
DRAFT STATUTORY INSTRUMENTS

2019 No.

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

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019.

(2) Regulations 7 and 8 and Schedule 2 come into force on exit day.

(3) The other provisions in these Regulations come into force on the day after the day on which these Regulations are made.

(4) For the purposes of these Regulations,

(a) an “equivalence direction” is a direction made under regulation 2(1);

(b) an “equivalence determination” is a determination made by regulations made by the Treasury under retained EU law referred to in Schedule 1 or under regulations made under the European Union (Withdrawal) Act 2018 other than these Regulations;

(c) an “exemption direction” is a direction made under regulation 3(1);

(d) an “exemption determination” is a determination made by regulations made by the Treasury under retained EU law or under regulations under the European Union (Withdrawal) Act 2018 referred to in regulation 3;

(e) “FCA” means the Financial Conduct Authority;

(f) “PRA” means the Prudential Regulation Authority;

(g) “EMIR” means Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (“EMIR”);

(h) “FSMA” means the Financial Services and Markets Act 2000(1);

(i) “SFTR” means Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse (“SFTR”)(2).

(5) Any reference in these Regulations to an EU Regulation or EU Decision is a reference to retained EU law as modified from time to time.

(1) 2000 c.8. Section 348 was amended by paragraph 26 of Schedule 2 to the Financial Services Act 2010 (c.28), paragraph 18 of Schedule 12 to the Financial Services Act 2012 (c.21), paragraph 5 of Schedule 8 to the Financial Services (Banking Reform) Act 2013 (c.33), paragraph 45(2) of Schedule 2 to the Bank of England and Financial Services Act 2016 (c.14) and S.I. 2016/1239. Section 349 was amended by section 964(4) of Companies Act 2006 (c.46), S.I. 2006/1183, S.I. 2007/1093, S.I. 2011/1043, and paragraph 19 of Schedule 12 to the Financial Services Act 2012. Section 350 was amended by paragraph 20 of Schedule 12 to the Financial Services Act 2012. Section 353 was amended by section 61 of the Consumer Credit Act 2006 (c.14), paragraph 23 of Schedule 12 of Financial Services Act 2012, and S.I. 2013/1881.

(2) OJ L 337, 23.12.2015, p. 1–34, see Article 2(4). [Exit SI is Transparency of Securities Financing Transactions and of Reuse (Amendment) (EU Exit) Regulations 2019. Due to be laid on 16 January.]

Equivalence directions

2.—(1) The Treasury may, by direction, in relation to countries which are EEA states, make a determination set out in Schedule 1 for the purposes set out in that Schedule.

(2) A direction given under paragraph (1)—

- (a) may have effect only on or after exit day; and
- (b) ceases to have effect on the date on which it is revoked by a direction under paragraph (1) or by any other enactment.

(3) The Treasury must lay a copy of any equivalence direction given by it under paragraph (1) before Parliament.

(4) The Treasury must publish any direction given under paragraph (1) in a way appearing to the Treasury to be best calculated to bring it to the attention of the public.

(5) No equivalence direction may be given under paragraph (1) after the end of the period of twelve months beginning with exit day.

(6) The power of the Treasury under paragraph (1) includes the power to revoke or vary an equivalence direction at any time.

Exemption directions

3.—(1) The Treasury may by direction—

- (a) determine that Articles 4 and 15 of SFTR do not apply to bodies in EEA states which—
 - (i) perform similar functions to members of the European System of Central Banks (“ESCB”) or
 - (ii) are charged with, or intervene in, the management of the public debt.
- (b) extend the exemption referred to in paragraph 1 of Article 6 of Regulation (EU) 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse “MAR”⁽³⁾ to transactions, orders or behaviour which are carried out by—
 - (i) a member State;
 - (ii) members of the ESCB;
 - (iii) a ministry, agency or special purpose vehicle of one or more member States, or a person acting on their behalf;
 - (iv) in the case of a member state that is a federal state, a member making up the federation;
 - (v) certain public bodies and central banks of third countries;
- (c) extend the exemption referred to in paragraph 2 of Article 6 of Regulation (EU) 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse to transactions, orders or behaviour which are carried out by—
 - (i) the Commission or any other officially designated body, or any person acting on their behalf;
 - (ii) the Union;
 - (iii) a special purpose vehicle of one or more member states;
 - (iv) the European Investment Bank;
 - (v) the European Financial Stability Facility;

(3) Exit version of MAR, which has been laid: MAR as amended by Part 6 of the Market Abuse (Amendment) (EU Exit) Regulations 2019.]

