
STATUTORY INSTRUMENTS

2019 No. 632

The Financial Services and Markets Act 2000
(Amendment) (EU Exit) Regulations 2019

PART 2

Amendments to the Act

CHAPTER 2

Part 3 of the Act: authorisation and exemption

Introduction

11. Part 3 of the Act (authorisation and exemption) is amended as follows.

Section 39 (exemption of appointed representatives)

12.—(1) Section 39 (exemption of appointed representatives) is amended as follows.

(2) In subsection (1A)(1), in paragraph (a)—

- (a) for “credit institution” substitute “qualifying credit institution”;
- (b) for “a person mentioned in Article 3.1 (optional exemptions) of the markets in financial instruments directive” substitute “a firm which has a Part 4A permission to carry on regulated activities as an exempt investment firm within the meaning of regulation 8 of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (S.I. 2017/701)”.

(3) In subsection (1AA)(2)—

- (a) in paragraph (a), for “credit institution” substitute “qualifying credit institution”;
- (b) in paragraph (b) omit “as defined by Article 4.1.43 (definitions) of the markets in financial instruments directive”.

(4) In subsection (1B)(3), for the words after ““the applicable register” is” substitute “the record maintained by the FCA by virtue of section 347(1)(ha)”.

(5) In subsection (1BA)(4), in paragraph (b)—

- (a) after “of a kind” insert “that”;
- (b) in sub-paragraph (i), before “specified” insert “is”;
- (c) for sub-paragraph (ii) substitute—

“(ii) relates to mortgage agreements entered into on or after 21st March 2016,”.

(1) Subsection (1A) was inserted by [S.I. 2007/126](#) and has been amended by [S.I. 2015/910](#) and [2017/701](#).

(2) Subsection (1AA) was inserted by [S.I. 2017/701](#).

(3) Subsection (1B) was inserted by [S.I. 2007/126](#) and was amended by paragraph 5 of Schedule 18 to the Financial Services Act 2012 and by [S.I. 2017/701](#).

(4) Subsection (1BA) was inserted by [S.I. 2015/910](#).

- (6) In subsection (4)(5), for “qualifying EU provision” substitute “qualifying provision”.
- (7) For subsection (7)(6) substitute—
- “(7) A person carries on “investment services business” if, under the full and unconditional responsibility of only one investment firm on whose behalf the person acts, the person—
- (a) promotes investment services or ancillary services to the firm’s clients or prospective clients,
 - (b) receives and transmits instructions or orders from clients in respect of investment services or financial instruments,
 - (c) places financial instruments, or
 - (d) provides advice to clients or prospective clients in respect of investment services or financial instruments.”.
- (8) For subsection (8)(7) substitute—
- “(8) In this section—
- “ancillary services” means any of the services and activities listed in Part 3A of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544);
- “financial instruments” means those instruments specified in Part 1 of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;
- “investment services” means any of the services and activities listed in Part 3 of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, relating to any of the instruments listed in Part 1 of that Schedule;
- “structured deposit” has the meaning given by Article 2.1.23 of the markets in financial instruments regulation.”(8).

Section 39A (certain tied agents operating outside United Kingdom)

13.—(1) Section 39A(9) (certain tied agents operating outside United Kingdom) is amended as follows.

(2) In subsection (1)(a), for the words after “who is” substitute “established in the United Kingdom; and”.

(3) In subsection (4), for the words after “Condition B is that” substitute “the FCA is satisfied that no such business is, or is likely to be, carried on by the agent in the United Kingdom.”.

(4) In subsection (6)(c)(10) omit sub-paragraph (ii).

(5) In subsection (6)(d)(11) omit “or register”.

(6) For subsection (8)(12) substitute—

“(8) Section 39(7) applies for the purposes of this section.”.

(7) In subsection (9) omit the definition of “competent authority”(13).

(5) Subsection (4) was substituted by paragraph 1 of Schedule 18 to the Financial Services Act 2012.
(6) Subsection (7) was inserted by S.I. 2007/126 and has been amended by S.I. 2017/701.
(7) Subsection (8) was amended by S.I. 2013/3115 and 2017/701.
(8) Part 3A was inserted by S.I. 2018/1403.
(9) Section 39A was inserted by S.I. 2007/126.
(10) Subsection (6)(c) was substituted by S.I. 2017/701.
(11) Subsection (6)(d) was amended by S.I. 2017/701.
(12) Subsection (8) was amended by S.I. 2017/701.
(13) This definition was amended by S.I. 2017/701.

(8) The amendments made by paragraphs (2), (3) and (7) do not apply during the three-year transitional period in relation to contracts entered into before exit day.

(9) In relation to such contracts, section 39A(6)(d) has effect during the three-year transitional period as if “or on the register of tied agents of an EEA State maintained pursuant to Article 29 of [Directive 2014/65/EU](#) of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments” were inserted after “entered on that record”.

(10) In paragraphs (8) and (9) “the three-year transitional period” means the period that—

- (a) begins with exit day, and
- (b) ends at the end of the period of three years starting with the first day after exit day.