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

DRAFT STATUTORY INSTRUMENTS

2019 No.

EXITING THE EUROPEAN UNION

FINANCIAL SERVICES AND MARKETS

The Financial Services (Miscellaneous) (Amendment) (EU Exit) (No. 3) Regulations 2019

Made - - - - ***

Coming into force in accordance with regulation 1

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

The Treasury make these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972, section 349(1)(b) of the Financial Services and Markets Act 2000(**c**), and sections 8(1) and 23(1) of, and paragraph 1(1) of Schedule 4 to and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018(**d**).

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

PART 1

General provision

Citation and commencement

1.—(1) These Regulations may be cited as the Financial Services (Miscellaneous) (Amendment) (EU Exit) (No. 3) Regulations 2019.

(**a**) S.I. 2012/1759.

(**b**) 1972 c.68. Section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c.51) and by section 3 of, and the Schedule to, the European Union (Amendment) Act 2008 (c.7). By virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c.51), regulations may be made under section 2(2) of the European Communities Act 1972 to implement obligations of the United Kingdom created or arising by or under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073) and the Protocol adjusting that Agreement signed at Brussels on 17th March 1993 (Cm 2183). Paragraph 1A was inserted into Schedule 2 by section 28 of the Legislative and Regulatory Reform Act 2006. The European Communities Act 1972 is repealed with effect from exit day by section 1 of the European Union (Withdrawal) Act 2018.

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

(**d**) 2018 c.16.

(2) This regulation and regulation 6 come into force at 11.59 pm on the day on which these Regulations are made.

(3) Regulations 4, 5, 7 and 8 come into force on the day after the day on which these Regulations are made.

(4) Regulations 9 to 14 come into force immediately before exit day.

(5) The other provisions of these Regulations come into force on exit day.

PART 2

Amendment of primary legislation

The Criminal Justice Act 1993

2. In the Criminal Justice Act 1993(**a**), in Schedule 1, after paragraph 5, insert—

"**6.** An individual ("A") is not guilty of insider dealing by virtue of dealing, or encouraging another person to deal, in securities through a trading venue in Gibraltar if A shows that A acted in conformity with—

(a) the following as they have effect in Gibraltar law—

(i) Article 5 of Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation), and

(ii) each EU regulation originally made under that Article, and

(b) all other applicable Gibraltar law (if any).

7. An individual ("A") is not guilty of insider dealing by virtue of dealing, or encouraging another person to deal, in securities through a trading venue in an EEA State if A shows that A acted in conformity with—

(a) the following as they apply in the EEA State—

(i) Article 5 of Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation), and

(ii) each EU regulation made under that Article, and

(b) all other applicable law of the EEA State (if any).

8. For the purposes of paragraphs 6 and 7 "trading venue" has the meaning given by Article 2(1)(16) of Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012, as substituted by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403)."(**b**).

PART 3

Amendment of subordinate legislation

Amendment of the Insider Dealing (Securities and Regulated Markets) Order 1994

3. In the Insider Dealing (Securities and Regulated Markets) Order 1994(**c**), in article 4, for the words from "that is," to the end, substitute—

"that is—

(**a**) 1993 c.36.
(**b**) For Regulation (EU) No 596/2014, see OJ L173.12.6.2014, p.1.
(**c**) S.I. 1994/187.

(a) that it is officially listed in the United Kingdom, in Gibraltar or in a State within the European Economic Area; or

(b) that it is admitted to dealing on, or has its price quoted on or under the rules of, a regulated market.".

The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017

4. In regulation 2A of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017(**a**), for "has effect on the day on which the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 are made", substitute "forms part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018".

The Data Reporting Services Regulations 2017

5. In regulation 2A of the Data Reporting Services Regulations 2017(**b**), for "has effect on the day on which the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 are made", substitute "forms part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018".

The Electronic Commerce and Solvency 2 (Amendment etc.) (EU Exit) Regulations 2019

6. In the Electronic Commerce and Solvency 2 (Amendment etc.) (EU Exit) Regulations 2019(**c**), in regulation 1, paragraph (2), for "the day after the day on which they are made" substitute "exit day".

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

7. In the Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019(**d**)—

(a) in regulation 3(1), after sub-paragraph (f), insert—

"(g) extend the scope of paragraph 6 and apply paragraph 7 of Article 1 of Regulation (EU) 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments to other central banks of EEA states.";

(b) in Schedule 1, in paragraph 5(3), for "sub-paragraph (1)" substitute "sub-paragraph (2)".

