

*Status: Point in time view as at 31/12/2020. This version of this part contains provisions that are prospective.*

*Changes to legislation: The Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019, PART 4 is up to date with all changes known to be in force on or before 04 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## STATUTORY INSTRUMENTS

# 2019 No. 632

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

### PART 4

#### Amendments to the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005

##### Modifications etc. (not altering text)

- C1** Pts. 3-6 modified in part (31.12.2020) by [The Gibraltar \(Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/680\)](#), regs. 1(2), **11(1)(4)(5)** (with reg. 11(8)-(10)) (as amended by [S.I. 2020/1301](#), regs. 1, 3, Sch. para. 40(f)); 2020 c. 1, Sch. 5 para. 1(1)

##### Introduction and transitional provision

**162.**—(1) The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 <sup>M1</sup> is amended as set out in this Part.

(2) Nothing in this Part causes a communication to constitute a breach of the prohibition in subsection (1) of section 21 of the Financial Services and Markets Act 2000 <sup>M2</sup> (restrictions on financial promotion) if—

- (a) a contract entered into before [<sup>F1</sup>IP completion day] required the communication to be made, and
- (b) the communication would not have constituted a breach of the prohibition had it been made before [<sup>F2</sup>IP completion day].

##### Textual Amendments

- F1** Words in reg. 162(2)(a) substituted (30.12.2020) by [The Financial Services and Economic and Monetary Policy \(Consequential Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1301\)](#), regs. 1, 3, **Sch. para. 33(u)**
- F2** Words in reg. 162(2)(b) substituted (30.12.2020) by [The Financial Services and Economic and Monetary Policy \(Consequential Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1301\)](#), regs. 1, 3, **Sch. para. 33(u)**

##### Commencement Information

- I1** Reg. 162 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see reg. 1(3)

##### Marginal Citations

- M1** [S.I. 2005/1529](#).

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**M2** 2000 c.8.

## Article 2 (interpretation: general)

**163.** In article 2 (interpretation: general), in paragraph (1), in the definition of “international organisation”, in paragraphs (a) and (b) omit “or another EEA State”.

### Commencement Information

**I2** Reg. 163 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1](#), [Sch. 5 para. 1\(1\)](#)), see reg. 1(3)

## Article 6 (interpretation: communications)

**164.** In article 6 (interpretation: communications) omit paragraphs (g) and (h).

### Commencement Information

**I3** Reg. 164 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1](#), [Sch. 5 para. 1\(1\)](#)), see reg. 1(3)

## Article 8A (interpretation: outgoing electronic commerce communication)

**165.** Omit article 8A <sup>M3</sup> (interpretation: outgoing electronic commerce communication).

### Commencement Information

**I4** Reg. 165 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1](#), [Sch. 5 para. 1\(1\)](#)), see reg. 1(3)

### Marginal Citations

**M3** Article 8A was amended by [S.I. 2011/1265](#).

## Article 10 (application to qualifying contracts of insurance)

**166.** In article 10 (application to qualifying contracts of insurance), in paragraph 1—

- (a) omit sub-paragraph (c);
- (b) omit sub-paragraph (d).

### Commencement Information

**I5** Reg. 166 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1](#), [Sch. 5 para. 1\(1\)](#)), see reg. 1(3)

## Article 12 (communications to overseas recipients)

**167.** In article 12 (communications to overseas recipients) omit paragraph 7.

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#### Commencement Information

**I6** Reg. 167 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see reg. 1(3)

#### Article 18A (electronic commerce communications: mere conduits, caching and hosting)

**168.**—(1) Article 18A (electronic commerce communications: mere conduits, caching and hosting) is amended as follows.

(2) In paragraph (a), for “paragraph 1 of Article 12, 13 or 14 of the electronic commerce directive” substitute “regulation 17(1), 18 or 19 of the Electronic Commerce (EC Directive) Regulations 2002 M4 ”.

(3) In paragraph (b), for “the conditions mentioned in the paragraph in question, to the extent” substitute “the conditions mentioned in—

- “(i) regulation 17(1)(a) to (c) of those Regulations (where regulation 17 is the relevant regulation),
- (ii) regulation 18(b)(i) to (v) of those Regulations (where regulation 18 is the relevant regulation), or
- (iii) regulation 19(a)(i) and (ii) of those Regulations (where regulation 19 is the relevant regulation),

to the extent”.

