

**2019 No. 541**

**EXITING THE EUROPEAN UNION**

**FINANCIAL SERVICES**

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

*Made* - - - - *11th March 2019*

*Coming into force in accordance with regulation 1*

The Treasury, in exercise of the powers conferred by section 8(1) of the European Union (Withdrawal) Act 2018<sup>(a)</sup>, make the following Regulations:

A draft of these Regulations has been approved by a resolution of each House of Parliament in accordance with paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018.

**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(a);
- (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”).

(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.

### 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”) 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;

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(a) 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.

- (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;
  - (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(a);
- (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(b);
- (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—

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(a) OJ L 275, 25.10.2003.  
 (b) OJ C 326, 26.10.2012.

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

*Rebecca Harris  
Paul Maynard*

11th March 2019

Two of the Lords Commissioners of Her Majesty's Treasury

## SCHEDULE 1

Regulation 2

### Equivalence determinations

#### *Benchmarks Regulation*

**1.**—(1) For the purposes of Article 30(2) of Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds (“Regulation (EU) 2016/1011”), to determine that the legal framework and supervisory practice of an EEA state ensures that—

- (a) administrators authorised or registered in that EEA state comply with binding requirements which are equivalent to the requirements under Regulation (EU) 2016/1011, in particular taking account of whether the legal framework and supervisory practice of an EEA state ensures compliance with the International Organisation of Securities Commissions’ (“IOSCO”) principles for financial benchmarks or, where applicable, with the IOSCO principles for Oil Price Reporting Agencies (“OPRAs”); and
- (b) the binding requirements are subject to effective supervision and enforcement on an on-going basis in that EEA state.

(2) For the purposes of Article 30(3) of Regulation (EU) 2016/1011, to determine that—

- (a) binding requirements in an EEA state with respect to specific administrators or specific benchmarks or families of benchmarks are equivalent to the requirements under Regulation (EU) 2016/1011, in particular taking account of whether the legal framework and supervisory practice of an EEA state ensures compliance with—
- (i) the IOSCO principles for financial benchmarks or,
- (ii) where applicable, with the IOSCO principles for OPRAs; and
- (b) such specific administrators or specific benchmarks or families of benchmarks are subject to effective supervision and enforcement on an on-going basis in that EEA state.

#### *Capital Requirements Regulation*

**2.** For the purpose of determining capital requirements under Regulation (EU) 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms (“CRR”), to determine whether an EEA state applies—

- (a) prudential supervisory and regulatory requirements at least equivalent to those applied in the United Kingdom, for the purposes of Article 107(3) of CRR;
- (b) supervisory and regulatory arrangements at least equivalent to those applied in the United Kingdom, for the purposes of Articles 114(7), 115(4), 116(5), 132(3) and 142(2) of CRR.

### *Credit Rating Agencies Regulation*

**3.—**(1) For the purposes of Article 5 of Regulation (EC) 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies (“CRAR”), to determine whether the legal and supervisory framework of an EEA state ensures that credit rating agencies authorised or registered in that EEA state—

- (a) comply with legally binding requirements which are equivalent to the requirements resulting from CRAR; and
- (b) are subject to effective supervision and enforcement in that EEA state.

(2) A third-country legal and supervisory framework may be considered equivalent to CRAR for the purposes of paragraph (1) only if that framework fulfils at least the following conditions—

- (a) credit rating agencies in that EEA state are subject to authorisation or registration and are subject to effective supervision and enforcement on an ongoing basis;
- (b) credit rating agencies in that EEA state are subject to legally binding rules which are equivalent to those set out in Articles 6 to 12 of and Annex I to CRAR; and
- (c) the regulatory regime in that EEA state prevents interference by the supervisory authorities and other public authorities of that EEA state with the content of credit ratings and methodologies.

### *EMIR*

**4.—**(1) For the purposes of Article 2A of EMIR, to determine that a third-country market complies with legally binding requirements which are—

- (a) equivalent to the requirements laid down in the law of the United Kingdom which were relied on by the United Kingdom immediately before exit day to implement Title III of EMIR; and
- (b) subject to effective supervision and enforcement in that EEA state on an ongoing basis for the purposes of Article 2A(1) of EMIR.