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

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

(2) After paragraph 11, insert—

"Fourth Money Laundering Directive

11A. Commission Delegated Regulation (EU) 2019/758 of 31 January 2019 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council with regard to regulatory technical standards for the minimum action and the type of

(**a**) S.I. 2017/701.
(**b**) S.I. 2017/699.
(**c**) S.I. 2019/***.
(**d**) S.I. 2019/541.
(**e**) S.I. 2018/1115, amended by S.I. 2019/576.

additional measures credit and financial institutions must take to mitigate money laundering and terrorist financing risk in certain third countries(**a**).".

(3) After paragraph 67, insert—

"**67A.** Commission Implementing Regulation (EU) 2019/410 of 29 November 2018 laying down implementing technical standards with regard to the details and structure of the information to be notified, in the field of payment services, by competent authorities to the European Banking Authority pursuant to Directive (EU) 2015/2366 of the European Parliament and of the Council(**b**).

67B. Commission Delegated Regulation (EU) 2019/411 of 29 November 2018 supplementing Directive (EU) 2015/2366 of the European Parliament and of the Council with regard to regulatory technical standards setting technical requirements on development, operation and maintenance of the electronic central register within the field of the payment services and on access to the information contained therein(**c**).".

(4) After paragraph 69, insert—

"Securities Financing Transactions Regulation

69A. Commission Delegated Regulation (EU) 2019/357 of 13 December 2018 supplementing Regulation (EU) 2015/2365 of the European Parliament and of the Council with regard to regulatory technical standards on access to details of securities financing transactions (SFTs) held in trade repositories(**d**).

69B. Commission Delegated Regulation (EU) 2019/358 of 13 December 2018 supplementing Regulation (EU) 2015/2365 of the European Parliament and of the Council with regard to regulatory technical standards on the collection, verification, aggregation, comparison and publication of data on securities financing transactions (SFTs) by trade repositories(**e**).

69C. Commission Delegated Regulation (EU) 2019/359 of 13 December 2018 supplementing Regulation (EU) 2015/2365 of the European Parliament and of the Council with regard to regulatory technical standards specifying the details of the application for registration and extension of registration as a trade repository(**f**).

69D. Commission Implementing Regulation (EU) 2019/364 of 13 December 2018 laying down implementing technical standards with regard to the format of applications for registration and extension of registration of trade repositories in accordance with Regulation (EU) 2015/2365 of the European Parliament and of the Council(**g**).

69E. Commission Implementing Regulation (EU) 2019/365 of 13 December 2018 laying down implementing technical standards with regard to the procedures and forms for exchange of information on sanctions, measures and investigations in accordance with Regulation (EU) 2015/2365 of the European Parliament and of the Council(**h**)."

"Securitisation Regulation

69F. Commission Delegated Regulation (EU) 2019/885 of 5 February 2019 supplementing Regulation (EU) 2017/2402 of the European Parliament and of the Council with regard to regulatory technical standards specifying information to be provided to a competent authority in an application for authorisation of a third party assessing STS compliance".

(**a**) OJ L 125, 14.5.2019, p. 4-10.
(**b**) OJ L 73, 15.3.2019, p. 20-83.
(**c**) OJ L 73, 15.3.2019, p. 84-92.
(**d**) OJ L 81, 22.3.2019, p. 22-29.
(**e**) OJ L 81, 22.3.2019, p. 30-44.
(**f**) OJ L 81, 22.3.2019, p. 45-57.
(**g**) OJ L 81, 22.3.2019, p. 125-127.
(**h**) OJ L 81, 22.3.2019, p. 128-133.

(5) After paragraph 113A, insert—

"**113B.** Commission Delegated Regulation (EU) 2019/348 of 25 October 2018 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the criteria for assessing the impact of an institution's failure on financial markets, on other institutions and on funding conditions (**a**)."

(6) After paragraph 184, insert—

"Securities Financing Transactions Regulation

184A. Commission Delegated Regulation (EU) 2019/356 of 13 December 2018 supplementing Regulation (EU) 2015/2365 of the European Parliament and of the Council with regard to regulatory technical standards specifying the details of securities financing transactions (SFTs) to be reported to trade repositories(**b**).

