
STATUTORY INSTRUMENTS

2020 No. 646

**The Over the Counter Derivatives, Central Counterparties
and Trade Repositories (Amendment, etc., and
Transitional Provision) (EU Exit) Regulations 2020**

PART 4

Amendment of Regulation (EU) No. 648/2012

Introduction

16. Regulation (EU) No. 648/2012 of the European Parliament and Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories is amended by the following provisions of this Part.

Article 15

17. In paragraph 3 of Article 15 (extension of activities and services)—

- (a) in the first subparagraph—
 - (i) for the words from the beginning to “draft regulatory technical standards” substitute “The Bank of England may make technical standards”;
 - (ii) omit the words from “and also specifying” to the end;
- (b) omit the second and third subparagraphs.

Article 17

18. In paragraph 3 of Article 17 (procedure for granting and refusing authorisation)—

- (a) omit the sentence beginning “Upon receipt”;
- (b) omit the words from “and the members of the college” to the end.

Chapter 3A

19. Omit Chapter 3A (Articles 24a to 24e).

Article 25: general amendments

20.—(1) Article 25 (recognition of a third-country CCP) is amended as follows.

- (2) In paragraph 1—
 - (a) for “Union” substitute “United Kingdom”;
 - (b) for “ESMA” substitute “the Bank of England”.
- (3) In paragraph 2—

- (a) for the words “ESMA after consulting the authorities referred to in paragraph 3,” substitute “The Bank of England”;
 - (b) in point (a) for the words “the Commission has adopted an implementing act” substitute “the Treasury has made regulations”;
 - (c) in point (d) for the words “considered” to the end substitute “a high-risk third country within the meaning of regulation 33 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017⁽¹⁾”.
- (4) In the first subparagraph of paragraph 2a—
- (a) for the words from the beginning to “paragraph 3,” substitute “The Bank of England must”;
 - (b) for the words “Union or of one or more of its Member States” substitute “United Kingdom”;
 - (c) in point (a)—
 - (i) for the first two references to “Union” substitute “United Kingdom”;
 - (ii) for “Union or on one or more of its Member States” substitute “United Kingdom”;
 - (d) in point (a)(i)—
 - (i) for “each Union currency” substitute “pounds sterling”
 - (ii) for the words “in the Union” to the end substitute “in the United Kingdom, including where they have been identified by the PRA as other systemically important institutions (O-SIIs) in accordance with regulation 29 of the Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014⁽²⁾; and”;
 - (e) in point (b)(iv) for the words “Union or of one or more of its Member States” substitute “United Kingdom”;
 - (f) in points (c) and (d) for “Union” substitute “United Kingdom”;
 - (g) in point (d) omit “in financial instruments denominated in Union currencies”;
 - (h) in point (e) for “Union or one or more of its Member States” substitute “United Kingdom”.
- (5) For the second subparagraph of paragraph 2a substitute—
- “The Bank of England may make technical standards specifying further the criteria set out in the first subparagraph.”;
- (6) In the third subparagraph of paragraph 2a for “ESMA shall” substitute “the Bank of England must”.
- (7) In paragraph 2b—
- (a) for “ESMA”, in each place it occurs apart from in point (a), substitute “the Bank of England”;
 - (b) in point (a) for the words from “With regard to the CCP’s compliance” to “Article 24b(1). ESMA” substitute “The Bank of England”;
 - (c) omit point (b);
 - (d) in point (c) for “three working days after service of” substitute “the time specified in”;
 - (e) for point (e) substitute—
 - “(e) the Treasury have not made location regulations under paragraph 2c in relation to the CCP.”.
- (8) Omit paragraph 3.

(1) [S.I. 2017/692](#), to which there are amendments not relevant to these Regulations.

(2) [S.I. 2014/894](#), amended by [S.I. 2018/1401](#).

