

Draft Regulations laid before Parliament under sections 48F(4)(b) and 258A(3)(b) of the Banking Act 2009, paragraph 1(3) of Schedule 7 to the European Union (Withdrawal) Act 2018 and sections 45(4), 46(3) and 46(4) of the Financial Services Act 2021 for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2022 No. XXX

FINANCIAL SERVICES

**The Financial Services Act 2021 (Prudential Regulation of
Credit Institutions and Investment Firms) (Consequential
Amendments and Miscellaneous Provisions) Regulations 2022**

Made - - - -

Coming into force - -

17th August 2022

The Treasury, in exercise of the powers conferred by sections 48F(2), 48F(3) and 258A(2)(b) of the Banking Act 2009(a), section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018(b) and sections 45(1), 45(3) and 49(7) of the Financial Services Act 2021(c) make the following Regulations.

A draft of these Regulations has been laid before and approved by a resolution of each House of Parliament, in accordance with sections 48F(4)(b) and 258A(3)(b) of the Banking Act 2009, paragraph 1(3) of Schedule 7 to the European Union (Withdrawal) Act 2018 and sections 45(4), 46(3) and 46(4) of the Financial Services Act 2021.

PART 1

Introduction

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2022.

(2) These Regulations come into force on 17th August 2022.

(3) These Regulations extend to England and Wales, Scotland and Northern Ireland.

(a) 2009 (c. 1); section 48F was inserted by paragraph 4 of Schedule 2 to the Financial Services (Banking Reform) Act 2013 (c. 33) and amended by S.I. 2014/3329.

(b) 2018 (c. 16).

(c) 2021 (c. 22).

PART 2

Amendment of Primary Legislation, Scottish Legislation and Northern Ireland Legislation

Insolvency (Northern Ireland) Order 1989

2.—(1) Schedule 4 of the Insolvency (Northern Ireland) Order 1989(a) (the categories of preferential debts) is amended as follows.

(2) In paragraph 20 (category 8: other deposits)—

(a) in sub-paragraph (a)—

(i) for “non-EEA” substitute “non-UK”;

(ii) for “an EEA state” substitute “the United Kingdom”;

(b) in sub-paragraph (b), for “an EEA” substitute “a UK”.

(3) In paragraph 21 (interpretation for categories 6A, 7 and 8)—

(a) in sub-paragraph (3), for paragraph (b) substitute—

“(b) any micro, small or medium-sized enterprise, as defined with regard to the annual turnover criterion referred to in Article 2(1) of the Annex to Commission Recommendation 2003/361/EC.”;

(b) in sub-paragraph (4), for paragraphs (b) and (c) substitute—

“(b) “non-UK branch” means a branch, as defined in Article 4(1)(17) of the capital requirements regulation, which is established outside the United Kingdom;

(c) “UK branch” means a branch, as so defined, which is established in the United Kingdom.”;

(c) for the words after sub-paragraph (4)(c) substitute—

“and for this purpose “the capital requirements regulation” means Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No. 648/2012.”.

Financial Services and Markets Act 2000

3. In section 192C(3) (power to direct qualifying parent undertaking) of the Financial Services and Markets Act 2000(b)—

(a) at the end of sub-paragraph (a)(i)(bb), omit “or”;

(b) at the end of sub-paragraph (a)(ii), omit “and”;

(c) after sub-paragraph (a)(ii), insert—

“(iii) Part 9C rules;

(iv) CRR rules; or

(v) rules made under section 192XA, and”.

Terrorism Act 2000

4.—(1) The Terrorism Act 2000(c) is amended as follows.

(a) S.I. 1989/2405 (N.I. 19); paragraphs 20 and 21 of Schedule 4 were inserted by S.I. 2014/3486 and paragraph 21 was amended by S.I. 2015/486. There are other amendments to this paragraph which are not relevant.

(b) 2000 c. 8; section 192C was inserted by the Financial Services Act 2012 (c. 21) and amended by S.I. 2019/632.

(c) 2000 c. 11.

