

18 December 2020: this guidance document supports the final Bank Transitional Direction published as part of Policy Statement 27/20.

Guidance on the Bank's use of the transitional direction as FMI competent authority

FMI should consider all relevant guidance in respect of their relevant obligations.

1. Introduction

- This document provides guidance on the Bank's transitional direction in relation to onshoring changes for FMIs. The Bank's transitional direction is made under the temporary transitional power (**TTP**) conferred on the regulators by Parliament (via The Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019).¹ This document provides guidance in the context of, and without limitation, the:
 - a. Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018;
 - b. Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019;
 - c. Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) (No. 2) Regulations 2019;
 - d. Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020;
 - e. Financial Services Contracts (Transitional and Saving Provision) (EU Exit) Regulations 2019;
 - f. Technical Standards (European Market Infrastructure) (Amendment etc.) (EU Exit) (No. 1) Instrument 2019;
 - g. Technical Standards (European Market Infrastructure) (Amendment etc.) (EU Exit) (No. 2) Instrument 2019;
 - h. Technical Standards (Central Securities Depositories) (Amendment etc.) (EU Exit) Instrument 2019;
 - i. Technical Standards (Central Securities Depositories) (Amendment etc.) (EU Exit) (No.2) Instrument 2020;
 - j. Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018;
 - k. Financial Markets and Insolvency (Amendment and Transitional Provision) (EU Exit) Regulations 2019; and
 - l. Central Securities Depositories (Amendment) (EU Exit) Regulations 2018.
- FMIs should have regard to this guidance while the transitional relief granted under the direction is in effect. FMIs should note that this guidance is non-binding in nature, that it may be amended from time-to-time and that the direction should be followed in the case of any inconsistency with this guidance.

¹ Available at: <<https://www.legislation.gov.uk/ukxi/2019/632/contents/made>>

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- The transitional direction will come into effect at the end of the transition period and will apply until 31 March 2022 unless the Bank decides to make any changes to this timing in the future.
- Any reference to an EU regulation, including to a Binding Technical Standard, is a reference to the UK version of that regulation, unless otherwise stated. The UK version includes any modifications made by Parliament, HM Treasury or the relevant regulators.
- For further details on the Bank’s general approach to the exercise of the transitional direction, FMIs should consult:
 - a. the Bank of England Policy Statement | PRA Policy Statement PS27/20 on ‘the Bank of England’s amendments under the European Union (Withdrawal) Act 2018: Changes before the end of the transition period’;²
 - b. the Bank of England’s Policy Statement on the amendments to financial services legislation under the European Union (Withdrawal) Act 2018 (PS 5/19); and
 - c. the general guidance provided with the Bank’s transitional direction (published on 18 December 2020).³

2. Practical application of transitional direction in certain areas

- a. **EMIR reporting obligation:** The operation of the transitional direction means that an FMI’s obligation to report derivatives transactions under Article 9 of EMIR is to an FCA-registered, or recognised, trade repository.
- b. **SFTR reporting obligation:** The operation of the transitional direction means that an FMI’s obligation to report transactions under Article 4 of SFTR is to an FCA-registered, or recognised, trade repository. FMIs do not need to report securities financing transactions where one of the counterparties is a member of the European System of Central Banks (Article 2 of SFTR).
- c. **CSDR Settlement Internalisation reporting obligation:** The operation of the transitional direction means that the reporting regime under Article 9 of CSDR will remain unchanged for all UK firms (and UK branches of third-country firms) until the end of the application of the transitional direction. Furthermore, the reporting obligation will not apply to UK branches of EEA firms until such time.
- d. **CCP record keeping:** The operation of the transitional direction means that a CCP’s obligation to ensure access to records under Article 12(5) of Commission Delegated Regulation (EU) No 153/2013 is to the Bank. There is no longer an obligation to ensure that ESMA has access to records.

² December 2020: <https://www.bankofengland.co.uk/prudential-regulation/publication/2020/uk-withdrawal-from-the-eu-changes-before-the-end-of-the-transition-period>.

³ Available at: <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/policy-statement/2020/ps2720app-a8.pdf>.

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- e. **CCP capital requirements:** The operation of the transitional direction means that a CCP's capital requirements under EMIR and the relevant Binding Technical Standards are unaffected by onshoring changes.
- f. **Institutions with which CCPs can deposit financial instruments and cash:** The operation of the transitional direction means that a CCP will be able to continue to deposit financial instruments and cash with EU credit institutions.

3. Exceptions to the transitional direction

- a. **Temporary recognition regime ("TRR") and run-off regime for third country CCPs:** The transitional direction does not apply to the TRR; third country CCPs providing clearing services under this regime will be 'deemed recognised' under Article 25 of EMIR, and any relevant obligations will need to be complied with as set out therein.

Similarly, the transitional direction does not apply to third country CCPs providing clearing services under the 'run-off regime' set out in the Financial Services Contracts (Transitional and Savings Provision) (EU Exit) Regulations 2019 as the Bank does not consider there to be any CCP relevant obligations in these regulations.

- b. **Articles 25 and 25a EMIR:** The transitional direction does not apply to the requirement for a third country CCP to notify the Bank of any material changes affecting the conditions of its recognition under Article 25(4) of EMIR or the requirement for a third country CCP to submit a reasoned request to be assessed against Article 25a of EMIR.
- c. **Article 89(5A) EMIR:** The transitional direction does not apply to the transitional arrangements specified in Article 89(5A) of EMIR.
- d. **CSDR transitional:** The transitional direction does not apply to the transitional arrangements for CSDs under Article 69 of CSDR⁴.
- e. **Article 25 CSDR:** The transitional direction does not apply to the requirement for a third country CSD to notify the Bank of any material changes affecting the conditions of its recognition under Article 25(6A) of CSDR.
- f. **CCP relevant obligations under MiFIR:** The transitional direction does not apply to CCPs' relevant obligations under MiFIR⁵ and in any related implementing measures.
- g. **FMI relevant obligations under SFD:** The transitional direction does not apply to the Financial Markets and Insolvency (Amendment and Transitional Provision) (EU Exit) Regulations 2019.

⁴ 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.

⁵ 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.