

Draft regulations laid before Parliament under paragraph 1(1) and (2) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2019 No. 0000

**EXITING THE EUROPEAN UNION
FINANCIAL SERVICES AND MARKETS**

**The Credit Rating Agencies (Amendment,
etc.) (EU Exit) Regulations 2019**

*Made - - - - - ***
Coming into force in accordance with regulation 1(2)
and (3)*

The Treasury make the following Regulations in exercise of the powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018⁽¹⁾.

In accordance with paragraph 1(1) and (2) of Schedule 7 to the European Union (Withdrawal) Act 2018, a draft of these Regulations has been laid before, and approved by a resolution of, each House of Parliament.

PART 1

General provision

Citation and commencement

1.—(1) These Regulations may be cited as the Credit Rating Agencies (Amendment, etc.) (EU Exit) Regulations 2019.

(2) This Part and Part 8 of these Regulations come into force on the day after the day on which they are made.

(3) Parts 2 to 7, 9 and 10 of these Regulations come into force on exit day.

Interpretation

2. In these Regulations—

- “the Act” means the Financial Services and Markets Act 2000⁽²⁾;
- “the CRA Regulation” means Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies;
- “credit rating agency” means a credit rating agency registered under Chapter 1 of Title 3 of the CRA Regulation;
- “credit rating activity” is to be construed in accordance with Article 3.1 of the CRA Regulation;
- “the FCA” means the Financial Conduct Authority.

PART 2

Rules and Guidance

Rules

- 3.—(1) The FCA may make such rules applying to credit rating agencies—
- (a) with respect to the carrying on of a credit rating activity, or
 - (b) with respect to the carrying on of an activity which is not a credit rating activity,
- as appear to the FCA to be necessary or expedient for the purpose of advancing one or more of its operational objectives under Part 1A of the Act.
- (2) Rules under paragraph (1) may include, in particular—
- (a) provision applying to credit rating agencies even though there is no relationship between the credit rating agencies to whom the rules will apply and the persons whose interests will be protected by the rules;
 - (b) requirements which take into account, in the case of a credit rating agency which is a member of a group, any activity of another member of the group.
- (3) The rules may not modify, amend or revoke any retained direct EU legislation (except retained direct EU legislation which takes the form of rules).

Rules: procedure, etc.

- 4.—(1) The following provisions of the Act apply in respect of rules made under regulation 3 as they apply in respect of rules made by the FCA under that Act.
- (2) The provisions are—
- (a) section 138A (modification or waiver of rules)⁽³⁾;
 - (b) section 138B (publication of directions under section 138A)⁽⁴⁾;
 - (c) section 138F (notification of rules)⁽⁵⁾;
 - (d) section 138G (rule-making instruments)⁽⁶⁾;
 - (e) section 138H (verification of rules)⁽⁷⁾;

(2) 2000 c. 8.

(3) Inserted by section 24(1) of the Financial Services Act 2012 (c. 21) and amended by paragraph 8 of Schedule 3 to the Financial Services (Banking Reform) Act 2013 (c. 33) and S.I. 2013/1388.

(4) Inserted by section 24(1) of the Financial Services Act 2012 (c. 21).

(5) Inserted by section 24(1) of the Financial Services Act 2012 (c. 21) and amended by paragraph 7 of Schedule 3 to the Pension Schemes Act 2015 (c. 8), sections 29(3) and 33(3) of, and paragraph 35 of Schedule 2 to, the Bank of England and Financial Services Act 2016 (c. 14) and paragraph 13 of Schedule 3 to the Financial Guidance and Claims Act 2018 (c. 10).

(6) Inserted by section 24(1) of the Financial Services Act 2012 (c. 21).

(7) Inserted by section 24(1) of the Financial Services Act 2012 (c. 21).

- (f) section 138I (consultation by the FCA)(**8**) as if—
 - (i) in subsection (6), after paragraph (e) there were inserted—
 - “(f) regulation 3 of the Credit Rating Agencies (Amendment, etc.) (EU Exit) Regulations 2019.”;
 - (ii) in subsection (10), after paragraph (b) there were inserted—
 - “, or
 - (c) to rules made by the FCA under regulation 3 of the Credit Rating Agencies (Amendment, etc.) (EU Exit) Regulations 2019.”;
 - (iii) after that subsection there were inserted—
 - “(10A) Subsection (2)(d) does not apply to rules made by the FCA under regulation 3 of the Credit Rating Agencies (Amendment, etc.) (EU Exit) Regulations 2019.”

Guidance

5. The FCA may give guidance consisting of such information and advice as it considers appropriate in respect of—

- (a) the operation of—
 - (i) these Regulations,
 - (ii) the CRA Regulation, or
 - (iii) rules made under regulation 3;
- (b) any matters relating to the functions of the FCA under these Regulations or the CRA Regulation;
- (c) any other matters about which it appears to the FCA to be desirable to give information or advice in respect of these Regulations or the CRA Regulation.

