
DRAFT STATUTORY INSTRUMENTS

2013 No.

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

PART 8

Transitional provisions

CHAPTER 1

Interpretation

Interpretation of Part 8

29. In this Part—

“appeal period”, “debtor”, “hirer”, “licence”, “licensee”, “regulated agreement” and “standard licence” have the meanings given by the 1974 Act (disregarding any repeal of the 1974 Act by this Order);

“appropriate regulator” means—

- (a) in relation to a person who is, or is applying to become, a PRA-authorised person, the PRA;
- (b) in any other case, the FCA.

CHAPTER 2

Licensing etc.

Meaning of “relevant person” in Chapter 2

30. In this Chapter, “relevant person” means a person who—

- (a) immediately before 1st April 2014 held a licence under the 1974 Act, and
- (b) on 1st April 2014 has a Part 4A permission to carry on a regulated activity by virtue of this Order (regardless of whether the person had permission via other means).

Applications for a standard licence where no determination made before 1st April 2014

31.—(1) Paragraphs (3) to (9) apply if, before 1st April 2014—

- (a) the OFT received an application under section 24A of the 1974 Act (applications for standard licences)⁽¹⁾ for a standard licence,
- (b) the applicant (“A”) had not withdrawn the application, and
- (c) the OFT had not determined whether to issue a licence in accordance with the application.

(1) Inserted by section 28 of the Consumer Credit Act 2006.

(2) It is immaterial for the purposes of this article whether the OFT had, before 1st April 2014, given notice to A under section 27 of the 1974 Act (determination of applications)⁽²⁾ that the OFT was minded to refuse A's application.

- (3) The application is to be treated as if it had been made to the appropriate regulator—
- (a) if A is an authorised person, and the appropriate regulator is the PRA, under section 55I of the Act (variation by PRA at request of authorised person);
 - (b) if A is not an authorised person, under section 55A of the Act⁽³⁾ (application for permission);
 - (c) if A is an authorised person and the appropriate regulator is the FCA, under section 55H of the Act (variation by the FCA at request of authorised person).

- (4) The application is to be treated as relating to the following regulated activities—
- (a) if A's application related to the carrying on of an ancillary credit business in so far as it comprised or related to credit brokerage (within the meaning of the 1974 Act), the regulated activity of the kind specified by article 36A of the Regulated Activities Order (credit broking),
 - (b) if—
 - (i) A's application related to the carrying on of an ancillary credit business in so far as it comprised or related to the activity of debt-administration (within the meaning of the 1974 Act), and
 - (ii) A—
 - (aa) indicated in A's application that A envisaged carrying on a business in a manner which would, if carried on after 1st April 2014, involve the carrying on of an activity of the kind specified by article 36H of the Regulated Activities Order (operating an electronic system in relation to lending), or
 - (bb) had, before 1st April 2014, given notice to the FCA of A's intention to carry on such a business,
- a regulated activity of the kind specified by article 36H of the Regulated Activities Order,
- (c) to the extent that A's application related to any other activity, those regulated activities which are activities which were described in the application.

- (5) If—
- (a) A's application related to the carrying on of an ancillary credit business in so far as it comprised or related to the activity of debt-administration (within the meaning of the 1974 Act),
 - (b) A's application is not, by virtue of paragraph (4), treated as relating to a regulated activity of the kind specified by article 36H of the Regulated Activities Order, and
 - (c) A, before 1st June 2014, gives notice to the FCA of A's intention to carry on that activity,
- the application is, from the date on which the FCA receives the notice, to be treated as relating to that activity, in addition to any activity to which the application is to be treated as relating to under paragraph (4).

(6) Any description of business specified in A's application is to be treated for the purposes of Part 4A of the Act as forming part of A's application.

- (7) Section 55U(1) to (4) of the Act (applications under Part 4A) does not apply to A's application.

(2) Amended by Schedule 25 to the Enterprise Act 2002.

(3) Sections 55A to 55Z4 inserted by section 11 of the Financial Services Act 2012.

(8) For the purposes of section 55V of the Act (determination of applications), the appropriate regulator is to be treated as having received the application on 1st April 2014.

(9) For the purpose of paragraph (4), it is the nature of the activities in relation to which a licence is sought that matters, not how they are described in the application.

Applications for a standard licence where determination has been made but appeal period has not ended

32.—(1) Paragraphs (2) to (4) apply if, before 1st April 2014—

- (a) the OFT had given a notice to a person (“A”) of its determination to refuse to issue a standard licence to A in accordance with A’s application, and
- (b) the appeal period in relation to that decision had not ended.