#### Commencement Information

**I7** Reg. 168 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see reg. 1(3)

#### Marginal Citations

**M4** [S.I. 2002/2013](#).

#### Article 20B (incoming electronic commerce communications)

**169.** Omit article 20B (incoming electronic commerce communications).

#### Commencement Information

**I8** Reg. 169 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see reg. 1(3)

#### Article 25 (relevant insurance activity: non-real time communications: reinsurance and large risks)

**170.** In article 25 (relevant insurance activity: non-real time communications: reinsurance and large risks), in paragraph (4) omit “(within the meaning of the Seventh Company Law Directive)”.

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#### Commencement Information

**I9** Reg. 170 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see reg. 1(3)

#### Article 29 (communications required or authorised by enactments)

**171.** In article 29 (communications required or authorised by enactments), after paragraph (4)<sup>M5</sup> insert—

“(4A) The reference in paragraph (4) to Regulation (EU) 345/2013 is a reference to that instrument as it has effect at the beginning of the day on which the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 are made (but see regulation 2 of the European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) Regulations 2019<sup>M6</sup>, which may further update the reference).”.

#### Commencement Information

**I10** Reg. 171 in force at 23.3.2019, see reg. 1(2)(f)

#### Marginal Citations

**M5** Paragraph (4) was inserted by [S.I. 2013/1773](#).

**M6** [S.I. 2019/628](#).

#### Article 34 (governments, central banks etc)

**172.** In article 34 (governments, central banks etc) omit sub-paragraph (b)(v).

#### Commencement Information

**I11** Reg. 172 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see reg. 1(3)

#### Article 36 (nationals of EEA States other than United Kingdom)

**173.** Omit article 36 (nationals of EEA States other than United Kingdom).

#### Commencement Information

**I12** Reg. 173 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see reg. 1(3)

#### Article 59 (annual accounts and directors' report)

**174.—**(1) Article 59 (annual accounts and directors' report) is amended as follows.

(2) In paragraph (1)(b)—

(a) at the end of sub-paragraph (ai)<sup>M7</sup> insert “ or ”;

(b) at the end of sub-paragraph (i)<sup>M8</sup> omit “or”;

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(c) omit sub-paragraph (iii) <sup>M9</sup>.

(3) In paragraph (7) omit sub-paragraph (e).

(4) The amendments made by this regulation do not apply in relation to any report for a financial year beginning before [<sup>F3</sup>IP completion day].

#### Textual Amendments

**F3** Words in reg. 174(4) substituted (30.12.2020) by [The Financial Services and Economic and Monetary Policy \(Consequential Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1301\)](#), regs. 1, 3, **Sch. para. 33(v)**

#### Commencement Information

**I13** Reg. 174 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see reg. 1(3)

#### Marginal Citations

**M7** Sub-paragraph (ai) was inserted by [S.I. 2015/352](#).

**M8** Sub-paragraph (i) was amended by [S.I. 2011/1265](#).

**M9** Sub-paragraph (iii) was amended by [S.I. 2011/1265](#) and [S.I. 2015/352](#).

PROSPECTIVE

### Article 70 (promotions included in listing particulars etc)

<sup>F4</sup>**175.** . . . . .

#### Textual Amendments

**F4** Reg. 175 omitted (6.9.2019) by virtue of [The Prospectus \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1234\)](#), **regs. 1(2)**, 28 (with savings in [S.I. 2019/680](#), **reg. 11** (as amended by [S.I. 2019/1234](#), **reg. 29(2)**))

### Schedule 1 (controlled activities and controlled investments)

**176.**—(1) In Schedule 1, Part 2 (controlled investments) is amended as follows.

(2) In paragraph 14 (shares or stock)—

(a) in sub-paragraph (2)(b) <sup>M10</sup> omit “or in a body constituted under the law of another EEA State for purposes equivalent to those of such a body”;

(b) omit sub-paragraph (3)(d).

