

Draft Regulations laid before Parliament under paragraph 2A(3)(a) of Schedule 2 to the European Communities Act 1972 and paragraphs 1 of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.

STATUTORY INSTRUMENTS

2019 No. 0000

EXITING THE EUROPEAN UNION

FINANCIAL SERVICES

DISCLOSURE OF INFORMATION

**The Public Record, Disclosure of Information and Co-operation
(Financial Services) (Amendment) (EU Exit) Regulations 2019**

<i>Sift requirements satisfied</i>	***
<i>Made</i> - - - -	***
<i>Laid before Parliament</i>	***
<i>Coming into force</i> - <i>in accordance with regulation 1(2) and (3)</i>	

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

The Treasury, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972, sections 349(1)(b) of the Financial Services and Markets Act 2000^(c), section 92 of the Financial Services (Banking Reform) Act 2013^(d) and section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018^(e) make the following Regulations:

A draft of these Regulations has been approved by a resolution of each House of Parliament in accordance with paragraph 2A(3)(a) of Schedule 2 to the European Communities Act 1972 and paragraph 1 of Schedule 7 to the European Union (Withdrawal) Act 2018.

(a) S.I. 2012/1759.

(b) 1972 c.68. Section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c.51) and by section 3 of, and the Schedule to, the European Union (Amendment) Act 2008 (c.7). By virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c.51), regulations may be made under section 2(2) of the European Communities Act 1972 to implement obligations of the United Kingdom created or arising by or under the Agreement of the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073) and the Protocol adjusting the Agreement signed at Brussels on 17th March 1993 (Cm 2183). The European Communities 1972 is repealed on exit day by section 1 of the European Union (Withdrawal) Act 2018.

(c) 2000 c.8.

(d) 2013 c.33

(e) 2018 c.16.

Part 1

Introductory

Citation and commencement

1.—(1) These Regulations may be cited as the Public Record, Disclosure of Information and Co-operation (Financial Services) (Amendment) (EU Exit) Regulations 2019.

(2) Parts 1 and 3 of these Regulations come into force on the day after the day these Regulations are made.

(3) Part 2 of these Regulations comes into force on exit day.

Part 2

Amendments in connection with exiting the European Union

CHAPTER 1

Amendments of Primary Legislation

The Financial Services and Markets Acts 2000

2.—(1) The Financial Services and Markets Act 2000(a) is amended as follows.

(2) In section 347 (the record of authorised persons etc)—

(a) in subsection (2A)(b)—

(i) at the end of paragraph (a) insert “and”;

(ii) at the end of paragraph (b)(ii) omit “and”;

(iii) omit paragraph (c);

(b) in subsection (3A)(c), for the words from “result” to “power” substitute “result of a cancellation of that person’s Part 4A permission under section 55J(d) because one or more of the conditions in section 55K(1)(b) to (d) was met, the power”;

(c) in subsection (8A)(e) omit the definition of “exempt investment firm”.

(3) In section 349 (exceptions from section 348)—

(a) in subsection (3A)(f)—

(i) in paragraph (a) for “a recipient to which subsection (3B)(g) applies” substitute “the Panel on Takeovers and Mergers”;

(ii) in paragraph (b) for “a recipient to which subsection (3B) applies” substitute “the Panel on Takeovers and Mergers”;

(b) omit subsection (3B);

(c) omit subsection (5)(b);

(d) in subsection (5)(c), after “similar functions” insert “to those referred to in paragraph (a)”.

(4) In section 353A (information received from the Bank of England)(a) omit subsection (6)(d).

(a) 2000 c.8.

(b) Subsection (2A) was inserted by paragraph 12 of Schedule 5 to S.I. 2007/126 and was amended by paragraph 16 of Schedule 12 to the Financial Services Act 2012 (c.21) and paragraph 44 of Schedule 2 to S.I. 2017/701.

(c) Subsection (3A) was inserted by paragraph 44 of Schedule 2 to S.I. 2017/701.

(d) Section 55J was inserted by section 11 of the Financial Services Act 2012 (c.21).

(e) Subsection (8A) was inserted by section 34 of the Financial Services (Banking Reform) Act 2013 (c.33). The definition of “exempt investment firm” was inserted in sub-section (8A) by paragraph 44 of Schedule 2 to S.I. 2017/701.

(f) Subsection (3A) was inserted by section 964(4) of the Companies Act 2006 (c.46).

(g) Subsection (3B) was inserted by section 964(4) of the Companies Act 2006 (c.46).

(5) In section 354A (FCA’s duty to co-operate with others)(b)—

- (i) omit subsection (3)(b);
- (ii) in subsection 3(c) omit “other”.

(6) Omit sections 354D (information under the markets in financial instruments directive) to 354H (information under the Insurance Distribution Directive)(c).

The Financial Services (Banking Reform) Act 2013

3. In the Financial Services (Banking Reform) Act 2013

- (a) in section 92 (exceptions from section 91)—
 - (i) omit subsection (2)(b);
 - (ii) in subsection (2)(c), after “similar functions” insert “to those in paragraph (a)”;
- (b) in section 94 (information received from the Bank of England) omit subsection (7)(d).

CHAPTER 2

Amendments of Subordinate Legislation

The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001

4.—(1) The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001(d) are amended as follows.

