
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 2

Amendment of primary legislation

Amendment of the Financial Services and Markets Act 2000

- 2.**—(1) The Financial Services and Markets Act 2000⁽¹⁾ is amended as follows.
- (2) In section 138P(6) (technical standards)⁽²⁾, after paragraph (c) insert—
- “(d) “the EMIR regulation” has the meaning given in section 313.”.
- (3) In section 296 (appropriate regulator’s power to give directions)⁽³⁾—
- (a) before subsection (2) insert—
- “(1C) This section also applies if it appears to the Bank of England that a Tier 2 third country central counterparty has failed to comply with an obligation imposed on it by or under this Act, or by or under the EMIR regulation.”;
- (b) after subsection (2) insert—
- “(2ZA) Where this section applies by virtue of subsection (1C), the Bank of England may direct the Tier 2 third country central counterparty to take specified steps for the purpose of securing compliance with the obligations referred to in that subsection.”;
- (c) before subsection (3) insert—
- “(2C) In the case of a Tier 2 third country central counterparty, those steps may include—
- (a) the granting to the Bank of England of access to any premises of the Tier 2 third country central counterparty for the purposes of inspecting—
- (i) those premises; or
- (ii) any documents on the premises which appear to the Bank of England to be relevant for the purposes mentioned in subsection (2ZA);
- (b) the suspension for the period specified in the direction of the carrying on in the United Kingdom by the Tier 2 third country central counterparty of any activity in respect of which the third country central counterparty is exempt from the general prohibition.

(1) 2000 c. 8.

(2) Section 138P is inserted by [S.I. 2018/1115](#).

(3) Section 296 is amended by paragraph 14 of Schedule 8 of the Financial Services Act 2012 (c.21) and [S.I. 2017/126](#). Subsections (1B) and (2B) are omitted by [S.I. 2019/662](#).

(2D) The Bank of England may not inspect the premises or documents on the premises of a Tier 2 third country central counterparty without first informing the relevant third country competent authority, and inspections must be conducted in accordance with cooperation arrangements established under Article 25.7 of the EMIR regulation.

(2E) In subsection (2D), relevant third country competent authority means a regulatory authority of a country other than the United Kingdom which is responsible for the authorisation and supervision of central counterparties in its territory.”;

(d) in subsection (3), after “section” insert “(except a direction made under subsection (2ZA))”.

(4) In section 313(1) (interpretation of Part 18)—

(a) in the definition of “recognised body”(4) at the end insert “, and in Chapter 3B also includes a third country central counterparty”;

(b) in the appropriate place insert—

“Tier 2 third country central counterparty” means a third country central counterparty which has been determined by the Bank of England to be systemically important or likely to become systemically important in accordance with Article 25.2a of the EMIR regulation;”.

(5) In Schedule 17A (further provision in relation to Part 18)(5)—

(a) in paragraph 11(1) (power to require information)(6)—

(i) after sub-paragraph (ab) insert—

“(ac) a third country central counterparty and any person to whom that central counterparty has outsourced operational functions, services or activities.”

(ii) in sub-paragraph (b), after “a recognised clearing house” insert “, a third country central counterparty”;

(b) in paragraph 13(1) (appointment of persons to carry out general investigations)(7), after “overseas clearing house” insert “or to any Tier 2 third country central counterparty”.

(c) in paragraph 14(2) (appointment of persons to carry out investigations in particular cases)(8) at the end insert—

“(g) a third country central counterparty may be guilty of an offence under section 398(1);

(h) a Tier 2 third country central counterparty may have contravened the requirements of the EMIR regulation.”

(d) in paragraph 30(a) (offences), after “recognised clearing house” insert “, a third country central counterparty”.

(4) The definition of “recognised body” is amended by [S.I. 2017/1064](#).

(5) Schedule 17A was inserted by Schedule 7 of the Financial Services Act 2012.

(6) Paragraph 11(1) is amended by [S.I. 2017/1064](#).

(7) Paragraph 13(1) is amended by [S.I. 2017/1064](#) and [2019/662](#).

(8) Paragraph 14 is amended by [S.I. 2017/1064](#) and [2019/662](#).