(2) The notice is to be treated as—

- (a) if A does not have a Part 4A permission, a decision notice given under section 55X(4) of the Act by the FCA to A of the decision to refuse A’s application for Part 4A permission;
- (b) in any other case, a decision notice given under section 55X(4) of the Act of the decision of the appropriate regulator to refuse A’s application to vary A’s Part 4A permission.

(3) But if A had, before 1st April 2014, submitted a notice of appeal to the First-tier Tribunal under section 41 of the 1974 Act (appeals to First-tier Tribunal under Part 3)(4) —

- (a) section 55Z3 of the Act (right to refer matters to the Tribunal) does not apply, and
- (b) for the purposes of section 55V(4) of the Act, the appropriate regulator is not to be taken as having determined the application.

(4) The notice has effect subject to any necessary modifications.

Variation of licence at request of licensee where no determination made before 1st April 2014

33.—(1) Paragraphs (3) to (6) apply if, before 1st April 2014—

- (a) the OFT received an application under section 30(1) of the 1974 Act (variation by request)(5) for a variation of a standard licence,
- (b) the applicant (“A”) had not withdrawn the application,
- (c) the OFT had not determined whether to vary the licence in accordance with the application, and

A is a relevant person.

(2) It is immaterial for the purposes of this article whether the OFT had, before 1st April 2014, given notice to A under section 30(4) of the 1974 Act (variation by request) that the OFT was minded to refuse A’s application.

(3) The application is to be treated as if it had been made to the appropriate regulator under section 55I or 55H of the Act (as the case may be).

(4) The application has effect subject to any necessary modifications.

(5) Section 55U(1) to (4) of the Act (applications under Part 4A) does not apply to A’s application.

(6) For the purposes of section 55V of the Act (determination of applications), the appropriate regulator is to be treated as having received the application on 1st April 2014.

(4) Amended by Schedule 25 to the Enterprise Act 2002, sections 33, 43, 53 and 56 of, and Schedule 4 to, the Consumer Credit Act 2006, [S.I. 2001/3649](#) and [S.I. 2009/1835](#).

(5) Amended by Schedule 25 to the Enterprise Act 2002 and section 31 of the Consumer Credit Act 2006.

Variation of licence at request of licensee where determination has been made but appeal period has not ended

34.—(1) Paragraphs (2) to (4) apply if, before 1st April 2014—

- (a) the OFT had given notice to a person (“A”) of its decision to refuse to vary a standard licence in accordance with an application made by A,
- (b) the appeal period in relation to that determination had not ended, and

A is a relevant person.

(2) The notice is to be treated as a decision notice under section 55X(4) of the Act of the decision of the appropriate regulator to refuse A’s application to vary A’s Part 4A permission.

(3) But if A had, before 1st April 2014, submitted a notice of appeal to the First-tier Tribunal under section 41 of the 1974 Act (appeals to First-tier Tribunal under Part 3), section 55Z3 of the Act (right to refer matters to the Tribunal) does not apply.

(4) The notice has effect subject to any necessary modifications.

Compulsory variation of a licence where no determination to vary made before 1st April 2014

35.—(1) Paragraphs (2) to (4) apply if, before 1st April 2014—

- (a) the OFT had given notice to a person (“A”) under section 31(2) of the 1974 Act (compulsory variation)(6) that it is minded to vary the terms of A’s licence,
- (b) the OFT had not determined to vary A’s licence under that section, and

A is a relevant person.

(2) The notice is to be treated as a written notice given under section 55Y(4) of the Act by the FCA of a proposal to vary A’s Part 4A permission (except for subsections (5) and (6) of section 55Y which do not apply).

(3) The notice has effect subject to any necessary modifications.

(4) If the period for making representations under section 34 of the 1974 Act in connection with that notice had not expired before 1st April 2014, subsections (1) and (2) of that section continue to apply as if—

- (a) in subsection (1), references to the OFT (apart from the first reference) were references to the FCA or, before 1st April 2014, the OFT;
- (b) in subsection (2), the reference to the OFT was to the FCA.

Compulsory variation of a licence where determination to vary made before 1st April 2014

36.—(1) Paragraphs (2) to (4) apply if, before 1st April 2014—

- (a) the OFT had given notice of its determination under section 31 of the 1974 Act(7) to vary the terms of the licence of a person (“A”),
- (b) the appeal period in relation to that determination had not ended, and

A is a relevant person.

(2) The notice is to be treated as a written notice given under section 55Y(7) of the Act by the FCA of its decision to vary A’s Part 4A permission (except for subsection (9) of section 55Y which does not apply).

(6) Amended by Schedule 25 to the Enterprise Act 2002.

(7) Amended by Schedule 25 to the Enterprise Act 2002 and section 31, 32 and 34 of the Consumer Credit Act 2006.