- (2) In Schedule 3A (a) (business in the regulated sector)—
- (a) in paragraph 1(1)(b), in the opening words, for “Annex 1 to the Capital Requirements Directive”, in both places where those words appear, substitute “Schedule 2 to the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017(c)”;
 - (b) in paragraph 3(1), omit the definition of “the Capital Requirements Directive”;
 - (c) in paragraph 3(3)—
 - (i) omit “, the Capital Requirements Directive”;
 - (ii) for “those Directives” substitute “that Directive”.
- (3) In paragraph 6(1) of Schedule 6 (d) (financial institution)—
- (a) omit sub-paragraph (g);
 - (b) in sub-paragraph (h), for “any of points 1 to 12, 14 and 15 of Annex 1 to Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013” substitute “the points in Schedule 2 to the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017,”.

Proceeds of Crime Act 2002

5.—(1) Schedule 9 to the Proceeds of Crime Act 2002(e) is amended as follows.

(2) In paragraph 1(1)(b)(f)(business in the regulated sector), for “Annex 1 to the Capital Requirements Directive”, in both places where it appears, substitute “Schedule 2 to the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017”.

(3) In paragraph 3(g) (interpretation)—

- (a) in sub-paragraph (1), omit the definition of “the Capital Requirements Directive”;
- (b) in sub-paragraph (3)—
 - (i) omit “, the Capital Requirements Directive”;
 - (ii) for “those Directives” substitute “that Directive”.

Counter-Terrorism Act 2008

6.—(1) Schedule 7 to the Counter-Terrorism Act 2008(h) is amended as follows.

(2) In paragraph 5(2)(a)(i) (meaning of “credit institution” and “financial institution”), for “Annex 1 to the capital requirements directive”, in both places where it appears, substitute “Schedule 2 to the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017”;

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- (a) Schedule 3A was inserted by section 3 and paragraphs 5(1) and (6) of Part 3 of Schedule 2 to the Anti-terrorism, Crime and Security Act 2001 (c. 24).
 - (b) Paragraph (1) of Schedule 3A was amended by S.I. 2013/3115. There are other amendments to this section which are not relevant.
 - (c) S.I. 2017/692. Schedule 2 was amended by these Regulations.
 - (d) Paragraph 6 of Schedule 6 was amended by S.I. 2013/3115, S.I. 200/2952 and S.I. 2011/99. There are other amendments to this paragraph which are not relevant.
 - (e) 2002 c. 29.
 - (f) Schedule 9 was amended by S.I. 2017/692.
 - (g) Paragraph 3 of Schedule 9 was amended by S.I. 2017/692. There are other amendments to this paragraph which are not relevant.
 - (h) 2008 c. 28.
 - (i) Paragraph 5 of Schedule 7 was amended by S.I. 2011/99 and S.I. 2013/3115. There are other amendments to this paragraph which are not relevant.

(3) In paragraph 7(a) (interpretation of Part 2), omit the definition of “the capital requirements directive”.

(4) In paragraph 46(b) (index of defined expressions), omit the entry for “the capital requirements directive”.

Banking Act 2009

7.—(1) The Banking Act 2009 is amended as follows.

(2) In section 48D(1)(c) (general interpretation of section 48B)—

(a) Omit the definition of “investment firm”;

(b) after subsection (2) insert—

“(2A) The definition of “investment firm” in section 258A(d) applies for the purposes of section 48B but for these purposes—

(a) any exclusions made under the power conferred by subsection (2)(b) of section 258A are to be ignored; and

(b) an institution is to be treated as falling within the definition only if it has permission to carry on the investment services and activities in point 3 or 6 of Part 3 of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(e).”;

(c) in the definition of “credit institution”, for “(23)” substitute “(24)”.

(3) In section 89JA(f) (resolution of UK branches of third-country institutions), in the table of further modifications in subsection (11), in the entry in column 2 relating to section 60(3)(c), for “third country” substitute “country or territory outside the United Kingdom”.

Bankruptcy (Scotland) Act 2016

8.—(1) Schedule 3 to the Bankruptcy (Scotland) Act 2016(g) is amended as follows.

(2) In paragraph 8 (other deposits)—

(a) in sub-paragraph (a)—

(i) for “non-EEA” substitute “non-UK”;

(ii) for “an EEA state” substitute “the United Kingdom”;

(b) in sub-paragraph (b) for “an EEA” substitute “a UK”.

