
DRAFT STATUTORY INSTRUMENTS

2018 No.

The Market Abuse (Amendment) (EU Exit) Regulations 2018

PART 6

Amendment of retained direct EU legislation

General provisions: definitions

10.—(1) Article 3 (definitions) is amended as follows.

(2) In paragraph 1—

(a) for point (1) (definition of ‘financial instrument’) substitute—

“(1) ‘financial instrument’ means those instruments specified in Part 1 of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001⁽¹⁾, read with Part 2 of that Schedule;”;

(b) in point (2) (definition of ‘investment firm’), for “point (1) of Article 4(1) of [Directive 2014/65/EU](#)” substitute “Article 2(1A) of the Markets in Financial Instruments Regulation”;

(c) for point (4), for the words from “point (26)” to the end, substitute—

“—

(a) Regulation (EU) No 575/2013 as that Regulation forms part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018; or

(b) Regulation (EU) No 575/2013 as that Regulation applies in the European Union;”

(d) in point (5) (definition of ‘market operator’), for “point (18) of Article 4(1) of [Directive 2014/65/EU](#)” substitute “Article 2(1)(10) of the Markets in Financial Instruments Regulation”;

(e) for points (6) to (8) (definitions of ‘regulated market’, ‘multilateral trading facility’ and ‘organised trading facility’) substitute—

“(6) ‘regulated market’ has the meaning given in Article 2(1)(13) of the Markets in Financial Instruments Regulation;

(6A) ‘UK regulated market’ has the meaning given in Article 2(1)(13A) of the Markets in Financial Instruments Regulation;

(6B) ‘EU regulated market’ has the meaning given in Article 2(1)(13B) of the Markets in Financial Instruments Regulation;

(7) ‘multilateral trading facility’ or ‘MTF’ has the meaning given in Article 2(1)(14) of the Markets in Financial Instruments Regulation;

(7A) ‘UK multilateral trading facility’ or ‘UK MTF’ has the meaning given in Article 2(1)(14A) of the Markets in Financial Instruments Regulation;

- (7B) ‘EU multilateral trading facility’ or ‘EU MTF’ has the meaning given in Article 2(1)(14B) of the Markets in Financial Instruments Regulation;
- (8) ‘organised trading facility’ or ‘OTF’ has the meaning given in Article 2(1)(15) of the Markets in Financial Instruments Regulation;
- (8A) ‘UK organised trading facility’ or ‘UK OTF’ has the meaning given in Article 2(1)(15A) of the Markets in Financial Instruments Regulation;
- (8B) ‘EU organised trading facility’ or ‘EU OTF’ has the meaning given in Article 2(1)(15B) of the Markets in Financial Instruments Regulation;”;
- (f) in point (9) (definition of ‘accepted market practice’), for “a competent authority” substitute “the FCA”;
- (g) for point (10) (definition of ‘trading venue’) substitute—
- “(10) ‘trading venue’ means a regulated market, an MTF or an OTF;
- (10A) ‘UK trading venue’ means a UK regulated market, a UK MTF or a UK OTF;
- (10B) ‘EU trading venue’ means an EU regulated market, an EU MTF or an EU OTF;”;
- (h) in point (11) (definition of ‘SME growth market’) for “point (12) of Article 4(1) of [Directive 2014/65/EU](#)” substitute “regulation 2(1) of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017(2)”;
- (i) for point (12) (definition of ‘competent authority’) substitute—
- “(12) ‘competent authority’ means—
- (a) in relation to an EEA state, the authority which has been designated by that Member State as its competent authority for the purposes of Article 22 of this Regulation as it was in force before exit day; and
- (b) in relation to a third country which is not an EEA state, the supervisory authority which exercises functions equivalent to those exercised by competent authorities in Member States in accordance with this Regulation as it was in force before exit day;”;
- (j) in point (17) (definition of ‘buy-back programme’), at the end insert “or the law of the United Kingdom which was relied on by the United Kingdom immediately before exit day to implement those Articles”;
- (k) in point (18) (definition of ‘algorithmic trading’), for “point (39) of Article 4(1) of [Directive 2013/65/EU](#)” substitute “regulation 2(1) of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017(3)”;
- (l) in point (19) (definition of ‘emission allowance’), for “point (11) of Section C of Annex 1 to [Directive 2014/65/EU](#)” substitute “paragraph 11 of Part 1 of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001”;
- (m) in point (25) (definition of ‘person discharging managerial responsibilities’)—
- (i) for “issuer,” substitute “issuer or”;
- (ii) omit “or another entity referred to in Article 19(10),”;
- (n) for point (27) (definition of ‘data traffic records’), substitute—
- “(27) ‘data traffic records’ means records of any data processed for the purpose of the conveyance of a communication on an electronic communications network or for the billing thereof;”

(2) [S.I. 2017/701](#), as amended by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018.