184B. Commission Implementing Regulation (EU) 2019/363 of 13 December 2018 laying down implementing technical standards with regard to the format and frequency of reports on the details of securities financing transactions (SFTs) to trade repositories in accordance with Regulation (EU) 2015/2365 of the European Parliament and of the Council and amending Commission Implementing Regulation (EU) No 1247/2012 with regard to the use of reporting codes in the reporting of derivative contracts(**c**).".

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

9.—(1) The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018(**d**) are amended as follows.

(2) In regulation 28(10)—

(a) in sub-paragraph (a)—

(i) after "in paragraph 1", insert—

"—

(i) before 'systematic internaliser', insert 'UK';"

(ii) renumber the words from "for" to the end of the sub-paragraph as paragraph (ii);

(b) after sub-paragraph (a), insert—

"(aa) after paragraph 1, insert—

"1A. For the purposes of paragraph 1, a 'UK systematic internaliser' is a systematic internaliser which—

(a) has its head office in the United Kingdom, or

(b) operates through a branch in the United Kingdom.""

(3) In regulation 51—

(a) in paragraph (1), for sub-paragraph (c), substitute—

"(c) in paragraph 2—

(i) for "Article 4(1)(13) of Directive 2014/65/EU" substitute "regulation 2(1) of the Markets in Financial Instruments Regulation 2017";

(ii) for "Union" substitute "United Kingdom".";

(b) in paragraph (2)(c), after paragraph (iii), insert—

"(iv) in the second subparagraph, for "competent authority" substitute "FCA";".

(**a**) OJ L 63, 4.3.2019, p. 1-11.
(**b**) OJ L 81, 22.3.2019, p. 1-21.
(**c**) OJ L 81, 22.3.2019, p. 85-124.
(**d**) S.I. 2018/1403.

The Money Market Funds (Amendment) (EU Exit) Regulations 2019

10.—(1) The Money Market Funds (Amendment) (EU Exit) Regulations 2019(**a**) are amended as follows.

(2) In regulation 6(a)(iii), in the opening words of the inserted paragraph 1B, for "paragraph 1B" substitute "paragraph 1A".

(3) In regulation 8—

(a) in paragraph (a)—

(i) in subparagraph (i), in the new substituted text, for subparagraph (b), substitute—

"(b) the UCITS or AIF is an EEA UCITS or EEA AIF which—

(i) is an EU MMF with temporary marketing permission; or

(ii) is a UK-recognised EU MMF;";

(ii) in subparagraph (ii), in the new substituted text, for subparagraph (b), substitute—

"(b) the UCITS or AIF is an EEA UCITS or EEA AIF which—

(i) is an EU MMF with temporary marketing permission; or

(ii) is a UK-recognised EU MMF;";

(iii) in subparagraph (iii), in the new substituted text, for subparagraph (b), substitute—

"(b) the UCITS or AIF is an EEA UCITS or EEA AIF which—

(i) is an EU MMF with temporary marketing permission; or

(ii) is a UK-recognised EU MMF;";

(b) after paragraph (b), insert—

"(c) after paragraph 2, insert—

"3.—(1) For the purposes of this Article, "UK-recognised EU MMF" means an EU MMF which satisfies the condition in subparagraph (2) and—

(a) which is a recognised scheme under section 272 of FSMA(**b**); or

(b) in relation to which the FCA has received written notification under regulation 57 (subject to paragraph (4)), 58 or 59 of the AIFM Regulations(**c**).

(2) An EU MMF satisfies the condition in this subparagraph if, immediately before the relevant date, it was—

(a) a recognised scheme under Part 6 of the Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2019(**d**); or

(b) marketed in the United Kingdom under Part 9A of the AIFM Regulations(**e**).

(3) For the purposes of subparagraph (2), the "relevant date" is the date on which—

(a) the EU MMF was declared to be a recognised scheme under section 272 of FSMA, or

(b) the FCA received the written notification referred to in subparagraph 1(b).

(4) If an EU MMF was marketed in the United Kingdom by an EEA AIFM before exit day under regulation 57 of the AIFM Regulations, the AIFM must give notice to the FCA for the purposes of subparagraph 1(b) under regulation 58 or 59 of those Regulations."".

(**a**) S.I. 2019/394.

(**b**) 2000 c.8. Section 272 was amended by paragraph 9 of Schedule 18 to the Financial Services Act 2012 (c. 21), and by S.I. 2013/1773 and 2013/1388.