Guidance: procedure, etc.

6.—(1) The FCA may—

- (a) publish its guidance;
- (b) offer copies of its published guidance for sale at a reasonable price;
- (c) if it issues guidance in response to a request made by a credit rating agency, make a reasonable charge for that guidance.

(2) Section 139B of the Act (notification of FCA guidance to the Treasury)(**9**) applies to guidance under regulation 5 which is—

- (a) given to credit rating agencies generally,
- (b) intended to have continuing effect, and
- (c) given in writing or other legible form,

as it applies to general guidance (within the meaning of that section).

(**8**) Inserted by section 24(1) of the Financial Services Act 2012 (c. 21) and amended by paragraph 8 of Schedule 3 to the Pension Schemes Act 2015 (c. 8), sections 29(4) and 33(4) of the Bank of England and Financial Services Act 2016 (c. 14) and paragraph 14 of Schedule 3 to the Financial Guidance and Claims Act 2018 (c. 10).

(**9**) Inserted by section 24(1) of the Financial Services Act 2012 (c. 21).

PART 3

Enforcement

CHAPTER 1

Penalties

Financial penalties

7.—(1) If the FCA considers that a credit rating agency has contravened a requirement imposed by or under these Regulations, or by or under the CRA Regulation, it may impose a penalty on the credit rating agency of such amount as it considers appropriate.

(2) A penalty imposed under this regulation—

- (a) is payable to the FCA, and
- (b) may be recovered as a debt due to the FCA.

(3) In imposing, or deciding whether to impose, a penalty under this regulation, the FCA must have regard to a statement of policy published under regulation 8 and in force at the time when the contravention occurred.

Statement of policy

8.—(1) The FCA must prepare and issue a statement of policy with respect to—

- (a) the imposition of penalties under regulation 7, and
- (b) the amount of penalties under that regulation.

(2) The FCA's policy in determining what the amount of a penalty should be must include having regard to—

- (a) the seriousness of the contravention (in relation to the nature of the requirement contravened), and
- (b) the extent to which the contravention is deliberate or reckless.

(3) The FCA may at any time alter or replace a statement issued under this regulation.

(4) If a statement issued under this regulation is altered or replaced by the FCA, the FCA must issue the altered or replacement statement.

(5) The FCA must, without delay, give the Treasury a copy of any statement which it issues under this regulation.

(6) A statement issued under this regulation by the FCA must be published by the FCA in the way appearing to the FCA to be best calculated to bring it to the attention of the public.

(7) The FCA may charge a reasonable fee for providing a credit rating agency with a copy of the statement.

Statement of policy: procedure

9.—(1) Before the FCA issues a statement under regulation 8, the FCA must publish a draft of the proposed statement in the way appearing to the FCA to be best calculated to bring it to the attention of the public.

(2) The draft must be accompanied by a notice that specifies the time within which representations about the proposal may be made to the FCA.

(3) Before issuing the proposed statement the FCA must have regard to any representations made in accordance with paragraph (2).

(4) If the FCA issues the proposed statement it must publish an account, in general terms, of—

- (a) any representations made to it in accordance with paragraph (2), and
- (b) its response to them.

(5) If the statement differs from the draft published under paragraph (1) in a way which is, in the opinion of the FCA, significant, the FCA must (in addition to complying with paragraph (4)) publish details of the difference.

(6) The FCA may charge a reasonable fee for providing a credit rating agency with a copy of a draft published by it under paragraph (1).

(7) This regulation also applies to a proposal to alter or replace a statement.

CHAPTER 2

Public censure

Public censure

10. If the FCA considers that a credit rating agency has contravened a requirement imposed by or under these Regulations, or by or under the CRA Regulation, the FCA may publish a statement to that effect.

CHAPTER 3

Financial penalties and public censure: procedure

Warning notice

11.—(1) If the FCA proposes to—

- (a) impose a penalty on a credit rating agency under regulation 7, or
- (b) publish a statement in respect of a credit rating agency under regulation 10,

it must give the credit rating agency a warning notice.

(2) A warning notice about a proposal to impose a penalty must state the amount of the penalty.

(3) A warning notice about a proposal to publish a statement must set out the terms of the statement.

Decision notice

12.—(1) If, having considered any representations made in response to a warning notice,⁽¹⁰⁾ the FCA decides to—

- (a) impose a penalty under regulation 7 (whether or not of the amount proposed), or
- (b) publish a statement under regulation 10 (whether or not in the terms proposed),

it must without delay give the credit rating agency concerned a decision notice.

(2) In the case of a penalty, the decision notice must state the amount of the penalty.

(3) In the case of a statement, the decision notice must set out the terms of the statement.

⁽¹⁰⁾ See regulation 19, which applies to these Regulations with modifications provisions of the Financial Services and Markets Act 2000 (c. 8) relating to the provision of notices generally.