- (9) In paragraph 4—
- (a) in the first subparagraph for “ESMA” substitute “the Bank of England”;
 - (b) in the second subparagraph—
 - (i) for “ESMA”, in each place it occurs, substitute “the Bank of England”;
 - (ii) omit the final sentence;
 - (c) in the third subparagraph for the words “Within 180 working days” to “ESMA” substitute “Before the end of the relevant period (see paragraph 4A), the Bank of England”;
 - (d) in the subparagraph beginning “ESMA shall publish” for “ESMA” substitute “The Bank of England”.
- (10) After paragraph 4 insert—
- “**4A.** In paragraph 4 “the relevant period” means—
- (a) where the applicant CCP has submitted an application before the end of the period of six months beginning with IP completion day, the period of one year beginning with the first day on which—
 - (i) the applicant CCP has submitted a complete application, and
 - (ii) the conditions in paragraph 2(a) and (c) are met, or
 - (b) in any other case, the period of 180 working days beginning with the first day on which—
 - (i) the applicant CCP has submitted a complete application, and
 - (ii) the conditions in paragraph 2(a) and (c) are met.
- 4B.** A CCP must, without undue delay, notify the Bank of England of any material changes affecting the conditions for recognition—
- (a) in point (b) of paragraph 2;
 - (b) in points (a), (c)(ii) and (d) of the first subparagraph of paragraph 2b.”
- (11) In paragraph 5—
- (a) for the words from “ESMA shall after consulting” to “five years” substitute “The Bank of England must, as it considers appropriate, review the recognition of a CCP established in a third country.”;
 - (b) in the third subparagraph—
 - (i) for “ESMA” substitute, in each place it occurs, “the Bank of England”;
 - (ii) omit “which shall not exceed 18 months”;
 - (iii) omit the words from “ESMA may extend” to the end.
- (12) In paragraph 6—
- (a) in the first subparagraph—
 - (i) for the words from the beginning to “determining” substitute “The Treasury may by regulations specify”;
 - (ii) in point (c) for “third-country legal regimes” substitute “legal regimes of other countries”;
 - (b) omit the second subparagraph.
- (13) After paragraph 6 insert—
- “**6ZA.** The Bank of England may provide advice to the Treasury in connection with any regulations made or to be made by the Treasury under paragraph 6.”

- (14) Omit paragraphs 6a and 6b.
- (15) In paragraph 7—
- (a) for “ESMA” substitute—
 - (i) in the first place it occurs, “The Bank of England”;
 - (ii) in each subsequent place it occurs, “the Bank of England”;
 - (b) in the first subparagraph—
 - (i) for “shall establish” substitute “must take such steps as it considers appropriate to establish”;
 - (ii) for “Such arrangements shall specify at least:” substitute “Such arrangements are to specify such matters as the Bank of England considers appropriate. Without limiting the scope to specify matters, such matters may include:”;
 - (c) in point (a)—
 - (i) omit “, the central banks of issue referred to in point (f) of paragraph 3”;
 - (ii) for “Union” substitute “United Kingdom”;
 - (d) in point (c) for “Union” substitute “United Kingdom”;
 - (e) in point (d) omit the words from “, including the agreement” to the end;
 - (f) in point (f) omit the words from “, in accordance with” to the end;
 - (g) in point (g)—
 - (i) omit the words from “, the third-country CCP college” to “paragraph 3”;
 - (ii) for “Union or one of its Member States” substitute “United Kingdom”;
 - (h) omit point (h);
 - (i) in the final subparagraph—
 - (i) for “Commission”, in the first place it occurs, substitute “Treasury”;
 - (ii) omit the words from “In such a case” to the end.
- (16) In paragraph 8—
- (a) in the first subparagraph—
 - (i) for the words “ESMA shall develop draft regulatory technical standards” substitute “the Bank of England may make technical standards”;
 - (ii) for the words “provide ESMA” substitute “provide the Bank of England”;
 - (b) omit the second and third subparagraphs.
- (17) After paragraph 8 insert—
- “9. This Article is subject to Part 6 of the Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018(3) (which contains transitional provisions).
10. In this Article “competent authority” means a regulatory authority which is responsible for the authorisation and supervision of central counterparties in its territory.”.

