
DRAFT STATUTORY INSTRUMENTS

2018 No.

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

PART 4

Amendment of EU Regulations

CHAPTER 1

Amendment of Markets in Financial Instruments Regulation

Subject matter and scope

25.—(1) Article 1 is amended as follows.

(2) In paragraph 1—

(a) omit point (d);

(b) in point (e)—

(i) omit “, ESMA and EBA”;

(ii) for “of ESMA” substitute “of the competent authority”;

(c) in point (f), for “Commission” substitute “Treasury”.

(3) For paragraph 2, substitute—

“**2.** This Regulation applies to—

(a) investment firms and credit institutions which have their head office in the United Kingdom which—

(i) (subject to paragraphs 2A and 2C) have permission under Part 4A of FSMA to carry on regulated activities relating to investment services and activities in the United Kingdom, when those firms or institutions are providing investment services or performing investment activities; and

(ii) would require authorisation under [Directive 2014/65/EU](#) of the European Parliament and of the Council on markets in financial instruments⁽¹⁾ (in the case of investment firms) or [Directive 2013/36/EU](#) of the European Parliament and of the Council on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms⁽²⁾ (in the case of credit institutions) (as those directives applied in the European Union immediately before exit day) if they had their head offices in an EEA state; and

(b) market operators which have their registered office or head office in the United Kingdom, including any UK trading venues they operate.

(1) OJ L173, 12.6.2014, p.349.

(2) OJ L176, 27.6.2013, p.338.

2A. Subject to paragraph 2B, Titles II, III, IV, V, Article 38, and Title VII and EU tertiary legislation (within the meaning of section 20(1) of the European Union (Withdrawal) Act 2018(3)) made under those provisions also apply to investment firms and credit institutions which have temporary permission to carry on such activities under the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018.

2B. Articles 20, 21, 26 and 27 only apply to a firm referred to in paragraph 2A in relation to business of that firm which is carried on through a branch in the United Kingdom.

2C. This Regulation does not apply to any firm which has permission under Part 4A of FSMA to carry on regulated activities as an exempt investment firm, within the meaning of regulation 8 of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017.

2D. Subject to paragraph 2E, if—

- (a) a firm referred to in paragraph 2A complies with a requirement in this Regulation as it applies in the EEA (“the EEA requirement”) in relation to the services it provides in the United Kingdom; and
- (b) the EEA requirement has equivalent effect to a requirement in this Regulation as it applies in the United Kingdom (“the UK requirement”),

the firm is to be treated as complying with the UK requirement.

2E. Paragraph 2D does not apply in relation to requirements in Article 23, Title IV, Article 28, Article 29 (so far as that Article applies to CCPs), Article 30, Article 31 or Title VI.”.

(4) In paragraph 5—

- (a) for “Union” substitute “United Kingdom”;
- (b) for “Commission” substitute “Treasury”;
- (c) omit “with or without a branch”.

(5) After paragraph 5, insert—

“**5za.** For the purposes of paragraph 1(f) and 5, references to applicable equivalence decisions by the Treasury include references to applicable decisions made by the Commission as they applied immediately before exit day.”.

(6) In paragraph 6—

- (a) after “(ESCB)” insert “, the Debt Management Office or the Bank of England (“a relevant organisation”)”;
- (b) for “member of the ESCB” substitute “relevant organisation”.

(7) In paragraph 7, for “member of the ESCB” substitute “relevant organisation”.

(8) In paragraph 8—

- (a) in the first subparagraph, for “ESMA shall, in close cooperation with the ESCB, develop draft regulatory technical standards to specify” substitute “The Bank of England may, after consultation with the FCA, make technical standards specifying”;
- (b) omit the second and third subparagraphs.

(9) In paragraph 9—

- (a) for the first subparagraph, substitute—

“9. The Treasury may, by regulations extend the scope of paragraph 6 to other central banks.”;

(b) omit the second and third sub-paragraphs.