Draft regulations laid before Parliament under paragraph 1(1) and (2) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2019 No. 0000

EXITING THE EUROPEAN UNION

FINANCIAL SERVICES AND MARKETS

The Credit Rating Agencies (Amendment, etc.) (EU Exit) Regulations 2019

Made - - - - ***

Coming into force in accordance with regulation 1(2) and (3)

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

In accordance with paragraph 1(1) and (2) of Schedule 7 to the European Union (Withdrawal) Act 2018, a draft of these Regulations has been laid before, and approved by a resolution of, each House of Parliament.

(**a**) 2018 c. 16.

PART 1

General provision

Citation and commencement

1.—(1) These Regulations may be cited as the Credit Rating Agencies (Amendment, etc.) (EU Exit) Regulations 2019.

(2) This Part and Part 8 of these Regulations come into force on the day after the day on which they are made.

(3) Parts 2 to 7, 9 and 10 of these Regulations come into force on exit day.

Interpretation

2. In these Regulations—

"the Act" means the Financial Services and Markets Act 2000(**a**);

"the CRA Regulation" means Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies;

"credit rating agency" means a credit rating agency registered under Chapter 1 of Title 3 of the CRA Regulation;

"credit rating activity" is to be construed in accordance with Article 3.1 of the CRA Regulation;

"the FCA" means the Financial Conduct Authority.

PART 2

Rules and Guidance

Rules

3.—(1) The FCA may make such rules applying to credit rating agencies—

(a) with respect to the carrying on of a credit rating activity, or

(b) with respect to the carrying on of an activity which is not a credit rating activity,

as appear to the FCA to be necessary or expedient for the purpose of advancing one or more of its operational objectives under Part 1A of the Act.

(2) Rules under paragraph (1) may include, in particular—

(a) provision applying to credit rating agencies even though there is no relationship between the credit rating agencies to whom the rules will apply and the persons whose interests will be protected by the rules;

(b) requirements which take into account, in the case of a credit rating agency which is a member of a group, any activity of another member of the group.

(3) The rules may not modify, amend or revoke any retained direct EU legislation (except retained direct EU legislation which takes the form of rules).

(**a**) 2000 c. 8.

Rules: procedure, etc.

4.—(1) The following provisions of the Act apply in respect of rules made under regulation 3 as they apply in respect of rules made by the FCA under that Act.

(2) The provisions are—

(a) section 138A (modification or waiver of rules)(**a**);

(b) section 138B (publication of directions under section 138A)(**b**);

(c) section 138F (notification of rules)(**c**);

(d) section 138G (rule-making instruments)(**d**);

(e) section 138H (verification of rules)(**e**);

(f) section 138I (consultation by the FCA)(**f**) as if—

(i) in subsection (6), after paragraph (e) there were inserted—

"(f) regulation 3 of the Credit Rating Agencies (Amendment, etc.) (EU Exit) Regulations 2019.";

(ii) in subsection (10), after paragraph (b) there were inserted—

", or

(c) to rules made by the FCA under regulation 3 of the Credit Rating Agencies (Amendment, etc.) (EU Exit) Regulations 2019.";

(iii) after that subsection there were inserted—

"(10A) Subsection (2)(d) does not apply to rules made by the FCA under regulation 3 of the Credit Rating Agencies (Amendment, etc.) (EU Exit) Regulations 2019."

Guidance

5. The FCA may give guidance consisting of such information and advice as it considers appropriate in respect of—

(a) the operation of—

(i) these Regulations,

(ii) the CRA Regulation, or

(iii) rules made under regulation 3;

(b) any matters relating to the functions of the FCA under these Regulations or the CRA Regulation;

(c) any other matters about which it appears to the FCA to be desirable to give information or advice in respect of these Regulations or the CRA Regulation.

Guidance: procedure, etc.

6.—(1) The FCA may—

(a) publish its guidance;

(b) offer copies of its published guidance for sale at a reasonable price;

(**a**) Inserted by section 24(1) of the Financial Services Act 2012 (c. 21) and amended by paragraph 8 of Schedule 3 to the Financial Services (Banking Reform) Act 2013 (c. 33) and S.I. 2013/1388.

(**b**) Inserted by section 24(1) of the Financial Services Act 2012 (c. 21).

(**c**) Inserted by section 24(1) of the Financial Services Act 2012 (c. 21) and amended by paragraph 7 of Schedule 3 to the Pension Schemes Act 2015 (c. 8), sections 29(3) and 33(3) of, and paragraph 35 of Schedule 2 to, the Bank of England and Financial Services Act 2016 (c. 14) and paragraph 13 of Schedule 3 to the Financial Guidance and Claims Act 2018 (c. 10).

(**d**) Inserted by section 24(1) of the Financial Services Act 2012 (c. 21).

(**e**) Inserted by section 24(1) of the Financial Services Act 2012 (c. 21).

(**f**) Inserted by section 24(1) of the Financial Services Act 2012 (c. 21) and amended by paragraph 8 of Schedule 3 to the Pension Schemes Act 2015 (c. 8), sections 29(4) and 33(4) of the Bank of England and Financial Services Act 2016 (c. 14) and paragraph 14 of Schedule 3 to the Financial Guidance and Claims Act 2018 (c. 10).

(c) if it issues guidance in response to a request made by a credit rating agency, make a reasonable charge for that guidance.

(2) Section 139B of the Act (notification of FCA guidance to the Treasury)(**a**) applies to guidance under regulation 5 which is—

(a) given to credit rating agencies generally,

(b) intended to have continuing effect, and

(c) given in writing or other legible form,

as it applies to general guidance (within the meaning of that section).

PART 3

Enforcement

CHAPTER 1

Penalties

Financial penalties

7.—(1) If the FCA considers that a credit rating agency has contravened a requirement imposed by or under these Regulations, or by or under the CRA Regulation, it may impose a penalty on the credit rating agency of such amount as it considers appropriate.

(2) A penalty imposed under this regulation—

(a) is payable to the FCA, and

(b) may be recovered as a debt due to the FCA.

(3) In imposing, or deciding whether to impose, a penalty under this regulation, the FCA must have regard to a statement of policy published under regulation 8 and in force at the time when the contravention occurred.

Statement of policy

8.—(1) The FCA must prepare and issue a statement of policy with respect to—

(a) the imposition of penalties under regulation 7, and

(b) the amount of penalties under that regulation.

(2) The FCA's policy in determining what the amount of a penalty should be must include having regard to—

(a) the seriousness of the contravention (in relation to the nature of the requirement contravened), and

(b) the extent to which the contravention is deliberate or reckless.

(3) The FCA may at any time alter or replace a statement issued under this regulation.

(4) If a statement issued under this regulation is altered or replaced by the FCA, the FCA must issue the altered or replacement statement.

(5) The FCA must, without delay, give the Treasury a copy of any statement which it issues under this regulation.

(6) A statement issued under this regulation by the FCA must be published by the FCA in the way appearing to the FCA to be best calculated to bring it to the attention of the public.

(7) The FCA may charge a reasonable fee for providing a credit rating agency with a copy of the statement.

(**a**) Inserted by section 24(1) of the Financial Services Act 2012 (c. 21).

Statement of policy: procedure

9.—(1) Before the FCA issues a statement under regulation 8, the FCA must publish a draft of the proposed statement in the way appearing to the FCA to be best calculated to bring it to the attention of the public.

(2) The draft must be accompanied by a notice that specifies the time within which representations about the proposal may be made to the FCA.

(3) Before issuing the proposed statement the FCA must have regard to any representations made in accordance with paragraph (2).

(4) If the FCA issues the proposed statement it must publish an account, in general terms, of—

(a) any representations made to it in accordance with paragraph (2), and

(b) its response to them.

(5) If the statement differs from the draft published under paragraph (1) in a way which is, in the opinion of the FCA, significant, the FCA must (in addition to complying with paragraph (4)) publish details of the difference.