Article 25: location regulations

21. For paragraph 2c of Article 25 (recognition of a third-country CCP) substitute—

“**2c.** The Treasury may make regulations in respect of a third-country CCP to be known as location regulations.

Location regulations may be made for the purpose of requiring that some or all of the clearing services of the third-country CCP may only be provided to clearing members and trading venues established in the United Kingdom by the CCP after it has been authorised in accordance with Article 14.

The Treasury may only make location regulations—

- (a) having received a recommendation from the Bank of England (see paragraph 2ca);
- (b) following compliance with the procedural requirements of paragraph 2cb.

Where a third-country CCP is already providing clearing services to clearing members or trading venues established within the United Kingdom, the requirement which may be imposed by virtue of the second subparagraph may only come into force after a period of time specified in the location regulations has elapsed (“adaptation period”).

Location regulations including an adaptation period may specify—

- (a) conditions with which the third-country CCP must comply in order to continue to provide clearing services or activities described in the location regulations during the adaptation period;
- (b) measures that must be taken during the adaptation period, in order to limit the potential costs to clearing members and their clients, in particular those established in the United Kingdom.

2ca. The Bank of England may recommend that the Treasury make location regulations under paragraph 2c if it considers that a third-country CCP, or some of its clearing services, are of such substantial systemic importance to the United Kingdom that the CCP should not be recognised under paragraph 1.

The recommendation must be in writing.

The recommendation must include advice—

- (a) explaining how compliance with the conditions set out in paragraph 2b would not sufficiently address the financial stability risk for the United Kingdom;
- (b) describing the characteristics of the clearing services provided by the CCP, including the liquidity and physical settlement requirements associated with the provision of such services;
- (c) providing a quantitative technical assessment of the costs and benefits and consequences of a decision not to recognise the CCP to provide certain clearing services or activities, taking into account—
 - (i) the existence of potential alternative substitutes for the provision of the clearing services concerned in the currencies concerned to clearing members, and to the extent the information is available, their clients and indirect clients established in the United Kingdom;
 - (ii) the potential consequences of including the outstanding contracts held at the CCP within the scope of the location direction;
- (d) where relevant, addressing the duration of the adaptation period mentioned in the fourth subparagraph of paragraph 2c and any conditions or measures the Bank of England proposes to be included in the location regulations (see the fifth subparagraph of paragraph 2c).

2cb. Before the Treasury make location regulations under paragraph 2c, they must send a statement in writing to the third-country CCP concerned.

The statement must—

- (a) state that the Treasury propose to make location regulations in respect of the CCP;
- (b) provide a summary of the Treasury’s reasons for proposing to make the regulations;
- (c) be accompanied by a copy of the Bank of England’s recommendation given under paragraph 2ca;
- (d) specify a reasonable period within which the CCP may make representations.

The Treasury must have regard to any representations made within the period specified in the statement.

Where the Treasury make location regulations, they must—

- (a) send a copy of the regulations to—
 - (i) the third-country CCP concerned;
 - (ii) the Bank of England;
 - (iii) the Financial Conduct Authority, and
- (b) publish the regulations on their website.”.

Article 25a

22. In Article 25a—

- (a) in paragraph 1—
 - (i) for “ESMA” in first place it occurs, substitute “the Bank of England”;
 - (ii) for “implementing act adopted in accordance with” substitute “regulations made under”;
 - (iii) omit the final sentence;
- (b) in paragraph 3—
 - (i) in the first subparagraph—
 - (aa) for “Commission” substitute “Bank of England”;
 - (bb) for “Union’s” substitute “United Kingdom’s”
 - (cc) for “shall adopt a delegated act” substitute “may make technical standards”;
 - (ii) omit the second subparagraph.