(2) In regulation 2—

- (a) in the definition of “competent authority”, for “within the meaning of Article 13(10) of the Solvency 2 Directive” substitute “that has the same meaning as in regulation 2(1) of the Solvency 2 Regulations 2015(e)”;
- (b) omit the definitions of—
 - (i) “dependent territory”;
 - (ii) “dependent territory regulatory authority”;
 - (iii) “EEA competent authority”;
 - (iv) “EEA regulatory authority”;
 - (v) “EEA resolution authority”;
- (c) in the definition of “the EMIR regulation”, at the end insert “(as amended by the Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc. and Transitional Provision) (EU Exit) Regulations 2018(f), the Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018(g) and the Trade Repositories (Amendment and Transitional Provision) (EU Exit) Regulations 2018(h))”;
- (d) in the definition of “EU Benchmarks Regulation 2016 information”, at the end insert “(as amended by the Benchmarks (Amendment) (EU Exit) Regulations 2019(i))”;

(a) Section 353A was inserted by paragraph 24 of Schedule 12 to the Financial Services Act 2012 (c.21).

(b) Sections 354A to 354C were substituted for section 354 by paragraph 25 of Schedule 12 to the Financial Services Act 2012 (c.21).

(c) Sections 354D to 354G were inserted by regulation 3 of S.I. 2016/1095. Section 354H was inserted by article 15 of S.I. 2018/546.

(d) S.I. 2001/2188.

(e) S.I. 2015/575.

(f) S.I. 2018/XXXX.

(g) S.I. 2018/1184.

(h) S.I. 2018/1318.

(i) S.I. 2019/XXXX.

- (e) after the definition of “EU Benchmark Regulation 2016 information” insert—
 - ““EU entity” has the meaning given in section 20(1) of the European Union (Withdrawal) Act 2018;”;
- (f) for the definition of “foreign resolution authority”, in the appropriate place, substitute—
 - ““third country resolution authority” means an authority in a country or territory which is not, and does not form part of, the United Kingdom which exercises functions in relation to third country resolution action (within the meaning of section 89H of the Banking Act 2009(a)), including planning for such action, corresponding to one or more functions exercisable by the Bank of England pursuant to Part 1 of the Banking Act 2009(b) or the Bank Recovery and Resolution (No.2) Order 2014(c);”;
- (g) for the definition of “markets in financial instruments directive information” substitute—
 - ““market in financial instruments information” means confidential information received by the FCA or the PRA in the course of discharging their functions under—
 - (a) the markets in financial instruments regulation (as amended by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018(d));
 - (b) EU tertiary legislation (within the meaning of section 20 of the European Union (Withdrawal) Act 2018) made under—
 - (i) the markets in financial instruments directive which forms part of retained EU law; and
 - (ii) the markets in financial instruments regulation (as amended by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018);
 - (c) the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017(e); or
 - (d) the Act, which correspond to functions under the markets in financial instruments directive;”;
- (h) omit the definitions of—
 - (i) “mortgages directive information”;
 - (ii) “non-EEA regulatory authority”;
- (i) for the definition of “overseas regulatory authority”, in the appropriate place, substitute—
 - ““third country regulatory authority” means—
 - (a) an authority in a country or territory outside the United Kingdom which exercises any function of a kind mentioned in section 195(4) of the Act;
 - (b) a third country investment exchange, a third country clearing house, a third country central counterparty (within the meaning of section 285(1)(d) of the Act(f) or a third country CSD (within the meaning of section 285(1)(g) of the Act)(g); or
 - (c) an authority in a country or territory outside the United Kingdom which exercises any functions of a kind corresponding to a function of the Bank of England;”;
- (j) omit the definition of “recovery and resolution directive”;
- (k) for the definition of “recovery and resolution directive information” substitute—
 - ““recovery and resolution information” means confidential information received by—

(a) Section 89H was inserted by S.I. 2014/3329.
(b) 2009 c.1.
(c) S.I. 2014/3348.
(d) S.I. 2018/1403.
(e) S.I. 2017/701.
(f) Subsection (1)(d) was substituted S.I. 2018/1184.
(g) Subsection (1)(g) was inserted by S.I. 2017/1064.