(3) But if A had, before 1st April 2014, submitted a notice of appeal to the First-tier Tribunal under section 41 of the 1974 Act (appeals to First-tier Tribunal under Part 3), section 55Z3 of the Act (right to refer matters to the Tribunal) does not apply.

(4) The notice has effect subject to any necessary modifications.

Revocation etc. of licence where no determination made before 1st April 2014

37.—(1) Paragraphs (3) to (5) apply if, before 1st April 2014—

(a) the OFT had given a notice under section 27 of the 1974 Act (determination of applications)(**8**) to a person (“A”) that it is minded to refuse A’s application to renew A’s standard licence,

(b) the OFT had not determined to refuse to renew A’s licence, and

A is a relevant person.

(2) Paragraphs (3) and (4) apply if, before 1st April 2014—

(a) the OFT had given a notice under section 32(2) of the 1974 Act (revocation of a standard licence)(**9**) to a person (“A”),

(b) the OFT had not determined to revoke A’s licence under that section, and

A is a relevant person.

(3) The notice is to be treated as—

(a) if A has Part 4A permission only by virtue of this Order, a warning notice given under section 55Z(1) of the Act by the FCA to A of the proposal by the FCA to cancel A’s Part 4A permission (except for the purposes of section 387 of the Act (warning notices)(**10**) which does not apply);

(b) in any other case, a written notice under section 55Y(4) of the Act of the proposal by the FCA to vary A’s Part 4A permission (except for subsections (5) and (6) of section 55Y which do not apply).

(4) The notice has effect subject to any necessary modifications.

(5) If the period for making representations under section 34 of the 1974 Act in connection with that notice had not expired before 1st April 2014, subsections (1) and (2) of that section continue to apply as if—

(a) in subsection (1), references to the OFT (apart from the first reference) were references to the FCA or, before 1st April 2014, the OFT;

(b) in subsection (2), the reference to the OFT was to the FCA.

Revocation etc. of licence where determination made before 1st April 2014

38.—(1) Paragraphs (3) to (5) apply if, before 1st April 2014—

(a) the OFT had given notice of its determination under section 27 of the 1974 Act not to renew the standard licence of a person (“A”),

(b) the appeal period in relation to that determination had not ended, and

A is a relevant person.

(2) Paragraphs (3) to (5) apply if, before 1st April 2014—

(**8**) Section 27 is applied for the purposes of applications to renew a licence by section 29 of the 1974 Act.

(**9**) Section 32 was amended by Schedule 25 to the Enterprise Act 2002, section 32 of the Consumer Credit Act 2006 and section 108 of the Financial Services Act 2012. There are other amending instruments but none is relevant to this Order.

(**10**) Amended by Schedule 9 to the Financial Services Act 2012.

- (a) the OFT had given notice of its determination under section 32 of the 1974 Act to revoke the standard licence of a person (“A”),
- (b) the appeal period in relation to that determination had not ended, and

A is a relevant person.

(3) The notice is to be treated as—

- (a) if A has Part 4A permission only by virtue of this Order, a decision notice given under section 55Z(2) of the Act by the FCA to A of the decision by the FCA to cancel A’s Part 4A permission;
- (b) in any other case, a written notice under section 55Y(7) of the Act of the decision of the FCA to vary A’s Part 4A permission (except for subsection (9) of section 55Y which does not apply).

(4) But if A had, before 1st April 2014, submitted a notice of appeal to the First-tier Tribunal under section 41 of the 1974 Act (appeals to First-tier Tribunal under Part 3), section 55Z3 of the Act (right to refer matters to the Tribunal) does not apply.

(5) The notice has effect subject to any necessary modifications.

Suspension of licence where determination made before 1st April 2014 but not confirmed

39.—(1) Paragraphs (2) to (4) apply if, before 1st April 2014—

- (a) the OFT had given a notice to a person (“A”) under section 32A(2) of the 1974 Act (suspension of a standard licence)(**11**) that it is suspending A’s licence,
- (b) the OFT had not, under section 34ZA of the 1974 Act (representations to OFT: suspension under section 32A) determined whether or not to confirm such a decision,
- (c) the suspension had not taken effect, and

A is a relevant person.

(2) The notice is to be treated as—

- (a) if A has Part 4A permission only by virtue of this Order—
 - (i) a written notice under section 55Y(4) of the Act of the decision of the FCA to vary A’s Part 4A permission (except for subsections (5) and (6) of section 55Y which do not apply), and
 - (ii) a warning notice given under section 55Z(1) of the Act by the FCA to A of the proposal by the FCA to cancel A’s Part 4A permission (except for the purpose of section 387 which does not apply);
- (b) in any other case, a written notice under section 55Y(4) of the Act of the decision of the FCA to vary A’s Part 4A permission (except for subsections (5) and (6) of section 55Y which do not apply).

