
STATUTORY INSTRUMENTS

2020 No. 646

**The Over the Counter Derivatives, Central Counterparties
and Trade Repositories (Amendment, etc., and
Transitional Provision) (EU Exit) Regulations 2020**

PART 3

Amendment of subordinate legislation

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

3. In regulation 2 (interpretation) of the Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018(1), at the end of paragraph (e), for "as amended by Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019", substitute "as last amended by Regulation (EU) 2019/2099 of the European Parliament and of the Council of 23 October 2019".

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

4.—(1) The Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018(2) are amended as follows.

(2) In regulation 1(4) (interpretation), in the definition of "the EMIR Regulation" for "as amended by Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019" substitute "as last amended by Regulation (EU) 2019/2099 of the European Parliament and of the Council of 23 October 2019".

(3) Omit regulation 8 (recognition of a third country CCP).

(4) In regulation 11 (interpretation) in the appropriate places insert the following definitions—
"clearing member" means an undertaking which participates in a central counterparty and which is responsible for discharging the financial obligations arising from that participation;
"client" means an undertaking with a contractual relationship with a clearing member of a central counterparty which enables that undertaking to clear its transactions with that central counterparty;"

(5) In regulation 13 (deemed recognition pursuant to Article 25 of the EMIR Regulation), after paragraph (5) insert—

"(5A) The fifth condition is that the applicant has not been determined as systemically important or likely to become systemically important in accordance with regulation 13A and is therefore a Tier 1 CCP."

(1) [S.I. 2018/1115](#).

(2) [S.I. 2018/1184](#).

(6) After regulation 13, insert—

“Determination of systemic importance

13A.—(1) The Bank of England must determine whether the applicant is systemically important or likely to become systemically important for the financial stability of the United Kingdom (a “Tier 2 CCP”) by taking into account all of the following criteria—

- (a) the nature, size and complexity of the applicant’s business in the United Kingdom, and outside the United Kingdom to the extent that its business may have a systemic impact on the United Kingdom, including—
 - (i) the value in aggregate terms and in pounds sterling of transactions cleared by the applicant, or the aggregate exposure of the applicant engaged in clearing activities to its clearing members and, to the extent the information is available, their clients and indirect clients established in the United Kingdom, including where they have been identified by the PRA as other systemically important institutions (O-SIIs) in accordance with regulation 29 of the Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014(3); and
 - (ii) the risk profile of the applicant in terms of, amongst other things, legal, operational and business risk;
- (b) the effect that the failure of, or a disruption to, the applicant would have on—
 - (i) financial markets, including the liquidity of the markets served;
 - (ii) financial institutions;
 - (iii) the broader financial system; or
 - (iv) the financial stability of the United Kingdom;
- (c) the applicant’s clearing membership structure including, to the extent the information is available, the structure of its clearing members’ network of clients and indirect clients, established in the United Kingdom;
- (d) the extent to which alternative clearing services provided by other central counterparties exist for clearing members and, to the extent the information is available, their clients and indirect clients established in the United Kingdom;
- (e) the applicant’s relationships, interdependencies, or other interactions with other financial market infrastructures, other financial institutions and the broader financial system to the extent that it is likely to have an impact on the financial stability of the United Kingdom.

(2) Without prejudice to the outcome of determination under regulation 13, the Bank of England must, after conducting the assessment in accordance with paragraph (1), inform the applicant whether it is considered to be a Tier 1 or Tier 2 CCP.

(3) On and after IP completion day, an assessment under this regulation is to be taken as having been carried out in accordance with Article 25.2a of the EMIR Regulation.

Conditions for Tier 2 CCPs

13B.—(1) Where the Bank of England determines that the applicant is a Tier 2 CCP in accordance with regulation 13A, it may only determine that the central counterparty should be taken to be recognised pursuant to Article 25 of the EMIR Regulation to provide certain

clearing services or activities where, in addition to meeting the conditions in paragraphs (2) to (5) of regulation 13, each of the following conditions are met.

(2) The first condition is that the applicant complies with the requirements set out in Article 16 and in Titles IV and V of the EMIR Regulation, as it has effect in EU law as amended from time to time (taking into account, in accordance with regulation 13C, the extent to which the applicant's compliance with those requirements is satisfied by compliance with comparable requirements applicable in that third country).

(3) The second condition is that the applicant has provided the Bank of England with—

(a) a written statement, signed by its legal representatives, expressing the unconditional consent of the applicant to—

(i) provide within the time specified in a request by the Bank of England, any documents, records or information and data held by the applicant at the time the request is served, and

(ii) allow the Bank of England to access any of the applicant's business premises;

(b) a reasoned legal opinion by an independent legal expert confirming that the consent expressed is valid and enforceable under the relevant applicable laws.