(6) The FCA may charge a reasonable fee for providing a credit rating agency with a copy of a draft published by it under paragraph (1).

(7) This regulation also applies to a proposal to alter or replace a statement.

CHAPTER 2

Public censure

Public censure

10. If the FCA considers that a credit rating agency has contravened a requirement imposed by or under these Regulations, or by or under the CRA Regulation, the FCA may publish a statement to that effect.

CHAPTER 3

Financial penalties and public censure: procedure

Warning notice

11.—(1) If the FCA proposes to—

(a) impose a penalty on a credit rating agency under regulation 7, or

(b) publish a statement in respect of a credit rating agency under regulation 10,

it must give the credit rating agency a warning notice.

(2) A warning notice about a proposal to impose a penalty must state the amount of the penalty.

(3) A warning notice about a proposal to publish a statement must set out the terms of the statement.

Decision notice

12.—(1) If, having considered any representations made in response to a warning notice,(**a**) the FCA decides to—

(a) impose a penalty under regulation 7 (whether or not of the amount proposed), or

(b) publish a statement under regulation 10 (whether or not in the terms proposed),

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(**a**) See regulation 19, which applies to these Regulations with modifications provisions of the Financial Services and Markets Act 2000 (c. 8) relating to the provision of notices generally.

it must without delay give the credit rating agency concerned a decision notice.

(2) In the case of a penalty, the decision notice must state the amount of the penalty.

(3) In the case of a statement, the decision notice must set out the terms of the statement.

Duty on publication of statement

13. After a statement under regulation 10 is published, the FCA must send a copy of the statement to—

(a) the person in respect of whom it is made, and

(b) any person to whom a copy of the decision notice is given under section 393(4) of the Act (third party rights)(**a**) (as applied by regulation 19).

CHAPTER 4

Financial penalties: supplemental

Deduction of enforcement costs, etc.

14.—(1) For the purposes of a penalty imposed under—

(a) regulation 7, or

(b) the CRA Regulation,

Part 3 of Schedule 1ZA to the Act (Financial Conduct Authority: penalties)(**b**), is modified as follows.

(2) Paragraph 19 has effect as if, after "this Act," there were inserted "regulation 7 of the Credit Rating Agencies (Amendment, etc.) (EU Exit) Regulations 2019 and Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies,".

(3) Paragraph 20 has effect as if—

(a) in subparagraph (2), after "this Act" there were inserted ", regulation 7 of the Credit Rating Agencies (Amendment, etc.) (EU Exit) Regulations 2019 and Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies";

(b) after subparagraph (4)(a) there were inserted—

"(aa) its powers under any of the provisions mentioned in section 133(7A) as applied by regulation 16 of the Credit Rating Agencies (Amendment, etc.) (EU Exit) Regulations 2019,";

(c) after subparagraph (5)(a) there were inserted—

"(aa) offences under—

(i) section 177 of that Act, as applied by regulation 18 of the Credit Rating Agencies (Amendment, etc.) (EU Exit) Regulations 2019,

(ii) section 398 of this Act, as applied by regulations 21 and 45 of those Regulations, and

(iii) section 400 of this Act, as applied by regulations 22 and 46 of those Regulations,".

(4) Paragraph 21 has effect as if, after subparagraph (2)(a), there were inserted—

(**a**) Subsection (4) is amended by paragraph 32(4) of Schedule 9 to the Financial Services Act 2012 (c. 21).

(**b**) Inserted by Schedule 3 to the Financial Services Act 2012 (c. 21). Paragraph 20 is amended by paragraph 4 of Schedule 10 to the Financial Services (Banking Reform) Act 2013 (c. 33). Paragraph 21 is amended by paragraph 15 of Schedule 3 to the Pension Schemes Act 2015 (c. 8) and paragraph 21(4) of Schedule 3 to the Financial Guidance and Claims Act 2018 (c. 10).

"(aa) credit rating agencies registered under Chapter 1 of Title 3 of Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies,".

PART 4

References and applications to a tribunal

Right to refer a decision to the Upper Tribunal

15. If the FCA decides to—

(a) impose a penalty on a credit rating agency under regulation 7, or

(b) publish a statement in respect of a credit rating agency under regulation 10,

the credit rating agency may refer the matter to the Upper Tribunal.

Hearings and appeals before the Upper Tribunal

16.—(1) The following provisions of the Act apply in respect of a reference to the Upper Tribunal under—

(a) regulation 15, or

(b) the CRA Regulation(**a**),

as they apply in respect of such a reference under that Act.

(2) The provisions are—

(a) section 133 (proceedings before Tribunal: general provision)(**b**) as if, in subsection (7A), after paragraph (o), there were inserted—

"(p) a decision to impose a penalty under regulation 7 of the Credit Rating Agencies (Amendment, etc.) (EU Exit) Regulations 2019 (financial penalties);

(q) a decision to publish a statement under regulation 10 of those Regulations (public censure).";

(b) section 133A (proceedings before Tribunal: decision and supervisory notices, etc)(**c**);

(c) section 133B (offences)(**d**).

Application to a court for an injunction

17.—(1) If, on the application of the FCA, a court is satisfied—

(a) that there is a reasonable likelihood that a credit rating agency will contravene a requirement imposed by or under these Regulations, or by or under the CRA Regulation, or

(b) that a credit rating agency has contravened such a requirement and that there is a reasonable likelihood that the contravention will continue or be repeated,

the court may make an order restraining (or in Scotland an interdict prohibiting) the contravention.

(2) If, on the application of the FCA, a court is satisfied—

(a) that a credit rating agency has contravened a requirement imposed by or under these Regulations or by or under the CRA Regulation, and

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(**a**) See Article 18A of the CRA Regulation (inserted by regulation 75).

(**b**) Substituted by S.I. 2010/22 and amended by section 23(2) of the Financial Services Act 2012 (c. 21), paragraph 83 of Schedule 9 to the Crime and Courts Act 2013 (c. 22), section 4(2) of the Financial Services (Banking Reform) Act 2013 (c. 33), S.I. 2013/1388, S.I. 2014/3329, S.I. 2016/680 and S.I. 2017/1064.

(**c**) Inserted by S.I. 2010/22 and amended by section 23(3) of the Financial Services Act 2012 (c. 21).

(**d**) Inserted by S.I. 2010/22 and amended by section 23(4) of the Financial Services Act 2012 (c. 21).

(b) that there are steps which could be taken for remedying the contravention,

the court may make an order requiring the credit rating agency, and any other person who appears to have been knowingly concerned in the contravention, to take such steps as the court may direct to remedy it.

(3) If, on the application of the FCA, a court is satisfied that a credit rating agency may have—

(a) contravened a requirement imposed by or under these Regulations or by or under the CRA Regulation, or

(b) been knowingly concerned in the contravention of such a requirement,

the court may make an order restraining (or in Scotland an interdict prohibiting) the credit rating agency from disposing of, or otherwise dealing with, any assets which it is satisfied the credit rating agency is reasonably likely to dispose of or otherwise deal with.

(4) The jurisdiction conferred by this regulation is exercisable by the High Court and the Court of Session.

(5) In paragraph (2), references to remedying a contravention include references to mitigating its effect.

PART 5

Information

Information gathering and investigations

18.—(1) Part 11 of the Act (information gathering and investigations) applies in respect of a credit rating agency as it applies in respect of an authorised person under the Act(**a**), subject as follows.

