

## Appendix 2: Draft Bank transitional direction

*Modifications to the near-final Bank transitional direction published in February 2019 are highlighted for the convenience of readers.*

### **Direction made by the Bank of England under Part 7 of the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019**

***(Note: There is Bank of England Guidance relating to this direction, both general and in relation to specific obligations)***

1. This direction is made by the Bank of England under **regulation 198 of** the 2019 Regulations, the Bank of England, having consulted the Treasury, the Prudential Regulation Authority and the Financial Conduct Authority under regulation 202 of the 2019 Regulations, and being satisfied within the terms of regulation 200 of the 2019 Regulations.
2. This direction, which shall come into force on exit day, shall apply until **31 December** 2020 unless otherwise stated in this direction or unless varied or revoked beforehand (without prejudice to any continuing effect in relation to earlier times).

#### **Interpretation**

3. In this direction –

“**the 2018 Act**” means the EU (Withdrawal) Act 2018;

“**the 2019 Regulations**” means Part 7 of the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019;

“**equivalence direction**”, “**equivalence determination**” and “**exemption direction**” have the same meanings as in the Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc.) (EU Exit) Regulations 2019;

“**exit instrument**” means an exit instrument within the meaning of the 2019 Regulations, which is in force on exit day;

“**exit day**” has the same meaning as in the 2018 Act;

“**EMIR**” means Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories;

“**EU references**” has the same meaning as in the 2018 Act;

“**Financial Services Compensation Scheme**” means the scheme established under Part XV of FSMA for compensating persons in the cases specified in sections 213(1)(a) to 213(1)(b) of FSMA;

“**FSMA**” means the Financial Services and Markets Act 2000;

“**Gibraltar**”, in the context of relevant obligations, has the same meaning as in rule 2.8 in the Interpretation Part of the PRA Rulebook; and

“**relevant obligation**” has the same meaning as in the 2019 Regulations.

4. Any reference in this direction to any EU Regulation or EU tertiary legislation (within the meaning of section 20 of the 2018 Act) is, unless the contrary intention appears, to be treated as a reference to that EU Regulation or EU tertiary legislation which forms part of UK law by virtue of the 2018 Act **on exit day**.

**Application and Exceptions**

5. This direction applies in relation to relevant obligations for which the Bank of England has responsibility for supervising or has other functions relating to a person’s compliance with the relevant obligation.
6. This direction shall not apply to a relevant obligation-
- (a) relating to Part 15A of FSMA or to the Financial Services Compensation Scheme;
  - (b) to which a specific transitional or savings provision contained in:
    - a. an exit instrument, or
    - b. another direction made by the Bank of England,

applies or would apply if it were for the same period as this direction, including, but not limited to, those listed in the Schedule;
  - (c) in relation to a person for whom the Treasury has a power to make an exemption direction;
  - (d) which begins to apply in a person’s case or applies in the person’s case differently as a result of the operation of an equivalence direction or equivalence determination;
  - (e) in Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012, and in Commission Delegated Regulation (EU) No 2017/581 of 24 June 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards on clearing access in respect of trading venues and central counterparties, Commission Delegated Regulation (EU) No 2017/582 of 29 June 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards specifying the obligation to clear derivatives traded on regulated markets and timing of acceptance for clearing, and Commission Delegated Regulation (EU) No 2017/2154 of 22 September 2017 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards on indirect clearing arrangements;
  - (f) relating to the definition of OTC derivative in Article 2 of EMIR;
  - (g) in Article 25 of EMIR;
  - (h) in Article 25 of Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012;

- (i) in the Financial Markets and Insolvency (Amendment and Transitional Provision) (EU Exit) Regulations 2019; and
- (j) relating to the payment of fees.

#### **Delay of operation of exit instruments**

- 7. Where, as a result of the operation of an exit instrument, a relevant obligation-
  - (a) begins to apply in a person's case, the relevant obligation shall not apply to that case;
  - (b) applies in the person's case differently from how it would but for the exit instrument, the relevant obligation shall, subject to paragraph 8 below, apply to the person's case as it would have applied immediately before exit day.
- 8. The relevant obligation referred to in paragraph 7(b) shall be construed in a way so as to enable it to achieve the same result in the person's case as it would have immediately before exit day but in the context of the UK no longer being a member state, including any adaptations to EU references as may be necessary to achieve that effect.
- 9. Where the obligation referred to in paragraph 7(b) is to provide information to (i) an undertaking in the EU or a member state, or (ii) an institution of the EU or a member state, the adaptation referred to in paragraph 8 shall include the adaptation that the information is to be provided to the equivalent or corresponding undertaking or institution in the UK.

#### **Accounting standards**

- 10. References in relevant obligations to accounting standards adopted under Regulation (EU) 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards shall be construed as references to UK-adopted international accounting standards (as defined in section 474(1) of the Companies Act 2006) in relation to the relevant obligations of a person in so far as that person is required to prepare accounts in accordance with UK-adopted international accounting standards.

#### **Savings**

- 11. Nothing in this direction shall affect the application of a relevant obligation for the purposes of the Bank of England imposing a requirement on a person under or pursuant to that obligation.
- 12. This direction is without prejudice to any provision made by an exit instrument relating to the application of relevant obligations in respect of Gibraltar.

By order of the Bank of England

[DATE]

## Schedule

- a) Part 6 of the Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018
- b) Article 89(5A) of EMIR
- c) Article 69 of Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012