STATUTORY INSTRUMENTS

2022 No. 1080

EXITING THE EUROPEAN UNION

FINANCIAL SERVICES

The Financial Services (Miscellaneous Amendments) (EU Exit) Regulations 2022

Sift requirements satisfied	*19th July 2022*
Made - - - -	*24th October 2022*
Laid before Parliament	*25th October 2022*
Coming into force - -	*15th November 2022*

The Treasury make these 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**).

The requirements of paragraph 3(2) of Schedule 7 to the European Union (Withdrawal) Act 2018 (relating to the appropriate Parliamentary procedure for these Regulations) have been satisfied.

PART 1

General provision

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Financial Services (Miscellaneous Amendments) (EU Exit) Regulations 2022.

(2) These Regulations come into force 21 days after the day on which they are laid.

(3) These Regulations extend to the United Kingdom.

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

PART 2

Amendment of secondary legislation

Amendment of the Payment Services Regulations 2017

2. In regulation 14(8)(b) (conditions for registration as a small payment institution) of the Payment Services Regulations 2017(**a**), for "which is not an EEA State" substitute "outside the United Kingdom".

Amendment of the Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018

3.—(1) Part 6 (transitional provisions) of the Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018(**b**) is amended as follows.

(2) At the end of regulation 17(4) insert ", and (5A)".

(3) After regulation 17(5) insert—

"(5A) A is also to be taken to be recognised in respect of other services, activities or classes of financial instrument which meet the following conditions—

(a) the service, activity or class of financial instrument is one which A is authorised or permitted to provide in the country in which A is established, in accordance with a system of laws or rules applicable to A that is administered by the appropriate regulator in the country concerned;

(b) the service, activity or class of financial instrument—

(i) has been notified by A to the Bank of England in accordance with paragraph (5B) as a service, activity or class of financial instrument which A intends to provide to—

(aa) clearing members, or

(bb) trading venues within the meaning of Article 2 of the EMIR Regulation,

that are established in the United Kingdom, and

(ii) where so notified by A, is one which A intends to provide in addition to services, activities or classes of financial instrument mentioned in paragraph (5) in respect of which A is taken to be recognised by the Bank of England.

(5B) For the purposes of paragraph (5A), the notification must—

(a) be made in such manner as the Bank of England may direct, and

(b) contain, or be accompanied by, such information as the Bank of England may direct.

(5C) The Bank of England must confirm promptly receipt of the notification to the person making it.".

(4) At the end of regulation 19C(1) insert "or 17(5A)".

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

4.—(1) Regulation 200 (giving, and effect, of transitional directions) of the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019(**c**) is amended as follows.

(**a**) S.I. 2017/752. Regulation 14 was amended by the Sanctions and Anti-Money Laundering Act 2018 (c. 13), section 59 and paragraph 9 of Part 2 of Schedule 3 and S.I. 2019/577 and 2020/591.
(**b**) S.I. 2018/1184. Relevant amending instruments are S.I. 2019/405, S.I. 2020/56 and 2020/646.
(**c**) S.I. 2019/632. Regulation 200 was amended by S.I. 2020/1301.

(2) At the end of regulation 200(1)(a) insert ", subject to paragraph (1B)".

(3) In regulation 200(1)(b) for "paragraph (2)" substitute "paragraphs (2) and (2A)".

(4) After regulation 200(1) insert—

"(1A) This paragraph applies to a transitional direction which may be given by the Financial Conduct Authority in accordance with this Part in respect of—

(a) a relevant obligation relating to share trading imposed by or under Article 23(1) of Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments(**a**) (the Markets in Financial Instruments Regulation), including the transitional direction entitled "FCA Transitional Direction for the Share Trading Obligation" dated 22nd December 2020(**b**);

(b) a relevant obligation relating to derivatives trading imposed by or under Article 28 of the Markets in Financial Instruments Regulation, including the transitional direction entitled "FCA Transitional Direction for the Derivatives Trading Obligation" dated 30th December 2020(**c**).

(1B) A transitional direction to which paragraph (1A) applies may not be given more than four years after IP completion day.".

(5) At the beginning of regulation 200(2)(c) insert "subject to paragraph (2A),".