- (a) the Bank of England in the course of discharging its functions under Part 1 of the Banking Act 2009 or the Bank Recovery and Resolution (No.2) Order 2014;
 - (b) the FCA or PRA in the course of discharging their functions under Part 1 of the Banking Act 2009 or the Bank Recovery and Resolution (No.2) Order 2014;
 - (c) a person appointed by the Bank of England under section 62B (resolution administrator) of the Banking Act 2009(a) to act as resolution administrator in the course of discharging that person’s functions as such;”;
- (l) for the definition of “short selling regulation information” substitute—
- ““short selling information” means confidential information received by the FCA in the course of discharging its functions as a competent authority under the short selling regulation (as amended by the Short Selling (Amendment) (EU Exit) Regulations 2018)(b);”;
- (m) For the definition of “single market information” substitute—
- “specified confidential EU law information” means confidential information received by the FCA or the PRA—
- (a) before exit day in the course of discharging its functions as the competent authority under the directives set out in sub-paragraph (c); or
 - (b) after exit day in the course of exercising its functions in or under the Act or retained EU law which functions are equivalent to the functions as the competent authority set out in the directives in sub-paragraph (c).
 - (c) The directives are—
 - (i) the alternative investment fund managers directive;
 - (ii) the capital requirements directive;
 - (iii) the conglomerates directive;
 - (iv) the insurance distribution directive;
 - (v) the mortgages directive;
 - (vi) the Solvency 2 directive;
 - (vii) the UCITS directive;”;
- (n) for the definition of “single market restrictions”, in the appropriate place, substitute—
- ““retained EU law restrictions” means the restrictions imposed on the disclosure of confidential information by the provisions in sub-paragraph (a) as they had effect immediately before exit day and as modified by sub-paragraph (b).
- (a) The provisions are—
 - (i) articles 76 and 81 of the markets in financial instruments directive;
 - (ii) section 2 of Chapter 1 of Title 7 of the capital requirements directive;
 - (iii) articles 64, 65, 66, 67, 68, 69 and 70 of the Solvency 2 directive;
 - (iv) articles 102 and 104.1 of the UCITS directive;
 - (v) article 13 of the insurance distribution directive;
 - (vi) articles 47.2, 47.3, 51, 52 and 53.2 of the alternative investment fund managers directive;
 - (vii) articles 5(2) and 36 of the mortgages directive;
 - (viii) article 83 of the EMIR regulation;
 - (ix) articles 84 and 98 of the recovery and resolution directive; and
 - (x) article 18 of the SFT regulation.

(a) Section 62B was inserted by S.I. 2014/3329.

(b) S.I. 2018/1321.

- (b) The restrictions in the provisions in sub-paragraph (a) have effect as follows—
 - (i) requirements imposed on a Member State or an EU entity are to be read as if they are requirements imposed on the United Kingdom or, where relevant, a primary recipient;
 - (ii) a restriction on the disclosure of confidential information to a person in a third country applies to any disclosure of confidential information to any person in a country or territory outside the United Kingdom; and
 - (iii) a requirement to seek the consent of an EU entity only applies where an equivalent requirement applies in relation to an equivalent entity in a third country.
- (c) For the purposes of sub-paragraph (b)(ii) a reference to a person in a third country, which is a third country regulatory authority, is to be read as including an ESA and the ESRB;”;
- (o) in the definition of “SFTR information”, at the end insert “(as amended by the Transparency of Securities Financing Transactions and of Reuse (Amendment) (EU Exit) Regulations 2018)(a)”;
- (p) for the definition of “UCITS directive information”(b) substitute—

““UCITS information” means confidential information received by the FCA in the course of discharging its functions as the United Kingdom authority under the Undertakings for Collective Investment in Transferable Securities Regulations 2011(c).”.
- (3) In regulation 3(3)(d) for “single market restrictions” substitute “retained EU law restrictions”.
- (4) In regulation 5(5)(e) for “single market restrictions” substitute “retained EU law restrictions”.
- (5) Omit regulation 6(f).
- (6) In the heading to Part III for “single market information” substitute “specified confidential EU law information”.
- (7) In regulation 8(g)—
 - (a) in sub-paragraph (a)(h) for “single market information” substitute “specified confidential EU law information”;
 - (b) in sub-paragraph (b)(i), in the opening words—
 - (i) omit “directive”;
 - (ii) for “from—” to the end of the paragraph substitute “from a third country regulatory authority under a cooperation agreement; and”;
 - (c) omit sub-paragraph (c)(j);
 - (d) in sub-paragraph (d)(k)—
 - (i) omit “directive”;
 - (ii) omit “; and”;
 - (e) omit sub-paragraph (f)(a).

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- (a) S.I. 2018/XXXX.
 - (b) Definition of “UCITS directive information” was inserted by S.I. 2011/1613.
 - (c) S.I. 2011/1613.
 - (d) Paragraph (3) of regulation 3 was amended by S.I. 2012/916.
 - (e) Paragraph (5) of regulation 5 was amended by S.I. 2012/916.
 - (f) Regulation 6 was amended by S.I. 2011/1043.
 - (g) Regulation 8 was substituted by S.I. 2006/3413.
 - (h) Sub-paragraph (a) was amended by S.I. 2012/916 and 2013/504.
 - (i) Sub-paragraph (b) was amended by S.I. 2014/3348 and 2017/701.
 - (j) Sub-paragraph (c) was amended by S.I. 2013/504 and 2016/680.
 - (k) Sub-paragraph (d) was amended by S.I. 2014/3348, 2016/715 and 2017/701.

- (8) In regulation 9—
- (a) in paragraph (1)(b) omit “(3)” and “(3E), (3EA), (3F),”;
 - (b) in paragraph (1A)(c) omit the words “in accordance with” to the end of the paragraph;
 - (c) in paragraph (2ZA)(d)—
 - (i) in sub-paragraph (e) omit “or”;
 - (ii) after sub-paragraph (e) insert—

