

## SCHEDULE 3

### Transitional Provisions

## PART 2

### Transitional provisions relating to Payment Services Regulations 2017

#### Interpretation

**13.** In this Part of this Schedule—

- (a) “PSR 2017” means the Payment Services Regulations 2017,
- (b) “the 2000 Act” means the Financial Services and Markets Act 2000,
- (c) “the FCA” means the Financial Conduct Authority, and
- (d) “EEA authorised payment institution”, “EEA registered account information service provider”, “home state competent authority”, “the money laundering directive”, “passport right”, and “the payment services directive” each has the meaning given by PSR 2017 as those Regulations have effect before the amendments made by Schedule 2.

#### Transitional authorisation for EEA authorised payment institution etc

**14.**—(1) This paragraph applies to a person who—

- (a) immediately before exit day is entitled to provide payment services in the United Kingdom in the exercise of a passport right,
- (b) would (apart from this Part of this Schedule) cease from exit day to be entitled to provide those services in the United Kingdom, and
- (c) has notified the FCA in accordance with paragraph 15 that the person wishes this paragraph to apply in the person’s case.

(2) During the transition period defined in paragraph 22—

- (a) the person is to be taken—
  - (i) in case of a person who is an EEA authorised payment institution immediately before exit day, to be an authorised payment institution whose authorisation under PSR 2017 relates to the payment services mentioned in sub-paragraph (1)(a) and (b), or
  - (ii) in the case of a person who is an EEA registered account information service provider immediately before exit day, to be a registered account information service provider whose registration under PSR 2017 relates to those payment services, and
- (b) accordingly, references in PSR 2017 to an authorised payment institution or a registered account information service provider are to be read as including a person who is taken by virtue of this paragraph to be an authorised payment institution or a registered account information service provider (as the case may be).

(3) Sub-paragraph (2) is subject to paragraphs 19 and 20.

(4) In the following provisions of this Part of this Schedule, “transitional authorisation” means authorisation by virtue of this paragraph as an authorised payment service provider or registration by virtue of this paragraph as a registered account information service provider.

#### Requirements to be met by notification

**15.**—(1) A notification for the purposes of paragraph 14(1)(c) must—

- (a) be made in such manner as the FCA may direct, and
  - (b) be made during the 3 months ending with the day preceding the day on which exit day falls.
- (2) The notification must—
- (a) state the name and address of the person making the notification, and any authorisation or reference number,
  - (b) specify the person's home state competent authority,
  - (c) specify a postal address in the United Kingdom to be used for correspondence,
  - (d) identify the payment services which the person is entitled to provide in the United Kingdom by virtue of being an EEA authorised payment institution or an EEA registered account information service provider for the purposes of PSR 2017,
  - (e) if, for the provision of the services in the United Kingdom, the person uses an agent who is registered with the home state competent authority, include the information referred to in regulation 34(3)(a) of PSR 2017,
  - (f) if the person uses or intends to use a branch in the United Kingdom to provide the services, state the names of those responsible for the management of the branch and details of its organisational structure,
  - (g) if the person has entered into a contract with another person under which that other person carries out or will carry out any operational function relating to the person's provision of payment services in the United Kingdom, include such information about that other person as the FCA may direct,
  - (h) specify any restrictions or conditions that have been imposed on the person by the person's home state competent authority, and
  - (i) specify any precautionary measures taken by the FCA under regulation 30(9) of PSR 2017 that are in force.

### **Registration of agents**

**16.**—(1) If a notification for the purposes of paragraph 14(1)(c) includes the information required by paragraph 15(2)(e) in relation to an agent, the FCA must, with effect from exit day or as soon as practicable after that time, include the agent on the register maintained under regulation 4 of PSR 2017.

(2) A person to whom paragraph 14 applies may apply to the FCA under regulation 34 of PSR 2017 before exit day for the registration at any time after exit day of an agent not falling within sub-paragraph (1).