(2) For the purposes of Article 13 of EMIR, to determine that the legal, supervisory and enforcement arrangements of an EEA state—

- (a) are equivalent to the requirements laid down under Articles 4, 9, 10 and 11 of EMIR;
- (b) ensure protection of professional secrecy that is equivalent to that set out in that Regulation; and
- (c) are being effectively applied and enforced in an equitable and non-distortive manner so as to ensure effective supervision and enforcement in that EEA state.

### *Markets in Financial Instruments*

**5.—**(1) For the purposes of Article 23 of Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments (“MiFIR”) and paragraph 8 of Schedule 3 to MIFIR, to determine whether the legal and supervisory framework of an EEA state ensures that a trading venue or regulated market, as appropriate, authorised in that country complies with legally binding requirements which are equivalent to the requirements resulting from MAR, Title II of MiFIR, and the law of the United Kingdom which was relied on by the United Kingdom immediately before exit day to implement Title III of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments<sup>(a)</sup> and Directive 2004/109/EC of the European Parliament and of the Council on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market (“Transparency Directive”)<sup>(b)</sup>, in

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(a) OJ L 173, 12.6.2014, p. 349–496, as amended.

(b) OJ L390, 31.12.2004, p. 38, as amended.

accordance with paragraph 8(2) of Schedule 3 to Regulation (EU) 600/2014, and which are subject to effective supervision and enforcement in that EEA state.

(2) For the purposes of Article 28 of MiFIR, to determine that the legal and supervisory framework of an EEA state ensures that a trading venue authorised in that country complies with legally binding requirements which are equivalent to the requirements for the trading venues referred to in paragraph 1(a), (b) or (c) of Article 28 of MiFIR, resulting from MiFIR, the law of the United Kingdom which was relied on by the United Kingdom immediately before exit day to implement Directive 2014/65/EU, and Regulation (EU) No 596/2014, and which are subject to effective supervision and enforcement in that EEA state, in accordance with Article 28(4) of MiFIR.

(3) A determination made under sub-paragraph (1) may be limited to a category of trading venues.

**6.** For the purposes of Article 33 of MiFIR, to determine that the legal, supervisory and enforcement arrangements of an EEA state—

- (a) are equivalent to the requirements resulting from Articles 28 and 29 of MiFIR;
- (b) ensure protection of professional secrecy that is equivalent to that set out in MiFIR;
- (c) are being effectively applied and enforced in an equitable and non-distortive manner so as to ensure effective supervision and enforcement in that EEA state.

**7.** For the purposes of Article 38(3) of MiFIR, to determine that the legal and supervisory framework of an EEA state ensures that a trading venue and CCP authorised in that EEA state complies with legally binding requirements which are equivalent to the requirements referred to in the second subparagraph of paragraph 3 of Article 38 of MiFIR and which are subject to effective supervision and enforcement in that EEA state.

**8.** For the purpose of Article 47 of MiFIR, to determine that the legal and supervisory arrangements of an EEA state ensure that firms authorised in that EEA state comply with legally binding prudential and business conduct requirements which have equivalent effect to the requirements set out in MiFIR, in the law of the United Kingdom which was relied on by the United Kingdom immediately before exit day to implement Directive 2013/36/EU and Directive 2014/65/EU and in the implementing measures adopted under this Regulation and under those Directives and that the legal framework of that EEA state provides for an effective equivalent system for the recognition of investment firms authorised under third-country legal regimes.

#### *Prospectus Directive and Transparency Directive*

**9.—(1)** For the purposes of rules made by the Financial Conduct Authority that are “prospectus rules” as defined by section 73A(4) of FSMA (“prospectus rules), to determine that a third country ensures the equivalence of prospectuses drawn up in that country with the law of the United Kingdom which was relied on by the United Kingdom immediately before exit day to implement the Prospectus Directive.

(2) Such equivalence may arise by reason of—

- (a) the third country’s national law, or
- (b) practices and procedures based on international standards set by international organisations including the disclosure standards of IOSCO.

(3) For the purposes of—

- (a) rules made by the FCA that are prospectus rules or “transparency rules” as defined by section 89A(5) of FSMA, and
- (b) Commission Regulation (EC) No 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information

contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements<sup>(a)</sup>;

to determine that the Generally Accepted Accounting Principles of a third country may be considered equivalent to UK-adopted international accounting standards within the meaning given by section 474(1) of the Companies Act 2006<sup>(b)</sup>.