(3) In paragraph 13 (meaning of “eligible deposit”)—

(a) for paragraph (3)(b) substitute—

“(b) any micro, small and medium-sized enterprise, as defined with regard to the annual turnover criterion referred to in Article 2(1) of the Annex to Commission Recommendation 2003/361/EC.”;

(b) for sub-paragraphs (4)(b) and (c) substitute—

“(b) “UK branch” means a branch, as defined in Article 4(1)(17) of the capital requirements regulation, which is established in the United Kingdom, and

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- (a) Paragraph 7 of Schedule 7 was amended by S.I. 2013/3115. There are other amendments to this paragraph which are not relevant.
- (b) Paragraph 46 of Schedule 7 was amended by S.I. 2013/3115. There are other amendments to this paragraph which are not relevant.
- (c) Section 48D was inserted by paragraph 4 of Schedule 2 to the Financial Services (Banking Reform) Act 2013 and amended by S.I. 2014/3329 and 2018/1394. There are other amendments to this section which are not relevant.
- (d) Section 258A was inserted by section 101 of the Financial Services Act 2012 (c. 21) and amended by S.I. 2013/3115, S.I. 2018/1394 and S.I. 2020/1385.
- (e) S.I. 2001/544; Schedule 2 was substituted by S.I. 2006/3384. There are amendments to this Schedule which are not relevant.
- (f) Section 89JA was inserted by S.I. 2016/1239 and amended by S.I. 2018/1394.
- (g) 2016 asp 21.

- (c) “non-UK branch” means a branch, as so defined, which is established outside the United Kingdom.”;
- (c) for sub-paragraph (5) substitute—
 - “(5) In sub-paragraph (4)(a) and (b), “the capital requirements regulation” means Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No. 648/2012.”.

PART 3

Amendment and Revocation of Secondary Legislation

Capital Requirements Regulations 2013

9. In regulation 34B(6) (ongoing review of the permission to use internal approaches) of the Capital Requirements Regulations 2013(a), in paragraph (6)—

- (a) omit “imposed as part of the grant of permission”;
- (b) omit “internal”.

Banking Act 2009 (Exclusion of Investment Firms of a Specified Description) Order 2014

10. The Banking Act 2009 (Exclusion of Investment Firms of a Specified Description) Order 2014(b) is revoked.

Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017

11. In regulation 6 (requirements applying to exempt investment firms) of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017(c)—

- (a) in paragraph (3)(c)(iii), before “the markets in financial instruments directive” insert “Part 9C rules, CRR rules,”;
- (b) in paragraph (6), after the definition of “the capital requirements regulation” insert—
 - ““CRR rules” has the meaning given in section 144A of the Act;
 - “Part 9C rules” has the meaning given in section 143F(1) of the Act ;”.

Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017

12.—(1) The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017(d) are amended as follows.

(2) In regulation 3(1) (general interpretation), omit the definition of “the capital requirements directive”.

(3) In regulation 10(e) (credit institutions and financial institutions)—

- (a) in paragraph (3)(c), omit “Annex 1 to the capital requirements directive as set out in”;
- (b) in paragraph (4)(a), omit “Annex 1 to the capital requirements directive as set out in”.

(a) S.I. 2013/3115. Regulation 34B was inserted by S.I. 2018/1401.

(b) S.I. 2014/1832 was amended by S.I. 2016/1239.

(c) S.I. 2017/701. Relevant amendments were made to regulation 6 by S.I. 2017/1255 and S.I. 2021/1376.

(d) S.I. 2017/692.

(e) Relevant amendments were made to regulation 10 by S.I. 2019/253.

(4) In Schedule 2 (activities listed in points 2 to 12, 14 and 15 of Annex 1 to the Capital Requirements Directive)—

- (a) for the heading substitute “Listed Activities”;
- (b) omit “listed in points 2 to 12, 14 and 15 of Annex 1 to the Capital Requirements Directive—“;
- (c) for point 4 substitute—
“Payment service as defined in regulation 2(1) of the Payment Services Regulations 2017(a).”;
- (d) in point 5, omit “insofar as such activity is not covered by point 4”.