(2) Section 165 (regulators' power to require information: authorised persons etc.)(**b**) applies as if—

(a) in subsection (4), after paragraph (b) there were inserted—

", and

(c) information and documents reasonably required in connection with the exercise by the FCA of functions conferred on it by or under—

(i) the Credit Rating Agencies (Amendment, etc.) (EU Exit) Regulations 2019, or

(ii) Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies.";

(b) in subsection (7), after paragraph (e) there were inserted—

"(f) by the FCA, to impose requirements on—

(i) a rated entity (within the meaning of Article 3.1 of Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies);

(ii) a related third party (within the meaning of Article 3.1 of that Regulation);

(iii) a person connected with credit rating activities (within the meaning of Article 3.1 of that Regulation);

(iv) a person to whom a credit rating agency has outsourced operational functions (in accordance with Article 9 of that Regulation)."

(**a**) See Part 3 of the Act for authorisation in general, and section 31 of the Act for the meaning of "authorised person".

(**b**) Amended by paragraph 1 of Schedule 12 to the Financial Services Act 2012 (c. 21), paragraph 36 of Schedule 2 to the Bank of England and Financial Services Act 2016 (c. 14) and S.I. 2013/1773.

(3) Section 166A (appointment of skilled person to collect and update information)(**a**) applies as if, after subsection (1), there were inserted—

"(1A) This section applies if the FCA considers that a credit rating agency has contravened a requirement imposed by or under Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies, to collect, and keep up to date, information of a description specified in that Regulation."

(4) Section 168 (appointment of persons to carry out investigations in particular cases)(**b**) applies as if, in subsection (2), after paragraph (c) there were inserted—

"(ca) a person has contravened a requirement imposed by or under Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies; or".

PART 6

Notices

Notices

19.—(1) Part 26 of the Act (notices) applies in respect of the giving of notices under—

(a) these Regulations,

(b) the Act as applied by these Regulations, and

(c) the CRA Regulation,

as it applies in respect of the giving of notices under the Act, subject as follows.

(2) Section 388 (decision notices)(**c**) applies as if, after subsection (2), there were inserted—

"(2A) In subsection (2), reference to action under a Part of this Act includes a reference to action under—

(a) a Part of the Credit Rating Agencies (Amendment, etc.) (EU Exit) Regulations 2019, and

(b) a Title of Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies."

(3) Section 391 (publication)(**d**) applies as if, in subsection (1ZB), after paragraph (m) there were inserted—

"(n) regulation 11 of the Credit Rating Agencies (Amendment, etc.) (EU Exit) Regulations 2019."

(4) Section 392 (application of sections 393 and 394) applies as if, after paragraph (b) there were inserted—

"(c) a warning notice given in accordance with regulation 11 of the Credit Rating Agencies (Amendment, etc.) (EU Exit) Regulations 2019;

(d) a decision notice given in accordance with regulation 12 of those Regulations."

(**a**) Inserted by paragraph 6 of Schedule 12 to the Financial Services Act 2012 (c. 21).

(**b**) Amended by paragraph 33(4) of Schedule 7 to the Counter-Terrorism Act 2008 (c. 28), paragraph 16 of Schedule 2 to the Financial Services Act 2010 (c. 28), paragraph 8 of Schedule 12 to the Financial Services Act 2012 (c. 21), paragraph 11 of Schedule 3 to the Pension Schemes Act 2015 (c. 8), paragraph 18 of Schedule 3 to the Financial Guidance and Claims Act 2018 (c. 10), S.I. 2016/680, S.I. 2007/126, S.I. 2012/2554, S.I. 2013/1773, S.I. 2016/225 and S.I. 2017/1255.

(**c**) Amended by paragraph 27 of Schedule 9 to the Financial Services Act 2012 (c. 21) and paragraph 13 of Schedule 3 to the Financial Services (Banking Reform) Act 2013 (c. 33).

(**d**) Subsection (1ZB) is inserted by section 4(3) of the Financial Services (Banking Reform) Act 2013 (c. 33) and amended by S.I. 2013/1388.

(5) Section 395 of the Act (the FCA's and PRA's procedures)(**a**) applies as if, after subsection (13), there were inserted—

"(14) "Supervisory notice" also means a notification given in accordance with—

(a) Article 18.2 of Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies, following a decision made under Article 16, 17, 20 or 24 of that Regulation;

(b) Article 18.10 of that Regulation."

Meaning of "consumer"

20. For the purposes of Part 26 of the Act, as applied by regulation 19, section 425A of the Act(**b**) (consumers: regulated activities etc. carried on by authorised persons) applies as if, in subsection (3), after paragraph (a) there were inserted—

"(ab) a credit rating agency, registered under Chapter 1 of Title 3 of Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies, carrying out a credit rating activity (within the meaning of Article 3.1 of that Regulation);".

PART 7

Offences

Offence of misleading FCA

21. Section 398(1) of the Act(**c**) (misleading FCA or PRA: residual cases) applies in respect of a requirement to provide information under—

(a) these Regulations,

(b) the Act as applied by these Regulations, and

(c) the CRA Regulation,

as it applies in respect of a requirement falling within subsection (1A) of that section.

Offences by bodies corporate

22. Section 400 of the Act(**d**) (offences by bodies corporate etc.) applies in respect of an offence under—

(a) section 177 of that Act (as applied by regulation 18), and

(b) section 398 of that Act (as applied by regulation 21),

as it applies in respect of an offence under that Act.

Proceedings for offences

23. Section 401 of the Act(**e**) (proceedings for offences) applies in respect of an offence under—

(a) section 177 of that Act (as applied by regulation 18),

(**a**) Amended by sections 17(3), 18(6), 19(2) and 24(3) of, and paragraph 34 of Schedule 9 to, the Financial Services Act 2012 (c. 21), paragraph 14 of Schedule 3 to the Financial Services (Banking Reform) Act 2013 (c. 33), S.I. 2005/381, S.I. 2005/1433, S.I. 2007/1973, S.I. 2009/534, S.I. 2013/1388, S.I. 2016/680, S.I. 2016/1239, S.I. 2017/701 and S.I. 2018/135.

(**b**) Inserted by paragraph 32 of Schedule 2 to the Financial Services Act 2010 (c. 28) and amended by S.I. 2013/655 and S.I. 2018/135.

(**c**) 2000 c. 8. Section 398 is amended by paragraph 36 of Schedule 9 to the Financial Services Act 2012 (c. 21), S.I. 2013/1773, S.I. 2015/1882, S.I. 2016/680, S.I. 2017/701, S.I. 2018/135 and S.I. 2018/698.

(**d**) 2000 c. 8. Section 400 is amended by paragraph 37 of Schedule 9 to the Financial Services Act 2012 (c. 21).

(**e**) Amended by paragraph 38 of Schedule 9 to the Financial Services Act 2012 (c. 21), S.I. 2013/1881 and S.I. 2016/1239.

(b) section 398 of that Act (as applied by regulation 21), and

(c) section 400 of that Act (as applied by regulation 22),

as it applies in respect of an offence under that Act.

PART 8

Transitional Provisions

CHAPTER 1

Advance applications

Advance application for registration as a credit rating agency

24.—(1) A person may submit an advance application to the FCA for registration as a credit rating agency.

(2) Such an application must contain information on each of the matters set out in Annex 2 to the CRA Regulation.

(3) Such an application must also—

(a) be made in such manner, and

(b) contain, or be accompanied by, such other information,

as the FCA may direct.

Assessment of whether an advance application is complete

25. The FCA must, before the end of a period of 20 working days beginning with the day of receipt—

(a) if it considers that an advance application complies with regulation 24(2) and the directions (if any) under regulation 24(3), confirm in writing to the applicant that the application is complete;

(b) if it considers that the application does not comply with regulation 24(2) or one or more of the directions (if any) under regulation 24(3)—

(i) confirm in writing to the applicant that the application is not complete, and

(ii) inform the applicant of the steps which need to be taken, and the time within which they need to be taken, for the application to be considered complete.

Determination of an advance application

26.—(1) The FCA must, before the end of the relevant period, take the following steps.

(2) The first step is that the FCA must consider the application based on compliance with the conditions for the issuing of credit ratings set out in the CRA Regulation.