(4) The determination in paragraph (3) may only be made if the financial statements drawn up in accordance with Generally Accepted Accounting Principles of the third country enable investors to make a similar assessment of the assets and liabilities, financial position, profit and losses and prospects of the issuer as financial statements drawn up in accordance with UK-adopted international accounting standards, with the result that investors are likely to make the same decisions about the acquisition, retention or disposal of securities of an issuer.

(5) For the purpose of prospectus rules, to determine that the legal and supervisory framework of a third country ensures that a regulated market authorised in that third country complies with legally binding requirements which are, for the purpose of the application of the exemption under paragraph 5 of rule 1.2.2 of the FCA Prospectus Rules, equivalent to the requirements resulting from:

- (a) Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse,
  - (b) the law of the United Kingdom which was relied on by the United Kingdom immediately before exit day to implement Title III of Directive 2004/39/EC<sup>(c)</sup>, and
  - (c) the law of the United Kingdom which was relied on by the United Kingdom immediately before exit day to implement the Transparency Directive,
- and which are subject to effective supervision and enforcement in that third country.

(6) The determination in paragraph (5) may only be made if the legal and supervisory framework of the third country fulfils at least the following conditions —

- (a) the markets are subject to authorisation and to effective supervision and enforcement on an ongoing basis;
- (b) the markets have clear and transparent rules regarding admission of securities to trading so that such securities are capable of being traded in a fair, orderly and efficient manner, and are freely negotiable;
- (c) security issuers are subject to periodic and ongoing information requirements ensuring a high level of investor protection; and
- (d) market transparency and integrity are ensured by the prevention of market abuse in the form of insider dealing and market manipulation.

(7) For the purposes of rules made by the FCA that are “transparency rules” as defined by section 89A(5) of FSMA, to determine that, by reason of its domestic law, regulations, administrative provisions, or of the practices or procedures based on the international standards set by international organisations, the third country where the issuer is registered ensures the equivalence of the information requirements provided for in the law of the United Kingdom which was relied on by the United Kingdom immediately before exit day to implement Directive 2004/109/EC.

#### *Securities Financing Transactions Regulation*

**10.**—(1) For the purpose of Article 19(1) of SFTR, to determine that the legal and supervisory arrangements of an EEA state ensure that—

- (a) trade repositories authorised in that EEA state comply with legally binding requirements which are equivalent to those laid down in SFTR;

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(a) OJ L 149, 30.4.2004, p.3, as amended.

(b) 2006 c. 46.

(c) OJ L 145, 30.4.2004, as amended.



- (b) effective supervision of trade repositories and effective enforcement of their obligations takes place in that EEA state on an ongoing basis;
- (c) guarantees of professional secrecy exist, including the protection of business secrets shared with third parties by the authorities, and those guarantees are at least equivalent to those laid down in SFTR; and
- (d) trade repositories authorised in that EEA state are subject to a legally binding and enforceable obligation to give direct and immediate access to the data to the entities referred to in Article 12(2) of SFTR.

(2) A determination made under sub-paragraph (1) must identify the third-country authorities that are entitled to access the data on securities financing transactions held in trade repositories established in the United Kingdom.

(3) For the purpose of Article 21(1) of SFTR, to determine that the legal, supervisory and enforcement arrangements of an EEA state—

- (a) are equivalent to the requirements laid down in Article 4 of SFTR;
- (b) ensure protection of professional secrecy equivalent to that laid down in that Regulation;
- (c) are being effectively applied and enforced in an equitable and non-distortive manner in order to ensure effective supervision and enforcement in that EEA state; and
- (d) ensure that the entities referred to in Article 12(2) of SFTR have either—
  - (i) direct access to the details on data on securities financing transactions pursuant to Article 19(1) of SFTR; or
  - (ii) indirect access to the details on securities financing transactions pursuant to Article 20 of SFTR.

#### *Short Selling Regulation*

**11.** For the purpose of Article 17 of Regulation (EU) 236/2012 of the European Parliament and of the Council on short selling and certain aspects of credit default swaps, to determine that the legal and supervisory framework of an EEA state satisfies the conditions in Article 17(2) of the Short Selling Regulation.

#### *Solvency 2 Regulation*

**12.—**(1) For the purposes of Articles 378, 379 and 380 of the Solvency 2 Regulation, to determine that—

- (a) the solvency regime of an EEA state that applies to reinsurance activities of undertakings with the head office in that EEA state is equivalent to that laid down in the relevant UK law,
- (b) the supervisory regime of an EEA state is equivalent to that laid down in the relevant UK law, and
- (c) the prudential regime of an EEA state is equivalent to that laid down in the relevant UK law.

