
STATUTORY INSTRUMENTS

2013 No. 1881

The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013

PART 8

Transitional provisions

CHAPTER 5

Rules and guidance

Credit-related rules and guidance made by the FCA

61.—(1) This article applies to rules made or guidance given by the FCA which relate or relates to a credit-related regulated activity or the carrying on of such an activity.

(2) Section 1B(4) of the Act (competition duty) does not apply to the extent that—

- (a) the rules are the same as, or substantially the same as, or have the same, or substantially the same, effect as any of the Consumer Credit Act provisions, or
- (b) the guidance is the same as, or substantially the same as, or which has the same, or substantially the same, effect as any of the Consumer Credit Act provisions.

(3) Section 138I(2)(a) of the Act (cost benefit analysis) does not apply in relation to a draft of rules to which this article applies which are the same as, or substantially the same as, any of the Consumer Credit Act provisions or which have the same, or substantially the same, effect as any such provisions.

(4) For the purposes of this article, the “Consumer Credit Act provisions” are—

- (a) the Consumer Credit Act 1974,
- (b) any subordinate legislation made, or guidance issued, under that Act, and
- (c) any notice issued by the OFT under section 86A of that Act ^{M1} (information sheets on arrears and defaults),

disregarding the effect of article 20 (amendments of the Consumer Credit Act 1974) and any order made before 1st April 2014 under section 107 of the Financial Services Act 2012.

(5) Section 138I of the Act (consultation by the FCA) applies as if for subsections (7) and (8) there were substituted—

“(7) “Cost benefit analysis” means—

- (a) an analysis of the difference between the costs and benefits of the Consumer Credit Act provisions and the costs and benefits that will arise—
 - (i) if the proposed rules are made, or
 - (ii) if subsection (5) applies, from the rules that have been made, and
- (b) subject to subsection (8), an estimate of that difference.

Changes to legislation: The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013, CHAPTER 5 is up to date with all changes known to be in force on or before 12 January 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

(7A) For the purposes of subsection (7), the “Consumer Credit Act provisions” are—

- (a) the Consumer Credit Act 1974,
- (b) any subordinate legislation made, or guidance issued, under that Act, and
- (c) any notice issued by the OFT under section 86A of that Act (information sheets on arrears and defaults),

disregarding the effect of article 20 (amendments of the Consumer Credit Act 1974) of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013 and any order made before 1st April 2014 under section 107 of the Financial Services Act 2012.

(8) If, in the opinion of the FCA—

- (a) the difference referred to in subsection (7) cannot reasonably be estimated; or
- (b) it is not reasonably practicable to produce an estimate,

the cost benefit analysis need not estimate the difference but must include a statement of the FCA's opinion and an explanation of it.”.

(6) The requirements of section 138I of the Act (as modified above) in so far as they apply to a proposal to make rules to which this article applies may be satisfied by things done (wholly or in part) before the date on which this article comes into force.

(7) It is immaterial for the purposes of paragraph (5) if, when the things were done, they were not compatible with section 138I of the Act or, in the case of things done by the Financial Services Authority before 1st April 2013, section 155 of the Act.

(8) In this article, “credit-related regulated activities” means the activities which will, from 1st April 2014, be regulated activities by virtue of Part 2 of this Order.

Marginal Citations

M1 Inserted by the Consumer Credit Act 2006, section 8.

Credit-related rules made by the PRA

62.—(1) This article applies to rules made by the PRA which relate to credit-related regulated activities or the carrying on of those activities.

(2) Section 138J(2)(a) of the Act (cost benefit analysis) does not apply in relation to a draft of rules to which this article applies which are the same as, or substantially the same as, any of the Consumer Credit Act provisions or which have the same, or substantially the same, effect as any such provisions.

(3) For the purposes of this article, the “Consumer Credit Act provisions” are—

- (a) the Consumer Credit Act 1974,
- (b) any subordinate legislation made, or guidance issued, under that Act, and
- (c) any notice issued by the OFT under section 86A of that Act ^{M2} (information sheets on arrears and defaults),

disregarding the effect of article 20 (amendments of the Consumer Credit Act 1974) and any order made before 1st April 2014 under section 107 of the Financial Services Act 2012.

