

STATUTORY INSTRUMENTS

2020 No. 1055

The Equivalence Determinations for Financial Services (Amendment etc.) (EU Exit) Regulations 2020

PART 2

Cooperation arrangements, regulatory decisions and equivalence directions

Cooperation arrangements between UK regulators and EEA regulators

3.—(1) Subject to paragraphs (2) to (4), where the Treasury have made an equivalence direction that makes a determination set out in a paragraph of Schedule 1 to the 2019 Regulations that is specified in the final column of Table 1 in Schedule 1 in relation to an EEA state, the UK regulator must take such steps as it considers appropriate to establish cooperation arrangements with the EEA regulator—

- (a) for the EEA state referred to in the equivalence direction; and
- (b) in accordance with the paragraph of Schedule 2 that is specified in the second column of the same row of that Table.

(2) Where the UK regulator considers that existing arrangements with the EEA regulator meet the requirements in the paragraph of Schedule 2 to which paragraph (1)(b) refers, then the UK regulator may consider paragraph (1) to be satisfied.

(3) Paragraph (1) need not be satisfied where the Treasury have made an equivalence direction that makes a determination set out in paragraph 9(8) of Schedule 1 to the 2019 Regulations (in respect of the Prospectus Regulation) and the EEA state referred to in that equivalence direction is a high-risk third country within the meaning of regulation 33(3)(a) of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017^{M1}.

(4) Paragraph (1) does not apply on or after IP completion day.

Commencement Information

II Reg. 3 in force at 30.9.2020, see reg. 1(2)

Marginal Citations

M1 [S.I. 2017/692](#), as amended by [S.I. 2019/1511](#).

Applications for a regulatory decision before IP completion day

4.—(1) Subject to paragraph (2), a person (“the applicant”) may make an application (“the application”) to the UK regulator under this regulation for a regulatory decision set out in a paragraph of Schedule 3 specified in the third column of Table 1 in Schedule 1.

- (2) An application may only be made—
- (a) before IP completion day; and

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- (b) after an equivalence direction has been made that makes a determination set out in the paragraph of Schedule 1 to the 2019 Regulations specified in the final column of the same row of Table 1.
- (3) An application under paragraph (1) must—
- (a) be made in such manner as the UK regulator may direct;
 - (b) be accompanied by such other information as that regulator may direct.
- (4) The UK regulator must confirm promptly receipt of the application to the applicant.
- (5) The UK regulator must determine, and inform the applicant, within a reasonable time whether the application is complete and meets requirements set out in accordance with paragraph (3).
- (6) If the UK regulator determines that the application is not complete and does not meet requirements set out in accordance with paragraph (3), that regulator may—
- (a) request that the applicant provide further information; and
 - (b) set such a time period for the provision of further information requested under sub-paragraph (a) as the regulator considers appropriate.
- (7) The UK regulator may at any time request that the applicant provide further information relating to the application.
- (8) The applicant must notify the UK regulator promptly of any material changes affecting the application.
- (9) The applicant may withdraw the application by giving notice to the UK regulator at any time before the application is determined.

Commencement Information

I2 Reg. 4 in force at 30.9.2020, see reg. 1(2)

Regulatory decisions

5.—(1) Where an application has been made under regulation 4, the UK regulator must decide that application in accordance with the paragraph of Schedule 3 to which the application relates.

(2) Where the decision under paragraph (1) is that the application meets the applicable requirements of regulation 4 and Schedule 3, the UK regulator must issue the regulatory decision to the applicant promptly.

(3) Where the decision under paragraph (1) is that the application does not meet the applicable requirements of regulation 4 and Schedule 3, the UK regulator must notify the applicant promptly and in writing of the reasons for refusal.

(4) The UK regulator must make a decision under paragraph (1) within the period of one year beginning with the first day on which—

- (a) the applicant has submitted a complete application; and
- (b) relevant cooperation arrangements have been established in relation to the EEA State to which the application relates, where required under the paragraph of Schedule 3 to which the application relates.

(5) A regulatory decision may not have effect before IP completion day.

Commencement Information

I3 Reg. 5 in force at 30.9.2020, see reg. 1(2)

Application of the 2000 Act to the Bank in relation to its functions under these Regulations

6.—(1) Subject to paragraph (2), the provisions of the 2000 Act referred to in paragraphs (3) to (6) apply in relation to the Bank in accordance with those paragraphs.

(2) In relation to the functions of the Bank under these Regulations, any reference in the 2000 Act to the PRA that is contained in, or relates to, any of the provisions (however expressed) mentioned below is to be read as a reference to the Bank.

(3) Sections 348 (restrictions on disclosure of confidential information by FCA, PRA etc.) to 350 (disclosure of information by the Inland Revenue) ^{M2} and 353 (removal of other restrictions on disclosure) ^{M3}, and Regulations made under those sections ^{M4}, apply in relation to information received by the Bank for the purposes of, or in the discharge of, any of its functions under these Regulations.

(4) Section 398 (misleading FCA or PRA: residual cases) ^{M5} applies to information given to the Bank in purported compliance with a requirement imposed by or under these Regulations, as if the Bank is the “regulator” referred to in sub-section (1) of that section.

(5) Section 401 (proceedings for offences) ^{M6} applies as if, for the purpose of sub-sections (2) (a) and (3)(a) of that section, the Bank is the “appropriate regulator” in respect of an offence under section 398(1) in relation to these Regulations.

(6) Paragraph 19 (annual report) of Schedule 1ZB ^{M7} applies in relation to the recording of decisions made by the Bank exercising its functions under these Regulations and the 2019 Regulations.