(3) The notice has effect subject to any necessary modifications.

(4) If the period for making representations under section 34ZA of the 1974 Act in connection with that notice had not expired before 1st April 2014, subsections (1) and (2) of that section continue to apply as if—

- (a) in subsection (1) each reference to the OFT (apart from the first reference) were a reference to the FCA or, before 1st April 2014, the OFT;
- (b) in subsection (2)—
 - (i) the reference to the OFT was to the FCA;

(11) Sections 32A and 34Z were inserted by section 108 of the Financial Services Act 2012.

- (ii) the words from “reconsider its determination” to “doing so must” were omitted.

Suspension of licence where determination made before 1st April 2014 and confirmed

40.—(1) Paragraphs (2) to (4) apply if, before 1st April 2014—

- (a) the OFT had given a notice to a person (“A”) under section 34ZA of the 1974 Act (representations to OFT: suspension under section 32A) of its determination to confirm a decision to suspend A’s licence under section 32A of that Act,
(b) that determination had not taken effect, and

A is a relevant person.

(2) The notice is to be treated as—

- (a) if A has Part 4A permission only by virtue of this Order—

- (i) a written notice under section 55Y(7) of the Act of the decision of the FCA to vary A’s Part 4A permission (except for subsection (9) of section 55Y which does not apply), and
(ii) a decision notice given under section 55Z(2) of the Act by the FCA of the decision by the FCA to cancel A’s Part 4A permission;

- (b) in any other case, a written notice under section 55Y(7) of the Act of the decision of the FCA to vary A’s Part 4A permission (except for subsection (9) of section 55Y which does not apply).

(3) But if A had, before 1st April 2014, submitted a notice of appeal to the First-tier Tribunal under section 41 of the 1974 Act (appeals to First-tier Tribunal under Part 3), section 55Z3 of the Act (right to refer matters to the Tribunal) does not apply.

(4) The notice has effect subject to any necessary modifications.

Imposition of requirements etc. where no determination made before 1st April 2014

41.—(1) Paragraphs (2) to (5) apply if, before 1st April 2014—

- (a) the OFT had given a notice under section 33D(2) of the 1974 Act (notice of intention of OFT to impose requirements on licensee)⁽¹²⁾ to a person (“A”) that the OFT is minded to make a determination to impose a requirement on A under section 33A of the 1974 Act⁽¹³⁾ or to vary or revoke a requirement imposed under section 33A of that Act,
(b) the OFT had not determined to impose a requirement on A or to vary or revoke a requirement imposed on A, and

A is a relevant person.

(2) The notice is to be treated as written notice under section 55Y(4) of the Act of a proposal by the FCA to impose a requirement on A or to vary or to cancel a requirement (except for subsections (5) and (6) of section 55Y which do not apply).

(3) The notice has effect subject to any necessary modifications.

(4) In deciding whether to impose a requirement on A, the FCA must have regard to the guidance prepared by the OFT under section 33E of the 1974 Act in force immediately before 1st April 2014.

(5) If the period for making representations under section 34 of the 1974 Act in connection with that notice had not expired before 1st April 2014, subsections (1) and (2) of that section continue to apply as if—

⁽¹²⁾ Inserted by section 41 of the Consumer Credit Act 2006.

⁽¹³⁾ Sections 33A to 33E inserted by sections 38 to 41 of the Consumer Credit Act 2006 and amended by section 107 of the Financial Services Act 2012.

- (a) in subsection (1), references to the OFT (apart from the first reference) were references to the FCA or, before 1st April 2014, the OFT;
- (b) in subsection (2), the reference to the OFT was to the FCA.

Imposition of requirements etc. where determination made but appeal period has not ended

42.—(1) Paragraphs (2) to (4) apply if, before 1st April 2014—

- (a) the OFT had given notice to a person (“A”) under section 33D of the 1974 Act of its determination to impose a requirement on A under section 33A of the 1974 Act or to vary or revoke a requirement imposed under section 33A of that Act,
- (b) the appeal period in relation to that determination had not ended, and

A is a relevant person.

(2) The notice is to be treated as written notice under section 55Y(7) of the Act of the decision by the FCA under section 55L of the Act to impose a requirement on A or to vary or to cancel a requirement (except for subsection (9) of section 55Y which does not apply).

(3) But if A had, before 1st April 2014, submitted a notice of appeal to the First-tier Tribunal under section 41 of the 1974 Act (appeals to First-tier Tribunal under Part 3), section 55Z3 of the Act (right to refer matters to the Tribunal) does not apply.

(4) The notice has effect subject to any necessary modifications.