- (vi) the European Stability Mechanism;
- (vii) 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;
- (d) make provision for MAR not to apply to the activity of a member State, the Commission or any other officially designated body, or of any person acting on their behalf, which concerns emission allowances and which is undertaken in pursuit of the Union’s climate policy in accordance with [Directive 2003/87/EC](#)(4);
- (e) make provision for MAR not to apply to the activities of a member State, the Commission or any other officially designated body, or of any person acting on their behalf, that are undertaken in pursuit of the Union’s Common Agricultural Policy or of the Union’s Common Fisheries Policy in accordance with acts adopted or with international agreements concluded under the Treaty on the Functioning of the European Union(5);
- (f) determine that “EMIR” does not apply to members of the ESCB or bodies in EEA states which—
 - (i) perform similar functions to members of the ESCB; or
 - (ii) are charged with, or intervene in, the management of the public debt;
- (2) An exemption direction—
 - (a) may have effect only on or after exit day; and
 - (b) ceases to have effect after the date on which it is revoked by a further exemption direction or by any other enactment.
- (3) The Treasury must lay a copy of any exemption direction given by them under paragraph (1) before Parliament.
- (4) The Treasury must publish any direction given under paragraph (1) in a way appearing to the Treasury to be best calculated to bring it to the attention of the public.
- (5) No exemption direction may be given under paragraph (1) after the end of the period of twelve months beginning with exit day.
- (6) The power of the Treasury under paragraph (1) includes the power to revoke or vary an exemption direction at any time.

Information and advice

- 4.—(1) The Treasury may by notice in writing require the Bank of England, the PRA or the FCA to provide information or advice specified, or of a description specified, in the notice.
- (2) The information or advice must be information or advice which the Treasury consider is necessary to enable it to decide whether to make—
- (a) an equivalence determination,
 - (b) an exemption determination, or
 - (c) any other determination (other than one referred to in regulation 2 or 3) that a third country has regulatory standards in an area of financial services that are equivalent to those in the United Kingdom as permitted by retained EU law.
- (3) The information or advice required by a notice referred to in paragraph (1) must be provided during such reasonable period as may be specified in the notice.

(4) OJ L 275, 25.10.2003.

(5) OJ C 326, 26.10.2012.

(4) The Bank of England, the PRA and the FCA may provide information or advice to the Treasury in connection with any determination referred to in regulations 2, 3 or this regulation in the absence of a notice under paragraph (1).

Application of the Financial Services and Markets Act 2000 in relation to functions under this Regulation

5. Sections 348 to 350 and 353 (disclosure of information) of FSMA apply in relation to information received by the Bank of England for the purposes of, or in discharge of, any of its functions under regulation 4.

Co-ordination

6.—(1) The Treasury, the Bank of England, the PRA and the FCA must co-ordinate the discharge of their respective functions in relation to equivalence determinations and exemption determinations and provision of information and advice under regulation 4.

(2) The Treasury, the Bank of England, the PRA and the FCA must prepare and maintain a memorandum describing in general terms—

- (a) how they propose to exercise their respective functions in relation to equivalence determinations and exemption determinations and comply with their obligations under paragraph (1);
- (b) how they propose to exercise any other functions relating to equivalence determinations they are given in regulations made under—
 - (i) retained EU law; or
 - (ii) the European Union (Withdrawal) Act 2018.

(3) The Treasury must lay before Parliament a copy of the memorandum maintained under paragraph (2).

(4) The Treasury must publish any memorandum maintained under paragraph (2) in a way appearing to the Treasury to be best calculated to bring it to the attention of the public.

Amendments to EU tertiary legislation

7. Schedule 2 makes amendments to specified EU tertiary legislation.

Revocation of Regulations establishing the European System of Financial Supervision

8. The following instruments are revoked —

- (a) Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board;
- (b) Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No [716/2009/EC](#) and repealing Commission [Decision 2009/78/EC](#);
- (c) Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No [716/2009/EC](#) and repealing Commission [Decision 2009/79/EC](#);
- (d) Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: *The Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019 No. 541*

and Markets Authority), amending Decision No [716/2009/EC](#) and repealing Commission [Decision 2009/77/EC](#)

Date

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name
Two of the Lords Commissioners of Her
Majesty's Treasury