(**c**) S.I. 2013/1773. Regulations 57 to 64 are revoked by S.I. 2013/1797, but that revocation is not yet in force. Regulations 57 and 59 are amended by S.I. 2019/328.

(**d**) S.I. 2019/325.

(**e**) Part 9A was inserted by S.I. 2019/328.

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

11.—(1) The Solvency 2 and Insurance (Amendment, etc.) (EU Exit) Regulations 2019(**a**) is amended as follows.

(2) In regulation 8(3), in new regulation 4B—

(a) in paragraph (1), for the words from the beginning to "at the latest" substitute "For the relevant quarter and every quarter thereafter, by the 8th working day of the month that follows the end of the quarter";

(b) after paragraph (1), insert—

"(1A) For the purposes of paragraph (1), the "relevant quarter" is the first quarter which ends after this regulation comes into force."

(3) In regulation 11—

(a) in paragraph (2)—

(i) in sub-paragraph (e), after the new paragraph 58A, insert—

"58B. 'insurance undertaking' means an undertaking which—

(a) has its head office in the United Kingdom,

(b) has permission under Part 4A of the Financial Services and Markets Act 2000(**b**) to carry on one or more regulated activities, and

(c) would require authorisation in accordance with Article 14 of the Solvency 2 Directive if the United Kingdom were a member State;

58C. 'reinsurance undertaking' means an undertaking which—

(a) has its head office in the United Kingdom,

(b) has permission under Part 4A of the Financial Services and Markets Act 2000 to carry on one or more regulated activities,

(c) effects or carries out contracts of insurance that are limited to reinsurance contracts, and

(d) would require authorisation in accordance with Article 14 of the Solvency 2 Directive if the United Kingdom were a member State;

58D. 'supervisory authority' means—

(a) in relation to insurance or reinsurance undertakings, the PRA; and

(b) in relation to third-country insurance or reinsurance undertakings, the national authority, or national authorities, empowered to supervise third-country insurance or reinsurance undertakings;";

(ii) in sub-paragraph (f)—

(aa) for "58" insert "58E (as so inserted)";

(bb) for the new paragraph 62, substitute—

"62. Any expression in this Regulation which is not defined in this Article—

(a) which is defined in regulation 2 of the Solvency 2 Regulations 2015 (as amended under the European Union (Withdrawal) Act 2018)(**c**) ("the Solvency 2 Regulations") has the meaning given in that regulation;

(b) which is defined in the Financial Services and Markets Act 2000 (as so amended) ("FSMA"), but not in the Solvency 2 Regulations, has the meaning given in FSMA;

(**a**) S.I. 2019/407.
(**b**) 2000 c. 8. Part 4A of the Act was substituted by the Financial Services Act 2012 (c. 21), section 11(2).
(**c**) S.I. 2015/575. Regulation 2 was amended by S.I. 2019/407.

(c) which is defined in Directive 2009/138/EC, but not in the Solvency 2 Regulations or in FSMA, has the meaning given in that Directive as it had effect immediately before exit day.";

(b) in paragraph (4), in new Article 3(2), for "1 to 6" substitute "0 to 6";

(c) for paragraph (5), substitute—

"(5) In Article 9(**a**)—

(a) in paragraphs 1, 3 and 4, for "international accounting standards adopted by the Commission in accordance with Regulation (EC) No 1606/2002" substitute "UK-adopted international accounting standards";

(b) in paragraph 2, for "international accounting standards adopted by the Commission pursuant to Regulation (EC) No 1606/2002" substitute "UK-adopted international accounting standards".";

(d) for paragraph (6), substitute—

"(6) In Article 10(4)(**b**), for "international accounting standards adopted by the Commission in accordance with Regulation (EC) No 1606/2002" substitute "UK-adopted international accounting standards.";"

(e) in paragraph (7), for sub-paragraph (c), substitute—

"(c) in paragraph 5(**c**), for "international accounting standards adopted by the Commission in accordance with Regulation (EC) No 1606/2002" substitute "UK-adopted international accounting standards".";

(f) for paragraph (8), substitute—

"(8) In Article 14(1)(**d**), for "international accounting standards adopted by the Commission in accordance with Regulation (EC) No 1606/2002" substitute "UK-adopted international accounting standards.";

(g) for paragraph (10), substitute—

"(10) In Article 28(g)(**e**), for "international accounting standards, as endorsed by the Commission in accordance with Regulation (EC) No 1606/2002" substitute "UK-adopted international accounting standards.";

(h) after paragraph (30), insert—

"(30A) In Article 189(6)(b), omit the words from "whether defined" to the end of the subparagraph.";

(i) in paragraph (61)(c), for paragraph (i), substitute—

"(i) omit "as defined in Article 13(26) of Directive 2009/139/EC";".