“reading the relevant provisions in those directives as if—

 - (i) requirements imposed on a Member State or an EU entity are to be read as if they are requirements imposed on the United Kingdom or, where relevant, a primary recipient;
 - (ii) a restriction on the disclosure of confidential information to a person in a third country applies to any disclosure of confidential information to any person in a country or territory outside the United Kingdom;
 - (iii) a requirement to seek the consent of an EU entity only applies where an equivalent requirement applies in relation to an equivalent entity in a third country; and
 - (iv) for the purposes of sub-paragraph (ii) a reference to a person in a third country, which is a third country regulatory authority, is to be read as including an ESA and the ESRB.”;
 - (d) in paragraph (2B)(e)—
 - (i) at end of sub-paragraph (a) insert “and”;
 - (ii) in sub-paragraph (b), from “a requirement” to the end of that sub-paragraph substitute—

“—

 - (i) requirements imposed on the regulator in the exercise of its functions under the Act which correspond to the functions under the Alternative Investment Fund Managers Regulations 2013(f);
 - (ii) EU tertiary legislation (within the meaning of section 20 of the European Union (Withdrawal) Act 2018) made under the alternative investment fund managers directive which forms part of retained EU law; and
 - (iii) rules made by the FCA under the Act that were in force immediately before exit day to implement the alternative investment fund managers directive.”;
 - (iii) omit sub-paragraph (c);
 - (e) for paragraph (2C)(g) substitute—

“(2C) The condition in this paragraph is that—

 - (a) the disclosure is of recovery and resolution information;
 - (b) the disclosure is to a third country resolution authority;
 - (c) the third country resolution authority is subject to restrictions on the disclosure of confidential information at least equivalent, in the opinion of the Bank of England, to the restrictions on the Bank of England in relation to its functions under Part 1

(a) Sub-paragraph (f) was inserted by S.I. 2015/2038.

(b) In paragraph (1) reference to paragraph (3) was inserted by S.I. 2010/2628, reference to paragraph (3E) was inserted by S.I. 2013/504, reference to paragraph (3EA) was inserted by S.I. 2016/715 and reference to paragraph (3F) was inserted by S.I. 2015/910.

(c) Paragraph (1A) was inserted by S.I. 2013/3115.

(d) Paragraph (2ZA) was inserted by S.I. 2013/1773.

(e) Paragraph (2B) was inserted by S.I. 2013/1773.

(f) S.I. 2013/1773.

(g) Paragraph (2C) was inserted by S.I. 2014/3348.

of the Banking Act 2009 or the Bank Recovery and Resolution (No.2) Order 2014;
and

- (c) the information—
 - (i) is necessary for the performance by the third country resolution authority of its functions in relation to a third country resolution action (within the meaning of section 89H of the Banking Act 2009) including planning for such action, corresponding to one or more of the functions exercisable by the Bank of England pursuant to Part 1 of the Banking Act 2009 or the Bank Recovery and Resolution (No.2) Order 2014; and
 - (ii) is not used for any other purpose.”;
- (f) omit paragraph (3)(a);
- (g) for paragraph (3A)(a) substitute—

“(a) was obtained from a third country regulatory authority under a cooperation agreement; and”;
- (h) in paragraph (3B)—
 - (i) omit sub-paragraph (b);
 - (ii) in sub-paragraph (d) omit “in a country or territory”;
 - (iii) omit sub-paragraphs (e) and (f)(b);
- (i) in paragraph (3C)(c)—
 - (i) in the opening words omit “directive”;
 - (ii) in sub-paragraph (a)—
 - (aa) for “an EEA competent authority under Article 101.2 of the UCITS directive or an overseas regulatory authority” substitute “a third country regulatory authority”; and
 - (bb) for “that directive” substitute “the UCITS directive, reading the provisions in article 102 of that directive as if the requirements imposed on a Member State were requirements imposed on the regulator”;
- (j) in paragraph (3D)(d)—
 - (i) in sub-paragraph (b) for “the central bank of any country or territory” substitute “a central bank”;
 - (ii) omit sub-paragraph (e);
- (k) omit paragraphs (3E)(e), (3EA)(f) and (3F)(g);
- (l) for paragraph (4)(h) substitute—

“(4) Paragraph (1) does not permit disclosure in breach of any restriction on the disclosure of confidential information in Section 2 of Chapter 1 of Title 7 of the capital requirements directive reading those provisions in that directive as follows—

 - (a) the requirements imposed on a Member State or an EU entity are to be read as if they are requirements imposed on the United Kingdom or, where relevant, a primary recipient;

(a) Paragraph (3) was amended by S.I. 2007/3255 and 2013/3115.
(b) Sub-paragraphs (e) and (f) were inserted by S.I. 2012/916.
(c) Paragraph (3C) was inserted by S.I. 2011/1613.
(d) Paragraph (3D) was inserted by S.I. 2011/1613.
(e) Paragraph (3E) was inserted by S.I. 2013/504.
(f) Paragraph (3EA) was inserted by S.I. 2016/715.
(g) Paragraph (3F) was inserted by S.I. 2015/910.
(h) Paragraph (4) was inserted by S.I. 2010/2628 and was substituted by S.I. 2013/3115.