(3) The second step is that the FCA must decide whether the applicant should be registered as a credit rating agency or whether the advance application for registration should be rejected.

(4) The third step is that the FCA must notify the applicant of its decision, and the reasons therefor.

(5) For the purposes of paragraph (1), the relevant period is 45 working days beginning with the day on which the FCA confirms that an application is complete.

(6) The FCA may extend the relevant period by 15 working days, in particular where the application—

(a) indicates that the applicant intends to—

(i) endorse credit ratings (within the meaning of Article 4.3 of the CRA Regulation);

(ii) outsource functions (within the meaning of Article 9 of the CRA Regulation);

(b) requests an exemption from compliance with a requirement of the CRA Regulation (in accordance with Article 6.3 of that Regulation).

Effect of determining an advance application

27. A decision under regulation 26(3) has effect from—

(a) the day of notification, or

(b) exit day,

whichever is later, as if it were a decision to register or refuse registration adopted in accordance with Article 16 of the CRA Regulation (notwithstanding provision in Chapter 1 of Title 3 of that Regulation in respect of when a decision has effect).

CHAPTER 2

Temporary registration

Temporary deemed registration under the CRA Regulation

28.—(1) A person to whom this regulation applies is to be treated as if the person is registered as a credit rating agency under Chapter 1 of Title 3 of the CRA Regulation.

(2) Reference in an enactment to a person registered as a credit rating agency under that Chapter, however expressed, is to be read, unless the contrary intention appears, as including a person treated as being so registered by virtue of this regulation.

Application of regulation 28

29. Regulation 28 applies to a person—

(a) who satisfies the conditions in regulation 30;

(b) for the period determined in accordance with regulation 31.

Conditions to be satisfied for regulation 28 to apply

30. The conditions are—

(a) the person is a body corporate which, immediately before exit day—

(i) is incorporated under the law of any part of the United Kingdom, and

(ii) is included within a group of undertakings which comprises a credit rating agency registered under Chapter 1 of Title 3 to the CRA Regulation;

(b) the person has—

(i) submitted an advance application in accordance with regulation 24, and

(ii) not been notified by the FCA of its decision in respect of the application in accordance with regulation 26(4).

Period during which regulation 28 is to apply

31.—(1) For the purposes of regulation 29(b), the period is one that begins with exit day and ends with a day determined in accordance with paragraph (2).

(2) The period ends—

(a) after three years beginning with the day on which exit day occurs, or

(b) if earlier, with the day—

(i) before the day on which registration as a credit rating agency has effect;

(ii) on which the FCA determines, in accordance with regulation 32(1), that regulation 28 should cease to apply, or

(iii) on which the person ceases to be included within a group of undertakings which comprise a credit rating agency registered under Chapter 1 of Title 3 to the CRA Regulation, as that Regulation has effect in the European Union.

Cessation following a determination by the FCA

32.—(1) The FCA may determine that regulation 28 should cease to apply to an applicant—

(a) where, in respect of an advance application—

(i) the application does not comply with regulation 24(2) or a direction under regulation 24(3), and

(ii) the steps referred to in regulation 25(b)(ii) have not been taken within the time specified;

(b) following a decision refusing registration in accordance with regulation 26(3);

(c) at the request of the person to whom regulation 28 applies.

(2) The FCA must notify the person in respect of whom the determination is made of the day on which regulation 28 will cease to apply.

(3) Paragraph (1) is subject to Article 20 (withdrawal of registration) of the CRA Regulation.

CHAPTER 3

Registration conversion

Registration under the CRA Regulation

33.—(1) Notwithstanding Articles 14 to 18A of the CRA Regulation, a person to whom this regulation applies is, on and after exit day, registered as a credit rating agency under Chapter 1 of Title 3 of the CRA Regulation.

(2) Reference in any enactment to a person registered under that Chapter, however expressed, includes a person registered by virtue of this regulation.

Application of regulation 33

34. Regulation 33 applies to a person who—

(a) satisfies the conditions in regulation 35, and

(b) notifies the FCA in accordance with regulation 36.

Conditions to be satisfied for regulation 33 to apply

35. The conditions are that the person is a body corporate which, immediately before exit day, is—

(a) incorporated under the law of any part of the United Kingdom, and

(b) registered as a credit rating agency under the CRA Regulation.

Notification for registration

36.—(1) The person must, no later than the final day, notify the FCA that the person wishes to be registered in accordance with regulation 33.

(2) For the purposes of paragraph (1), the notification must—

(a) be made in such manner, and

(b) contain, or be accompanied by, such information,

as the FCA may direct.

(3) For the purposes of paragraph (1), the final day is—

(a) the day before the day on which exit day occurs, or

(b) such earlier day as the FCA may direct.

Acknowledgement of receipt

37. The FCA must, before the end of a period of 10 working days beginning with the day on which it receives a notification under regulation 36, send the person making the notification an acknowledgment of receipt.

FCA's response

38. The FCA must, before the end of a period of 20 working days beginning with the day on which it receives a notification under regulation 36—

(a) if it considers that the notification complies with the requirements of, or made under, that regulation, confirm in writing to the person making the notification that the notification is valid;

(b) if it considers that the notification does not comply with those requirements—

(i) confirm in writing to the person making the notification that the notification is not valid, and

(ii) where applicable, inform the person of the steps which need to be taken, and the time within which they need to be taken, for the notification to be considered valid.

CHAPTER 4

Certification conversion

Certification under the CRA Regulation

39.—(1) Notwithstanding Article 5 of the CRA Regulation, a person to whom this regulation applies is, on and after exit day, a certified credit rating agency for the purposes of the CRA Regulation.

(2) Reference in an enactment to a person certified under the CRA Regulation, however expressed, includes a person certified by virtue of this regulation.

Application of regulation 39

40. Regulation 39 applies to a credit rating agency who—

(a) satisfies the condition in regulation 41, and

(b) notifies the FCA in accordance with regulation 42.

Condition to be satisfied for regulation 39 to apply

41. The condition is that the credit rating agency is, immediately before exit day, certified in accordance with Article 5.2 of the CRA Regulation.

Notification for certification

42.—(1) The person must, no later than the final day, notify the FCA that the person wishes to be certified in accordance with regulation 39.

(2) For the purposes of paragraph (1), the notification must—

(a) be made in such manner, and

(b) contain, or be accompanied by, such information,

as the FCA may direct.

(3) For the purposes of paragraph (1), the final day is—

(a) the day before the day on which exit day occurs, or

(b) such earlier day as the FCA may direct.

Acknowledgement of receipt

43. The FCA must, before the end of a period of 10 working days beginning with the day on which it receives a notification under regulation 42, send the person making the notification an acknowledgment of receipt.

FCA's response

44. The FCA must, before the end of a period of 20 working days beginning with the day on which it receives a notification under regulation 42—

(a) if it considers that the notification complies with the requirements of, or made under, that regulation, confirm in writing to the person making the notification that the notification is valid;

(b) if it considers that the notification does not comply with those requirements—

(i) confirm in writing to the person making the notification that the notification is not valid, and

(ii) where applicable, inform the person of the steps which need to be taken, and the time within which they need to be taken, for the notification to be considered valid.

CHAPTER 5

General provision

Misleading the FCA: criminal offence

45. Section 398(1) of the Financial Services and Markets Act 2000 (misleading the FCA or PRA: residual cases) applies to a requirement to provide information in accordance with regulation 24(2), or a direction under regulation 24(3), 36(2) or 42(2), as it applies to a requirement falling within subsection (1A) of that section.

Offences by bodies corporate

46. Section 400 of the Act (offences by bodies corporate etc.)(**a**) applies in respect of an offence under section 398 of that Act (as applied by regulation 45), as it applies in respect of an offence under that Act.

Further information to be supplied by a person to whom regulation 28, 33 or 39 applies

47.—(1) A person to whom regulation 28 applies must notify the FCA if any information contained in or accompanying an advance application submitted in accordance with regulation 24 changes.