(2) The Treasury may only make a determination for the purposes of sub-paragraph (1) in relation to a country if it is satisfied that—

- (a) in the case of a determination under sub-paragraph (1)(a), the criteria set out in Article 378 of the Solvency 2 Regulation are fulfilled;
- (b) in the case of a determination under sub-paragraph (1)(b), the criteria set out in Article 379 of the Solvency 2 Regulation are fulfilled; and
- (c) in the case of a determination under sub-paragraph (1)(c), the criteria set out in Article 380 of the Solvency 2 Regulation are fulfilled.

(3) The Treasury may also determine that—

- (a) the solvency regime of a third country applied to reinsurance activities of undertakings with their head office in that third country is temporarily equivalent to that laid down in the relevant UK law if the criteria set out in Article 378A(5) of the Solvency 2 Regulation are fulfilled;
  - (b) the solvency regime of a third country that applies to undertakings with their head office in that third country is provisionally equivalent to that laid down in the relevant UK law if the criteria set out in Article 379A(4) of the Solvency 2 Regulation are fulfilled;
  - (c) the prudential regime of a third country that applies to undertakings the parent undertaking of which has its head office outside the United Kingdom is temporarily equivalent to that laid down in the relevant UK law if the criteria set out in Article 380A(4) of the Solvency 2 Regulation are fulfilled.
- (4) A determination of equivalence under paragraph (3) shall have effect for the period specified in Articles 378A(7), 379A(6) and (8) and 380A(6) and (7) of the Solvency 2 Regulation.
- (5) For the purposes of this paragraph—
- (a) the “relevant UK law” means United Kingdom enactments or rules which implemented the following provisions of the Solvency 2 Directive (within the meaning of Article 1(61) of the Solvency 2 Regulation)—
    - (i) in the case of a determination under paragraph (2)(a) or (3)(a), Title I of the Solvency 2 Directive,
    - (ii) in the case of a determination under paragraph (2)(b) or (3)(b), Title I, Chapter IV of the Solvency 2 Directive,
    - (iii) in the case of a determination under paragraph (2)(c) or (3)(c), Title III of the Solvency 2 Directive;
  - (b) the “Solvency 2 Directive” means Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of insurance and reinsurance<sup>(a)</sup> as it had effect immediately before exit day;
  - (c) the “Solvency 2 Regulation” means Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of insurance and reinsurance.

## SCHEDULE 2

Regulation 7

### Commission Tertiary Legislation

#### *EMIR*

1. In Article 1 of the following Commission Implementing Decisions, for “regulated markets as defined in point (14) of Article 4(1) of Directive 2004/39/EC” substitute “UK regulated markets as defined in Article 2(1)(13A) of Regulation (EU) 600/2014 of 15 May 2014 on markets in financial instruments”—

- (a) Commission Implementing Decision (EU) 2016/1073 of 1 July 2016 on the equivalence of designated contract markets in the United States of America in accordance with Regulation (EU) No 648/2012 of the European Parliament and of the Council;
- (b) Commission Implementing Decision (EU) 2016/2270 of 15 December 2016 on the equivalence of approved exchanges in Singapore in accordance with Regulation (EU) No 648/2012 of the European Parliament and of the Council;
- (c) Commission Implementing Decision (EU) 2016/2271 of 15 December 2016 on the equivalence of financial instrument exchanges and commodity exchanges in Japan in accordance with Regulation (EU) No 648/2012 of the European Parliament and of the Council;

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<sup>(a)</sup> OJ L 335, 17.12.2009, p. 1, as amended.

- (d) Commission Implementing Decision (EU) 2016/2272 of 15 December 2016 on the equivalence of financial markets in Australia in accordance with Regulation (EU) No 648/2012 of the European Parliament and of the Council;
- (e) Commission Implementing Decision (EU) 2016/2273 of 15 December 2016 on the equivalence of recognised exchanges in Canada in accordance with Regulation (EU) No 648/2012 of the European Parliament and of the Council.

