of that Schedule.”.

(8) In paragraph 28 (interpretation) omit the definition of “credit institution” and insert at the appropriate places—

““EU trading venue” has the meaning given by Article 2.1.16B of the markets in financial instruments regulation;”;

““qualifying credit institution” has the meaning given in the Regulated Activities Order;”;

““UK trading venue” has the meaning given by Article 2.1.16 of the markets in financial instruments regulation.”.

F14 Sub-paragraph (2)(b) was amended by [S.I. 2014/1815](#).

F15 Paragraph 15A was inserted by [S.I. 2010/86](#).

F16 Sub-paragraph (2)(f) was amended by 2017/488.

F17 Words in reg. 176(3) substituted (30.12.2020) by [The Financial Services and Economic and Monetary Policy \(Consequential Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1301\)](#), regs. 1, 3, **Sch. para. 33(w)**

F18 Paragraph 21 was amended by [S.I. 2006/3384](#).

F19 Sub-paragraph (1)(e) was inserted by [S.I. 2006/3384](#) and was amended by [S.I. 2017/488](#).

F20 Sub-paragraph (2)(d) was inserted by [S.I. 2006/3384](#) and was amended by [S.I. 2017/488](#).

F21 Sub-paragraph (3)(c) was inserted by [S.I. 2006/3384](#) and was amended by [S.I. 2017/488](#).

F22 Sub-paragraph (4)(b) was inserted by [S.I. 2006/3384](#) and was amended by [S.I. 2011/1613](#) and [S.I. 2017/488](#); sub-paragraphs (4)(c) and (d) were inserted by [S.I. 2006/3384](#) and were amended by [S.I. 2017/488](#).

F23 Sub-paragraph (5) was inserted by [S.I. 2006/3384](#).

F24 Sub-paragraphs (1A), (1B) and (1C) were inserted by [S.I. 2006/3384](#); and (1A)(d) and (1C)(c) were amended by [S.I. 2017/488](#).

F25 Sub-paragraph (1CA) was inserted by [S.I. 2017/488](#).

F26 Sub-paragraph (1D) was inserted by [S.I. 2006/3384](#), sub-paragraphs (1D)(b), (c) and (d) were amended by [S.I. 2017/488](#).

F27 Sub-paragraph (1E) was inserted by [S.I. 2006/3384](#) and was amended by [S.I. 2017/488](#).

F28 Sub-paragraph (3) was inserted by [S.I. 2006/3384](#).

F29 Sub-paragraph (4A) was inserted by [S.I. 2017/488](#).

F30 Sub-paragraphs (4)(b) to (d) were amended by [S.I. 2017/488](#); sub-paragraph (4B) was inserted by [S.I. 2017/488](#).

F31 Sub-paragraph (5) was inserted by [S.I. 2006/3384](#).

F32 Paragraph 23A was inserted by [S.I. 2017/488](#).

Status: This version of this part contains provisions that are prospective.

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Commencement Information

- I14** Reg. 176 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see reg. 1(3)

Status:

This version of this part contains provisions that are prospective.

Changes to legislation:

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Changes and effects yet to be applied to :

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