(2) A person to whom regulation 33 applies must notify the FCA if any information contained in or accompanying the notification made in accordance with regulation 36 changes.

(**a**) 2000 c. 8. Section 398 is amended by paragraph 36 of Schedule 9 to the Financial Services Act 2012 (c. 21), S.I. 2013/1773, S.I. 2015/1882, S.I. 2016/680, S.I. 2017/701, S.I. 2018/135 and S.I. 2018/698.

(3) A person to whom regulation 39 applies must notify the FCA if any information contained in or accompanying the notification made in accordance with regulation 42 changes.

Directions

48.—(1) The power to make a direction under this Part includes the power—

(a) to make different directions in relation to different applications or categories of application;

(b) to vary or revoke a previous direction.

(2) A direction under this Part must be—

(a) in writing, and

(b) published by the FCA in a manner suitable to bring it to the attention of persons likely to be affected.

Interpretation of Part 8

49.—(1) In this Part—

"advance application" means an application submitted during the period—

(a) beginning with the day on which this Part comes into force, and

(b) ending immediately before exit day;

"working day" means a day other than—

(a) a Saturday or a Sunday,

(b) Christmas Day or Good Friday, or

(c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971(**a**) in any part of the United Kingdom.

(2) In this Part, reference to a group of undertakings means a group consisting of—

(a) a parent undertaking and its subsidiaries, within the meaning of Articles 1 and 2 of Directive 83/349/EEC of 13 June 1983(**b**), and

(b) undertakings linked to each other by a relationship mentioned in Article 12.1(a) or (b) of that Directive, whose occupation includes the issuing of credit ratings.

PART 9

Amendment of subordinate legislation

Amendment of the Credit Rating Agencies Regulations 2010

50.—(1) The Credit Rating Agencies Regulations 2010(**c**) are amended as follows.

(2) In regulation 2(1), omit the definition of "ESMA".

(3) Omit regulations 32 to 34.

(**a**) 1971 c. 80; amended by section 1 of the St Andrew's Day Bank Holiday (Scotland) Act 2007 (asp 2).
(**b**) O.J. L 193, 18.7.1983, p.1.
(**c**) S.I. 2010/906 as amended by S.I. 2011/1435 and S.I.2013/472.

PART 10

Amendment of retained direct EU legislation

Amendment of Regulation (EC) No 1060/2009

51. The CRA Regulation is amended as follows.

52. In Article 1—

(a) after "This Regulation introduces a", omit "common";

(b) for "Union", substitute "United Kingdom";

(c) after "smooth functioning of the", omit "internal";

(d) in the second paragraph, for "Union" substitute "United Kingdom".

53. In Article 2—

(a) in paragraph 1, for "Union", substitute "United Kingdom";

(b) in paragraph 2—

(i) in point (c), for "point 1.3 of Part 1 of Annex VI to Directive 2006/48/EC", substitute "Article 114 and Article 137 of Regulation (EU) No 575/2013";

(ii) in point (d), for "the central banks", substitute "central banks";

(iii) in point (d)(iv), for "respective central banks' Member States", substitute "United Kingdom Government";

(c) in paragraph 4—

(i) for "the Commission", in each place it occurs, substitute "the Treasury";

(ii) omit, "upon submission of a request by a Member State, in accordance with the regulatory procedure referred to in Article 38(3) and".

54. In Article 3—

(a) for paragraph 1 substitute—

"1. For the purpose of this Regulation:

'alternative investment fund manager' has the meaning in regulation 4(1) of the Alternative Investment Managers Regulations 2013;

'beneficial owner' has the meaning given to it in regulation 3(1) of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017;

'central counterparty' or 'CCP' means a legal person that interposes itself between the counterparties to the contracts traded on one or more financial markets, becoming the buyer to every seller and the seller to every buyer, which is authorised under the Financial Services and Markets Act 2000;

'common management relationship', means a relationship between two or more undertakings which satisfies the following conditions:

(i) the undertakings are not connected in the manner described in section 1162 of, and Schedule 7 to, the Companies Act 2006 (c. 46), and

(ii) either:

(a) the undertakings are managed on a unified basis pursuant to a contract with one of them, or provisions in the undertakings' memorandum or articles of association; or

(b) the administrative, management or supervisory bodies of those undertakings consist, for the major part, of the same credit rating agencies in office during the financial year in respect of which it is being decided whether such a relationship exists;

‘competent authority’, means the FCA;

‘control’ means the relationship between a parent undertaking and a subsidiary, as described in section 1162(2) of the Companies Act 2006 (c. 46), or a close link between any natural or legal person and an undertaking;

‘credit institution’ has the meaning given by Article 2.1.19 of the markets in financial instruments regulation;

‘credit rating’ means an opinion regarding the creditworthiness of an entity, a debt or financial obligation, debt security, preferred share or other financial instrument, or of an issuer of such a debt or financial obligation, debt security, preferred share or other financial instrument, issued using an established and defined ranking system of rating categories;

‘credit rating activities’ means data and information analysis and the evaluation, approval, issuing and review of credit ratings;

‘credit rating agency’ means a legal person whose occupation includes the issuing of credit ratings on a professional basis;

‘credit score’ means a measure of creditworthiness derived from summarising and expressing data based only on a pre-established statistical system or model, without any additional substantial rating-specific analytical input from a rating analyst;

‘EU regulated market’ has the meaning given in Article 2.1.13.B of the markets in financial instruments regulation;

‘the FCA’, means the Financial Conduct Authority;

‘financial instrument’ has the meaning given by Article 2.1.9 of the markets in financial instruments regulation, read with Articles 5 to 8 of Commission Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive;

‘group of credit rating agencies’ means a group of undertakings established in the United Kingdom consisting of a parent undertaking and its subsidiaries within the meaning of section 1162 of the Companies Act 2006 (c. 46) as well as undertakings linked to each other by a common management relationship and whose occupation includes the issuing of credit ratings. For the purposes of Article 4.3(a), a group of credit rating agencies shall also include credit rating agencies established in third countries;

‘institution for occupational retirement provision’ means an institution, irrespective of its legal form, operating on a funded basis, established separately from any sponsoring undertaking or trade for the purpose of providing retirement benefits in the context of an occupational activity on the basis of an agreement or a contract agreed:

(i) individually or collectively between the employer and the employee or their respective representatives, or

(ii) with self-employed persons, in compliance with United Kingdom legislation,

and which carries out activities directly arising therefrom;

‘insurance undertaking’ has the meaning given in section 417 of the Financial Services and Markets Act 2000;

‘investment firm’ has the meaning given by Article 2.1A of the markets in financial instruments regulation;

‘investment research’ means research or other information recommending or suggesting an investment strategy, explicitly or implicitly, concerning one or several financial instruments or the issuers of financial instruments, including any opinion as to the present or future value or price of such instruments, intended for distribution channels or for the public, and in relation to which the following conditions are met:

(i) it is labelled or described as investment research or in similar terms, or is otherwise presented as an objective or independent explanation of the matters contained in the recommendation;

(ii) if the recommendation in question were made by an investment firm to a client, it would not constitute the provision of investment advice (meaning the provision of credit rating agencies recommendations to a client, either upon its request or at the initiative of the investment firm, in respect of one or more transactions relating to financial instruments);

'issuer' means a legal entity which issues or proposes to issue securities;

'lead rating analyst' means a person with primary responsibility for elaborating a credit rating or for communicating with the issuer with respect to a particular credit rating or, generally, with respect to the credit rating of a financial instrument issued by that issuer and, where relevant, for preparing recommendations to the rating committee in relation to such rating;

'management company' has the meaning given in section 237 of the Financial Services and Markets Act 2000 (c. 8);

'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;

'originator' means either of the following:

(i) an entity which, either itself or through related entities, directly or indirectly, was involved in the original agreement which created the obligations or potential obligations of the debtor or potential debtor giving rise to the exposure being securitised; or

(ii) an entity which purchases a third party's exposure onto its balance sheet and then securitises them;

'prospectus' means a prospectus published under Part 6 of the Financial Services and Markets Act 2000;

'rated entity' means a legal person whose creditworthiness is explicitly or implicitly rated in the credit rating, whether or not it has solicited that credit rating and whether or not it has provided information for that credit rating;

'rating analyst' means a person who performs analytical functions that are necessary for the issuing of a credit rating;

'rating category' means a rating symbol, such as a letter or numerical symbol which might be accompanied by appending identifying characters, used in a credit rating to provide a relative measure of risk to distinguish the different risk characteristics of the types of rated entities, issuers and financial instruments or other assets;

'rating outlook' means an opinion regarding the likely direction of a credit rating over the short term, the medium term or both;

'regulated market' has the meaning given in Article 2.1(13) of the markets in financial instruments regulation;

'regulatory purposes' means the use of credit ratings for the specific purpose of complying with the law applicable in the United Kingdom;

'reinsurance undertaking' has the meaning given by section 417 of the Financial Services and Markets Act 2000;

'related third party' means the originator, arranger, sponsor, servicer or any other party that interacts with a credit rating agency on behalf of a rated entity, including any person directly or indirectly linked to that rated entity by control;

're-securitisation' means a securitisation where the risk associated with an underlying pool of exposures is tranched and at least one of the underlying exposures is a securitisation position;

're-securitisation position' means an exposure to a re-securitisation;

'senior management' means the persons who effectively direct the business of the credit rating agency and the members of its administrative or supervisory board;

'sovereign rating' means:

(i) a credit rating where the entity rated is a State or a regional or local authority of a State;

(ii) a credit rating where the issuer of the debt or financial obligation, debt security or other financial instrument is a State or a regional or local authority of a State, or a special purpose vehicle of a State or of a regional or local authority;

(iii) a credit rating where the issuer is an international financial institution established by two or more States which has the purpose of mobilising funding and providing financial assistance for the benefit of the members of that international financial institution which are experiencing or threatened by severe financing problems;

'sponsor' means a sponsor as defined in point (42) of Article 4 of Directive 2006/48/EC of the European Parliament and of the Council of 14th June 2006 relating to the taking up and pursuit of the business of credit institutions;

'sponsoring undertaking' means any undertaking or other body, regardless of whether it includes or consists of one or more legal or natural credit rating agencies, which acts as an employer or in a self-employed capacity or any combination thereof and which pays contributions into an institution for occupational retirement provision;

'structured finance instrument' means a financial instrument or other assets resulting from a securitisation transaction or scheme whereby the credit risk associated with an exposure or pool of exposures is tranched, having the following characteristics:

(i) payments in the transaction or scheme are dependent upon the performance of the exposure or pool of exposures, and

(ii) the subordination of tranches determines the distribution of losses during the ongoing life of the transaction or scheme;

'third country', means any country other than the United Kingdom;

'third country competent authorities', means a public authority which is empowered under the law applicable in the relevant jurisdiction to supervise credit rating agencies;

'United Kingdom regulated market' has the meaning given in Article 2.1(13A) of the markets in financial instruments regulation;

'unsolicited credit rating' and 'unsolicited sovereign rating' mean, respectively, a credit rating or a sovereign rating assigned by a credit rating agency other than upon request. " ;

(b) in paragraph 2, for points (a) and (b) substitute—

"(a) recommendations, meaning research or other information recommending or suggesting an investment strategy, explicitly or implicitly, concerning one or several financial instruments or the issuers of financial instruments, including any opinion as to the present or future value or price of such instruments, intended for distribution channels or for the public;

(b) investment research and other forms of general recommendation, such as 'buy', 'sell' or 'hold', relating to transactions in financial instruments or to financial obligations; or ";

(c) in paragraph 3, omit "as defined in point (6) of Article 3 of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing".

55. In Article 4—

(a) in paragraph 1, 2, 3 and 4, for "Union", in each place it occurs, substitute "United Kingdom";

(b) in paragraph 1, in the second sub-paragraph, for "regulated market" substitute "United Kingdom regulated market";

(c) after paragraph 1 insert—

"1A. Without prejudice to the general effect of paragraph 37(1) of Schedule 8 to the EU Withdrawal Act 2018, credit institutions, investment firms, insurance undertakings, reinsurance undertakings, institutions for occupational retirement provision, management companies, investment companies, alternative investment fund managers and central counterparties may use, for the time period specified in paragraph 1B, a credit rating for regulatory purposes if:

(a) the rating is or was issued or endorsed by a credit rating agency established in the Union which is part of a group in respect of which one of its undertakings—

(i) is registered in the United Kingdom in accordance with this Regulation, or

(ii) has made an advance application under regulation 24 of the Credit Rating Agencies (Amendment, etc.) (EU Exit) Regulations 2019 to be registered in the United Kingdom in accordance with this Regulation, and

(b) the rating was issued or endorsed and not withdrawn immediately before exit day.

1B. The specified time period is one year beginning with exit day.";

(d) in paragraph 3—

(i) in point (b), for "the European Supervisory Authority (European Securities and Markets Authority) (ESMA) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council", substitute "the FCA";

(ii) in point (c) and (d), for "ESMA", in each place it occurs, substitute "the FCA";

(iii) in point (g), for "competent authorities", substitute "third country competent authorities";

(iv) omit point (h);

(e) in paragraph 6—

(i) for "the Commission", substitute "the Treasury";

(ii) omit "and the cooperation arrangements referred to in Article 5(7) are operational".

56. In Article 5—

(a) in paragraph 1—

(i) for "Union", substitute "United Kingdom";

(ii) in point (b) for, "the Commission", substitute "the Treasury";

(iii) omit point (c);

(iv) in point (d), for "one or more Member States", substitute with "the United Kingdom";

(b) in paragraph 2, for "ESMA", substitute "the FCA";

(c) in paragraph 3, for "ESMA", substitute "The FCA";

(d) in paragraph 4—

(i) in point (b), for "Union", substitute "United Kingdom";

(ii) in the second paragraph—

(aa) for "ESMA", in each place it occurs, substitute "the FCA";

(bb) for "one or more Member States", substitute "the United Kingdom";

(e) in paragraph 6—

(i) for "The Commission" and "the Commission", in each place it occurs, substitute "the Treasury";

(ii) omit "in accordance with the regulatory procedure referred to in Article 38(3)";

(iii) in point (c), in the second paragraph, for "shall adopt, by means of delegated acts in accordance with Article 38a, and subject to the conditions of Articles 38b and 38c, measures" substitute "may make regulations";

(f) omit paragraph 7;

(g) in paragraph 8, omit ", 23b".

57. In Article 5a, paragraph 2, for "Sectorial competent authorities", substitute "The relevant competent authority".

58. Omit Article 5b.

59. For Article 5c substitute—

"5C. Without prejudice to its right of initiative, the Treasury shall continue to review whether references to credit ratings in UK law trigger or have the potential to trigger sole or mechanistic reliance on credit ratings by the FCA, the entities referred to in the first subparagraph of Article 4(1) or other financial market participants."

60. In Article 6, in paragraph 3, in each place it occurs, for "ESMA", substitute "the FCA";

61. In Article 6b, omit paragraph 6.

62. In Article 8—

(a) in paragraph 6, point (aa), for "ESMA", substitute "the FCA";

(b) in paragraph 7, point (a), for "ESMA", substitute "the FCA".

63. In Article 8a—

(a) in paragraph 1, for "Member State", substitute "country";

(b) in paragraph 3, for "ESMA", substitute "the FCA".