The Securitisation (Amendment) (EU Exit) Regulations 2019

12. In regulation 15 of the Securitisation (Amendment) (EU Exit) Regulations 2019(**f**), in the new Article 15(3)(c)—

(a) after paragraph (ii), insert—

"(iia) in regulation 74 (application of Part 9A of the 2000 Act (rules and guidance)), ignore paragraph (3);";

(b) in paragraph (iii), for "(2)(f)" substitute "(3)";

(c) in paragraph (iv), for "paragraph (8)(h)" substitute "paragraphs (3) and (8)(h)".

(**a**) Article 9 is amended by S.I. 2019/407.
(**b**) Article 10 is amended by S.I. 2019/407.
(**c**) Article 13 is amended by S.I. 2019/407.
(**d**) Article 14 is amended by S.I. 2019/407.
(**e**) Article 28 is amended by S.I. 2019/407.
(**f**) S.I. 2019/660.

The Public Record, Disclosure of Information and Co-operation (Financial Services) (Amendment) (EU Exit) Regulations 2019

13. In regulation 6(2)(b) of the Public Record, Disclosure of Information and Co-operation (Financial Services) (Amendment) (EU Exit) Regulations 2019(**a**), after paragraph (vi), insert—

"(vii) in sub-paragraph (f)(ii), for "Department of Enterprise, Trade and Investment" substitute "Department for the Economy"."

The Financial Services (Miscellaneous) (Amendment) (EU Exit) Regulations 2019

14. In regulation 40 of the Financial Services (Miscellaneous) (Amendment) (EU Exit) Regulations 2019(**b**), in the inserted regulation 6, in paragraph (1), for "Until 1st September 2019" substitute "For a period of five months beginning on exit day".

PART 4

Amendment of retained direct EU legislation

Revocation of Commission Delegated Regulation (EU) 2019/360

15. Commission Delegated Regulation 2019/360 of 13 December 2018 supplementing Regulation (EU) 2015/2365 of the European Parliament and of the Council with regard to fees charged by the European Securities and Markets Authority to trade repositories is revoked.

Commission Implementing Decision (EU) 2019/541

16.—(1) Commission Implementing Decision (EU) 2019/541 of 1 April 2019 on the equivalence of the legal and supervisory framework applicable to approved exchanges and recognised market operators in Singapore in accordance with Regulation (EU) No 600/2014 of the European Parliament and of the Council is amended as follows.

(2) In Article 1, for the words from "comply with" to the end, substitute—

"—

(a) comply with legally binding requirements which are equivalent to the requirements for the trading venues referred to in points (a), (b) and (c) of Article 28(1) of Regulation (EU) No 600/2014 resulting from—

(i) that Regulation;

(ii) the law of the United Kingdom which was relied on by the United Kingdom immediately before exit day to implement Directive 2014/65/EU; and

(iii) Regulation (EU) No 596/2014, and

(b) are subject to effective supervision and enforcement in Singapore.".

(3) Omit Article 2.

Name
Name
Two of the Lords Commissioners of Her Majesty's Treasury

Date

(**a**) S.I. 2019/681.
(**b**) S.I. 2019/710.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made, inter alia, in exercise of the powers in section 8 of the European Union (Withdrawal) Act 2018 (c. 16) to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union (and in particular, the deficiencies under paragraphs (a), (b), (c), (d) and (g) of section 8(2)). Part 2 of the Regulations amends Schedule 1 to the Criminal Justice Act 1993 (c. 36). Part 3 of the Regulations amends secondary legislation relating to financial services (regulations 4 and 5 are made using the power in section 2(2) of the European Communities Act 1972 (c. 68), and regulation 13 is made using the power in section 349(1)(b) of the Financial Services and Markets Act 2000 (c. 8)). Part 4 revokes Commission Delegated Regulation (EU) 2019/360 and amends Commission Implementing Decision (EU) 2019/541.

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

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