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DRAFT STATUTORY INSTRUMENTS

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**2019 No.**

The Financial Services and Markets Act 2000  
(Amendment) (EU Exit) Regulations 2019

PART 7

Transitional Powers of the Financial Regulators

**Interpretation**

**197.**—(1) In this Part—

“transitional direction” means a direction under regulation 198(1);

“relevant obligation” has the meaning given by regulation 199.

(2) For the purposes of this Part, each of the following is a “regulator”—

- (a) the Bank of England;
- (b) the Prudential Regulation Authority;
- (c) the Financial Conduct Authority.

**Power of the regulators to give transitional directions**

**198.**—(1) A regulator may direct that a relevant obligation to which a person is subject—

- (a) is not to apply to the person, or
- (b) is to apply to the person with modifications specified in the direction.

(2) Power under paragraph (1) is subject to regulation 200.

(3) Power of a regulator under paragraph (1) is exercisable on the regulator’s own initiative.

(4) Power of a regulator under paragraph (1), so far as it relates to rules made by the regulator, is in addition to (and does not limit) power of the regulator under section 138A of the Act<sup>(1)</sup>.

**Meaning of “relevant obligation”**

**199.**—(1) An obligation is a “relevant obligation”, in relation to a regulator and a person, if—

- (a) the obligation is imposed by or under an enactment,
- (b) the obligation is not an excluded obligation,
- (c) the regulator has responsibility for supervising, or has other functions relating to, the person’s compliance with the obligation, and
- (d) as a result of the operation of an exit instrument, the obligation—
  - (i) begins to apply in the person’s case, or

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<sup>(1)</sup> Section 138A was inserted by section 24 of the Financial Services Act 2012.

- (ii) applies in the person’s case differently from how it would, but for the exit instrument, apply in the person’s case.

(2) In this regulation—

“enactment” means—

- (a) an enactment contained in—
  - (i) an Act, or
  - (ii) subordinate legislation (within the meaning of the Interpretation Act 1978),
- (b) an enactment which is retained direct EU legislation, or
- (c) an enactment contained in, or in an instrument made under, Northern Ireland legislation;

“excluded obligation”, in relation to a regulator, means—

- (a) an obligation to satisfy the threshold conditions in relation to a regulated activity, or
- (b) an obligation imposed by or under rules made under section 64A or 137O of the Act<sup>(2)</sup>;

“exit instrument” means—

- (a) regulations under section 8 of the European Union (Withdrawal) Act 2018, or
- (b) an instrument under regulation 3 of the Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018<sup>(3)</sup>;

“regulated activity” and “threshold conditions” have the same meaning as in the Act (see, in particular, sections 22 and 55B)<sup>(4)</sup>.

### Giving, and effect, of transitional directions

**200.**—(1) A transitional direction—

- (a) may not be given more than 2 years after exit day,
- (b) may specify the period in relation to which it has effect, subject to paragraph (2),
- (c) may be given subject to conditions, and
- (d) may be given to a particular person or particular persons, or to persons of a description specified in the direction.

(2) A transitional direction—

- (a) is of no effect in relation to times before it is given,
- (b) is of no effect in relation to times before exit day, and
- (c) is of no effect in relation to times more than 2 years after exit day (without prejudice to any continuing effect in relation to earlier times).

(3) A regulator may not give a transitional direction, or a set of two or more transitional directions, to any person or persons unless the regulator is satisfied that the direction, or the directions viewed collectively, will prevent or mitigate disruption that could reasonably be expected to arise—

- (a) for the person, or
- (b) (as the case may be) for the persons viewed collectively,

from compliance with the unmodified obligation, or with the unmodified obligations viewed collectively, at times in relation to which the direction is, or the directions are, to have effect.

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(2) Section 64A was inserted by section 30 of the Financial Services (Banking Reform) Act 2013; section 137O was inserted by section 24 of the Financial Services Act 2012.

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

(4) Section 22 was amended by section 7 of the Financial Services Act 2012; section 55B was inserted by section 11 of that Act.

(4) The Financial Conduct Authority may not give a transitional direction, or a set of two or more transitional directions, unless the Authority is satisfied that doing so would not adversely affect the advancement of its key objectives viewed collectively; and here the reference to the Authority’s key objectives is to its objectives set out in section 1B of the Act, read with section 11A of the Act(5).

(5) The Prudential Regulation Authority may not give a transitional direction, or a set of two or more transitional directions, unless the Authority is satisfied that doing so would not adversely affect the advancement of its objectives under the Act(6).

(6) The Bank of England may not give a transitional direction, or a set of two or more transitional directions, unless the Bank is satisfied that doing so would not adversely affect the advancement of the Bank’s financial stability objective set out in section 2A(1) of the Bank of England Act 1998(7).

(7) For the purposes of this regulation, two or more transitional directions given by a regulator are a “set” if the regulator declares them to be a set.

### Variation of transitional directions

**201.**—(1) A regulator’s power under regulation 198(1) includes power to give a direction varying (or further varying) a transitional direction already given by that regulator, subject to paragraph (2).

(2) The way in which the power to vary is exercised must be such that the resulting—

- (a) varied direction, or
- (b) where the earlier direction was part of a set of transitional directions, set of directions as varied,

could be given by revoking existing, and giving new, transitional directions.

(3) Where a transitional direction has been given to two or more particular persons, or to persons of a description specified in the direction, the power to vary it may be exercised in relation to all, some or any one of those persons.

(4) Regulation 200(7) (meaning of “set”) applies also for the purposes of paragraph (2).