(3) In paragraph 15A <sup>M11</sup> (alternative finance investment bonds), for sub-paragraph (f) <sup>M12</sup> of paragraph (2) substitute—

“(f) the arrangements are—

(i) a security that is admitted to the official list in accordance with Part 6 of the Act,

(ii) a security that is admitted to an official list in the EEA (in accordance with the provisions of Directive [2001/34/EC](#) of the European Parliament and of the Council on the admission of securities to official stock exchange listing and on information

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to be published on those securities) and has been so admitted since before [<sup>F5</sup>IP completion day],

- (iii) a security that is admitted to trading on a recognised investment exchange or a UK trading venue, or
- (iv) a security that is admitted to trading on an EU trading venue and has been so admitted since before [<sup>F5</sup>IP completion day].”.

(4) In paragraph 21 <sup>M13</sup> (options)—

- (a) in sub-paragraph (1)(e) <sup>M14</sup>, for the words after “an option to which” substitute “ paragraph 5, 6, 7 or 10 of Part 1 of Schedule 2 (read with Articles 5, 6, 7, and 8 of the Commission Regulation) applies ”;
- (b) in sub-paragraph (2)(d)(i) <sup>M15</sup>, for “Section C of Annex I to the markets in financial instruments directive” substitute “ Part 1 of Schedule 2 ”;
- (c) in sub-paragraph (2)(d)(ii), for “Section C of Annex I to the markets in financial instruments directive” substitute “ Part 1 of that Schedule ”;
- (d) in sub-paragraph (3)(c) <sup>M16</sup>, for “Section C of Annex I to the markets in financial instruments directive” substitute “ Part 1 of Schedule 2 ”;
- (e) in sub-paragraph (4), for sub-paragraphs (a) to (d) <sup>M17</sup> substitute—
  - “(a) an investment firm or qualifying credit institution is providing or performing investment services and activities on a professional basis;
  - (b) a management company which has a Part 4A permission to do so is providing the investment service specified in paragraph 4 or 5 of Part 3 of Schedule 2 or the ancillary service specified in paragraph 1 of Part 3A of that Schedule;
  - (c) a market operator is providing the investment service specified in paragraph 8 or 9 of Part 3 of that Schedule;
  - (d) a full-scope UK AIFM which has a Part 4A permission to do so is providing the investment service specified in paragraph 1, 4 or 5 of Part 3 of that Schedule or the ancillary service specified in paragraph 1 of Part 3A of that Schedule.”;
- (f) omit sub-paragraph (5) <sup>M18</sup>.

(5) In paragraph 22 (futures)—

- (a) in sub-paragraph (1A)(d), (1B)(e) and (1C)(c) <sup>M19</sup>, for “Section C of Annex I to the markets in financial instruments directive” substitute “ Part 1 of Schedule 2 ”;
- (b) in sub-paragraph (1CA) <sup>M20</sup>, for “Section C of Annex I to the markets in financial instruments directive” substitute “ Part 1 of Schedule 2 ”;
- (c) in sub-paragraph (1D), for sub-paragraphs (a) to (d) <sup>M21</sup> substitute—
  - “(a) an investment firm or qualifying credit institution is providing or performing investment services and activities on a professional basis;
  - (b) a management company which has a Part 4A permission to do so is providing the investment service specified in paragraph 4 or 5 of Part 3 of Schedule 2 or the ancillary service specified in paragraph 1 of Part 3A of that Schedule;
  - (c) a market operator is providing the investment service specified in paragraph 8 or 9 of Part 3 of that Schedule;
  - (d) a full-scope UK AIFM which has a Part 4A permission to do so is providing the investment service specified in paragraph 1, 4 or 5 of Part 3 of that Schedule or the ancillary service specified in paragraph 1 of Part 3A of that Schedule.”;