*Markets in financial instruments*

2.—(1) In Commission Implementing Decision (EU) 2017/2320 of 13 December 2017 on the equivalence of the legal and supervisory framework of the United States of America for national securities exchanges and alternative trading systems in accordance with Directive 2014/65/EU of the European Parliament and of the Council<sup>(a)</sup>—

- (a) in Article 1, for the words from “considered” to the end, substitute—

“considered—

- (a) to be equivalent to the requirements for UK regulated markets as defined in Regulation (EU) 600/2014, resulting from—
  - (i) Regulation (EU) 596/2014;
  - (ii) Title II of Regulation (EU) 600/2014; and
  - (iii) the law of the United Kingdom which was relied on by the United Kingdom immediately before exit day to implement Title III of Directive 2014/65/EU and Directive 2004/109/EC, and
- (b) to be subject to effective supervision and enforcement.”;
- (b) in the Annex to the Decision, for “regulated markets as defined in Directive 2014/65/EU”, both times it appears, substitute “UK regulated markets as defined in Regulation (EU) 600/2014”.

(2) In the Commission Implementing Decisions listed in sub-paragraph (3), in Article 1, for the words from “considered” to the end, substitute—

“considered—

- (a) to be equivalent to the requirements for UK regulated markets as defined in Regulation (EU) 600/2014, resulting from—
  - (i) Regulation (EU) 596/2014;
  - (ii) Title II of Regulation (EU) 600/2014; and
  - (iii) the law of the United Kingdom which was relied on by the United Kingdom immediately before exit day to implement Title III of Directive 2014/65/EU and Directive 2004/109/EC and
- (b) to be subject to effective supervision and enforcement.”;
- (3) The Commission Implementing Decisions listed in this sub-paragraph are—
  - (a) Commission Implementing Decision (EU) 2017/2318 of 13 December 2017 on the equivalence of the legal and supervisory framework in Australia applicable to financial markets in accordance with Directive 2014/65/EU of the European Parliament and of the Council;
  - (b) Commission Implementing Decision (EU) 2017/2319 of 13 December 2017 on the equivalence of the legal and supervisory framework applicable to recognised exchange companies in Hong Kong Special Administrative Region in accordance with Directive 2014/65/EU of the European Parliament and of the Council.

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(a) OJ L 331, 14.12.2017, p. 94.

3. In Commission Implementing Decision (EU) 2017/2238 of 5 December 2017 on the equivalence of the legal and supervisory framework applicable to designated contract markets and swap execution facilities in the United States of America in accordance with Regulation (EU) No 600/2014 of the European Parliament and of the Council—

- (a) in Article 1, for “Directive 2014/65/EC” substitute “that Regulation”);
- (b) in the Annex to the decision, for “Directive 2014/65/EU” both times it occurs, substitute “Regulation (EU) 600/2014”.

4. In Commission Implementing Decision (EU) 2018/2047 of 20 December 2018 on the equivalence of the legal and supervisory framework applicable to stock exchanges in Switzerland in accordance with Directive 2014/65/EU of the European Parliament and of the Council, in Article 1—

- (a) for “Directive 2014/65/EC” substitute “that Regulation”;
- (b) for “Directive 2004/39/EC” substitute “the law of the United Kingdom which was relied on by the United Kingdom immediately before exit day to implement Directive 2004/39/EC”.

#### *Capital Requirements Regulation*

5. In Commission Implementing Decision 2014/908 of 12 December 2014 on the equivalence of the supervisory and regulatory requirements of certain third countries and territories for the purposes of the treatment of exposures according to Regulation (EU) No 575/2013 of the European Parliament and of the Council, in Articles 1, 2, 3, 4 and 5, for “Union” each time it occurs, substitute “United Kingdom”.

#### *Solvency 2*

6. In Commission Delegated Decision (EU) 2015/1602 of 5 June 2015 on the equivalence of the solvency and prudential regime for insurance and reinsurance undertakings in force in Switzerland based on Articles 172(2), 227(4) and 260(3) of Directive 2009/138/EC of the European Parliament and of the Council—

- (a) in Articles 1, 2 and 3, after “requirements of”, each time it occurs, insert “United Kingdom enactments and rules which implemented”;
- (b) after Article 3, insert—

#### *“Article 3A*

In this decision, references to the United Kingdom enactments and rules which implemented provisions in Directive 2009/138/EC are to the law of the United Kingdom or any part of the United Kingdom which was relied on immediately before exit day to implement Directive 2009/138/EC and its implementing measures—

- (a) in rules made by the Financial Conduct Authority or by the Prudential Regulation Authority under the Financial Services and Markets Act 2000 as they have effect on exit day, and
- (b) as amended from time to time, in all other cases.”