### **Requirements imposed by FCA**

**17.**—(1) This paragraph applies in relation to a person to whom paragraph 14 applies.

(2) Any requirement which—

- (a) was imposed on the person—
  - (i) as a precautionary measure under regulation 30(9) of PSR 2017, or
  - (ii) under section 196 of the 2000 Act as applied by paragraph 6 of Schedule 6 to PSR 2017, and
- (b) has effect immediately before exit day,

is to continue to have effect at and after that time as if it were imposed by the FCA under regulation 7 of PSR 2017.

(3) The FCA may exercise its powers under regulation 7 of PSR 2017 in relation to the person if it appears to the FCA that, immediately before exit day, the condition in section 194(1)(a) or (b) of the 2000 Act, as applied by paragraph 6 of Schedule 6 to PSR 2017, was met.

### **Duties of person relying on transitional authorisation**

**18.**—(1) This paragraph applies during the transition period defined in paragraph 22 to any person in relation to whom paragraph 14 applies.

(2) The person must notify the FCA of—

- (a) any material change affecting any matter dealt with in the information contained in or accompanying the notification for the purposes of paragraph 14(1)(c),
- (b) the cancellation or variation by the person's home state competent authority of the person's authorisation to provide payment services in accordance with the payment services directive,
- (c) any regulatory action taken against the person by the person's home state competent authority, or
- (d) any adverse judgments made against the person by the person's home state competent authority in pursuance of the money laundering directive.

(3) The person must when required by the FCA provide the FCA with such evidence as the FCA may reasonably require to demonstrate the person's compliance with the law of the person's home state implementing Article 10 of the payment services directive (safeguarding).

### **Exclusion of certain provisions of Payment Services Regulations 2017**

**19.**—(1) The following provisions of PSR 2017 do not apply in relation to a person while the person is by virtue of paragraph 14 an authorised payment institution or a registered account information service provider—

- (a) regulation 10(1) (cancellation of authorisation);
- (b) regulation 20 (duty to notify changes);
- (c) regulation 22 and Schedule 3 (capital requirements);
- (d) in regulation 23 (safeguarding requirements), paragraphs (14) to (16);
- (e) regulation 24 (accounting and statutory audit);
- (f) in Schedule 6 (application and modification of legislation), paragraph 5 (control over payment institutions) and paragraph 6 (incoming firms: intervention by FCA).

(2) Regulation 6 (conditions for authorisation) does not apply in relation to a person by virtue of the person's transitional authorisation, but applies in relation to any application for authorisation made by the person during the transition period defined in paragraph 22.

### **Power of FCA to cancel transitional authorisation**

**20.**—(1) The FCA may cancel a person's transitional authorisation and remove the person from the register where—

- (a) the person's authorisation by the person's home state competent authority is cancelled,
- (b) the person has failed to comply with the terms of the person's authorisation by the person's home state competent authority,
- (c) the person does not provide payment services in the United Kingdom during the 12 months beginning with exit day,

**Draft Legislation:** This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: *The Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018 No. 1201*

- (d) the person ceases to engage in business activity in the United Kingdom for more than six months,
- (e) the person's notification for the purposes of paragraph 14(1)(c) contains false statements,
- (f) the person lacks one or more of the following—
  - (i) robust governance arrangements for its payment service business, including a clear organisational structure with well-defined, transparent and consistent lines of responsibility,
  - (ii) effective procedures to identify, manage, monitor and report any risks to which the person might be exposed, and
  - (iii) adequate internal control mechanisms, including sound administrative, risk management and accounting procedures,
- (g) any of the directors, or persons responsible for the management of the person's payment services, is not of good repute,
- (h) the person does not have a business plan under which appropriate and proportionate systems, resources and procedures will be employed by the person to operate soundly,
- (i) the person has not taken adequate measures for the purposes of safeguarding electronic money holders' funds in accordance with regulation 23 of PSR 2017,
- (j) in the case of a person carrying on payment initiation services, the person does not hold professional indemnity insurance, or a comparable guarantee, of the kind mentioned in regulation 6(7)(e) of PSR 2017,
- (k) the person would constitute a threat to the stability of, or trust in, a payment system by continuing the person's electronic money or payment services business,
- (l) the cancellation is desirable in order to protect the interests of consumers, or
- (m) the person's provision of payment services is otherwise unlawful, including where such provision of services is unlawful because the person's registration in a register maintained under regulation 54 or 55 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 has been cancelled under regulation 60 of those Regulations.

