

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

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## DRAFT STATUTORY INSTRUMENTS

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# 2018 No.

## EXITING THE EUROPEAN UNION

## FINANCIAL SERVICES

### The Market Abuse (Amendment) (EU Exit) Regulations 2018

*Made - - - -*

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*Coming into force in accordance with regulation 1*

The Treasury is a government department designated<sup>(1)</sup> for the purpose of section 2(2) of the European Communities Act 1972<sup>(2)</sup> in relation to financial services.

The Treasury, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and section 8(1) of the European Union (Withdrawal) Act 2018<sup>(3)</sup> make the following Regulations.

A draft of these Regulations has been 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 Market Abuse (Amendment) (EU Exit) Regulations 2018.

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(1) [S.I. 2012/1759](#).

(2) [1972 c.68](#). Section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 ([c.51](#)) and by section 3 of, and the Schedule to, the European Union (Amendment) Act 2008 [c.7](#). By virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 ([c.51](#)), regulations may be made under section 2(2) of the European Communities Act 1972 (“the 1972 Act”) to implement obligations of the United Kingdom created or arising by or under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073) and the Protocol adjusting the Agreement signed in Brussels on 17th March 1993 (Cm 2183). Paragraph 1A was inserted into Schedule 2 to the 1972 Act by section 28 of the Legislative and Regulatory Reform Act 2006. The 1972 Act is repealed with effect from exit day by section 1 of the European Union (Withdrawal) Act 2018.

(3) [2018 c.16](#).

(2) This regulation, and regulations 2, 3 and 6, come into force on the day after the day on which these Regulations are made.

(3) The other provisions in these Regulations come into force on exit day.

## PART 2

### Amendment of primary legislation using powers in the European Communities Act 1972

#### Amendment of the Criminal Justice Act 1993

2. In paragraph 5 of Schedule 1 to the Criminal Justice Act 1993<sup>(4)</sup>—

- (a) the existing text becomes sub-paragraph (1);
- (b) in paragraph (a) of that sub-paragraph—
  - (i) after “(market abuse regulation)” insert “, as that Article has effect at the time mentioned in sub-paragraph (2),”; and
  - (ii) for “made under that Article” substitute “(a “delegated regulation”) made before that time under that Article, as the delegated regulation has effect at that time”; and
- (c) after that sub-paragraph insert—
  - “(2) The time is the beginning of the day on which the Market Abuse (Amendment) (EU Exit) Regulations 2018 are made.”

#### Amendment of the Financial Services and Markets Act 2000

3. In section 122G(7) of the Financial Services and Markets Act 2000 (publication of information and corrective statements by issuers)<sup>(5)</sup>, in the definition of “emission allowance market participant”, for “3.1.19” substitute “3.1.20”.

## PART 3

### Amendment of primary legislation using powers in the European Union (Withdrawal) Act 2018

#### Amendment of the Criminal Justice Act 1993

4. In Schedule 1 to the Criminal Justice Act 1993, in paragraph 5(1) (as numbered and amended by regulation 2), in paragraph (a), for the words from “and each” to the end substitute—

- “and—
- (i) each EU regulation, originally made under that Article before that time, which is retained direct EU legislation; and
- (ii) all subordinate legislation (within the meaning of the Interpretation Act 1978) made under that Article on or after exit day;”.

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<sup>(4)</sup> 1993 c.36. Paragraph 5 of Schedule 1 was inserted by S.I. 2016/680. There are other amendments but none is relevant.

<sup>(5)</sup> 2000 c.8. Section 122G was inserted by S.I. 2016/880.

## Amendment of the Financial Services and Markets Act 2000

- 5.—(1) Part 8 of the Financial Services and Markets Act 2000(6) is amended as follows.
- (2) In section 122B (general power to require information)—
- (a) in subsection (2), for “a supplementary EU regulation” substitute “under supplementary market abuse legislation”;
  - (b) for subsections (6) and (7), substitute—

“(6) The FCA may exercise its powers under this section at the request of an overseas regulator where the regulator makes the request in the exercise of its relevant functions.

(6A) In subsection (6)—

“overseas regulator” means—

    - (a) the competent authority of an EEA State for the purposes of the market abuse regulation, as that regulation has effect in the European Union (the “EU version of the market abuse regulation”); or
    - (b) an authority of any other country or territory outside the United Kingdom which exercises functions corresponding to those of a competent authority under the EU version of the market abuse regulation;

“relevant functions” means—

    - (a) in relation to the competent authority of an EEA State, its functions under—
      - (i) the EU version of the market abuse regulation; or
      - (ii) a directly applicable EU regulation made under the EU version of the market abuse regulation;
    - (b) in relation to an authority of any other country or territory outside the United Kingdom, its functions corresponding to the functions referred to in paragraph (a);”;
- (3) In section 122D (entry of premises under warrant)—
- (a) in subsection (10)—
    - (i) for “EEA” substitute “overseas”;
    - (ii) for “functions under the market abuse regulation or a supplementary EU regulation” substitute “relevant functions”;
  - (b) after subsection (10), insert—

“(10A) In subsection (10), “overseas regulator” and “relevant functions” have the meaning given in section 122B(6A).”;
  - (c) omit subsection (11).
- (4) In section 122G (publication of information and corrective statements by issuers), in subsection (3)(b), for “a supplementary EU regulation” substitute “under supplementary market abuse legislation”.
- (5) In section 122H(3) (publication of corrective statements generally), for “a supplementary EU regulation” substitute “under supplementary market abuse legislation”.
- (6) In section 122I(1) (power to suspend trading in financial instruments), for “a supplementary EU regulation” substitute “under supplementary market abuse legislation”.
- (7) Omit section 122IA (power to suspend auctioning of auctioned products on a recognised auction platform).