Failure to comply with information requirement

43.—(1) Paragraph (2) applies if, before 1st April 2014, a relevant person (“A”) had failed to do something A was required to do by virtue of section 36B or 36C of the 1974 Act (power of OFT to require information or to require access to premises)(**14**).

(2) Section 36E of the 1974 Act (failure to comply with information requirement) continues to apply in connection with A’s failure as if the reference to the OFT were a reference to the FCA.

Civil penalties – where no determination made before 1st April 2014

44.—(1) Paragraphs (2) to (7) apply if, before 1st April 2014—

- (a) the OFT had given a notice under section 39B(1) of the 1974 Act (notice that OFT is minded to impose a civil penalty)(**15**) to a person (“A”) that it is minded to impose a penalty on A under section 39A of the 1974 Act (power to impose civil penalties)(**16**), and
- (b) the OFT had not before 1st April 2014—
 - (i) given A a penalty notice under section 39A of the 1974 Act, or
 - (ii) given notice to A under section 34 of the 1974 Act of its determination not to give such a penalty notice.

(2) The notice is to be treated as a warning notice given by the FCA to A under section 207(1)(b) of the Act(**17**) (except for the purposes of sections 210 (statements of policy) and 387 (warning notices) which do not apply).

(3) The notice has effect subject to any necessary modifications.

(4) For the purposes of this article, each reference in Part 14 of the Act and any provision made under Part 14 of the Act to an “authorised person” is to be treated as including a reference to A.

(14) Section 36B was inserted by section 46 of the Consumer Credit Act 2006. Section 36C was inserted by section 47 of that Act.

(15) Inserted by section 53 of the Consumer Credit Act 2006.

(16) Inserted by section 52 of the Consumer Credit Act 2006.

(17) Amended by Schedule 2 to the Financial Services Act 2010 and Schedule 9 to the Financial Services Act 2012.

(5) If the period for making representations under section 34 of the 1974 Act in connection with that notice had not expired before 1st April 2014, subsections (1) and (2) of that section continue to apply as if—

(a) in subsection (1), references to the OFT (apart from the first reference) were references to the FCA or, before 1st April 2014, the OFT;

(b) in subsection (2), the reference to the OFT was to the FCA.

(6) In determining what if any financial penalty to impose on A, the FCA must have regard to—

(a) any penalty or fine that has been imposed on A by another body in relation to the conduct giving rise to the possible imposition of the penalty;

(b) other steps the OFT or FCA has taken, or the FCA might take, in relation to that conduct;

(c) the statement of policy prepared by the OFT under section 39C of the 1974 Act⁽¹⁸⁾ as most recently published at the time the conduct occurred.

(7) The financial penalty imposed on A by the FCA in relation to each failure to comply with a requirement may not exceed £50,000.

(8) Section 210 of the Act (statement of policy) does not apply to a penalty imposed by the FCA by virtue of this article.

Civil penalties – where determination made but appeal period has not ended

45.—(1) Paragraphs (2) to (5) apply if, before 1st April 2014—

(a) the OFT had given A a penalty notice under section 39A of the 1974 Act, and

(b) the appeal period in relation to that notice had not expired.

(2) The notice is to be treated as a decision notice given by the FCA to A under section 208(1) (b) of the Act⁽¹⁹⁾ (except for the purposes of section 210 which does not apply).

(3) But if A has, before 1st April 2014, submitted a notice of appeal to the First-tier Tribunal under section 41 of the 1974 Act (appeals to First-tier Tribunal under Part 3), section 208(4) of the Act (right to refer matters to the Tribunal) does not apply.

(4) The notice has effect subject to any necessary modifications.

(5) For the purposes of this article, each reference in Part 14 of the Act (disciplinary measures) and any provision made under Part 14 of the Act to an “authorised person” is to be treated as including a reference to A.

Civil penalties – where determination made before 1st April 2014 and penalty due

46.—(1) Paragraphs (2) to (4) apply if, before 1st April 2014—

(a) the OFT had given A a penalty notice under section 39A of the 1974 Act⁽²⁰⁾, and

(b) the appeal period in relation to that notice had expired.

(2) The penalty is payable to the FCA (rather than the OFT).

(3) If a defaulter (within the meaning of section 39A of the 1974 Act) had not paid to the OFT before 1st April 2014 the penalty imposed under that section—

(a) the defaulter must pay the unpaid balance to the FCA;

(b) section 39A(5) of the 1974 Act continues to apply to the defaulter with the following modifications—

⁽¹⁸⁾ Inserted by section 54 of the Consumer Credit Act 2006.

⁽¹⁹⁾ Amended by Schedule 2 to the Financial Services Act 2010 and Schedule 9 to the Financial Services Act 2012.

⁽²⁰⁾ Inserted by section 52 of the Consumer Credit Act 2006.