(4) Section 138J of the Act (consultation by the PRA) is to apply as if for subsections (7) and (8) there were substituted—

“(7) “Cost benefit analysis” means—

- (a) an analysis of the difference between the costs and benefits of the Consumer Credit Act provisions and the costs and benefits that will arise—
 - (i) if the proposed rules are made, or
 - (ii) if subsection (5) applies, from the rules that have been made, and
 - (b) subject to subsection (8), an estimate of that difference.
- (7A) For the purposes of subsection (7), the “Consumer Credit Act provisions” are—
- (a) the Consumer Credit Act 1974,
 - (b) any subordinate legislation made, or guidance issued, under that Act, and
 - (c) any notice issued by the OFT under section 86A of that Act (information sheets on arrears and defaults),
- disregarding the effect of article 20 (amendments of the Consumer Credit Act 1974) of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013 and any order made before 1st April 2014 under section 107 of the Financial Services Act 2012.
- (8) If, in the opinion of the PRA—
- (a) the difference referred to in subsection (7) cannot reasonably be estimated; or
 - (b) it is not reasonably practicable to produce an estimate,
- the cost benefit analysis need not estimate the difference but must include a statement of the PRA's opinion and an explanation of it.”.
- (5) The requirements of section 138J of the Act (as modified above) in so far as they apply to a proposal to make rules to which this article applies may be satisfied by things done (wholly or in part) before the date on which this article comes into force.
- (6) For the purposes of paragraph (4)—
- (a) it is immaterial if, when the things were done, they were not compatible with section 138J of the Act or, in the case of things done by the Financial Services Authority before 1st April 2013, section 155 of the Act;
 - (b) the requirements may be satisfied by things done by the Financial Services Authority.
- (7) In this article, “credit-related regulated activities” means the activities which will, from 1st April 2014, be regulated activities by virtue of Part 2 of this Order.

Marginal Citations

M2 Inserted by the Consumer Credit Act 2006, section 8.

Designation of provisions made under the 1974 Act

63.—(1) The FCA may designate a relevant instrument, or part of a relevant instrument, if the FCA considers it necessary or expedient to do so in consequence of any provision made by or under this Order.

(2) If the FCA designates a relevant instrument or part of such an instrument, in accordance with this article, the FCA must specify whether the instrument or part is to be treated as having been made by the FCA as a rule under section 137A of the Act or under a specified provision of the Regulated Activities Order (“the specified section or provision”).

(3) An instrument or part which is designated by the FCA in accordance with this article is to be treated for all purposes as having been made as a rule under the specified section or provision.

Changes to legislation: The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013, CHAPTER 5 is up to date with all changes known to be in force on or before 12 January 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

(4) The FCA may make such modifications to a relevant instrument or part designated, or being designated, as it considers necessary or expedient in consequence of any provision made by this Order.

(5) For the purposes of this article and article 64—

“relevant instrument” means any subordinate legislation or part of any subordinate legislation which is—

(a) made under Part 2 of the 1974 Act (irrespective of whether it is also made under section 182 of that Act), and

(b) revoked by this Order;

“specified” means specified by the FCA in a designating instrument.

Designating instruments

64.—(1) To designate or modify a relevant instrument or part of a relevant instrument, the FCA must make an instrument in writing which specifies, or more than one instrument in writing which between them specify—

(a) the relevant instrument or part,

(b) any modifications being made to the relevant instrument or part,

(c) the date on which the designation is to come into effect, and

(d) whether the instrument or part is to be treated as having been made by the FCA as a rule under section 137A of the Act or under a specified provision of the Regulated Activities Order.

(2) The FCA must publish each designating instrument in the way appearing to it to be best calculated to bring it to the attention of the public.

(3) A person is not to be taken to have contravened a relevant instrument designated by the FCA if the person shows that, at the time of the alleged contravention, the designating instrument concerned had not been published.

(4) A designating instrument is to be treated as a rule-making instrument for the purposes of section 138H (verification of rules) of the Act ^{M3}.

(5) A designating instrument may contain provision other than that required by paragraph (1).

(6) The making of a designating instrument is a legislative function of the FCA for the purposes of paragraph 8(2) of Schedule 1ZA to the Act ^{M4} (arrangements for discharging functions).

Marginal Citations

M3 [Section 138H](#) was inserted by the Financial Services Act 2012, section 24.

M4 [Schedule 1ZA](#) was inserted by the Financial Services Act 2012, Schedule 3.

Changes to legislation:

The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013, CHAPTER 5 is up to date with all changes known to be in force on or before 12 January 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

[View outstanding changes](#)

Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:

- Order revoked by [2023 c. 29 Sch. 1 Pt. 2](#)