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

2018 No.

EXITING THE EUROPEAN UNION
FINANCIAL SERVICES

The Money Laundering and Transfer of Funds (Information) (Amendment) (EU Exit) Regulations 2018

Made - - - - ***

Coming into force in accordance with regulation 1(2)

The Treasury, 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**), make the following Regulations.

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

PART 1

GENERAL

Citation and commencement

1.—(1) These Regulations may be cited as the Money Laundering and Transfer of Funds (Information) (Amendment) (EU Exit) Regulations 2018.

(2) These Regulations come into force on exit day.

(**1**) 2018 c. 16.

PART 2

AMENDMENT OF SECONDARY LEGISLATION

Money Laundering Amendments

2. The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017(**2**) are amended in accordance with regulations 3 to 12.

Part 1: introduction

3. In regulation 3(1)—

(a) omit the definition of "European Supervisory Authorities";

(b) in the definition of "fourth money laundering directive", at the end, insert "as it had effect on 26th June 2017";

(c) after the definition of "markets in financial instruments directive", insert—

> ""markets in financial instruments regulation" means Regulation (EU) 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments (as that Regulation forms part of domestic law under section 3 of the European Union (Withdrawal) Act 2018);";

(d) in the definition of "regulated market"—

(i) for paragraph (a), substitute—

> "(a) within the United Kingdom, means a UK regulated market, as defined by Article 2(1)(13A) of the markets in financial instruments regulation;";

(ii) for paragraph (b), substitute—

> "(b) outside the United Kingdom, means—
>
> (i) within the EEA, an EU regulated market, as defined by Article 2(1)(13B) of the markets in financial instruments regulation; or
>
> (ii) outside the EEA, a regulated financial market which subjects companies whose securities are admitted to trading to disclosure obligations which are equivalent to the specified disclosure obligations;";

(e) omit the definition of "the Solvency 2 directive";

(f) in the definition of "specified disclosure obligations"—

(i) for paragraph (b), substitute—

> "(b) disclosure obligations consistent with the requirements in—
>
> (i) sections 85, 87A and 87G of FSMA;
>
> (ii) prospectus rules within the meaning of Part 6 of FSMA (see section 73A(4) of FSMA) as those rules have effect on exit day;
>
> (iii) Commission Regulation (EC) No 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements; and

(**2**) S.I. 2017/692.

(iv) Articles 6 to 10 of Commission Delegated Regulation (EU) 2016/301 of 30 November 2015 supplementing Directive 2003/71/EC of the European Parliament and of the Council with regard to regulatory technical standards for approval and publication of the prospectus and dissemination of advertisements and amending Commission Regulation (EC) No 809/2004; and";

(ii) for paragraph (c), substitute—

"(c) disclosure obligations consistent with the requirements in sections 4 and 5.5 of, and rules 6.1.1 to 6.1.15 in, the Disclosure Guidance and Transparency Rules source book made by the FCA under section 89A of FSMA as those rules have effect on exit day;";

(iii) omit paragraph (d);

(g) in the definition of "third country" for "an EEA state" substitute "the United Kingdom";

(h) after the definition of "trust or company service provider" insert—

""UK regulated market" means a recognised investment exchange within the meaning of section 285(1)(a) of FSMA, which is not an overseas investment exchange within the meaning of section 313(1) of FSMA.".

Part 2: money laundering and terrorist financing - application

4.—(1) In regulation 9—

(a) omit paragraph (2);

(b) in paragraph (5)—

(i) for "paragraphs (2) and (3)" substitute "paragraph (3)";

(ii) omit sub-paragraph (a).