- (b) a restriction on the disclosure of confidential information to a person in a third country applies to any disclosure of confidential information to any person in a country or territory outside the United Kingdom;
 - (c) a requirement to seek the consent of an EU entity applies only where an equivalent requirement applies in relation to an equivalent entity in a third country; and
 - (d) for the purposes of sub-paragraph (b) a reference to a person in a third country, which is a third country regulatory authority, is to be read as including an ESA and the ESRB.”;
 - (m) in paragraph (5)(a) omit “directive”.
- (9) In the heading to regulation 10A omit “directive”.
- (10) In regulation 10A(b)—
- (a) in paragraph (1), in the opening words omit “directive”;
 - (b) in paragraph (3) omit “directive”.
- (11) In regulation 10B(c)—
- (a) in paragraph (1), in the opening words, omit “directive”;
 - (b) in paragraph (2), for the definitions of “recovery plan” and “resolution plan”, substitute—
““recovery plan” means a recovery plan or a group recovery plan as those terms are defined in the Bank Recovery and Resolution (No.2) Order 2014; and
“resolution plan” means a resolution plan or a group resolution plan as those terms are defined in that Order.”.
- (12) In the heading to Part IV(d) for “single market restrictions” substitute “retained EU law restrictions”.
- (13) In regulation 11—
- (a) in sub-paragraph (a)(e) for “single market information” substitute “specified confidential EU law information”;
 - (b) in sub-paragraph (d)(f)—
 - (i) in the opening words omit “directive”;
 - (ii) for the words “from—” to the end of the sub-paragraph, substitute—
“from a third country regulatory authority under a cooperation agreement unless that authority has given its express consent for disclosure that is covered by this Part;”;
 - (c) in sub-paragraph (e)(g)—
 - (i) in the opening words omit “directive”;
 - (ii) for the words “from—” to the end of the sub-paragraph substitute—
“from a third country regulatory authority under a cooperation agreement unless that authority has given its express consent for disclosure that is covered by this Part;”;
 - (d) omit sub-paragraphs (f)(h) and (fa)(i);
 - (e) in sub-paragraph (g)(j) omit “directive”;

(a) Paragraph (5) was inserted by S.I. 2014/3348.
(b) Regulation 10A was inserted by S.I. 2014/3348.
(c) Regulation 10B was inserted by S.I. 2014/3348.
(d) Heading to Part IV was amended by S.I. 2012/916.
(e) Sub-paragraph (a) was amended by S.I. 2012/916.
(f) Sub-paragraph (d) was inserted by S.I. 2006/3413 and was amended by S.I. 2017/701.
(g) Sub-paragraph (e) was inserted by S.I. 2011/1613.
(h) Sub-paragraph (f) was inserted by S.I. 2013/504.
(i) Sub-paragraph (fa) was inserted by S.I. 2016/715.
(j) Sub-paragraph (g) was inserted by S.I. 2014/3348/

(14) For the heading to Part V substitute—

“CHAPTER 1

Transitional Provisions Applicable Before Exit Day”.

(15) In regulation 13, in the appropriate places, insert—

- (a) ““EEA competent authority” has the meaning given in regulation 2 of these Regulations as it had effect immediately before exit day;”;
- (b) ““single market information” has the meaning given in regulation 2 of these Regulations as it had effect immediately before exit day;”;
- (c) ““single market restrictions” has the meaning given in regulation 2 of these Regulations as it had effect immediately before exit day;”.

(16) In regulation 17(a), for “the markets in financial instruments directive” substitute “Directive 2004/39/EC of the European Parliament and of the Council of 21st April 2004 on markets in financial instruments(b)”.

(17) After regulation 17 insert—

“CHAPTER 2

Transitional Provision Applicable on or after Exit Day

Transitional provision applicable on or after exit day

18. Confidential information received before exit day by a primary recipient or any person obtaining the information directly or indirectly from a primary recipient shall continue to be treated, on or after exit day, as if that information had been received by that person in accordance with the relevant EU Regulations, directives or these Regulations as they had effect immediately before exit day.”.

(18) In the heading to Schedule 1(c), for single market restrictions” substitute “retained EU law restrictions”.

(19) In the table in Part 1 of Schedule 1—

- (a) in the entry commencing “A person appointed in judicial or administrative proceedings”(d), for “an EEA State or a State which is not an EEA State” substitute “the United Kingdom or a country or territory outside the United Kingdom”;
- (b) omit the entry commencing “A body responsible, in an EEA State” together with the correspond entry in the second column;
- (c) in the entry commencing “A person appointed to carry out a statutory audit”(e) for “within the meaning of” substitute “in accordance with the law of the United Kingdom in force immediately before exit day that implemented”;
- (d) omit the entry commencing “An investment exchange”(f) together with the corresponding entry in the second column;
- (e) omit “ACER”(g) together with the corresponding entry in the second column;
- (f) omit “ESAs”(h) together with the corresponding entry in the second column;
- (g) omit “ESRB”(i) together with the corresponding entry in the second column.

(20) Omit the table in Part 2 of Schedule 1(a).

(a) Regulation 17 was inserted by S.I. 2006/3413.
(b) OJ No. L 145, 30.4.2004 p.1.
(c) Heading to Schedule 1 was amended by S.I. 2012/916.
(d) Entry was inserted by S.I. 2014/3348.
(e) Entry was inserted by S.I. 2014/3348.
(f) Entry was inserted by S.I. 2001/3624.
(g) Entry was inserted by S.I. 2012/916.
(h) Entry was inserted by S.I. 2012/916.
(i) Entry was inserted by S.I. 2012/916.