Article 25b

23. In Article 25b—

- (a) in each place where it occurs, for “ESMA” substitute “The Bank of England”;
- (b) in paragraph 1—
 - (i) in the first subparagraph, omit the final sentence;
 - (ii) omit the third subparagraph;
- (c) in paragraph 2—
 - (i) omit “or where ESMA receives a notification pursuant to the third subparagraph of paragraph 1”;

- (ii) for “(2), (3) and (4)” substitute “(2) and (3)”;
- (d) for paragraph 3 substitute—

“3. The Bank of England shall carry out assessments of the resilience of recognised Tier 2 CCPs to adverse market developments.”

Articles 25c to 25o

- 24. Omit Articles 25c to 25o.

Article 25p

- 25. In Article 25p—

- (a) for the opening words in the first subparagraph of paragraph 1 substitute—

“1. The Bank of England may withdraw a recognition decision adopted in accordance with Article 25 where:”;
- (b) in paragraph 1, in the first subparagraph—
 - (i) in point (c)—
 - (aa) for “ESMA” substitute “the Bank of England”;
 - (bb) omit “within an appropriately set timeframe of up to a maximum of six months”;
 - (ii) in point (d), in each place where it occurs, for “ESMA” substitute “the Bank of England”;
 - (iii) in point (e) substitute—

“(e) the regulations made under Article 25(6) have been revoked, or the conditions specified in the regulations are no longer satisfied.”;
- (c) in paragraph 1, in the second subparagraph, for “ESMA” substitute “The Bank of England”;
- (d) in paragraph 1, in the third subparagraph, for “ESMA” substitute “the Bank of England”;
- (e) in paragraph 2—
 - (i) for the first subparagraph—
 - (aa) for “ESMA” substitute “the Bank of England”;
 - (bb) for the words from “measures under points (a),” to the end, substitute “disciplinary measures in accordance with Chapter 3B of Part 18 of the Financial Services and Markets Act 2000”;
 - (ii) for the second subparagraph, substitute—

“If the Bank of England determines that remedial action has not been taken or that the action taken is not appropriate, the Bank of England shall withdraw the recognition decision.”;
- (f) in paragraph 3, for “ESMA” substitute “The Bank of England”;
- (g) omit paragraph 4.

Article 25q

- 26. Omit Article 25q.

Article 32

27. In Article 32, paragraph 1, omit the fourth subparagraph.

Article 35

28. In Article 35, paragraph 1, in the second subparagraph omit the final sentence.

Article 49

29. In Article 49—

- (a) in paragraph 1a—
 - (i) in both places it occurs, for “competent authority and ESMA” substitute “Bank of England”;
 - (ii) omit “each”;
- (b) omit paragraphs 1b and 1c;
- (c) in paragraph 1d, for “competent authority and ESMA shall each inform the CCP and each other” substitute “Bank of England shall inform the CCP”;
- (d) in paragraph 1e—
 - (i) for “its competent authority and ESMA” substitute “the Bank of England”;
 - (ii) for “competent authority, in agreement with ESMA,” substitute “Bank of England”;
- (2) for paragraph 5 substitute—

“(5) The Bank of England may make technical standards specifying the conditions under which changes to the models and parameters referred to in paragraph 1 are significant.”.

Article 81

30. In Article 81(3)(4) at the end insert—

“;

(g) the body known as the Panel on Takeovers and Mergers.”.

Article 89

31. In Article 89, omit paragraphs 3a to 3c.

Annexes III and IV

32. Omit Annexes III and IV.

(4) Regulation 3 of [S.I. 2018/1318](#) (as amended by regulation 8 of [S.I. 2019/1416](#)) substitutes points (a) to (c) for points (a) to (q) of Article 81(3), regulation 56(15) of [S.I. 2019/335](#) inserts points (d) and (e) into Article 81(3) and regulation 33(a) of [S.I. 2019/1416](#) inserts point (f) into Article 81(3).