64. In Article 8b—

(a) for "the Union" substitute "the United Kingdom";

(b) for "ESMA", in each place it occurs substitute "the FCA";

(c) for "national or Union law", substitute "law applicable in the United Kingdom";

(d) for "Commission", substitute "the Treasury".

65. In Article 8d, for "ESMA", in each place it occurs, substitute "the FCA".

66. In Article 9, for "ESMA", substitute "the FCA".

67. In Article 10—

(a) in paragraph 2a—

(i) for "Directive 2003/6/EC", substitute "Regulation (EU) No 596/2014";

(ii) for "Article 6(3) of that Directive", substitute "Regulation (EU) No 596/2014";

(b) in paragraph 6, for "ESMA or any competent authority", in each place it occurs, substitute "the FCA".

68. In Article 11, in paragraph 2—

(a) in the first sentence, for "ESMA", in each place it occurs, substitute "the FCA";

(b) in the second sentence, for "ESMA" substitute "The FCA".

69. In Article 11a—

(a) in the heading, for "European rating platform", substitute "Public rating database";

(b) in paragraph 1, for "ESMA", substitute "the FCA";

(c) in paragraph 2—

(i) for "ESMA", substitute "The FCA";

(ii) omit "(European rating platform)";

(iii) omit the second paragraph.

70. In Article 14—

(a) in paragraph 1, for "Union" substitute "United Kingdom";

(b) in paragraph 2—

(i) for "ESMA" substitute "the FCA";

(ii) omit "for the entire territory of the Union";

(c) in paragraph 3—

(i) for "Union" substitute "United Kingdom";

(ii) for "ESMA" substitute "the FCA";

(d) in paragraphs 4 and 5, for "ESMA" substitute "the FCA".

71. In Article 15—

(a) in paragraph 1 and 2, for "ESMA", in each place it occurs, substitute "the FCA";

(b) in paragraph 3, for "any of the official languages of the institutions of the Union", substitute "English" and omit the second sentence;

(c) in paragraph 4, for "ESMA", in each place it occurs, substitute "the FCA".

72. In Article 16—

(a) in the heading, for "ESMA" substitute "the FCA";

(b) in paragraph 1, for "ESMA" substitute "the FCA";

(c) in paragraph 2, for "ESMA" substitute "The FCA";

(d) in paragraph 3 and 4, for "ESMA", in each place it occurs, substitute "the FCA".

73. In Article 17—

(a) in the heading, for "ESMA" substitute "the FCA";

(b) in paragraph 1 and 2, for "ESMA" substitute "The FCA";

(c) in paragraph 3 and 4, for "ESMA", substitute "the FCA".

74. For Article 18 substitute—

"*Article 18*

Notification of decisions

1. Within 5 working days of the adoption of a decision under Article 16, 17, 20 or 24, the FCA must notify its decision to the credit rating agency concerned.

2. If the decision referred to in paragraph 1 is:

(a) to refuse the application for registration made under Article 16 or 17,

(b) to exercise the FCA's power under Article 20(1) or 20(2) to withdraw the registration of the credit rating agency on the FCA's own initiative,

(c) to refuse an application made by a credit rating agency under Article 20(3) to withdraw the registration of the credit rating agency, or

(d) to give a direction under Article 24(1),

the FCA must give the credit rating agency a written notice.

3. A written notice under paragraph 2 must:

(a) give details of the decision made by the FCA,

(b) state the FCA's reasons for the decision,

(c) state when the decision takes effect, and

(d) inform the credit rating agency that it may either:

(i) request a review of the decision by the FCA, and make written representations for the purpose of the review, within such period as may be specified in the notice, or

(ii) refer the matter to the Upper Tribunal within such period as may be specified in the notice, and

(e) indicate the procedure on a reference to the Upper Tribunal.

4. Subject to paragraph 5, a withdrawal of registration under Article 20, or a direction under Article 24(1), takes effect:

(a) immediately, upon the adoption of the decision, if the notice states that is the case,

(b) on such date as may be specified in that notice, or

(c) if no date is specified in the notice, when the matter to which the notice relates is no longer open to review.

5. In respect of a decision to withdraw registration under Article 20, a notice that a decision is to take effect immediately is subject to the transitional period for the use of credit ratings for regulatory purposes under Article 24(3).

6. A decision to withdraw registration on the FCA's own initiative under Article 20(1) or (2), or to give a direction under Article 24(1), may be expressed to take effect immediately (or on a specified date) only if the FCA, having regard to the ground on which it is exercising its power reasonably considers that it is necessary for the withdrawal or direction to take effect immediately (or on that date).

7. A refusal of an application to register under Article 16 or 17 comes into effect on the fifth working day following its adoption.

8. If the credit rating agency requests a review of the decision made by the FCA ("the original decision") the FCA must consider any written representations made by the credit rating agency and review the original decision.

9. On a review under paragraph 8 the FCA may make any decision ("the new decision") it could have made on the application.

10. The FCA must give the credit rating agency written notice of its new decision, if the new decision is:

(a) to maintain a decision to refuse an application for registration, made under Article 16 or 17,

(b) to refuse to revoke a decision made under Article 20(1) or 20(2) to withdraw the registration of the credit rating agency on the FCA's own initiative,

(c) to maintain a decision to refuse an application from a credit rating agency under Article 20(3) to withdraw the registration of the credit rating agency,

(d) to refuse to revoke a direction given under Article 24(1), or

(e) to impose a different direction to that given in the original decision under Article 24(1).

12. The written notice under paragraph 10 must:

(a) give details of the new decision made by the FCA;

(b) state the FCA's reasons for the new decision;

(c) state whether the decision takes effect immediately or on such date as may be specified in the notice;

(d) inform the credit rating agency that it may, within such period as may be specified in the notice, refer the new decision to the Upper Tribunal; and

(e) indicate the procedure on a reference to the Upper Tribunal."

75. After Article 18 insert—

"Article 18A

Upper Tribunal

1. Subject to paragraph 2, a credit rating agency may refer to the Upper Tribunal the FCA's decision to:

(a) refuse to register the credit rating agency under Article 16 or 17,

(b) exercise its power under Article 20(1) or 20(2) to withdraw the registration of a credit rating agency,

(c) refuse the credit rating agency's application under Article 20(3) to withdraw its registration, or

(d) give a direction under Article 24(1).

2. Where there is a review under Article 18(7), paragraph 1 applies in relation to the new decision only."

76. Omit Article 19.

77. For Article 20 substitute—

"Article 20

Withdrawal of registration

1. Without prejudice to Article 24, the FCA may on its own initiative withdraw the registration of a credit rating agency where the credit rating agency:

(a) expressly renounces the registration or has provided no credit ratings for the preceding 6 months,

(b) obtained the registration by making false statements or by any other irregular means, or

(c) no longer meets the conditions under which it was registered.

2. The FCA may also, on its own initiative, withdraw the registration of a credit rating agency where it is desirable to do so to advance one or more of its operational objectives as set out in section 1B(3) of the Financial Services and Markets Act 2000.

3. The FCA may, on an application by a credit rating agency, withdraw the registration of the credit rating agency.

4. The decision on the withdrawal of registration of a credit rating agency under paragraph 1, 2 or 3 shall be reflected in the Register and shall take immediate effect in the United Kingdom, subject to the transitional period for the use of credit ratings referred to in Article 24(3)."

78. In the heading to Chapter 2, for "ESMA", substitute "the FCA".

79. In Article 21—

(a) for the heading substitute "The FCA";

(b) in paragraph 1, for "ESMA", substitute "the FCA";

(c) omit paragraph 2;

(d) omit paragraph 3;

(e) in paragraph 4—

(i) for "ESMA shall develop draft regulatory" substitute "The FCA may adopt";

(ii) in point (e), for "ESMA" substitute "the FCA";

(iii) omit the second and third paragraphs;

(f) in paragraph 4a—

(i) for "ESMA shall develop draft regulatory", substitute "The FCA may adopt";

(ii) in point (a) and (b), for "ESMA" substitute "the FCA";

(iii) omit the second subparagraph and third subparagraph;

(g) omit paragraph 4b;

(h) in paragraph 5, for "ESMA", substitute "The FCA";

(i) in paragraph 6—

(i) for "ESMA", where first occurring, substitute "The FCA";

(ii) for "ESMA", where next occurring, substitute "the FCA";

(iii) for "the European Parliament, the Council and the Commission", substitute "the Treasury.";

(j) omit paragraph 7.

