

sDraft Regulations laid before Parliament under paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2019 No.

EXITING THE EUROPEAN UNION

FINANCIAL SERVICES AND MARKETS

The Financial Services (Distance Marketing) (Amendment and Savings Provisions) (EU Exit) Regulations 2019

Made - - - - - *******

Coming into force in accordance with regulation 1

The Treasury are a government department designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to financial services.

The Treasury make these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and section 8(1) of, and paragraph 21(a)(ii) and (b) of Schedule 7 to, the European Union (Withdrawal) Act 2018(c).

In accordance with paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, a draft of this instrument has been laid before and approved by a resolution of each House of Parliament.

PART 1

Introduction

Citation and commencement

1.—(1) These Regulations may be cited as the Financial Services (Distance Marketing) (Amendment and Savings Provisions) (EU Exit) Regulations 2019.

(2) This Part and Part 2 come into force on the day after the day on which these Regulations are made.

(3) Otherwise, these Regulations come into force on exit day.

(a) S.I. 2012/1759.
(b) 1972 c. 68.
(c) 2018 c. 16.

Interpretation

2. In these Regulations, “the 2004 Regulations” means the Financial Services (Distance Marketing) Regulations 2004(a).

PART 2

European Communities Act 1972: amendment of the 2004 Regulations

Amendment of the 2004 Regulations

3. In regulation 2(1) of the 2004 Regulations for the definition of “the Directive” substitute—

““the Directive” means Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC;”(b).

PART 3

European Union (Withdrawal) Act 2018: amendment of the 2004 Regulations

Amendment of the 2004 Regulations

4. The 2004 Regulations are amended as follows.

Amendment of regulation 2

5. In regulation 2(1) (interpretation)—

- (a) omit the definition of “the European Consumer Credit Information form”(c);
- (b) after the definition of “means of distance communication”, insert—

““the Pre-Contract Credit Information (Overdrafts) form” means the form set out in Schedule 3 to the Disclosure of Information Regulations;”.

Amendment of regulation 4

6. In regulation 4 (scope) for paragraph (1) substitute—

“(1) Regulations 7 to 11 do not apply in relation to a contract made between an EEA supplier contracting from an establishment in an EEA State and a consumer in the United Kingdom unless the EEA supplier is a payments supplier or a relevant EEA AIFM.

(1A) Regulations 12 and 13 do not apply in relation to a contract made between an EEA supplier contracting from an establishment in an EEA State and a consumer in the United Kingdom unless the EEA supplier is—

- (a) an authorised person,
- (b) a payments supplier, or
- (c) a relevant EEA AIFM.

(a) S.I. 2004/2095.

(b) OJ No. L 271, 09.10.2002, p. 16; as most recently amended by Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ No. L 337, 23.12.2015, p. 35).

(c) The definition of “the European Consumer Credit Information form” was inserted by S.I. 2010/1010.

(1B) Regulation 15 does not apply in relation to a supply of financial services by an EEA supplier from an establishment in an EEA State to a consumer in the United Kingdom unless the EEA supplier is a payments supplier or a relevant EEA AIFM.

(1C) For the purposes of paragraphs (1) to (1B)—

“payments supplier” means an EEA supplier to whom paragraph 2 or 14 of Schedule 3 to the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018 applies;

“relevant EEA AIFM” means an EEA AIFM (within the meaning given in regulation 78A(1)(b) of the Alternative Investment Fund Managers Regulations 2013) to whom regulation 78B of those Regulations does not apply.”.

Amendment of regulation 7

7. In regulation 7 (information required prior to the conclusion of the contract)—

- (a) in paragraph (1A)(a), omit “, 17”;
- (b) in paragraph (7)(a) for “European Consumer Credit Information form” substitute “Pre-contract Credit Information (Overdrafts) form”.

Amendment of regulation 8

8. In regulation 8 (written and additional information)—

- (a) in paragraph (1A)(b), omit “, 17”;
- (b) in paragraph (1C)(a)(i)(c), for “European Consumer Credit Information form” substitute “Pre-contract Credit Information (Overdrafts) form”.

Amendment of regulation 16

9. In regulation 16 (prevention of contracting-out), for paragraph (3) substitute—

“(3) These Regulations apply despite any contract term which applies or purports to apply the law of a country other than the United Kingdom, if the contract or supply has a close connection with the United Kingdom or any part of the United Kingdom.”.

Amendment of Schedule 1

10. In Schedule 1 (information required prior to the conclusion of the contract)—

- (a) in paragraph 2, for “consumer’s State of residence” substitute “United Kingdom”;
- (b) omit paragraph 17;
- (c) in paragraph 21, for “except to” to the end substitute “as applicable to the contract”.

PART 4

Savings

Savings

11.—(1) Despite the amendments made by regulation 6—

- (a) regulations 7 to 11 of the 2004 Regulations do not apply to a contract made before exit day by—

(a) Paragraph (1A) of regulation 7 was inserted by S.I. 2009/209 and amended by S.I. 2017/752.
(b) Paragraph (1A) of regulation 8 was inserted by S.I. 2009/209 and amended by S.I. 2017/752
(c) Paragraph (1C) of regulation 8 was inserted by S.I. 2010/1010.

- (i) a payments supplier, or a relevant EEA AIFM, contracting from an establishment in an EEA State, and
- (ii) a consumer in the United Kingdom;
- (b) regulations 12 and 13 of the 2004 Regulations do not apply to a contract made before exit day by a relevant EEA supplier contracting from an establishment in an EEA State and a consumer in the United Kingdom;
- (c) regulation 15 does not apply to any supply of financial services before exit day by a payments supplier, or a relevant EEA AIFM, from an establishment in an EEA State to a consumer in the United Kingdom.

(2) In this regulation—

“payments supplier” means an EEA supplier to whom paragraph 2 or 14 of Schedule 3 to the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018(a) applies;

“relevant EEA AIFM” means an EEA AIFM (within the meaning given in regulation 78A(1)(b) of the Alternative Investment Fund Managers Regulations 2013(b)) to whom regulation 78B of those Regulations does not apply;

“relevant EEA supplier” means an EEA supplier who is—

- (a) an authorised person (within the meaning given in the Financial Services and Markets Act 2000(c)),
- (b) a payments supplier, or
- (c) a relevant EEA AIFM.

Date

Two of the Lords Commissioners of Her Majesty’s Treasury

Name
Name

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to legislation relating to the distance marketing of financial services.

Part 2 of these Regulations is made in exercise of the powers in section 2(2) of the European Communities Act 1972, and corrects a cross-reference in implemented EU law.

Part 3 of these Regulations is made in exercise of the powers conferred by section 8(1) of the European Union (Withdrawal) Act 2018 (c.16) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular under paragraphs (c) and (g) of section 8(2) of the Act) arising from the withdrawal of the United Kingdom from the European Union. The deficiencies addressed arise in relation to distance contracts for financial services made by suppliers established in the EEA and consumers in the United Kingdom and in relation to financial services supplied by such suppliers to consumers in the United Kingdom. Part 3 also makes various consequential amendments.

Part 4 of these Regulations makes saving provisions.

(a) S.I. 2018/1201.

(b) S.I. 2013/1773; regulations 78A and 78B were inserted by the Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2018 (S.I. 2018/xxxx).

(c) 2000 c. 8. See section 31.

An impact assessment of the effect that this instrument, and certain other instruments made by HM Treasury under the European Union (Withdrawal) Act 2018, 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.

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