(21) In the table in Part 3 of Schedule 1—

- (a) omit the entry “A dependent territory regulatory authority” together with the corresponding entry in the second column;
- (b) for “A non-EEA regulatory authority” substitute “A third country regulatory authority”;
- (c) for “A foreign resolution authority”(b) substitute “A third country resolution authority”;
- (d) insert—

“ACER	Its functions under Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency
A body responsible, in a third country, for administering a deposit guarantee scheme recognised in accordance with the law of that country, or an investor-compensation scheme recognised in accordance with the law of that country.	Its functions as such
A person in a third country appointed to carry out a statutory audit of a company in accordance with the law of that country.	That person’s functions as such
An investment exchange which has its head office in a third country, and which is recognised as an investment exchange under the law of that country.	Its functions as a supervisor of financial markets
ESAs	Their functions under Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority) and Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority)
ESRB	Its functions under Regulation (EU) No 1092/2010 of the European Parliament and the Council of 24 November 2010 on

(a) Table in Part 2 was amended by S.I. 2014/3348.

(b) Entry was inserted by S.I. 2014/3348.

European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board

An authority responsible for maintaining the stability of the financial system in a third country through macro prudential regulation Its functions as such.”

(22) In the table in Part 4 of Schedule 1—

- (a) in the entry commencing “A recognised clearing house”(a) omit “an EEA central counterparty (within the meaning of section 285(1)(c) of the Act”;
- (b) in the entry commencing “A clearing house”(b)—
 - (i) for “an EEA State other than the United Kingdom” substitute “a third country”;
 - (ii) for “that state” substitute “that country”;
- (c) for the entry commencing “An EEA central counterparty”(c) substitute—
“A third country central counterparty (within the meaning of section 285(1)(d) of the Act)”;
- (d) in the entry commencing “A recognised CSD”(d) omit—
 - (i) “, EEA CSD”; and
 - (ii) “, (f)”.

(23) Omit the table in Part 5 of Schedule 1(e).

(24) In the heading to Schedule 2(f), for “single market restrictions” substitute “retained EU law restrictions”.

(25) In the table in Schedule 2—

- (a) omit “An EEA regulatory authority” together with the corresponding entry in the second column;
- (b) in the entry commencing “A recognised clearing house”(g), omit “, an EEA central counterparty (within the meaning of section 285(1)(c) of the Act”;
- (c) in the entry commencing “a recognised CSD”(h) omit—
 - (i) “, EEA CSD”; and
 - (ii) “, (f)”.

The Financial Services and Markets Act 2000 (Confidential Information) (Bank of England) (Consequential Provisions) Order 2001

5.—(1) The Financial Services and Markets Act 2000 (Confidential Information) (Bank of England) (Consequential Provisions) Order 2001(i) is amended as follows.

(2) In article 3(1)—

- (a) in sub-paragraph (a) for “; or” substitute “.”;

(a) Entry was amended by S.I. 2013/504.
(b) Entry was inserted by S.I. 2001/3624.
(c) Entry was inserted by S.I. 2013/504.
(d) Entry was inserted by S.I. 2017/1064.
(e) Table in Part 5 was inserted by S.I. 2010/2628.
(f) Heading to Schedule 2 was amended by 2012/916.
(g) Entry was amended by 2013/504.
(h) Entry was inserted by 2017/1064.
(i) S.I. 2001/3648.

- (b) omit sub-paragraph (b).
- (3) In the heading to article 4, for “single market directive information” substitute “specified confidential EU law information”.
- (4) In article 4—
 - (a) omit paragraphs (1) and (2); and
 - (b) in paragraph (3) for “single market directive information” substitute “specified confidential EU law information”.
- (5) In article 6—
 - (a) in paragraph (3) for “single market directive information” substitute “specified confidential EU law information”;
 - (b) in paragraph (4) for “single market directive information” substitute “specified confidential EU law information”; and
 - (c) in paragraph (5) for “single market directive information” substitute “specified confidential EU law information”.

The Electronic Money Regulations 2011

- 6.—(1) The Electronic Money Regulations 2011(a) are amended as follows.
- (2) In Schedule 3—
- (a) in paragraph 6(b)(ii), for “subsections (3A) and (3B)” substitute “subsection (3A)”;
 - (b) in paragraph 11—
 - (i) in sub-paragraph (a)(i), for ““directive restrictions”” substitute ““retained EU law restrictions””;
 - (ii) in sub-paragraph (a)(ii)—
 - (aa) in the opening words for ““EEA regulatory authority”” substitute ““disciplinary proceedings authority””; and
 - (bb) for the definition of “electronic money directive information” substitute—
““electronic money information” means confidential information received by the Authority in the course of discharging its functions as the competent authority under the electronic money directive;”;
 - (iii) in sub-paragraph (a)(iii), for ““overseas regulatory authority”” substitute ““third country regulatory authority””
 - (iv) in sub-paragraph (c) omit “directive”;
 - (v) in sub-paragraph (d) omit “directive”;
 - (vi) in sub-paragraph (e) omit “directive”.

The Payments in Euro (Credit Transfers and Direct Debits) Regulations 2012

- 7.—(1) The Payments in Euro (Credit Transfers and Direct Debits) Regulations 2012(b) are amended as follows.
- (2) In the Schedule, in paragraph 9—
- (a) in paragraph (a)—
 - (i) in the opening words, for ““overseas regulatory authority”” substitute ““third country regulatory authority””;

(a) S.I. 2011/99.
(b) S.I. 2012/3122.