(4) The third condition is that the applicant has implemented all the necessary measures and established all necessary procedures to ensure the effective compliance with the conditions set out in paragraphs (2) and (3).

Comparable compliance

13C.—(1) An applicant which has been determined to be a Tier 2 CCP may request that the Bank of England assesses whether its compliance with the applicable third country framework, taking account of the regulations made under regulation 14, may be deemed to satisfy compliance with the requirements in Article 16 and Titles IV and V of the EMIR Regulation.

(2) The request shall include an explanation of why compliance with the requirements applicable in the third country satisfies the requirements set out in Articles 16 and Titles IV and V of the EMIR Regulation.

(3) On and after IP completion day, a request made under this regulation is to be treated as if it were made in accordance with Article 25a of the EMIR Regulation.

(4) A reference to the EMIR Regulation in this regulation is to the EMIR Regulation as it has effect in EU law as amended from time to time.”.

(7) In regulation 15(2) (Bank's power to advise Treasury on regulatory equivalence of central counterparties), for “Article 25.6A” substitute “Article 25.6ZA”.

(8) In regulation 16 (co-operation arrangements between the Bank of England and the competent authorities of third countries before IP completion day)(4), for paragraph (2) substitute—

“(2) Such arrangements are to specify such matters as the Bank of England considers appropriate, and may include—

(a) the mechanism for the exchange of information between the Bank of England and the competent authority, including access to all information requested by the Bank of England regarding central counterparties authorised in that third country, such as significant changes to risk models and parameters, extension of central counterparty activities and services, changes in the clients account structure and in the use of payment systems that substantially affect the United Kingdom;

(4) The heading to regulation 16 is amended by regulation 7 of [S.I. 2020/56](#).

- (b) the mechanism for prompt notification to the Bank of England where the competent authority deems a central counterparty it is supervising to be in breach of the conditions of its authorisation or of other law to which it is subject;
- (c) the mechanism for prompt notification to the Bank of England by the competent authority where a central counterparty it is supervising has been granted the right to provide clearing services to clearing members or clients established in the United Kingdom;
- (d) the procedures concerning the coordination of supervisory activities;
- (e) the procedures necessary for the effective monitoring of regulatory and supervisory developments in a third country;
- (f) the procedures for third-country authorities to assure the effective enforcement of decisions adopted by the Bank of England;
- (g) the procedures for third-country authorities to inform the Bank of England promptly of any emergency situations relating to the recognised central counterparty, including developments in financial markets, which may have an adverse effect on market liquidity and the stability of the financial systems of the United Kingdom and the procedures and contingency measures to address such situations.”.

(9) In regulation 17(7) (eligibility for temporary deemed recognition), for “Article 25.5” substitute “Article 25p”.

Amendment of the Trade Repositories (Amendment and Transitional Provision) (EU Exit) Regulations 2018

5. In regulation 4 (interpretation) of the Trade Repositories (Amendment and Transitional Provision) (EU Exit) Regulations 2018(5) for “as amended by Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019” substitute “as last amended by Regulation (EU) 2019/2099 of the European Parliament and of the Council of 23 October 2019”.

Amendment of the Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019

6.—(1) The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019(6) are amended as follows.

(2) In regulation 1(2) (interpretation), in the definition of “EMIR regulation”, for “as amended by Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019” substitute “as last amended by Regulation (EU) 2019/2099 of the European Parliament and of the Council of 23 October 2019”.

(3) For regulation 16(3)(a) (public register) substitute—

“(a) in point (b) for “Article 17” substitute “Article 14 or 15”.”.

(4) Omit regulation 28(4) (procedure for granting and refusing authorisation).

(5) After regulation 32(3) (review and evaluation) insert—

“(3A) In paragraph 3—

(a) in the second subparagraph omit the words from “Upon ESMA’s request,” to the end;

(5) [S.I. 2018/1318](#). Regulation 4 is amended by [S.I. 2019/1416](#).

(6) [S.I. 2019/335](#) and [2019/1416](#).

- (b) omit the third subparagraph.”
- (6) In regulation 34 (cooperation) after “Articles 23” insert “, 23a”.
- (7) In regulation 50(2) (review of models, stress testing and back testing)—
 - (a) for sub-paragraph (a) substitute—
 - “(a) for “its competent authority and ESMA” substitute “the Bank of England”;
 - (b) after sub-paragraph (b) insert—
 - “(ba) omit “1b, 1c.””

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

7. In regulation 1(4)(g) (interpretation) of the Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc.) (EU Exit) Regulations 2019(7) for “as amended by Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019” substitute “as last amended by Regulation (EU) 2019/2099 of the European Parliament and of the Council of 23 October 2019”.

