
DRAFT STATUTORY INSTRUMENTS

2018 No.

The Over the Counter Derivatives, Central Counterparties
and Trade Repositories (Amendment, etc., and
Transitional Provision) (EU Exit) Regulations 2018

PART 5

TRANSITIONAL PROVISIONS: INTRAGROUP TRANSACTIONS

Interpretation

79.—(1) In this Part—

“Regulation 2015/2205” means Commission Delegated Regulation (EU) 2015/2205 of 6 August 2015 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on the clearing obligation⁽¹⁾;

“Regulation 2016/592” means Commission Delegated Regulation (EU) 2016/592 of 1 March 2016 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on the clearing obligation⁽²⁾;

“Regulation 2016/1178” means Commission Delegated Regulation (EU) 2016/1178 of 10 June 2016 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on the clearing obligation⁽³⁾;

“Regulation 2016/2251” means Commission Delegated Regulation (EU) 2016/2251 of 4 October 2016 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards for risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty⁽⁴⁾;

“clearing obligation” means the obligation imposed on counterparties by paragraph 1 of Article 4;

“counterparty” means—

- (a) a financial counterparty within the meaning given in point (8) of Article 2; or
- (b) a non-financial counterparty within the meaning given in point (9) of Article 2;

“equivalence determination” means a determination made by the Treasury in relation to a third country under paragraph 2 of Article 13;

“intragroup transaction” means a transaction referred to in paragraph 1 or 2 of Article 3;

“non-UK counterparty” means a counterparty which is established in a third country in respect of which there is no equivalence determination;

(1) OJNo. L 314, 1.12.2015, p.13.
(2) OJ No. L 103, 19.4.2016, p.5.
(3) OJ No. L 195, 20.7.2016, p.3.
(4) OJ No. L 340, 15.12.2016, p.9.

“OTC derivative contract” has the meaning given in point (7) of Article 2;

“risk-management obligation” means the obligation imposed on counterparties by paragraph 3 of Article 11;

“third country” means a country other than the United Kingdom;

“UK counterparty” means a counterparty which is established in the United Kingdom.

(2) References in this Part to numbered Articles, except in regulations 80(1)(c) and 82(5)(a) and (b), are to the Articles of the EMIR regulation bearing that number.

(3) References in this Part to the EMIR regulation, except in regulations 80(2)(c) and 82(6), are to that Regulation as in force after exit day.

Continuation of exemptions from certain clearing obligations and risk-management obligations

80.—(1) This regulation applies to an OTC derivative contract—

- (a) where one of the counterparties is a UK counterparty;
- (b) where the other counterparty is neither a UK counterparty nor established in a member State; and
- (c) which immediately before exit day was exempt from—
 - (i) the clearing obligation by virtue of—
 - (aa) paragraph 2 of Article 3 of Regulation 2015/2205 as it had effect immediately before exit day;
 - (bb) paragraph 2 of Article 3 of Regulation 2016/592 as it had effect immediately before exit day; or
 - (cc) paragraph 2 of Article 3 of Regulation 2016/1178 as it had effect immediately before exit day; or
 - (ii) certain requirements of the risk-management obligation by virtue of the application of paragraph 2 of Article 36 or paragraph 3 of Regulation 2016/2251 (as read with Chapter 3 of that Regulation) as they had effect immediately before exit day.

(2) This regulation also applies to an OTC derivative contract—

- (a) where one of the counterparties is a UK counterparty;
- (b) where the other counterparty is established in a member State; and
- (c) which immediately before exit day—
 - (i) was exempt from the clearing obligation by virtue of paragraph 2(a) of Article 4 as it had effect immediately before exit day; or
 - (ii) was exempt from, or was partially exempt from, certain requirements of the risk management obligation by virtue of paragraph 6, 7 or 10 of Article 11 (as read with Chapter 3 of the 2016 Regulation) as they had effect immediately before exit day.

(3) Where this regulation applies, the exemptions or partial exemptions specified in paragraph (1) (c) or, as the case may be, (2)(c) continue to apply in relation to the relevant contract, subject to regulation 84, until the relevant day specified in regulation 81.

Relevant day for the purposes of regulation 80

81.—(1) In relation to the clearing obligation, the relevant day referred to in regulation 80(3) is the earlier of—

- (a) the day which is 2 months after the day on which an equivalence determination in relation to the third country in which the non-UK counterparty is established comes into force; or
- (b) the day which is 3 years after exit day.

(2) In relation to the risk-management obligation, the relevant day referred to in regulation 80(3) is the earlier of—

- (a) the day which is 4 months after the day on which an equivalence determination in relation to the third country in which the non-UK counterparty is established comes into force; or
- (b) the day which is 3 years after exit day.