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- (d) omit sub-paragraph (1E) <sup>M22</sup>.
- (6) In paragraph 23 (contracts for differences etc)—
- (a) in sub-paragraphs (3)(b) <sup>M23</sup> and (4A)(c) <sup>M24</sup>, for “Section C of Annex I to the markets in financial instruments directive” substitute “ Part 1 of Schedule 2 ”;
- (b) in sub-paragraphs (4) and (4B) <sup>M25</sup>, for paragraphs (a) to (d) substitute—
- “(a) an investment firm or qualifying credit institution is providing or performing investment services and activities on a professional basis;
- (b) a management company which has a Part 4A permission to do so is providing the investment service specified in paragraph 4 or 5 of Part 3 of Schedule 2 or the ancillary service specified in paragraph 1 of Part 3A of that Schedule;
- (c) a market operator is providing the investment service specified in paragraph 8 or 9 of Part 3 of that Schedule;
- (d) a full-scope UK AIFM which has a Part 4A permission to do so is providing the investment service specified in paragraph 1, 4 or 5 of Part 3 of that Schedule or the ancillary service specified in paragraph 1 of Part 3A of that Schedule.”;
- (c) omit sub-paragraph (5) <sup>M26</sup>.
- (7) In paragraph 23A <sup>M27</sup> (emission allowances)—
- (a) in sub-paragraph (1), after “compliance” insert “ (by an EEA State) ”;
- (b) in sub-paragraph (2), for paragraphs (a) to (d) substitute—
- “(a) an investment firm or qualifying credit institution is providing or performing investment services and activities on a professional basis;
- (b) a management company which has a Part 4A permission to do so is providing the investment service specified in paragraph 4 or 5 of Part 3 of Schedule 2 or the ancillary service specified in paragraph 1 of Part 3A of that Schedule;
- (c) a market operator is providing the investment service specified in paragraph 8 or 9 of Part 3 of that Schedule;
- (d) a full-scope UK AIFM which has a Part 4A permission to do so is providing the investment service specified in paragraph 1, 4 or 5 of Part 3 of that Schedule or the ancillary service specified in paragraph 1 of Part 3A of that Schedule.”.
- (8) In paragraph 28 (interpretation) omit the definition of “credit institution” and insert at the appropriate places—
- ““EU trading venue” has the meaning given by Article 2.1.16B of the markets in financial instruments regulation;”;
- ““qualifying credit institution” has the meaning given in the Regulated Activities Order;”;
- ““UK trading venue” has the meaning given by Article 2.1.16 of the markets in financial instruments regulation.”.

#### Textual Amendments

- F5** Words in reg. 176(3) substituted (30.12.2020) by [The Financial Services and Economic and Monetary Policy \(Consequential Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1301\)](#), regs. 1, 3, [Sch. para. 33\(w\)](#)

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### Commencement Information

- I14** Reg. 176 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see reg. 1(3)

### Marginal Citations

- M10** Sub-paragraph (2)(b) was amended by [S.I. 2014/1815](#).
- M11** Paragraph 15A was inserted by [S.I. 2010/86](#).
- M12** Sub-paragraph (2)(f) was amended by [2017/488](#).
- M13** Paragraph 21 was amended by [S.I. 2006/3384](#).
- M14** Sub-paragraph (1)(e) was inserted by [S.I. 2006/3384](#) and was amended by [S.I. 2017/488](#).
- M15** Sub-paragraph (2)(d) was inserted by [S.I. 2006/3384](#) and was amended by [S.I. 2017/488](#).
- M16** Sub-paragraph (3)(c) was inserted by [S.I. 2006/3384](#) and was amended by [S.I. 2017/488](#).
- M17** Sub-paragraph (4)(b) was inserted by [S.I. 2006/3384](#) and was amended by [S.I. 2011/1613](#) and [S.I. 2017/488](#); sub-paragraphs (4)(c) and (d) were inserted by [S.I. 2006/3384](#) and were amended by [S.I. 2017/488](#).
- M18** Sub-paragraph (5) was inserted by [S.I. 2006/3384](#).
- M19** Sub-paragraphs (1A), (1B) and (1C) were inserted by [S.I. 2006/3384](#); and (1A)(d) and (1C)(c) were amended by [S.I. 2017/488](#).
- M20** Sub-paragraph (1CA) was inserted by [S.I. 2017/488](#).
- M21** Sub-paragraph (1D) was inserted by [S.I. 2006/3384](#), sub-paragraphs (1D)(b), (c) and (d) were amended by [S.I. 2017/488](#).
- M22** Sub-paragraph (1E) was inserted by [S.I. 2006/3384](#) and was amended by [S.I. 2017/488](#).
- M23** Sub-paragraph (3) was inserted by [S.I. 2006/3384](#).
- M24** Sub-paragraph (4A) was inserted by [S.I. 2017/488](#).
- M25** Sub-paragraphs (4)(b) to (d) were amended by [S.I. 2017/488](#); sub-paragraph (4B) was inserted by [S.I. 2017/488](#).
- M26** Sub-paragraph (5) was inserted by [S.I. 2006/3384](#).
- M27** Paragraph 23A was inserted by [S.I. 2017/488](#).



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