
EXPLANATORY NOTE

(This note is not part of the Regulations)

Except for the regulations referred to in the next paragraph, these Regulations are made in exercise of the powers in section 8 of the European Union (Withdrawal) Act 2018 (c.16) 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, the deficiencies under paragraphs (a), (d), (e) and (g) of section 8(2)).

The regulations commenced by regulation 1(2) amend the Financial Services and Markets Act 2000 (“the Act”) (c.8) and secondary legislation made under the Act in exercise of powers under the European Communities Act 1972 (c.68). These amendments ensure that the references to EU instruments in the Act and the secondary legislation are up to date at exit day, in accordance with the United Kingdom’s EU obligations prior to exit day.

Part 2 of the Regulations amends the Act, including section 417 (definitions) and makes transitional provision in relation to some of the amendments. There are terms defined in section 417 that are no longer used in the Act, but which continue to be used undefined in legislation made under it. This is an unusual situation and it is unclear whether section 11 of the Interpretation Act 1978 (c.30) can be relied on, which is the reason for the amendment at the beginning of section 417(1). Part 3 amends the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) and makes transitional provision in relation to some of the amendments. Part 4 amends the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (S.I. 2005/1529) and makes transitional provision in relation to some of the amendments. Part 5 amends other secondary legislation made under the Act. Part 6 contains minor and consequential amendments.

Part 7 provides for a new power for the regulators (the Financial Conduct Authority, Prudential Regulation Authority and the Bank of England) to make transitional directions to waive or modify obligations imposed on UK-supervised firms by enactments where the nature of the obligation has been altered by the exercise of section 8 of the European Union (Withdrawal) Act 2018. A regulator can only make a transitional direction where it is satisfied that it will prevent or mitigate disruptions for firms, and where the direction will not adversely affect the regulator’s statutory objectives. All transitional directions must cease to have effect two years after exit day.

Part 8 makes further provision for the Financial Conduct Authority, Prudential Regulation Authority and Bank of England to charge fees in connection with the discharge of their functions under or as a result of:

- regulations made under section 8 of the European Union (Withdrawal) Act 2018;
- retained direct EU legislation;
- technical standards made in accordance with Chapter 2A of Part 9A of the Act;
- subordinate legislation made by virtue of regulations made under section 8 of the European Union (Withdrawal) Act 2018.

These Regulations refer to sourcebooks made by the Financial Conduct Authority under the Act. Sourcebooks made by the Financial Conduct Authority are available on <https://www.handbook.fca.org.uk/handbook> and copies of the rules referred to can be obtained from the Financial Conduct Authority, 12 Endeavour Square, London E20 1JN, where it is also available for inspection.

Status: *This is the original version (as it was originally made).*

An impact assessment of the effect that this instrument, and other instruments made by HM Treasury under the European Union (Withdrawal) Act 2018 at or about the same time, will have on the costs of business, the voluntary sector and the public sector will be available from HM Treasury, 1 Horse Guards Road, London SW1A 2HQ and will be published alongside this instrument at www.legislation.gov.uk.