(5) In paragraph 13 of Schedule 3A(b) (capital markets etc.), omit “Annex 1 to the capital requirements directive as set out in”.

Payment Services Regulations 2017

13. In regulation 2(1) (interpretation) of the Payment Services Regulations 2017(c), in the definition of “group”, in paragraph (b), omit “10(1) or”.

Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018

14. Paragraph 49(3) of Schedule 1 to the Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018(d) is omitted.

Financial Conglomerates and Other Financial Groups (Amendment etc.) (EU Exit) Regulations 2019

15. Regulation 5(3) (amendments to Regulation (EU) No 575/2013) of the Financial Conglomerates and Other Financial Groups (Amendment etc.) (EU Exit) Regulations 2019(e) is omitted.

Solvency 2 and Insurance (Amendment, etc) (EU Exit) Regulations 2019

16. In paragraph 16(h) (matters in respect of which the Treasury may make regulations) of Schedule 1 to the Solvency 2 and Insurance (Amendment, etc) (EU Exit) Regulations 2019(f), after “the use of external credit assessments from ECAs in the calculation” insert “; for the purposes of Regulation (EU) No 575/2013 and CRR rules as defined in section 144A of the Financial Services and Markets Act 2000(g).”.

Bank Levy (Loss Absorbing) Regulations 2020

17.—(1) The Bank Levy (Loss Absorbing) Regulations 2020(h) are amended as follows.

(2) In regulation 2 (interpretation), after the definition of “Capital Requirements Regulation” insert—

““PRA Rulebook” means the rulebook published by the Prudential Regulation Authority containing rules made by that Authority under the Financial Services and Markets Act 2000(i) as that rulebook has effect on 17 August 2022.”.

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- (a) Regulation 2 was amended by S.I. S.I. 2010/2993, S.I. 2013/1881, S.I. 2017/1173, S.I. 2018/1201 and S.I. 2021/1306.
 - (b) Schedule 3A was inserted by S.I. 2020/991.
 - (c) S.I. 2017/752. Relevant amendments were made to regulation 2 by S.I. 2021/1376.
 - (d) S.I. 2018/1394.
 - (e) S.I. 2019/264.
 - (f) S.I. 2019/407.
 - (g) 2000 (c. 8). Section 144A was inserted by paragraph 1 of Schedule 3 to the Financial Services Act 2021 (c. 22).
 - (h) S.I. 2020/1188.
 - (i) 2000 c. 8.

(3) In regulation 3(2)(b)(i) (loss absorbing instruments issued by overseas subsidiaries), for “Article 36(1)(i)” substitute “Article 36 of Chapter 3 of the Own Funds and Eligible Liabilities (CRR) Part of the PRA Rulebook”.

Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2021

18. In regulation 34 (saving for amendment of existing technical standards instruments made by the Financial Conduct Authority) of the Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2021(a), for “26/15” substitute “25(16)”.

PART 4

Amendment of Retained Direct EU Legislation

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

19.—(1) 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(b) is amended as follows.

(2) In Article 2(c) (definitions), after point (36) insert—

“(37) ‘FCA Handbook’ means the handbook published by the FCA containing rules made by that Authority under FSMA as that handbook has effect on 17 August 2022;

(38) ‘FCA investment firm’ has the meaning given in Article 4(1)(2AB) of the Capital Requirements Regulation(d);

(39) ‘Part 9C rules’ has the meaning given in section 143F(1) of FSMA(e).”.

(3) In Article 50a(f) (calculation of KCCP)—

(a) in paragraph (1), after “PRA Rulebook” insert “and Chapter 10 of the Prudential Sourcebook for MiFID Investment Firms (MIFIDPRU) in the FCA Handbook”;

(b) in paragraph (3), after “institutions” insert “or FCA investment firms”;

(c) in paragraph (4)(b), after “institution” insert “or FCA investment firm”.

(4) In Article 50b(g) (general rules for the calculation of KCCP), after point(b) insert—

“(ba) for FCA investment firms that fall under the scope of Part 9C rules, the netting sets are the same as those set out in the definition of “netting set (in MIFIDPRU)” in the Glossary of the FCA Handbook;”.