- (ii) in the opening words that are inserted by paragraph (9)(a), for “or any function” substitute “or an authority in a country or territory outside the United Kingdom which exercises any function of a kind corresponding to a function”;
- (b) in paragraph (d), in the inserted sub-paragraph (c), in the opening words, for “as the competent authority under” substitute “corresponding to”;
- (c) in paragraph (e), in the inserted paragraph (4A), in the opening words, for “as the competent authority under” substitute “corresponding to”;
- (d) in paragraph (f), in the inserted sub-paragraph (f), in the opening words, for “as the competent authority under” substitute “corresponding to”;
- (e) in paragraph (g)(ii), for ““The Department of Enterprise, Trade and Investment in Northern Ireland”” substitute ““The Department for the Economy in Northern Ireland””.

The Financial Services (Banking Reform) Act 2013 (Disclosure of Confidential Information) Regulations 2014

8.—(1) The Financial Services (Banking Reform) Act 2013 (Disclosure of Confidential Information) Regulations 2014(a) are amended as follows.

(2) In regulation 2, for the definition of “single market restrictions” substitute, in the appropriate place—

““retained EU law restrictions” has the meaning given in regulation 2 of the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001.”

- (3) In regulation 3(3), for “single market restrictions” substitute “retained EU law restrictions”.
- (4) In regulation 5(4), for “single market restrictions” substitute “retained EU law restrictions”.
- (5) Omit regulation 6.

The Payment Services Regulations 2017

9.—(1) The Payment Services Regulations 2017(b) are amended as follows.

(2) In regulation 147—

- (a) in paragraph (1), in the opening words, for “must” substitute “may”; and
- (b) omit paragraph (4).

(3) In Schedule 6—

- (a) in paragraph 8(1)(b) for “subsections 3A and 3B were” substitute “subsection (3A) was”;
- (b) in paragraph 13—
 - (i) in paragraph (a)—
 - (aa) omit paragraphs (i) and (ii);
 - (bb) in paragraph (iii), in the opening words for “after the definition of “overseas regulatory authority”” substitute “before the definition of “prescribed disciplinary proceedings””;
 - (cc) in paragraph (iii) omit the definition of “payment services directive information”;
 - (dd) for paragraph (iv) substitute—
 - “(iv) in the definition of “retained EU law restrictions” at the end of paragraph (b) there were inserted—
 - “(xi) article 24 of the payment services directive”;

(a) S.I. 2014/882.

(b) S.I. 2017/752.

- (v) in the definition of “specified confidential EU law information”, after paragraph (c)(v) there were inserted—
 - “(va) the payment services directive;”;
- (ii) omit paragraph (d);
- (iii) in paragraph (e)(ii), in the inserted paragraph (1B), omit “directive”;
- (iv) omit paragraph (f);
- (v) in paragraph (g)—
 - (aa) in the opening words, for “single market restrictions” substitute “retained EU law restrictions”;
 - (bb) in sub-paragraph (ii), for ““The Department of Enterprise, Trade and Investment in Northern Ireland”” substitute ““The Department for the Economy in Northern Ireland””.

CHAPTER 3

Amendments of retained direct EU legislation

Amendment of Regulation (EU) No 236/2012

10.—(1) Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14th March 2012^(a) on short selling and certain aspects of credit default swaps is amended as follows.

(2) In Article 34, omit paragraph 2.

(3) In Article 38(2), for “shall, where possible,” substitute “may”.

Amendment of Regulation (EU) No 596/2014

11.—(1) Regulation (EU) 596/2014 of the European Parliament and of the Council of 16th April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC^(b) is amended as follows.

(2) In Article 26(1), in the first place that it occurs, for “shall, where necessary” substitute “may”.

Amendment of Regulation (EU) No 2015/2365

12.—(1) Regulation (EU) 2015/2365 of the of the European Parliament and of the Council of 25th November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012^(c) is amended as follows.

(2) In Article 18^(d)—

(a) in paragraph (2), for the words “the FCA receives in the course of its duties” substitute “those persons receive in the course of their duties”;

(b) in paragraph (3)—

(i) for the words “the FCA, when it receives” substitute “where the competent authorities receive”;

(ii) after the words “pursuant to this Regulation” insert “they”;

(a) OJ No. L 86, 24.3.2012 p.1.

(b) OJ No. L 173, 12.6.2014, p.1.

(c) OJ No. L 337, 23.12.2015, p.1.

(d) The reference to article 18 is as amended by the Transparency of Securities Financing Transactions and of Reuse (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/XXXX).

- (iii) for the words “its duties and for the exercise of its functions” substitute “their duties and for the exercise of their functions”;
- (iv) in the final sentence, for “the FCA” substitute “the competent authorities”.
- (c) for paragraph (5), substitute—

“(5) Paragraphs 1, 2 and 3 shall not prevent the competent authorities from exchanging or transmitting confidential information in accordance with any provision of the law applying in any part of the United Kingdom.”.

PART 3

Amendments other than in connection with Exiting the European Union

The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001

13.—(1) The Financial Services and Markets Act 2000 (Disclosure of Information) Regulations 2001(a) are amended as follows.