- (i) omit “to the OFT”;
 - (ii) the reference to the OFT in paragraph (b) is to be treated as a reference to the FCA.
- (4) For the purposes of Part 3 of Schedule 1ZA to the Act (penalties and fees)(21)—
- (a) any amounts received by the FCA by virtue of this article are to be treated as amounts received by way of penalties imposed under the Act;
 - (b) any expenses incurred by the FCA in connection with the recovery of penalties due to it by virtue of this article are to be treated as incurred in connection with the recovery of penalties imposed under the Act.

Civil penalties – where no formal action taken before 1st April 2014

- 47.**—(1) Paragraphs (2) to (6) apply if—
- (a) the FCA is satisfied that a person (“A”) had, before 1st April 2014, failed to comply with a requirement imposed on A under section 33A, 33B or 36A of the 1974 Act(22), and
 - (b) the OFT had not, before 1st April 2014, given a notice under section 39B(1) of the 1974 Act to A that the OFT was minded to impose a penalty on A under section 39A of the 1974 Act.
- (2) The FCA may impose a penalty, in respect of the failure, on A under section 206 of the Act (financial penalties)(23).
- (3) For the purposes of this article, each reference in Part 14 of the Act and any provision made under Part 14 of the Act to an “authorised person” is to be treated as including a reference to A.
- (4) In determining what if any financial penalty to impose on A, the FCA must have regard to—
- (a) any penalty or fine that has been imposed on A by another body in relation to the conduct giving rise to the possible imposition of the penalty;
 - (b) other steps the OFT or FCA has taken, or the FCA might take, in relation to that conduct;
 - (c) the statement of policy prepared by the OFT under section 39C of the 1974 Act as most recently published at the time the conduct occurred.
- (5) The financial penalty imposed on A by the FCA in relation to each failure to comply with a requirement may not exceed £50,000.
- (6) Section 210 of the Act (statement of policy) does not apply to a penalty imposed by the FCA by virtue of this article.

Enforcement of agreements made by unlicensed trader

- 48.**—(1) This article applies to a regulated agreement entered into before 1st April 2014 (“a relevant agreement”).
- (2) A relevant agreement is not enforceable against the debtor or hirer by a person carrying on a regulated activity of the kind specified by article 60B(2) or 60N(2) of the Regulated Activities Order (as the case may be) if that person does not have permission to carry on that activity.
- (3) Section 40(1A) and (2) of the 1974 continue to apply to a relevant agreement with the following modifications—
- (a) after “Unless the OFT has” insert “before 1st April 2014”;

(21) Inserted by Schedule 3 to the Financial Services Act 2012.

(22) Section 36A inserted by section 45 of the Consumer Credit Act 2006.

(23) Amended by section 10 of the Financial Services Act 2010 and Schedule 9 to the Financial Services Act 2012.

(b) after “applies to the agreement” insert “or the FCA has given a notice under section 28A of the Financial Services and Markets Act 2000 by virtue of subsection (1B)”;

(c) after subsection (1A) there is inserted—

“(1B) Sections 28A and 28B of the Financial Services and Markets Act 2000(24) apply to a regulated agreement which is not enforceable by virtue of subsection (1A) with the following modifications—

(a) subsection (2) and paragraph (b) of subsection (3) of section 28A do not apply;

(b) for subsections (4) to (6) of section 28A substitute—

“(4) In considering whether to allow the agreement to be enforced the FCA must have regard to whether the relevant firm reasonably believed that a licence under the Consumer Credit Act 1974 was not required by the creditor or owner (as the case may be) to enter into the agreement.”;

(c) for subsection (8) of section 28A substitute—

“(8) “The relevant firm” means the person who (disregarding the effect of subsection (1A)), would be entitled to enforce the agreement.”.”

Offences committed under the 1974 Act before 1st April 2014

49. Section 402(1) of the Act (power of FCA to institute proceedings for certain offences)(25) applies as if it included a reference to offences committed under the 1974 Act before 1st April 2014.

Information and investigation powers

50.—(1) Section 165 of the Act (regulators’ power to require information)(26) has effect as if each reference to “authorised person” (except in subsection (7)) included a reference to a person who at any time held a standard licence under the 1974 Act.

(2) Section 168 of the Act (appointment of persons to carry out investigations in particular cases)(27) applies as if—

(a) subsection (1) included a reference to an offence under the 1974 Act;

(b) subsection (4) included a reference to circumstances suggesting that a person may have, before 1st April 2014, failed to comply with a requirement imposed on that person under section 33A, 33B or 36A of the 1974 Act.

(3) Part 27 of the Act (offences) (28) applies as if references to an offence included references to an offence under Part 11 of the Act as modified by this Order.