### Consultation

**202.**—(1) A regulator, before it gives a transitional direction in which another regulator has an interest, must consult that other regulator.

(2) For the purposes of paragraph (1)—

- (a) the Prudential Regulatory Authority has an interest in a transitional direction if the direction—
  - (i) might affect the Authority’s discharge of functions conferred on it by or under—
    - (aa) the Act, or
    - (bb) retained EU law, or
  - (ii) would apply to a PRA-authorised person, or to a person connected with a PRA-  
authorised person;
- (b) the Financial Conduct Authority has an interest in all transitional directions;
- (c) the Bank of England has an interest in a transitional direction if the direction—
  - (i) might affect the Bank’s discharge of functions conferred on it by or under—

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(5) Section 1B was inserted by section 6 of the Financial Services Act 2012; section 11A was inserted by section 2 of the Financial Services (Banking Reform) Act 2013.

(6) See sections 2B to 2D of the Act, which were inserted by section 6 of the Financial Services Act 2012. Section 2B was amended by section 1 of the Financial Services (Banking Reform) Act 2013.

(7) 1998 c.11; section 2A was inserted by section 238 of the Banking Act 2009 (c.1).

- (aa) the Act,
  - (bb) the Banking Act 2009<sup>(8)</sup>, or
  - (cc) retained EU law, or
- (ii) would apply to—
- (aa) a central counterparty or a central securities depository, or
  - (bb) a financial counterparty, or a non-financial counterparty, within the meaning of the EMIR regulation.
- (3) A regulator, before it gives a transitional direction, must consult the Treasury on a draft of the proposed direction.
- (4) Paragraphs (1) and (3) do not apply in the case of a transitional direction if the regulator assesses that the urgency of the situation is such that the direction should be given before the required consultation is begun or completed, but in that event the regulator must (as the case may be)—
- (a) begin the consultation required by those paragraphs in the case of the direction as soon as the direction is given, or
  - (b) complete the consultation.
- (5) In paragraph (2)—
- “central counterparty”, and “the EMIR regulation”, have the same meaning as in Part 18 of the Act (see section 313(1) of the Act<sup>(9)</sup>);
- “central securities depository” has the same meaning as in the Act (see section 417(1) of the Act<sup>(10)</sup>);
- “PRA-authorised person” has the same meaning as in the Act (see section 2B(5) of the Act<sup>(11)</sup>).
- (6) For the purposes of paragraph (2), a person is connected with another person if the first person is connected with the other person for the purposes of section 165 of the Act (see subsection (11) of that section<sup>(12)</sup>).

### Notification and publication of transitional directions

**203.**—(1) Where a transitional direction is given by a regulator, the regulator—

- (a) must prepare—
  - (i) an explanation of the purpose of the direction,
  - (ii) such guidance in connection with the direction as the regulator considers appropriate, and
  - (iii) a statement to the effect that the regulator is satisfied as required by paragraph (4), or (as the case may be) paragraph (5) or (6), of regulation 200, and
- (b) must publish the direction and the matters listed in sub-paragraph (a).

(2) Paragraph (1)(b) does not apply if the regulator is satisfied that it is inappropriate to publish the direction.

(3) Where a transitional direction is given by a regulator and the direction is not published on the regulator’s website, the regulator must take the steps appearing to the regulator to be best calculated to bring the direction, and the matters listed in paragraph (1)(a), to the attention of—

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<sup>(8)</sup> 2009 c.1.

<sup>(9)</sup> The definitions of “central counterparty” and “the EMIR regulation” were inserted by S.I. 2013/504.

<sup>(10)</sup> The definition of “central securities depository” was inserted by S.I. 2017/1064.

<sup>(11)</sup> Section 2B was inserted by section 6 of the Financial Services Act 2012.

<sup>(12)</sup> Section 165(11) was amended by paragraph 1(8) of Schedule 12 to the Financial Services Act 2012.

- (a) in the case of a direction given to a particular person or particular persons, that person or those persons, or
  - (b) in the case of a direction given to persons of a description specified in the direction, any persons who are likely to be affected by the direction.
- (4) Where a regulator gives a transitional direction, the regulator must without delay provide the Treasury with a copy of the direction.
- (5) Section 139A(5) of the Act(13) (consultation) does not apply to guidance under paragraph (1) (a)(ii).

### **Revocation of transitional directions**

**204.**—(1) A regulator may revoke a transitional direction given by the regulator, either wholly or in relation to one or some of the persons to whom it was given.

(2) Power of a regulator to revoke a transitional direction is exercisable on the regulator’s own initiative.

(3) Where a regulator revokes a transitional direction in relation to a particular person or particular persons, the regulator must provide the person, or each of the persons, with a copy of the revocation.

(4) Where a regulator revokes a transitional direction in relation to persons of a description specified in the revocation, the regulator must take the steps appearing to the regulator to be best calculated to bring the revocation to the attention of any persons likely to be affected by it.

(5) Where a regulator revokes a transitional direction, the regulator must without delay provide the Treasury with a copy of the revocation.

### **Annual reports and complaints**

**205.**—(1) Power to give a transitional direction is treated as a “relevant sub-delegated power” for the purposes of paragraph 32 of Schedule 7 to the European Union (Withdrawal) Act 2018.

(2) Functions under this Part are to be treated as not being “relevant functions” for the purposes of section 84 of the Financial Services Act 2012 (arrangements for the investigation of complaints relating to exercise of relevant functions of regulators).

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(13) Section 139A was inserted by section 24 of the Financial Services Act 2012.