80. Omit Article 22.

81. In Article 22a, in paragraphs 1 and 2, for "ESMA", substitute "the FCA".

82. In Article 23, for "ESMA, the Commission or any public authorities of a Member State", substitute "the FCA, any public authorities of the United Kingdom or the Treasury".

83. Omit Articles 23a to 23e.

84. For Article 24 substitute—

"Article 24

Supervisory measures

1. Where it appears to the FCA that a credit rating agency has failed, or is likely to fail, to comply with any of the obligations imposed on it by or under this Regulation or under the Credit Rating Agencies (Amendment, etc.) (EU Exit) Regulations 2019, the FCA may make one or more of the following directions:

(a) that the credit rating agency is temporarily prohibited from issuing credit ratings with effect throughout the United Kingdom;

(b) that the use, for regulatory purposes, of credit ratings issued by the credit rating agency are suspended with effect throughout the United Kingdom.

2. When considering whether to impose a direction under paragraph 1, the FCA shall take into account the nature and seriousness of the failure or likely failure.

3. Credit ratings may continue to be used for regulatory purposes following the publication of a direction under paragraph 1(b) or a decision under Article 20(3) during a period not exceeding—

(a) ten working days from the date the FCA's direction is made if there are credit ratings of the same financial instrument or entity issued by other credit rating agencies registered under this Regulation;

(b) three months from the date the FCA's direction is made if there are no credit ratings of the same financial instrument or entity issued by other credit rating agencies registered under this Regulation."

85. Omit Articles 25 and 25a.

86. For the heading to Chapter 3 substitute "Professional secrecy".

87. Omit Article 26 and 27.

88. Omit Article 30 and 31.

89. In Article 32—

(a) in paragraph 1—

(i) for "ESMA", in each place it occurs, substitute "the FCA";

(ii) omit "the competent authorities,";

(iii) omit "for the competent authorities";

(b) in paragraph 2—

(i) for "ESMA", in each place it occurs substitute "the FCA";

(ii) for "the competent authorities", substitute "any other United Kingdom public authority";

(iii) for "the sectoral competent authorities", substitute "or third country competent authorities";

(iv) omit "or other authorities and bodies referred to in Article 27(2)";

(v) omit "or the competent authority";

(vi) omit "or body".

90. In Article 34—

(a) for "ESMA", where first occurring, substitute "The FCA";

(b) for "ESMA", wherever else occurring, substitute "the FCA";

(c) for the third paragraph substitute—

"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."

91. In Article 35—

(a) for "ESMA", where first occurring, substitute "The FCA";

(b) for "ESMA", where next occurring, substitute "the FCA";

(c) omit "or a competent authority".

92. In Article 35a—

(a) in paragraph 2, in the second subparagraph omit "competent national";

(b) paragraph 3, point (b), for "applicable national law", substitute "law applicable in the United Kingdom";

(c) in paragraph 4—

(i) for "applicable national law", in each place it occurs substitute "law applicable in the United Kingdom";

(ii) omit the last sentence;

(d) in paragraph 5, for "national law", substitute "law applicable in the United Kingdom";

(e) in paragraph 6—

(i) for "ESMA", substitute "the FCA";

(ii) for "as laid down in Article 36a" substitute "to impose fines under the Credit Rating Agencies (EU Exit) (Amendments etc.) Regulations 2019 or under this Regulation";

93. For the heading to Title 4 substitute "Amendment to Annexes".

94. Omit Articles 36 to 36e.

95. In Article 37—

(a) for "the Commission" substitute "the Treasury";

(b) for "adopt, by means of delegated acts in accordance with Article 38a and subject to the conditions of Articles 38b and 38c, measures" substitute "may make regulations".

96. Omit Articles 38 to 41.

97. In Annex 1—

(a) for "ESMA", in each place it occurs, substitute "the FCA";

(b) in paragraph 1 of section C, for "Article 1(2) of Directive 2004/72/EC" substitute "point 26 of Article 3(1) of Regulation (EU) No 596/2014";

(c) in section D, in paragraph 3 of Part 3, for "regulated markets" substitute "EU regulated markets";

(d) in section E, in paragraph 1 of Part 3, for "regulated markets" substitute "United Kingdom regulated markets";

(e) in section E, in paragraph 8 of Part 3—

(i) for "Article 46a(1) of Council Directive 78/660/EEC of 25 July 1978" substitute "the United Kingdom provisions which implemented Article 20(1) of Directive 2013/34/EU";

(ii) for "Article 46a(1)(d) of that Directive" substitute "those provisions".

98. In Annex 2, in point 1 for "Union" substitute "United Kingdom".

99. In Annex 3—

(a) omit the heading;

(b) in Part 1—

(i) in point 10, for "ESMA", substitute "the FCA";

(ii) in point 50, for "ESMA", substitute "the FCA";

(iii) in point 52, for "ESMA or any competent authority", in each place it occurs, substitute "the FCA";

(iv) in point 55, for "ESMA", substitute "the FCA";

(c) in Part 2—

(i) in points 2, 3a, 3c, 5 and 6, for "ESMA" substitute "the FCA";

(ii) omit points 7 and 8;

(d) in Part 3, in point 4a, for "ESMA", substitute "the FCA".

100. Omit Annex 4.

Revocation of Commission Delegated Regulation (EU) No. 272/2012

101. Commission Delegated Regulation (EU) No 272/2012 of 7 February 2012 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to fees charged by the European Securities and Markets Authority to credit rating agencies is revoked.

Revocation of Commission Delegated Regulation (EU) No. 946/2012

102. Commission Delegated Regulation (EU) No. 946/2012 of 12 July 2012 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to rules of procedure on fines imposed to credit rating agencies by the European Securities and Markets Authority, including rules on the right of defence and temporal provisions is revoked.

Name
Name

Date

Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to retained EU law related to credit rating agencies to ensure that it continues to operate effectively in the United Kingdom once the United Kingdom has left the EU. In particular, they make provision for a function of an EU entity under retained EU law to be exercised instead by the Financial Conduct Authority ("the FCA"). As such, section 8(2)(b) of the European Union (Withdrawal) Act 2018 (c. 16) is relevant to these Regulations.

Additional powers and functions are required so that the FCA is able to fulfil this role effectively. These include certain procedural processes, such as appeal rights and notice procedures, and disciplinary and criminal sanctions and investigations.

These Regulations also include transitional provision for the registration of credit rating agencies in the United Kingdom. This maintains continuity and ensures that United Kingdom firms can continue to use credit ratings issued by credit rating agencies without disruption on and after exit day.

In these Regulations:

- Part 1 makes general provision;
- Part 2 makes provision for the FCA to make rules and issue guidance in respect of credit rating agencies;
- Part 3 makes provision dealing with enforcement of obligations placed on credit rating agencies;
- Part 4 makes provision for the referral of matters to the Upper Tribunal;
- Part 5 deals with information gathering and investigations;
- Part 6 makes provision in connection with the issuing of notices by the FCA;
- Part 7 creates offences in connection with the obligations imposed on a credit rating agency, in particular with respect to the provision of information;
- Part 8 makes transitional provision for:
  - advance applications and temporary registration;
  - registration and certification conversion;
- Part 9 amends subordinate legislation dealing with credit rating agencies;
- Part 10 amends and revokes retained EU law dealing with credit rating agencies.

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

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