
STATUTORY INSTRUMENTS

2013 No. 441

The Financial Services Act 2012 (Transitional Provisions) (Enforcement) Order 2013

PART 2

Controlled functions

Power to impose penalties

- 2.—(1) Paragraphs (2) to (5) apply if—
- (a) before the commencement date—
 - (i) a person performed or began to perform a controlled function,
 - (ii) the performance of that controlled function by that person was not approved for the purposes of section 59(1) (approval for particular arrangements), and
 - (iii) the Authority had not given a warning notice in accordance with section 63B(1)(2) (procedure and right to refer to Tribunal) in relation to the performance of the controlled function without approval; and
 - (b) the PRA(3) would have been the appropriate regulator within the meaning of section 63A(5A) (power to impose penalties) had the person performed or begun to perform that function without approval on the commencement date.
- (2) Sections 63A to 63C apply as if section 63A(5A) defined both the FCA(4) and the PRA as the appropriate regulator.
- (3) Section 63A(4) applies as if for “the appropriate regulator” there were substituted “one of the regulators(5)”.
- (4) Section 63A(5) applies as if for “the appropriate regulator” there were substituted “a regulator”.
- (5) For the purposes of section 63C(10) (statement of policy), in its application to the performance by a person of a controlled function without approval—
- (a) where the function was performed and ceased to be performed before the commencement date, the statement of policy to which the PRA must have regard is the statement published by the Authority and in force at the time that the function was performed;
 - (b) where the function was performed before the commencement date and continued to be performed on or after the commencement date, the statement of policy to which the PRA must have regard is the first statement published by the PRA under that section.

(1) Section 59 was amended by [S.I. 2012/1906](#) and is further amended by the 2012 Act, section 14 and Schedule 5, paragraph 3.

(2) Sections 63A to 63D were inserted by the Financial Services Act 2010 ([c.28](#)), section 11 and are further amended by the 2012 Act, Schedule 5, paragraphs 8 to 11.

(3) Section 117 of the 2012 Act defines “the PRA” as meaning the Prudential Regulation Authority.

(4) Section 117 of the 2012 Act defines “the FCA” as meaning the Financial Conduct Authority.

(5) Section 3A(2) of FSMA 2000 defines the “regulators” as the FCA and the PRA; section 3A is substituted by the 2012 Act, section 6.

Disciplinary powers

- 3.—(1) Paragraphs (2) to (4) apply if—
- (a) it appears to a regulator that a person was, before the commencement date, guilty of misconduct (within the meaning of section 66(6) (disciplinary powers) as it applied at the time of the misconduct);
 - (b) the controlled function which the person was approved to perform is, on the commencement date, a significant-influence function in relation to the carrying on by a PRA-authorized person of a regulated activity;
 - (c) the Authority had not, before the commencement date, given a warning notice in accordance with section 67(1)(7) (disciplinary measures: procedure and right to refer to Tribunal) in respect of the misconduct.
- (2) Either regulator may take action under section 66 in respect of the misconduct.
- (3) For the purposes of a regulator taking action under section 66 in respect of misconduct which occurred before the commencement date, section 66 is modified as follows—
- (a) for subsections (2) and (2A), substitute section 66(2) as it applied at the time of the misconduct; and
 - (b) in subsection (4), for “the regulator knew” substitute “one of the regulators knew”.
- (4) For the purposes of section 69(8)(8) (statement of policy), the statement of policy to which the PRA must have regard—
- (a) where the misconduct occurred and ceased to occur before the commencement date, is the statement published by the Authority and in force at the time that the misconduct occurred;
 - (b) where the misconduct occurred before the commencement date and continued to occur on or after the commencement date, is the first statement published by the PRA under that section.

(6) Section 66 was amended by the Financial Services Act 2010 (c.28), section 12 and Schedule 2, paragraph 8 and S.I. 2007/126, 2011/1613 and 2012/1906, and is further amended by the 2012 Act, Schedule 5, paragraph 14.

(7) Section 67(1) was amended by the Financial Services Act 2010, Schedule 2, paragraph 9 and is further amended by the 2012 Act, Schedule 5, paragraph 15.

(8) Section 69 was amended by the Financial Services Act 2010, Schedule 2, paragraph 10 and is further amended by the 2012 Act, Schedule 5, paragraph 17