Commencement Information

I4 Reg. 6 in force at 30.9.2020, see reg. 1(2)

Marginal Citations

M2 Section 348 amended by paragraph 26 of Schedule 2 to the [Financial Services Act 2010 \(c. 28\)](#), [paragraph 18](#) of Schedule 12 to the [Financial Services Act 2012 \(c. 21\)](#), [paragraph 5](#) of Schedule 8 to the [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), [paragraph 45](#) of Schedule 2 to the [Bank of England and Financial Services Act 2016 \(c. 14\)](#), and S.I. 2016/1239; section 349 amended by section 964 of the [Companies Act 2006 \(c. 46\)](#), [paragraph 19](#) of Schedule 12 to the [Financial Services Act 2012 \(c. 21\)](#) and S.I. 2007/1093 and 2011/1043, and will be amended by S.I. 2019/681 on IP completion day; section 350 amended by paragraph 20 of Schedule 12 to the [Financial Services Act 2012 \(c. 21\)](#).

M3 Section 353 amended by paragraph 23 of Schedule 12 to the [Financial Services Act 2012 \(c. 21\)](#) and S.I. 2013/1881.

M4 S.I. 2001/2188 and 3648.

M5 Section 398 amended by paragraph 36 of Schedule 9 to the [Financial Services Act 2012 \(c. 21\)](#); there are other amendments which are not relevant.

M6 Section 401 amended by paragraph 38 of Schedule 9 to the [Financial Services Act 2012 \(c. 21\)](#) and S.I. 2013/1881; there are other amendments which are not relevant.

M7 Schedule 1ZB added by Schedule 3 to the [Financial Services Act 2012 \(c. 21\)](#); paragraph 19 amended by sections 5 and 130 of the [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), [paragraph 50](#) of Schedule 2 to the [Bank of England and Financial Services Act 2016 \(c. 14\)](#).

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[F1] Misleading the FCA: criminal offence

6A. Section 398 (misleading the FCA or PRA: residual cases) of the Financial Services and Markets Act 2000 applies to a requirement to provide information in accordance with these Regulations as it applies to a requirement falling within subsection (1A) of that section.]

F1 Reg. 6A inserted (27.11.2020) by [The Securities Financing Transactions, Securitisation and Miscellaneous Amendments \(EU Exit\) Regulations 2020 \(S.I. 2020/1385\)](#), regs. 1(2), **70(3)**

Commencement Information

I5 Reg. 6A in force at 27.11.2020, see reg. 1(3) (as inserted by [S.I. 2020/1385](#), regs. 1(2), **70(2)**)

Fees

7.—(1) The UK regulator may require applicants to pay such fees in connection with discharging its functions under these Regulations as it considers will enable it to meet its expenses incurred in carrying out those functions or for any incidental purpose.

(2) Any fee owed to the UK regulator under this regulation may be recovered as a debt due to that regulator.

(3) Nothing in this regulation affects the operation of Part 8 of the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 ^{M8}.

Commencement Information

I6 Reg. 7 in force at 30.9.2020, see reg. 1(2)

Marginal Citations

M8 [S.I. 2019/632](#).

Effect of applications, equivalence directions and regulatory decisions on or after IP completion day

8.—(1) On or after IP completion day, an equivalence direction made before IP completion day that makes a determination set out in a paragraph of Schedule 1 to the 2019 Regulations specified in the first column of Table 2 in Schedule 4 to these Regulations (for the purposes set out in that paragraph) has effect as if made—

- (a) on IP completion day; and
- (b) under the provision of retained EU law specified in the second column of the same row of that Table.

(2) A regulatory decision made in accordance with a paragraph of Schedule 3 that is specified in the first column of Table 3 in Schedule 4 has effect on or after IP completion day as if made—

- (a) under the provision of retained EU law specified in the second column of the same row of that Table; and
- (b) on—
 - (i) IP completion day, if made before IP completion day; or
 - (ii) the day that the decision is made, if made on or after IP completion day.

(3) On or after IP completion day, an application made by an EEA CSD under regulation 4, for the purposes set out in paragraph 3 of Schedule 3, has effect as if it is an application made under

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Article 25 of CSDR on IP completion day, for the purposes of Article 69(1) and (2)(a) of CSDR only, where—

- (a) the application has not been withdrawn; and
- (b) the application has not been determined under regulation 5.

Commencement Information

I7 Reg. 8 in force at 30.9.2020, see reg. 1(2)

[^{F2}Power for the FCA to establish arrangements for Article 5(7) of CRAR with third country regulators before IP completion day

8A.—(1) Before IP completion day, the FCA may establish arrangements with a third country regulator for the purposes of Article 5(7) of CRAR;

(2) Nothing in this regulation affects the operation or scope of the FCA’s existing powers.

(3) In this regulation, “third country regulator” means a regulator, other than a regulator for the UK or a part of the UK or an EEA regulator, with functions that correspond to those of the FCA in relation to CRAR.]

F2 Reg. 8A inserted (27.11.2020) by [The Securities Financing Transactions, Securitisation and Miscellaneous Amendments \(EU Exit\) Regulations 2020 \(S.I. 2020/1385\)](#), regs. 1(2), **70(4)**

Commencement Information

I8 Reg. 8A in force at 27.11.2020, see reg. 1(3) (as inserted by [S.I. 2020/1385](#), regs. 1(2), **70(2)**)

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Changes and effects yet to be applied to :

- Regulations revoked by [2023 c. 29 Sch. 1 Pt. 2](#)