(2) Regulation 10(2) to (5) of PSR 2017 apply in relation to cancellation under sub-paragraph (1) of this paragraph as they apply in relation to cancellation under regulation 10(1) of those Regulations.

### **Notice of intention**

**21.**—(1) A person in relation to whom paragraph 14 applies must, before the end of the 12 months beginning with the day on which exit day falls, notify the FCA—

- (a) whether the person or a member of the person's immediate group, as defined by section 421ZA of the 2000 Act, intends to apply under regulation 5 or 17 of PSR 2017, and
- (b) whether the person intends to cease at or before the end of the transition period to provide in the United Kingdom the services to which the transitional authorisation relates.

(2) The person must notify the FCA within a reasonable time of any change in an intention previously notified.

### **Transition period**

**22.**—(1) The transition period in relation to a person is a period beginning with exit day and ending with a day determined under this paragraph, or with any earlier day on which the cancellation under paragraph 20 of the person's transitional authorisation takes effect.

(2) In a case where a person has applied under regulation 5 of PSR 2017, on or after the date on which this regulation comes into force, for authorisation as a payment institution and has not withdrawn the application—

- (a) if the application is granted, the person's transition period ends with the day before the day stated in accordance with regulation 9(6) of PSR 2017 as that on which the authorisation takes effect, and
- (b) if the application is refused, the decision notice under regulation 9(8) of PSR 2017 must state the date on which the person's transition period is to end.

(3) In a case where a person has applied under regulation 17 of PSR 2017, on or after the date on which this regulation comes into force, for registration as an account information service provider and has not withdrawn the application—

- (a) if the application is granted, the person's transition period ends with the day before the day stated in accordance with regulation 9(6) of PSR 2017 (as applied by regulation 15 of those Regulations) as that on which the authorisation takes effect, and
- (b) if the application is refused, the decision notice under regulation 9(8) of PSR 2017 (as so applied) must state the date on which the person's transition period is to end.

(4) In any other case, the person's transition period ends at the end of the 3 years beginning with the day on which exit day falls.

(5) The person may give notice to the FCA specifying a date (earlier than that determined under sub-paragraphs (2) to (4)) on which the person will cease to engage in new business covered by the person's transitional authorisation.

(6) The FCA may by notice to the person require the person to specify a date under sub-paragraph (5) before the end of a period specified in the notice, and if the person does not do so the FCA may itself specify a date on which the person's transitional authorisation will cease to cover new business.

### **Power to extend period specified in paragraph 22(4)**

**23.**—(1) The Treasury may by regulations made by statutory instrument amend paragraph 22(4) so as to extend the period referred to in that provision, if the Treasury consider it necessary to do so.

(2) The Treasury may make regulations under sub-paragraph (1) only if, no later than 6 months before the end of the period to be extended, the FCA has submitted to the Treasury an assessment as to the effect of extending, or not extending, the period on persons (in general) to whom paragraph 14 applies.

(3) Regulations under sub-paragraph (1) may not extend the period for the time being by more than 12 months.

(4) A statutory instrument containing regulations under sub-paragraph (1) is subject to annulment in pursuance of a resolution of either House of Parliament.

### **Directions**

**24.** The power of the FCA to give directions under this Part of this Schedule includes power—

- (a) to give different directions in relation to different notifications or categories of notification, and
- (b) to vary or revoke a previous direction.