7. In Commission Delegated Decision (EU) 2016/309 of 26 November 2015 on the equivalence of the supervisory regime for insurance and reinsurance undertakings in force in Bermuda to the regime laid down in Directive 2009/138/EC of the European Parliament and of the Council and amending Commission Delegated Decision (EU) 2015/2290—

- (a) in Articles 1, 2 and 3, after “laid down in”, each time it occurs, insert “United Kingdom enactments and rules which implemented”;
- (b) after Article 3, insert—

*“Article 3A*

In this decision, references to the United Kingdom enactments and rules which implemented provisions in Directive 2009/138/EC are to the law of the United Kingdom or any part of the United Kingdom which was relied on immediately before exit day to implement Directive 2009/138/EC and its implementing measures—

- (a) in rules made by the Financial Conduct Authority or by the Prudential Regulation Authority under the Financial Services and Markets Act 2000 as they have effect on exit day, and
- (b) as amended from time to time, in all other cases.”

**8.** In Commission Delegated Decision (EU) 2016/310 of 26 November 2015 on the equivalence of the solvency regime for insurance and reinsurance undertakings in force in Japan to the regime laid down in Directive 2009/138/EC of the European Parliament and of the Council—

- (a) in Articles 1 and 2, after “laid down in”, each time it occurs, insert “United Kingdom enactments and rules which implemented”;
- (b) after Article 2, insert—

*“Article 2A*

In this decision, references to the United Kingdom enactments and rules which implemented provisions in Directive 2009/138/EC are to the law of the United Kingdom or any part of the United Kingdom which was relied on immediately before exit day to implement Directive 2009/138/EC and its implementing measures—

- (a) in rules made by the Financial Conduct Authority or by the Prudential Regulation Authority under the Financial Services and Markets Act 2000 as they have effect on exit day, and
- (b) as amended from time to time, in all other cases.”

**9.** In Commission Delegated Decision (EU) 2015/2290 of 12 June 2015 on the provisional equivalence of the solvency regimes in force in Australia, Bermuda, Brazil, Canada, Mexico and the United States and applicable to insurance and reinsurance undertakings with head offices in those countries—

- (a) in Article 1, after “laid down in”, each time it occurs, insert “United Kingdom enactments and rules which implemented”;
- (b) after Article 1, insert—

*“Article 1A*

In Article 1, references to the United Kingdom enactments and rules which implemented provisions in Directive 2009/138/EC are to the law of the United Kingdom or any part of the United Kingdom which was relied on immediately before exit day to implement Directive 2009/138/EC and its implementing measures—

- (a) in rules made by the Financial Conduct Authority or by the Prudential Regulation Authority under the Financial Services and Markets Act 2000 as they have effect on exit day, and
- (b) as amended from time to time, in all other cases.”

*Prospectus Directive*

**10.** In Commission Regulation (EC) No 1289/2008 of 12 December 2008 amending Commission Regulation (EC) No 809/2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards elements related to prospectuses and advertisements, omit Article 2.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations are made in exercise of the powers in section 8(1) of the European Union (Withdrawal) Act 2018 (c. 16). They make provision to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In particular, these Regulations address deficiencies under paragraphs (a), (b), (c) and (d) of section 8(2) of the Act and transfer functions under section 8(6) of the Act.

On and after exit day, EEA states will be third countries to the UK. Third country status is relevant to several aspects of financial services law, where it is mitigated for countries that are found to have equivalent legislation and regulatory enforcement to that in the UK.

Regulation 2 provides a time-limited power to HM Treasury to determine by direction that the legal and supervisory framework of a member state of the European Union or the European Economic Area is equivalent to the framework in the United Kingdom for the purpose of provisions in retained EU law listed in Schedule 1.

Regulation 3 provides a time-limited power to HM Treasury to determine by direction that central banks and certain other bodies in the EEA are exempt from certain provisions in retained EU law.

Regulation 8 revokes the EU Regulations that established the European Supervisory Agencies and the European Systemic Risk Board.

Schedule 2 corrects deficiencies in decisions in retained EU law made under the equivalence regimes listed in Schedule 1.

An impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available from HM Treasury, 1 Horse Guards Road, London SW1A 2HQ and is published alongside this instrument at [www.legislation.gov.uk](http://www.legislation.gov.uk).

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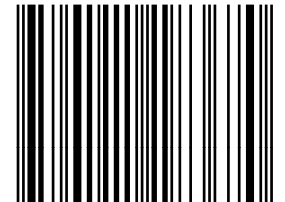


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