New exemptions from certain clearing obligations and risk-management obligations

82.—(1) This regulation applies to an OTC derivative contract where—

- (a) one of the counterparties is a UK counterparty;
- (b) the other counterparty is a non-UK counterparty; and;
- (c) the contract would be an intragroup transaction if the Treasury were to make an equivalence determination in respect of the third country in which the non-UK counterparty is established.

(2) Where this regulation applies, the UK counterparty may after exit day—

- (a) apply to the FCA for; or
- (b) notify the FCA of its intention to apply,

an exemption in accordance with the provision of the EMIR regulation to which the exemption relates as if the Treasury had made an equivalence determination in respect of the third country in which the non-UK counterparty is established.

(3) Notwithstanding—

- (a) paragraph 2(b) of Article 4; and
- (b) paragraphs 8 and 9 of Article 11,

the FCA may authorise or, as the case may be, object to, the exemptions specified in those provisions (as read with Chapter 3 of Regulation 2016/2251) pursuant to the application or notification referred to in paragraph (2).

(4) The exemptions mentioned in paragraph (3) apply, subject to regulation 84, until the relevant day specified in regulation 83.

(5) Paragraph (8) applies where one or both of the counterparties—

- (a) has applied before exit day to a competent authority for an exemption from an obligation as specified in paragraph (6) or (7); or
- (b) has notified a competent authority before exit day of its intention to apply an exemption from an obligation as specified in either of those paragraphs.

(6) The obligations specified in this paragraph are—

- (a) the clearing obligation in a case where the application or notification relates to an exemption which would apply by virtue of—
 - (i) paragraph 2 of Article 3 of Regulation 2015/2205 as it had effect immediately before exit day;
 - (ii) paragraph 2 of Article 3 of Regulation 2016/592 as it had effect immediately before exit day; or
 - (iii) paragraph 2 of Article 3 of Regulation 2016/1178 as it had effect immediately before exit day; or

- (b) certain requirements of the risk-management obligation in a case where the application or notification relates to an exemption which would apply by virtue of paragraph 2 of Article 36 of Regulation 2016/2251, or paragraph 3 of Article 37 of that Regulation as they had effect immediately before exit day.
- (7) The obligations specified in this paragraph are—
- (a) the clearing obligation in a case where the application or notification relates to an exemption which would apply by virtue of paragraph 2(a) of Article 4 as it had effect immediately before exit day; or
 - (b) certain requirements of the risk management obligation in a case where the application or notification relates to an exemption which would apply by virtue of paragraph 6, 7 or 10 of Article 11 as they had effect immediately before exit day.
- (8) Where this paragraph applies, the application or notification to the competent authority is to be treated after exit day as if it were an application or, as the case may be, a notification to the FCA by the UK counterparty for the purposes of paragraph (2).
- (9) Where it appears to the FCA that the application or notification referred to in paragraph (5) does not meet the requirements of the EMIR regulation and Chapter 3 of Regulation 2016/2251 to which the exemption relates, the FCA may request that the UK counterparty provides such further information as is necessary to enable the FCA to ascertain whether those requirements are complied with.
- (10) Paragraphs 11 and 12 of Article 11 have effect for the purposes of the exemptions, or partial exemptions, applying by virtue of paragraph (3)(b) as they have effect in relation to exemptions or partial exemptions applying by virtue of paragraph 8 or 9 of Article 11 (as read with Chapter 3 of Regulation 2016/2251).
- (11) In this regulation, “competent authority” means a regulatory authority which is responsible for the authorisation and supervision of counterparties in its territory.

Relevant day for the purposes of regulation 82

- 83.**—(1) In relation to the clearing obligation, the relevant day referred to in regulation 82(3) is the earlier of—
- (a) the day which is 2 months after the day on which an equivalence determination in relation to the third country in which the non-UK counterparty is established comes into force; or
 - (b) 3 years after exit day.
- (2) In relation to the risk-management obligation, the relevant day referred to in regulation 82(3) is the earlier of the day which is—
- (a) 4 months after the day on which an equivalence determination in relation to the third country in which the non-UK counterparty is established comes into force; or
 - (b) 3 years after exit day.

Regulations

- 84.**—(1) The Treasury may, in respect of the relevant days referred to in—
- (a) regulation 81(1)(b) and (2)(b); or
 - (b) regulation 83(1)(b) and (2)(b),
- prescribe a later day in regulations in respect of any third country in which a non-UK counterparty is established.
- (2) The power to make regulations conferred by paragraph (1) is exercisable by statutory instrument.

(3) A statutory instrument made under paragraph (1) is subject to annulment in pursuance of a resolution of either House of Parliament.