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(6) Sections 122B-122H, 122I, 131AA and 131AB of Part 8 were inserted by [S.I. 2016/680](#). Section 122IA was inserted by [S.I. 2017/701](#). Sections 123, 123A, 123B and 129 were substituted by [S.I. 2016/680](#).

- (8) In section 123(1) (power to impose penalties or issue censure)—
  - (a) in paragraph (b)(ii) and (c)(ii), for “a supplementary EU regulation” substitute “any supplementary market abuse legislation”;
  - (b) in paragraph (c)(i), omit “122IA,”;
- (9) In section 123A (power to prohibit individuals from managing or dealing)(7)—
  - (a) in subsection (b)(ii), for “a supplementary EU regulation” substitute “any supplementary market abuse legislation”;
  - (b) in subsection (1)(c), omit “, 122IA”;
  - (c) in subsection (2), omit paragraph (c);
  - (d) omit subsection (8).
- (10) In section 123B(1) (suspending permission to carry on regulated activities etc.)—
  - (a) in paragraph (b)(ii), for “a supplementary EU regulation” substitute “any supplementary market abuse legislation”;
  - (b) in paragraph (c), omit “, 122IA”.
- (11) In section 124(10) (statement of policy)(8), in the definition of “relevant person”—
  - (a) in paragraphs (b)(ii) and (c)(ii), for “a supplementary EU regulation” substitute “any supplementary market abuse legislation”;
  - (b) in paragraph (c)(i), omit “122IA,”.
- (12) In section 129 (power of court to impose administrative sanctions in cases of market abuse)(9)—
  - (a) in subsection (7), in the definition of “temporary prohibition”—
    - (i) at the end of paragraph (a), insert “or”;
    - (ii) omit paragraph (c) and the “or” preceding it;
  - (b) omit subsection (8);
  - (c) in subsection (9)(a), for “a supplementary EU regulation” substitute “by supplementary market abuse legislation”.
- (13) In section 131AA—
  - (a) in subsection (1)(c) (reporting of infringements)(10) omit “, EEA central counterparties,”;
  - (b) in subsection (2), for “EU regulation” substitute “market abuse legislation”.
- (14) In section 131AB (interpretation)(11)—
  - (a) the existing text becomes subsection (1);
  - (b) in subsection (1)—
    - (i) omit the definition of “EEA regulator”;
    - (ii) for the definition of “financial instrument” substitute—
 

““financial instrument” means any instrument specified in Part 1 of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities) Order(12), read with Part 2 of that Schedule;”;

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(7) Section 123A(2)(c) and (8) were inserted by [S.I. 2017/701](#).

(8) Section 124(10) was inserted by [S.I. 2016/680](#).

(9) Paragraph (c) of the definition of “temporary prohibition” in subsection (7), and subsection (8) were inserted by [S.I. 2017/701](#). Subsection (9) was inserted by [S.I. 2017/1255](#).

(10) Section 131AA was inserted, with section 131AB, by [S.I. 2016/680](#).

(11) The definitions of “emission allowance” and “recognised auction platform” were inserted by [S.I. 2017/701](#).

(12) [S.I. 2001/544](#).

- (iii) omit the definition of “recognised auction platform”;
- (iv) omit the definition of “supplementary EU regulation”;
- (c) after subsection (1), insert—
  - “(2) The following are supplementary market abuse legislation for the purposes of this Part—
    - (a) an EU regulation, originally made under the market abuse regulation, which is retained direct EU legislation; and
    - (b) subordinate legislation (within the meaning of the Interpretation Act 1978) made under the market abuse regulation on or after exit day.”.

## PART 4

### Amendment of subordinate legislation: European Communities Act 1972

#### **Amendment of the Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016**

6. In regulation 2 (interpretation) of the Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016<sup>(13)</sup>, in the definition of “the market abuse regulation”, after “2004/72/EC” insert “, as it has effect on the day on which the Market Abuse (Amendment) (EU Exit) Regulations 2018 are made”.

## PART 5

### Amendment of subordinate legislation: European Union (Withdrawal) Act 2018

#### **Amendment of the Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016**

7.—(1) The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016<sup>(14)</sup> are amended as follows.

- (2) In regulation 2 (interpretation)—
  - (a) omit the definition of “supplementary EU regulation”;
  - (b) after the definition of “the market abuse regulation” insert—
    - ““supplementary market abuse enactment” means—
      - (a) any EU regulation made under the market abuse regulation which is retained direct EU legislation;
      - (b) any instrument made under the market abuse regulation on or after exit day.”.
- (3) Regulation 3 (designation of competent authority) is omitted.
- (4) In regulation 4(1) (delayed public disclosure of inside information), for “competent authority specified under Article 17.3 only upon the request of that authority” substitute “FCA only upon the FCA’s request”.

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<sup>(13)</sup> S.I. 2016/680.

<sup>(14)</sup> S.I. 2016/680.