Amendment of the Transparency of Securities Financing Transactions and of Reuse (Amendment) (EU Exit) Regulations 2019

8. In regulation 7(a) of the Transparency of Securities Financing Transactions and of Reuse (Amendment) (EU Exit) Regulations 2019(8), in the new paragraph (3)(g) to be substituted into Article 3 of Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015, after “Regulation (EU) No 648/2012” insert “as last amended by Regulation (EU) 2019/2099 of the European Parliament and of the Council of 23 October 2019”.

Amendment of the Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019

9. In regulation 4(b)(i) (scope) of the Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019(9), in the words to be inserted into point (c) of paragraph 2 of Article 2 of Regulation (EU) 2016/1011, for “as amended by Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019” substitute “as last amended by Regulation (EU) 2019/2099 of the European Parliament and of the Council of 23 October 2019”.

Amendment of the Securitisation (Amendment) (EU Exit) Regulations 2019

10. In regulation 2 (interpretation) of the Securitisation (Amendment) (EU Exit) Regulations 2019(10), in the definition of “the EMIR regulation” for “as amended by Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019” substitute “as last amended by Regulation (EU) 2019/2099 of the European Parliament and of the Council of 23 October 2019”.

Amendment of the Investment Exchanges, Clearing Houses and Central Securities Depositories (Amendment) (EU Exit) Regulations 2019

11.—(1) The Investment Exchanges, Clearing Houses and Central Securities Depositories (Amendment) (EU Exit) Regulations 2019(11) are amended as follows.

(7) [S.I. 2019/541](#). Regulation 1 is amended by [S.I. 2019/1416](#).

(8) [S.I. 2019/542](#).

(9) [S.I. 2019/657](#). Regulation 4 is amended by [S.I. 2019/1416](#).

(10) [S.I. 2019/660](#). Regulation 2 is amended by [S.I. 2019/1416](#).

(11) [S.I. 2019/662](#).

(2) For regulation 8(2)(c)(i) (amendments to Part 18, Chapter 3B: disciplinary measures), substitute—

“(i) in paragraph (a), for “, a recognised CSD or an EEA CSD” substitute “, third country central counterparty or a recognised CSD”;

(3) In regulation 13 (amendments to Schedule 17A: information gathering and investigations), for paragraph (1) substitute—

“(1) In paragraph 12, for the words from “recognised clearing house” to the end substitute “recognised clearing house, third country central counterparty or a recognised CSD”.”

Amendment of the Gibraltar (Miscellaneous Amendments) (EU Exit) Regulations 2019

12.—(1) Regulation 11 (saving for certain financial services legislation relating to Gibraltar) of the Gibraltar (Miscellaneous Amendments) (EU Exit) Regulations 2019(**12**) is amended as follows.

(2) In paragraph (5), after sub-paragraph (z4)(**13**), insert—

“(z5) the Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020.”.

(3) In paragraph (7)(d), for “and (z4)” substitute “, (z4) and (z5)”.

Amendment of the International Accounting Standards and European Public Limited-Liability Company (Amendment etc.) (EU Exit) Regulations 2019

13. In paragraph 63 of Schedule 1 (consequential amendments) to the International Accounting Standards and European Public Limited-Liability Company (Amendment etc.) (EU Exit) Regulations 2019(**14**), in sub-paragraph (1), for “as amended by Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019” substitute “as last amended by Regulation (EU) 2019/2099 of the European Parliament and of the Council of 23 October 2019”.

Amendment of the Financial Services (Miscellaneous) (Amendment) (EU Exit) Regulations 2019

14. In regulation 26 of the Financial Services (Miscellaneous) (Amendment) (EU Exit) Regulations 2019(**15**), for “as amended by Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019” substitute “as last amended by Regulation (EU) 2019/2099 of the European Parliament and of the Council of 23 October 2019”.

Amendment of the Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment etc., and Transitional Provision) (EU Exit) (No.2) Regulations 2019

15.—(1) The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment etc., and Transitional Provision) (EU Exit) (No.2) Regulations 2019(**16**) are amended as follows.

(2) Omit regulation 2 (amendment of the Financial Services and Markets Act 2000).

(3) In regulation 25, after “trade repositories” insert “as amended by Regulation (EU) 2019/2099 of the European Parliament and of the Council of 23 October 2019”.

(12) [S.I. 2019/680](#).

(13) Paragraphs (5)(z4) and (7)(d) of regulation 11 are inserted by [S.I. 2020/628](#).

(14) [S.I. 2019/685](#). Paragraph 63 is amended by [S.I. 2019/1416](#).

(15) [S.I. 2019/710](#). Regulation 26 is amended by [S.I. 2019/1416](#).

(16) [S.I. 2019/1416](#).