(2) In regulation 2—

(a) in the definition of “overseas regulatory authority”—

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

(ii) at the end of sub-paragraph (b) insert—

“or

(c) an authority in a country or territory outside the United Kingdom which exercises any functions of a kind corresponding to a function of the Bank of England;”;

(b) in the definition of “single market restrictions”, in sub-paragraph (f) for “104a.1” substitute “104.1”;

(c) omit the definition of “the third non-life insurance directive”.

(3) In regulation 5(3)(c) for the “the Department of Enterprise, Trade and Investment in Northern Ireland” substitute “the Department for the Economy in Northern Ireland”.

(4) In regulation 9—

(a) omit paragraph (2A);

(b) in paragraph (3), for sub-paragraphs (iii), (iv) and (v) substitute—

“(vi) article 33 of the Solvency 2 directive.”;

(c) in paragraph (3A)(a), for “article 63” substitute “article 88”.

(5) In the heading to regulation 12A insert “The Gambling Commission”.

(6) In the heading to regulation 12C insert “Proceedings under the Proceeds of Crime Act 2002(b)”.

(7) In Schedule 1—

(a) in the table in Part 1—

(i) in the entry commencing “A person appointed in judicial or administrative proceedings”, in the corresponding entry in the second column, for “That person’s functions as such” substitute—

“That person’s functions in so far as they relate to:

(i) former authorised persons or persons who have carried on former regulated activities;

(a) 2001/2188.

(b) 2002 c.29.

- (ii) persons carrying on, or who have carried on, regulated activities; or
- (iii) banking group companies (as defined in section 81D(a) of the Banking Act 2009”;
- (ii) for the entry “The Department of Enterprise, Trade and Investment in Northern Ireland” substitute “The Department for the Economy in Northern Ireland”;
- (b) in the table in Part 2, after the entry commencing “An authority responsible for” insert—

“A reorganisation body or authority in Its functions as such”
an EEA State whose aim is to protect
the stability of the financial system
- (c) in the table in Part 3 after “A foreign resolution authority” insert—

“An authority responsible for Its functions as such”
maintaining the stability of the
financial system in a third country or
territory through macro-prudential
regulation

A reorganisation body or authority in Its functions as such”
a third country or territory whose aim is
to protect the stability of the financial
system
- (d) in the table in Part 4, for “The Department of Enterprise, Trade and Investment in Northern Ireland” substitute “The Department for the Economy in Northern Ireland”.

The Electronic Money Regulations 2011

- 14.—**(1) The Electronic Money Regulations 2011(b) are amended as follows(c).
- (2) In Schedule 3, in paragraph 11—
- (a) in paragraph (a)(i), for “article 9 of the insurance mediation directive”, in both places that it occurs, substitute “article 13 of the insurance distribution directive”;
 - (b) in paragraph (c), in the inserted text, for “(c)” substitute “(g)”.

The Financial Services (Banking Reform) Act 2013 (Disclosure of Confidential Information) Regulations 2014

- 15.—**(1) The Financial Services (Banking Reform) Act 2013 (Disclosure of Confidential Information) Regulations 2014 are amended as follows(d).
- (2) In the table in the Schedule, for “The Department of Enterprise, Trade and Investment in Northern Ireland” substitute “The Department of the Economy in Northern Ireland”.

Name

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- (a) Section 81D of the Banking Act 2009 was inserted by section 100 of the Financial Services Act 2012 (c.21) and was amended by paragraph 7 of Schedule 2 to the Financial Services (Banking Reform) Act 2013 (c.33) and S.I. 2014/3160 and 2014/3329.
 - (b) S.I. 2011/99.
 - (c) These amendments to the Electronic Money Regulations 2011 are made under section 2(2) of the European Communities Act 1972 (c.68).
 - (d) The amendments to the Financial Services Banking Reform Act 2013 Disclosure of Confidential Information Regulations 2014 are made under section 92 of the Financial Services (Banking Reform) Act 2013 (c.33).

Date

Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers in section 2(2) of the European Communities Act 1972 (c.59) (“the 1972 Act”), section 349 of the Financial Services and Markets Act 2000 (c.8) (“FSMA”) and section 8(1) of the European Union (Withdrawal) Act 2018 (c.16) (“the 2018 Act”).

Part 2 of these Regulations make amendments in exercise of the powers in section 8(1) of the 2018 Act in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union (and in particular deficiencies referred to in sub-paragraphs (a), (b), (c) and (g) of section 8(2)). Amendments are made to FSMA, the Financial Services (Banking Reform) Act 2013 (c.33), the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 (S.I. 2001/2188), the Financial Services and Markets Act 2000 (Confidential Information) (Bank of England) Consequential Provisions Order 2001 (S.I. 2001/3648), the Electronic Money Regulations 2001 (S.I. 211/99), the Payment in Euro (Credit Transfers and Direct Debits) Regulations 2012 (S.I. 2012/3122), the Financial Services (Banking Reform) Act 2013 (Disclosure of Confidential Information) Regulations 2014 (S.I. 2014/882) and the Payment Services Regulations 2017 (S.I. 2017/752).

Part 3 of these Regulations make amendments in exercise of the powers in section 2(2) of the 1972 Act and section 349 of FSMA to correct existing minor errors that could not be made under the powers in the 2018 Act.

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.