Applications made to the OFT which have not been determined by 1st April 2014

51.—(1) Any application which before 1st April 2014—

(a) had been made to the OFT under the 1974 Act, and

(b) had not been determined by the OFT,

is to be treated as having been made to the FCA, unless paragraph (2) applies.

(24) Sections 28A and 28B were inserted by Schedule 9 to the Financial Services Act 2012.

(25) Amended by Schedule 7 to the Counter-Terrorism Act 2008 and Schedule 9 to the Financial Services Act 2012.

(26) Amended by Schedule 2 to the Financial Services Act 2010 and Schedule 12 to the Financial Services Act 2012.

(27) Amended by Schedule 7 to the Counter-Terrorism Act 2008, Schedule 12 to the Financial Services Act 2012, [S.I. 2007/126](#) and [S.I. 2012/2554](#).

(28) Part 27 was amended by Schedule 25 to the Enterprise Act 2002, Schedule 7 to the Counter Terrorism Act 2008, section 95 of, and Schedule 9 to, the Financial Services Act 2012 and [S.I. 2012/2554](#).

(2) This paragraph applies if the application had been made under a provision of the 1974 Act which is repealed by this Order.

Decision notices

52. In relation to any notice which is, by virtue of this Chapter of this Part, to be treated as a decision notice given under the Act—

- (a) it is immaterial whether the notice complies with section 388(1)(b) to (e) of the Act (decision notices)(**29**), and
- (b) that section applies as if, for subsections (3) and (4), there were substituted—
 - “(3) The regulator concerned may, before it takes the action to which a decision notice (“the original notice”) relates, give the person concerned a further decision notice.
 - (4) A further decision notice given under subsection (3) may in particular—
 - (a) relate to different action in respect of the same matter, or
 - (b) vary the original notice.”.

Waivers

53. Any of the following given or made by the OFT which are in effect immediately before 1st April 2014 are to have effect as if they had been given or made by the FCA—

- (a) a direction given under section 60(3) of the 1974 Act (form and content of agreements)(**30**);
- (b) a determination made under regulations made under section 64(4) of the 1974 Act (duty to give notice of cancellation rights)(**31**);
- (c) a direction given under section 101(8) or (8A) of the 1974 Act (right to terminate hire agreement)(**32**);
- (d) a direction given under section 160(1) of the 1974 Act (alternative procedure for business consumers)(**33**).

CHAPTER 3

Appeals

Appeals – where steps taken before 1st April 2014

54.—(1) Paragraphs (2) and (3) (in addition to provision made in Chapter 2) apply where a person (“A”) had, before 1st April 2014, submitted a notice of appeal to the First-tier Tribunal under section 41 of the 1974 Act (appeals to First-tier Tribunal under Part 3)(**34**) (“a relevant appeal”).

(2) Sections 41 to 41ZB of the 1974 Act (appeals, Tribunal procedure rules and disposal of appeals)(**35**) continue to apply to a relevant appeal (notwithstanding any repeal made by this Order) with the following modifications to section 41ZB—

- (a) for each reference to the “OFT” substitute “FCA”;
- (b) omit subsections (5) and (6).

(29) Amended by Schedule 9 to the Financial Services Act 2012.

(30) Amended by Schedule 25 to the Enterprise Act 2002.

(31) Amended by Schedule 25 to the Enterprise Act 2002.

(32) Amended by Schedule 25 to the Enterprise Act 2002 and by section 63 of the Consumer Credit Act 2006.

(33) Amended by Schedule 25 to the Enterprise Act 2002.

(34) Amended by Schedule 25 to the Enterprise Act 2002, sections 33, 43, 53 and 56 of, and Schedule 4 to, the Consumer Credit Act 2006, [S.I. 2001/3649](#) and [S.I. 2009/1835](#).

(35) Sections 41ZA and 41ZB were inserted by [S.I. 2009/1938](#).

- (3) In any relevant appeal—
- (a) anything done by the OFT before 1st April 2014 in relation to the appeal is to be treated as having been done by the FCA;
 - (b) the FCA is substituted for the OFT as a party to the appeal.

Appeals – where no steps taken before 1st April 2014

55.—(1) Paragraphs (2) to (4) (in addition to provision made in Chapter 2) apply where a person (“A”) had, before 1st April 2014, a right to submit a notice of appeal to the First-tier Tribunal under section 41 of the 1974 Act but had not exercised that right before that date.

(2) A may refer the matter to the Tribunal within the specified period.

(3) Section 133 of the Act (proceedings before Tribunal: general provision)(**36**) applies to any such reference as if it were a disciplinary reference (within the meaning of that section).

(4) In this article, “specified period” has the same meaning as in the 1974 Act.

CHAPTER 4

Permission etc.