(3) [S.I. 2017/701](#).

- (o) in point (30) (definition of ‘market maker’), for “point (7) of Article 4(1) of [Directive 2014/65/EU](#)” substitute “Article 2(1)(6) of the Markets in Financial Instruments Regulation”;
- (p) in point (33) (definition of ‘high-frequency trading’), for “point (40) of Article 4(1) of [Directive 2014/65/EU](#)” substitute “regulation 2(1) of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017”;
- (q) after point (35) (definition of ‘investment recommendations’) insert—
 - “(36) ‘FCA’ means the Financial Conduct Authority;
 - (37) ‘the Markets in Financial Instruments Regulation’ means Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012, as it forms part of domestic law by virtue of section 3 of the EU (Withdrawal) Act 2018, and as it is modified by domestic law from time to time;
 - (38) ‘the EU Market Abuse Regulation’ means Regulation (EU) No 596/2014 of the European Parliament and of the Council on market abuse as it has effect in European law⁽⁴⁾;
 - (39) references to a ‘third country’ (including in expressions including the words ‘third country’) are to be read as references to a country other than the United Kingdom.”.
- (3) In paragraph 2(b), for “trading venue” substitute “UK trading venue or an EU trading venue”, in both places it occurs.
- (4) In Article 4 (notification and list of financial instruments)—
 - (a) in paragraph 1—
 - (i) in the first subparagraph—
 - (aa) before “regulated markets” insert “UK”;
 - (bb) for “an MTF or an OTF” substitute “a UK MTF or a UK OTF”;
 - (cc) for “competent authority of the trading venue” substitute “FCA”;
 - (ii) in the second subparagraph, for “competent authority of the trading venue” substitute “FCA”;
 - (iii) omit the fourth subparagraph;
 - (b) for paragraph 2 substitute—

“2. The FCA shall publish notifications received under paragraph 1 on its website in the form of a list without delay. The FCA shall update that list without delay following receipt of a notification received under paragraph 1. The list shall not limit the scope of this Regulation.”;
 - (c) in paragraph 3—
 - (i) in point (a), for “regulated markets, MTFs and OTFs” substitute “UK regulated markets, UK MTFs and UK OTFs”;
 - (ii) in point (c), for “trading venues” substitute “UK trading venues”;
 - (d) for paragraphs 4 and 5 substitute—

“4. The FCA may make technical standards specifying—

 - (a) the content of the notifications referred to in paragraph 1;
 - (b) the manner and conditions of the compilation, publication and maintenance of the list referred to in paragraph 2.

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

5. The FCA may make technical standards specifying the timing, format and template of the submission of notifications under paragraph 1.”;
- (5) In Article 5 (exemption for buy-back programmes and stabilisation)—
- (a) in paragraph 1—
- (i) in point (b), for “competent authority of the trading venue” substitute “FCA or European competent authority”;
- (ii) in point (d), omit “regulatory”;
- (b) for paragraph 3 substitute—
- “3. In order to benefit from the exemption in paragraph 1—
- (a) where shares have been admitted to trading or are traded on a UK trading venue, the issuer must report to the FCA each transaction relating to the buy-back programme including the information specified in Article 25(1) and (2) and Article 26(1), (2) and (3) of the Markets in Financial Instruments Regulation (and for these purposes, Article 26 of that Regulation applies as if the obligation in paragraph (2)(a) only applied to financial instruments which are admitted to trading or traded on a UK trading venue);
- (b) where shares have been admitted to trading or are traded on an EU trading venue, the issuer must make the reports to the competent authority of the trading venue on which the shares have been admitted to trading or are traded which are required in accordance with Article 5(3) of the EU Market Abuse Regulation.”;
- (c) in paragraph 4—
- (i) for point (b) substitute—
- “(b) relevant information about the stabilisation is disclosed and notified—
- (i) where the securities or associated instruments are traded on a UK trading venue, to the FCA in accordance with paragraph 5;
- (ii) where the securities or associated instruments are traded on an EU trading venue, to the European competent authority of the trading venue in accordance with Article 5(5) of the EU Market Abuse Regulation.”;
- (ii) in point (d), omit “regulatory”;
- (d) in paragraph 5—
- (i) omit “Without prejudice to Article 23(1),”;
- (ii) for “competent authority of the trading venue” substitute “FCA (where the securities or associated instruments are traded on a UK trading venue)”;
- (e) for paragraph 6 substitute—
- “6. The technical standards referred to in this paragraph are—
- (a) Commission Delegated Regulation (EU) 2016/1052 of 8 March 2016 supplementing Regulation (EU) 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the conditions applicable to buy-back programmes and stabilisation measures—
- (i) as that Regulation forms part of domestic law, where the trading takes place on a UK trading venue; or
- (ii) as that Regulation applies in the European Union, where the trading takes place on an EU trading venue;