(5) In Article 50c(h) (reporting of information)—

(a) in paragraph (1)—

(i) after “PRA Rulebook” insert “and Chapter 10 of the Prudential Sourcebook for MiFID Investment Firms (MIFIDPRU) in the FCA Handbook”;

(ii) after “institutions” insert “or FCA investment firms”;

(b) in paragraph (2), after “institutions” insert “or FCA investment firms”;

(c) in paragraph (3)(c), after “institution” insert “or FCA investment firm”.

(a) S.I. 2021/1376.

(b) EUR 648/2012.

(c) Points (32) to (35) were inserted by S.I. 2018/1184. Point (36) was inserted by S.I. 2021/1376.

(d) Article 4(1)(2AB) was inserted by section 1(4) of the Financial Services Act 2021.

(e) Section 143F was inserted by paragraph 1 of Schedule 2 to the Financial Services Act 2021.

(f) Article 50a was amended by S.I. 2021/1376.

(g) Article 50b was amended by S.I. 2021/1376.

(h) Article 50c was amended by S.I. 2021/1376.

Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012

20. In Article 4(1)(131)(b) (definition of resolution entity) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012(a), for “Part 6 of the Capital Requirements Regulations 2013” substitute “this Regulation and CRR rules”.

Regulation (EU) No 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC

21. In article 12 (report to supervisors of public-interest entities) of Regulation (EU) No 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC(b)—

- (a) in paragraph (2), omit the second and third sub-paragraphs;
- (b) in paragraph (3), omit “or to ESRB and the CEAOB,”.

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 (Solvency II)

22.—(1) 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 (Solvency II)(c) is amended as follows.

(2) In Article 335(1)(e)(i)(d) (method 1: determination of consolidated data), after “in accordance with” insert “Part 9C rules or”.

(3) In Article 336(c)(i)(e) (method 1: calculation of the consolidated group solvency capital requirement), after “in accordance with” insert “Part 9C rules or”.

Commission Delegated Regulation (EU) 2019/980 of 14 March 2019 supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council as regards the format, content, scrutiny and approval of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Commission Regulation (EC) No 809/2004

23. In paragraph 1 of Annex 26 (UK Growth Securities Note for Equity Securities) of Commission Delegated Regulation (EU) 2019/980 of 14 March 2019 supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council as regards the format, content, scrutiny and approval of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Commission Regulation (EC) No 809/2004, for the entry in column 2 of the table relating to Item 4.1.12(f), substitute—

“Where applicable, the potential impact on the investment in the event of resolution under the UK law which implemented Directive 2014/59/EU.”.

(a) EUR 575/2013. Article 4(1)(131) was amended by S.I. 2019/1232.
(b) EUR 537/2014.
(c) EUR 2015/35.
(d) Article 335 was amended by S.I. 2019/407.
(e) Article 336 was amended by S.I. 2019/407.
(f) Annex 26 was amended by S.I. 2019/1234.

PART 5

Transitional provision

Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012

24.—(1) This regulation applies in relation to securitisations to which article 43(6)(a) of the Securitisation Regulation applies where—

- (a) prior to the prudential regulation changes, the requirements set out in Article 405(1) of Regulation (EU) No 575/2013 were met in the manner specified in article 405(2) of that Regulation; and
- (b) further to the prudential regulation changes, article 405(2) of that Regulation no longer applies.

(2) The originator, sponsor or original lender must either take a net economic interest in the securitisation so that the requirements set out in Article 405(1) of Regulation (EU) No 575/2013 are satisfied or must increase any existing net economic interest in the securitisation so that those requirements are satisfied (and the provisions made by Articles 12 and 14 of the risk retention delegated regulation do not prevent any transfer of a net economic interest to the originator, sponsor or original lender for this purpose).

(3) The originator, sponsor or original lender which is to take or increase the net economic interest referred to in paragraph (2) must do so before 1st January 2023.

(4) Paragraphs (2) and (3) apply to multiple originators, multiple sponsors or multiple original lenders in accordance with Article 3 of the risk retention delegated regulation.