(2) In regulation 10—

(a) in paragraph (1)(b), for "an EEA state" substitute "the United Kingdom";

(b) for paragraph (2)(b), substitute—

"(b) an authorised person (within the meaning of section 31 of FSMA), who has permission under Part 4A of FSMA to carry out or effect contracts of insurance, when carrying out or effecting any contract of long-term insurance (an "insurance undertaking");";

(c) in paragraph (2)(c)—

(i) for "a person falling within Article 2 of the markets in financial instruments directive" substitute "a person falling within one of the exclusions to the definition of "investment firm" in article 3(1) of the Regulated Activities Order";

(ii) for "within the meaning of that directive" substitute "within the meaning of that article";

(d) in paragraph (2)(f) after "that Directive" insert "(and for this purpose, Article 2.7 is to be read as if "insurance undertaking" has the meaning given in sub-paragraph (b))";

(e) in paragraph (2)(g), for "an EEA state" substitute "the United Kingdom";

(f) in paragraph (3)(c), after "capital requirements directive" insert "as set out in Schedule 2";

(g) for paragraph (4), substitute—

"(4) For the purposes of this regulation—

(a) a "listed activity" means an activity listed in points 2 to 12, 14 and 15 of Annex 1 to the capital requirements directive as set out in Schedule 2;

(b) "Regulated Activities Order" means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(**3**).".

Part 2: Money laundering and terrorist financing - risk assessment and controls

5.—(1) In regulation 16—

(a) paragraph (5) is omitted;

(b) in paragraph (7), omit sub-paragraphs (c), (d) and (e).

(2) In regulation 17, in paragraph (2), omit sub-paragraphs (a) and (b).

(3) In regulation 20—

(a) omit paragraph (2);

(b) after paragraph (5), insert—

"(6) The FCA may make technical standards specifying—

(a) what additional measures are required from credit institutions and financial institutions under paragraph (4); and

(b) the minimum action to be taken by credit institutions and financial institutions where paragraph (4) applies.".

(4) Omit regulation 22.

Part 3: customer due diligence

6.—(1) In regulation 33—

(a) in paragraph (2)—

(i) in the opening words, for "an EEA state" substitute "a third country";

(ii) for paragraph (a), substitute—

"(a) the entity is—

(i) subject to requirements in national legislation having an equivalent effect to those laid down in the fourth money laundering directive on an obliged entity (within the meaning of that directive); and

(ii) supervised for compliance with those requirements in a manner equivalent to section 2 of Chapter VI of the fourth money laundering directive;";

(iii) in paragraph (b), after "under" insert "requirements equivalent to those laid down in";

(b) omit paragraph (8).

(2) In regulation 37—

(a) in paragraph (3)—

(i) in sub-paragraph (a)—

(aa) for paragraph (iii)(aa), substitute—

"(aa) subject to requirements in national legislation having an equivalent effect to those laid down

(**3**) S.I. 2001/544.

in the fourth money laundering directive on an obliged entity (within the meaning of that directive); and";

(bb) in paragraph (iii)(bb), for "in accordance with" substitute "in a manner equivalent to";

(ii) in sub-paragraph (b)(iv), for "an EEA state" substitute "the United Kingdom";

(iii) in sub-paragraph (c)(i), for "an EEA state" substitute "the United Kingdom";

(b) in paragraph (6), for paragraph (b), substitute—

"(b) a person who carries on business in a third country who is—

(i) subject to requirements in national legislation having an equivalent effect to those laid down in the fourth money laundering directive on an obliged entity (within the meaning of that directive); and

(ii) supervised for compliance with those requirements in a manner equivalent to section 2 of Chapter VI of the fourth money laundering directive.";

(c) omit paragraph (7).

Part 4: reliance and record keeping

7. In regulation 39—

(a) in paragraph (3)—

(i) omit sub-paragraph (b);

(ii) in sub-paragraph (d), omit ", (b)";

(b) in paragraph (5)—

(i) in the words before sub-paragraph (a), omit "established in an EEA state";

(ii) for sub-paragraph (a), substitute—

"(a) the entity is—

(i) a person who is subject to the requirements in these Regulations as a relevant person within the meaning of regulation 8 and who is supervised for compliance with them; or

(ii) subject to requirements in national legislation having an equivalent effect to those laid down in the fourth money laundering directive on an obliged entity (within the meaning of that directive) and supervised for compliance with those requirements in a manner equivalent to section 2 of Chapter VI of the fourth money laundering directive;";

(iii) for sub-paragraph (b) substitute—

"(b) the branch or subsidiary complies fully with procedures and policies established for the group under—

(i) regulation 20 of these Regulations, or

(ii) requirements in national legislation having an equivalent effect to those laid down Article 45 of the fourth money laundering directive.";

(c) in paragraph (6)(c), omit "other than the United Kingdom".