

List of pension scheme arrangements exempted from the clearing obligation

The European Market Infrastructure Regulation (EMIR)¹ provides for the obligation of counterparties to clear OTC derivative contracts that have been declared subject to the clearing obligation. Under Article 89 of EMIR, some pension scheme arrangements may benefit from a temporary exemption (currently to 16 August 2017²) from the clearing obligation for their OTC derivative contracts that are objectively measurable as reducing investment risks directly related to their financial solvency.

Pursuant to Article 89(2) of EMIR, listed below are types of pension scheme entities and arrangements which have been granted an exemption from the clearing obligation. This follows, and takes into account, the publication³ of opinions by the European Securities and Markets Authority (ESMA), which in turn reflect ESMA's consultation with the European Insurance and Occupational Pensions Authority (EIOPA).

The entities and arrangements below have been assessed by the FCA as complying with Article 2(10)c or d of EMIR, and as encountering difficulties in meeting the variation margin requirements. The list does not include pension scheme arrangements under Article 2(10)a and b of EMIR, which automatically qualify for the temporary clearing exemption.

Before using an exemption, pension scheme arrangements and entities must carry out a self-assessment to ensure compliance with one of the approved types listed below, as well as the relevant criteria set out in EMIR. Such assessments should be properly documented, made available to the competent authority upon request, and reviewed on an ongoing basis to ensure they are updated to reflect any changes in circumstances. Pension scheme arrangements and entities should, in addition to notifying their counterparties of the eligibility of the transaction for a clearing exemption under EMIR, also notify their counterparties of any changes to their exemption status.

¹ 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, OJ L 201, 27.7.2012, p.1.

² http://ec.europa.eu/finance/financial-markets/docs/derivatives/20150605-delegated-act_en.pdf

³ <https://www.esma.europa.eu/press-news/esma-news/esma-issues-opinions-uk-pension-schemes-be-exempt-central-clearing-under-emir>

Table 1: List of pension scheme arrangements which benefit from a temporary exemption from the clearing obligation⁴

id	Type of pension scheme arrangements	Country	EMIR Article 2(10)(c) or (d) of EMIR ⁵	Date on which the exemption was granted
1	A pension scheme arrangement which is the occupational retirement provision business of a life insurance undertaking covered by Directive 2002/83/EC, where all assets and liabilities corresponding to the business are ring-fenced, managed and organised separately from the other activities of the insurance undertaking, without any possibility of transfer, within the meaning of Article 2(10)(c) of EMIR	United Kingdom	(c)	15 February 2016
2	A retirement income pension scheme arrangement which is the occupational retirement provision business of a life insurance undertaking covered by Directive 2002/83/EC, where all assets and liabilities corresponding to the business are ring-fenced, managed and organised separately from the other activities of the insurance undertaking, without any possibility of transfer, within the meaning of Article 2(10)(c) of EMIR	United Kingdom	(c)	15 February 2016
3	A buyout pension scheme which is the occupational retirement provision business of a life insurance undertaking covered by Directive 2002/83/EC, where all assets and liabilities corresponding to the business are ring-fenced, managed and organised separately from the other activities of the insurance undertaking, without any possibility of transfer, within the meaning of Article 2(10)(c) of EMIR	United Kingdom	(c)	15 February 2016
4	A life insurance arrangement covered by Directive 2002/83/EC, the primary purpose of which is to provide retirement benefits by management of customers' long-term investments, which does not fall within Article 2(10)(c) of EMIR and which meets the requirements set out in Article 2(10)(d) of EMIR	United Kingdom	(d)	15 February 2016
5	A life insurance entity covered by Directive 2002/83/EC, the primary purpose of which is to provide retirement benefits by management of customers' long-term investments, which does not fall within Article 2(10)(c) of EMIR and which meets the requirements set out in Article 2(10)(d) of EMIR	United Kingdom	(d)	15 February 2016

⁴ Pursuant to Article 89(1) of EMIR

⁵ Indicates whether the type of pension scheme arrangements meets the definition of Article 2(10)(c) or the definition of Article 2(10)(d) of EMIR

6	A retirement income life insurance arrangement covered by Directive 2002/83/EC, the primary purpose of which is to provide retirement benefits by payment of income to customers, which does not fall within Article 2(10)(c) of EMIR and which meets the requirements set out in Article 2(10)(d) of EMIR	United Kingdom	(d)	15 February 2016
7	A retirement income life insurance entity covered by Directive 2002/83/EC, the primary purpose of which is to provide retirement benefits by payment of income to customers, which does not fall within Article 2(10)(c) of EMIR and which meets the requirements set out in Article 2(10)(d) of EMIR	United Kingdom	(d)	15 February 2016
8	A buyout life insurance arrangement covered by Directive 2002/83/EC, the primary purpose of which is to provide retirement benefits by payment of income to customers, which does not fall within Article 2(10)(c) of EMIR and which meets the requirements set out in Article 2(10)(d) of EMIR	United Kingdom	(d)	15 February 2016
9	A buyout life insurance entity covered by Directive 2002/83/EC, the primary purpose of which is to provide retirement benefits by payment of income to customers, which does not fall within Article 2(10)(c) of EMIR and which meets the requirements set out in Article 2(10)(d) of EMIR	United Kingdom	(d)	15 February 2016
10	An authorised pooled fund, established in the UK as a sub-fund without distinct legal personality, designed for pooling assets related to the provision of retirement benefits (i.e. the assets of pension scheme arrangements within Article 2(10) EMIR), where all investors are pension schemes; which is not within Article 2(10)(a) of EMIR and which meets the requirements set out in Article 2(10)(d) of EMIR	United Kingdom	(d)	15 February 2016
11	An authorised pooled fund, established in the UK as a separate legal entity, designed for pooling assets related to the provision of retirement benefits (i.e. the assets of pension scheme arrangements within Article 2(10) EMIR), where all investors are pension schemes; which is not within Article 2(10)(a) of EMIR and which meets the requirements set out in Article 2(10)(d) of EMIR	United Kingdom	(d)	15 February 2016
12	A contractually based pooled fund established in the UK, designed for pooling assets related to the provision of retirement benefits (i.e. the assets of pension scheme arrangements within Article 2(10) EMIR) or sub-fund of such a fund, where all investors are pension schemes; which in either case is not within Article 2(10)(a) of EMIR and which meets the requirements set out in Article 2(10)(d) of EMIR	United Kingdom	(d)	15 February 2016

13	An employer, or industry-wide, provided or sponsored or arranged pension scheme arrangement, which is not within Article 2(10)(a) of EMIR and which meets the requirements set out in Article 2(10)(d) of EMIR	United Kingdom	(d)	15 February 2016
14	An employer, or industry-wide, provided or sponsored or arranged pension scheme entity, which is not within Article 2(10)(a) of EMIR and which meets the requirements set out in Article 2(10)(d) of EMIR	United Kingdom	(d)	15 February 2016
15	An arrangement providing individual pension scheme arrangements, which is established and authorised in the UK, and which meets the requirements set out in Article 2(10)(d) of EMIR	United Kingdom	(d)	15 February 2016
16	An entity providing individual pension scheme arrangements, which is established and authorised in the UK, and which meets the requirements set out in Article 2(10)(d) of EMIR	United Kingdom	(d)	15 February 2016