- (b) any technical standards made by the FCA under paragraph 7, where the trading takes place on a UK trading venue;
- (c) any other regulatory technical standards adopted by the Commission under Article 5(6) of Regulation (EU) No 596/2014 of the European Parliament and of the Council on market abuse as it has effect in the European Union, where the trading takes place on an EU trading venue.

7. The FCA may make technical standards to specify the conditions that buy-back programmes and stabilisation measures referred to in paragraphs 1 and 4 must meet, including conditions for trading, restrictions regarding time and volume, disclosure and reporting obligations, and price conditions.

8. In this Article, ‘European competent authority’ means the authority which has been designated by a Member State as its competent authority for the purposes of Article 22 of this Regulation as it had effect before exit day.”

(6) In Article 6 (exemption for monetary and public debt management activities and climate policy activities)—

(a) in paragraph 1—

(i) in point (a), for “a Member State”, substitute “the United Kingdom (including any government department of the United Kingdom)”;

(ii) in point (b), for “members of the ESCB”, substitute “Bank of England”;

(iii) for point (c), substitute—

“(ba) the Treasury or a person acting on its behalf;

(c) a ministry, any other agency or a special purpose vehicle of—

(i) the United Kingdom; or

(ii) the United Kingdom and one or more Member States;

(ca) a person acting on behalf of a ministry, agency or special purpose vehicle referred to in point (c);

(cb) a subsidiary or special purpose vehicle of the Bank of England;”;

(iv) for point (d) substitute—

“(d) the Scottish Government, the Welsh Government, or the Northern Ireland Executive.”;

(b) in paragraph 2—

(i) omit the first subparagraph;

(ii) in the second subparagraph, in the opening words, for “such transactions, orders or behaviour carried out” substitute “transactions, orders or behaviour carried out in pursuit of public debt management policy”;

(iii) also in the second subparagraph—

(aa) omit points (a) to (e);

(bb) in point (f), for “two or more Member States” substitute “the United Kingdom and one or more Member States”;

(c) after paragraph 2 insert—

“2A. This Regulation does not apply to the activities of the Secretary of State, the Scottish Ministers, the Welsh Ministers, a Northern Ireland department or any other officially designated body, or of any person acting on their behalf, that are undertaken in pursuit of agricultural policy, or of fisheries and aquaculture policy, in accordance with

retained EU law or with any international agreement to which the United Kingdom is a party.”;

(d) in paragraph 3, for “This Regulation does not apply to the activity” substitute “The Treasury may by regulations make provision for this Regulation not to apply to the activity”;

(e) in paragraph 4, for “This Regulation does not apply to the activities” substitute “The Treasury may by regulations make provision for this Regulation not to apply to the activities”;

(f) for paragraph 5 substitute—

“5. The Treasury may by regulations extend the exemption referred to in paragraph 1 to transactions, orders or behaviour which are carried out by—

(a) a Member State;

(b) members of the ESCB;

(c) a ministry, agency or special purpose vehicle of one or more Member States, or a person acting on their behalf;

(d) in the case of a Member State that is a federal state, a member making up the federation;

(e) certain public bodies and central banks of third countries.”;

(g) after paragraph 5 insert—

“5A. The Treasury may by regulations extend the exemption referred to in paragraph 2 to transactions, orders or behaviour which are carried out by—

(a) the Commission or any other officially designated body, or any person acting on their behalf;

(b) the Union;

(c) a special purpose vehicle of one or more Member States;

(d) the European Investment Bank;

(e) the European Financial Stability Facility;

(f) the European Stability Mechanism;

(g) an international financial institution established by two or more Member States which has the purpose of mobilising funding and providing financial assistance for the benefit of its members that are experiencing or threatened by severe financial problems.”;

(h) omit paragraph 6.