(5) In this regulation—

- (a) references to Article 405 of Regulation (EU) No 575/2013 are references to that provision in the version applicable on 31st December 2018 as modified by points (a) and (b) of Article 43(6) of the Securitisation Regulation;
- (b) references to articles 3, 12 and 14 of the risk retention delegated regulation are to those Articles in the version applicable on 31st December 2018.

Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012

25.—(1) This regulation applies in relation to a relevant securitisation where—

- (a) prior to the prudential regulation changes, the requirements set out in Article 6(1) of the Securitisation Regulation were met by the originator or sponsor in the manner specified in Article 6(4)(b) of that Regulation; and
- (b) further to the prudential regulation changes, article 6(4) of the Securitisation Regulation no longer applies.

(2) The originator, sponsor or original lender of the securitisation must either take a net economic interest in the securitisation so that the requirements set out in Article 6(1) of the Securitisation Regulation are satisfied or must increase any existing net economic interest in the securitisation so that those requirements are satisfied (and the provisions made by Articles 12 and 14 of the risk retention delegated regulation do not prevent any transfer of a net economic interest to the originator, sponsor or original lender for this purpose).

(a) Article 43(6) was amended by S.I. 2019/660 and 2021/1376.

(b) Article 6(4) was amended by S.I. 2019/660 and 2021/1376.

(3) The originator, sponsor or original lender which is to take or increase the net economic interest referred to in paragraph (2) must do so before 1st January 2023.

(4) Paragraphs (2) and (3) apply to multiple originators, multiple sponsors or multiple original lenders in accordance with Article 3 of the risk retention delegated regulation.

(5) In this regulation—

- (a) “relevant securitisation” means a securitisation the securities of which were issued or the initial securitisation positions of which were created before 1st January 2022;
- (b) a reference to the risk retention delegated regulation is a reference to that Regulation as applied to a securitisation by article 43(7) of the Securitisation Regulation.

Interpretation of this Part

26. In this Part—

- (a) “original lender” has the meaning given in Article 2(20) of the Securitisation Regulation;
- (b) “originator” has the meaning given in Article 2(3) of the Securitisation Regulation;
- (c) “prudential regulation changes” has the meaning given in regulation 38(2)(b) of the Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2021(a);
- (d) “the risk retention delegated regulation” means Commission Delegated Regulation (EU) No 625/2014 of 13 March 2014 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council by way of regulatory technical standards specifying the requirements for investor, sponsor, original lender and originator institutions relating to exposures to transferred credit risk(b).
- (e) “securitisation” has the meaning given in Article 2(1) of the Securitisation Regulation;
- (f) “the Securitisation Regulation” means Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012;
- (g) “sponsor” has the meaning given in Article 2(5) of the Securitisation Regulation.

	<i>Name</i>
	<i>Name</i>
Date	Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of these Regulations)

The primary purpose of this instrument is to make amendments to legislation that are consequential on changes made by sections 1 to 5 of, and Schedules 1 to 4 to, the Financial Services Act 2021 (c. 21). These provisions relate to the prudential regulation of credit institutions and investment firms.

This instrument also addresses failures of retained EU law to operate effectively, and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

Part 2 of this instrument makes amendments to primary legislation, Scottish legislation and Northern Ireland legislation. In particular, regulation 2 amends the definition of “investment firm”

(a) S.I. 2021/1376.
(b) EUR 625/2014.

in the Banking Act 2009 such that specified liabilities owed to PRA-regulated and FCA-regulated investment firms are kept within the exclusion from the bail-in power.

Part 3 of this instrument makes amendments to secondary legislation.

Part 4 of this instrument makes amendments to retained direct EU legislation.

Part 5 of this instrument makes transitional provision in respect of certain securitisations relating to the retention of a material net economic interest by the originator, sponsor or original lender.

A full impact assessment has not been produced for this instrument, as no, or no significant, impact on the private, voluntary or public sector is foreseen. A de minimis impact assessment was produced for the Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2021 to which these Regulations follow. The impact of these Regulations is accounted for in that de minimis assessment, a copy of which is available from HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ and was published with the Explanatory Memorandum for that instrument on www.legislation.gov.uk.