(6) After regulation 200(2) insert—

"(2A) A transitional direction to which paragraph (1A) applies is of no effect in relation to times more than four years after IP completion day (without prejudice to any continuing effect in relation to earlier times).".

PART 3

Amendment of retained EU law

Amendment of Regulation (EC) No 1060/2009

5.—(1) Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies(**d**) is amended as follows.

(2) Omit Article 32 (professional secrecy).

(3) In Article 34 (agreement on exchange of information), for "guarantees of professional secrecy which are at least equivalent to those set out in Article 32" substitute "conditions for the protection of confidential information that are, at least, equivalent to those under the Financial Services and Markets Act 2000(**e**)".

Amendment of Regulation (EU) 2017/2402

6.—(1) Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation(**f**) is amended as follows.

(**a**) EUR 2014/600, amended by S.I. 2018/1403, as amended by S.I. 2019/1212, 2019/1390 and 2020/1301.
(**b**) A copy of this direction is available at https://www.fca.org.uk/publication/handbook/sto-transitional-direction-dec20.pdf and may be obtained from the Financial Conduct Authority, 12 Endeavour Square, London E20 1JN.
(**c**) A copy of this direction is available at https://www.fca.org.uk/publication/handbook/direction-derivatives-trading-obligation.pdf and may be obtained from the Financial Conduct Authority, 12 Endeavour Square, London E20 1JN.
(**d**) EUR 1060/2009, amended by S.I. 2019/266.
(**e**) 2000 c. 8.
(**f**) EUR 2017/2402, amended by S.I. 2019/660.

(2) In Article 18(3)(**a**) (use of the designation 'simple, transparent and standardised securitisation'), in the definition of "relevant securitisation", in subparagraph (a), for "two years" substitute "four years".

Nigel Huddleston
David Evennett

24th October 2022 — Two of the Lords Commissioners of His Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to, 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 (in particular, under paragraphs (a), (b), (c), (d) and (g) of section 8(2) of that Act).

Regulation 2 amends regulation 14(8)(b) of the Payment Services Regulations 2017 (S.I. 2017/752), which provides for the conditions for the registration as a small payment institution. Regulation 14(8)(b) contains a deficient reference to the EEA, which is to amended to refer to the UK following the UK's withdrawal from the EU.

Regulation 3 amends Part 6 of the Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018 (S.I. 2018/1184), which makes transitional provision in relation to the provision of clearing services in the United Kingdom by central counterparties that are established outside the United Kingdom and that are currently in the United Kingdom's temporary recognition regime. Subject to the conditions specified in new regulation 17(5A), the services, activities or classes of financial instrument in respect of which such central counterparties are to be taken to be recognised by the Bank of England is extended beyond the conditions specified in existing regulation 17(5) to include services, activities or classes of financial instrument which such central counterparties are authorised or permitted to provide in the country in which they are established, provided that they have notified the Bank of England of their intention to offer such services in the United Kingdom.

Regulation 4 amends Part 7 of the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/632), which concerns the power of the regulators to give transitional directions. The period during which a transitional direction may be given is extended from two years after IP completion day to four years after that day, in respect of transitional directions relating to share trading and derivatives trading respectively, as regulated further to Articles 23(1) and 28 of Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments. The time period during which transitional directions of this description may remain in effect is also extended from two years after IP completion day to four years after that day.

Regulation 5 amends Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies which is retained direct EU legislation. Article 32 of the Regulation places professional secrecy obligations on the FCA (and its staff and agents etc) not to disclose "information covered by professional secrecy", except where necessary for legal proceedings. Article 32 is omitted, and a consequential amendment is made to Article 34. The effect is to remove barriers for such information being subject to, and shared under, confidential information provisions in section 348 of the Financial Services and Markets Act 2000 (c. 8) and the exemption under section 349.

(**a**) Inserted by S.I. 2019/660.

Regulation 6 amends Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation. Regulation 18 of the Securitisation (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/660) provided temporary recognition of simple, transparent and standardised securitisations in the UK. The time period during which the temporary recognition remains in effect is extended from two years after IP completion day to four years after that day.

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. A de minimis impact assessment is available from HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ and is published with the Explanatory Memorandum alongside this instrument at www.legislation.gov.uk.

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