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STATUTORY INSTRUMENTS

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**2013 No. 1635**

**The Legal Aid, Sentencing and Punishment of  
Offenders Act 2012 (Referral Fees) Regulations 2013**

**PART 2**

**The FCA**

**Functions of the FCA**

- 3.**—(1) The FCA has the functions conferred on it by these Regulations.
- (2) In discharging its functions under these Regulations, the FCA must have regard to—
- (a) the need to use its resources in the most efficient and economic way;
  - (b) the principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction;
  - (c) the desirability of sustainable growth in the economy of the United Kingdom in the medium or long term;
  - (d) the general principle that consumers should take responsibility for their decisions;
  - (e) the responsibilities of the senior management of persons subject to the requirements referred to in paragraph (4), including those affecting consumers, in relation to compliance with those requirements;
  - (f) the desirability where appropriate of the FCA exercising its functions in a way that recognises differences in the nature of, and objectives of, businesses carried on by different persons subject to the requirements referred to in paragraph (4);
  - (g) the desirability in appropriate cases of the FCA publishing information relating to persons on whom the requirements referred to in paragraph (4) are imposed, or requiring such persons to publish information, as a means of contributing to the advancement by the Authority of its operational objectives as set out in section 1B(3) of the 2000 Act;<sup>(1)</sup>
  - (h) the principle that the FCA should exercise its functions as transparently as possible.
- (3) “Consumer” has the meaning given in section 1G of the 2000 Act.<sup>(2)</sup>
- (4) The requirements referred to in this paragraph are—
- (a) in relation to a referral fees authorised person—
    - (i) a restriction imposed by section 56 of the Act;
    - (ii) any requirement imposed by or under these Regulations;
  - (b) in relation to any other person, any requirement imposed by or under these Regulations.

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<sup>(1)</sup> Section 1B was inserted by section 6 of the Financial Services Act 2012.

<sup>(2)</sup> Section 1G was inserted by section 6 of the Financial Services Act 2012.

## Monitoring and enforcement

- 4.—(1) The FCA must maintain arrangements designed to enable it to determine whether—
- (a) referral fees authorised persons are complying with any relevant requirement applicable to them, and
  - (b) there has been any contravention of regulation 19.

(2) The FCA must also maintain arrangements for enforcing section 56 of the Act in relation to referral fees authorised persons and these Regulations.

## Guidance

5.—(1) The FCA may give guidance consisting of such information and advice as it considers appropriate with respect to—

- (a) the application of sections 56 and 57 of the Act to referral fees authorised persons;
  - (b) the operation of these Regulations;
  - (c) any matters relating to the functions of the FCA under these Regulations;
  - (d) any other matters about which it appears to the FCA to be desirable to give information or advice in connection with these Regulations.
- (2) The FCA may—
- (a) publish its guidance;
  - (b) offer copies of its published guidance for sale at a reasonable price;
  - (c) if it gives guidance in response to a request made by any person, make a reasonable charge for that guidance.

## Complaints

6. The FCA must maintain arrangements designed to enable persons to submit complaints to it that a relevant requirement has been breached by a referral fees authorised person.

## Fees, &c.

7.—(1) The functions of the FCA under these Regulations are to be treated for the purposes of paragraph 23 (fees) of Schedule 1ZA to the 2000 Act<sup>(3)</sup> as qualifying functions conferred on the FCA under that Act except that—

- (a) section 3B<sup>(4)</sup> (regulatory principles to be applied by both regulators) of the 2000 Act does not apply to the making of rules under paragraph 23 by virtue of this regulation,
- (b) rules made under paragraph 23 by virtue of this regulation are not regulating provisions for the purposes of Chapter 4 of Part 9A (competition scrutiny)<sup>(5)</sup> of the 2000 Act, and
- (c) in paragraph 23(7) after “under this Act” insert “or under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Referral Fees) Regulations 2013”.

(2) Paragraphs 19 to 22 (penalties) of Schedule 1ZA to the 2000 Act apply for the purposes of these Regulations with the modifications set out in paragraphs (3) to (6).

(3) In paragraph 19 for “under this Act” substitute “under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Referral Fees) Regulations 2013”.

(4) In paragraph 20—

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<sup>(3)</sup> Schedule 1ZA was inserted by Schedule 3 to the Financial Services Act 2012.

<sup>(4)</sup> Section 3B was inserted by section 6 of the Financial Services Act 2012.

<sup>(5)</sup> Chapter 4 of Part 9A was inserted by section 24 of the Financial Services Act 2012.

- (a) in both sub-paragraphs (2) and (3)(b) for “under this Act” substitute “under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Referral Fees) Regulations 2013”;
  - (b) for sub-paragraph (4) substitute—
    - “(4) For this purpose the FCA’s enforcement powers are—
      - (a) its powers under regulations 14 to 18 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Referral Fees) Regulations 2013,
      - (b) its powers under Part 25 of this Act (injunctions and restitution) as applied by regulation 24 of those Regulations, and
      - (c) its powers in relation to the investigation or prosecution of the offences under regulation 19 of those Regulations.”;
  - (c) omit sub-paragraph (5).
- (5) In paragraph 21(1) after “paragraph 20(1)” insert “as applied by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Referral Fees) Regulations 2013”.
- (6) In paragraphs 21(1), (3), (4) and (5) and 22(2) and (9) for “financial penalty scheme” substitute “referral fees financial penalty scheme” (in each place).

#### **Exemption from liability in damages**

**8.** The functions of the FCA under these Regulations are to be treated for the purposes of paragraph 25 (exemption from liability in damages) of Schedule 1ZA to the 2000 Act as functions conferred on the FCA.