Interim permission

56.—(1) Unless paragraph (12) applies, on and after 1st April 2014, any relevant person (“P”) who, immediately before that date, held a standard licence under the 1974 Act(**37**) is to be treated as having an interim permission to carry on—

(a) if P’s licence covered the carrying on of an ancillary credit business in so far as it comprised or related to credit brokerage (within the meaning of the 1974 Act), the regulated activity specified in article 36A of the Regulated Activities Order (credit broking) and article 64 of that Order in so far as relevant to that activity;

(b) if—

(i) P’s licence covered the carrying on of an ancillary credit business in so far as it comprised or related to the activity of debt-administration (within the meaning of the 1974 Act),

(ii) immediately before 1st April 2014, P carried on an activity which, if carried on after that date would be an activity of the kind specified by article 36H of the Regulated Activities Order (operating an electronic system in relation to lending), and

(iii) immediately before 1st April 2014, P did not also carry on an activity which, if carried on after that date, would be an activity of the kind specified by article 39G of that Order (debt administration),

the regulated activity specified in article 36H of the Regulated Activities Order and article 64 of that Order in so far as relevant to that activity;

(c) if—

(i) P’s licence covered the carrying on of an ancillary credit business in so far as it comprised or related to the activity of debt-administration (within the meaning of the 1974 Act),

(36) Amended by [S.I. 2010/22](#) and amended by section 23 of the Financial Services Act 2012.

(37) “Standard licence” is defined in section 189 of the 1974 Act. By virtue of section 32A(5) of that Act, a licensee under a suspended licence is to be treated, in respect of the period of suspension, as if the licence had not been issued (see section 32A).

- (ii) immediately before 1st April 2014, P carried on an activity which, if carried on after that date would be an activity of the kind specified by article 36H of the Regulated Activities Order (operating an electronic system in relation to lending), and
- (iii) immediately before that date, P also carried on an activity which, if carried on after that date, would be an activity of the kind specified by article 39G of that Order (debt administration),

the regulated activities specified in articles 36H and 39G of the Regulated Activities Order and article 64 of that Order in so far as relevant to those activities;

- (d) to the extent that P’s licence covers any other activities, those regulated activities which are activities which were described in the licence and article 64 of that Order in so far as relevant to those activities.

(2) On and after 1st April 2014, any relevant person (“P”) who, immediately before that date—

- (a) held a standard licence under the 1974 Act,
- (b) was a credit intermediary (within the meaning given by section 160A of the 1974 Act⁽³⁸⁾), but
- (c) did not carry on an activity which, if carried on after 1st April 2014, would be an activity of the kind specified by article 36H of the Regulated Activities Order,

is to be treated as having an interim permission to carry on regulated activities of the kind specified by articles 36A(1)(d) to (f) of the Regulated Activities Order to the extent that P was carrying on such activities immediately before 1st April 2014 and article 64 of that Order in so far as relevant to that activity; and such interim permission may be in addition to any interim permission the person obtains by virtue of paragraph (1).

(3) On and after 1st April 2014, any relevant person (“P”) who is a local authority is to be treated as having an interim permission to carry on regulated activities which are activities which P was carrying on at any point in the period of one year ending on that date.

(4) For the purposes of paragraphs (1), (2) and (3), P is a “relevant person” if P has, in the period beginning with 2nd September 2013 and ending on 31st March 2014 (including both days), notified the FCA of P’s desire to obtain interim permission under this article and paid any fee which is provided for in rules made by the FCA for this purpose.

(5) On and after the notice date (see paragraph (7)), a relevant recent licensee (“P”) is to be treated as having an interim permission to carry on—

- (a) if P’s licence covered the carrying on of an ancillary credit business in so far as it comprised or related to credit brokerage (within the meaning of the 1974 Act), the regulated activity specified in article 36A of the Regulated Activities Order (credit broking) and article 64 of that Order in so far as relevant to that activity;
- (b) if—
 - (i) P’s licence covered the carrying on of an ancillary credit business in so far as it comprised or related to the activity of debt-administration (within the meaning of the 1974 Act),
 - (ii) immediately before 1st April 2014 P carried on an activity which, if carried on after that date would be an activity of the kind specified by article 36H of the Regulated Activities Order (operating an electronic system in relation to lending), and
 - (iii) immediately before that date, P did not also carry on an activity which, if carried on after that date, would be an activity of the kind specified by article 39G of that Order (debt administration),

(38) Inserted by [S.I. 2010/1010](#).

the regulated activity specified in article 36H of the Regulated Activities Order and article 64 of that Order in so far as relevant to that activity;

(c) if—

- (i) P's licence covered the carrying on of an ancillary credit business in so far as it comprised or related to the activity of debt-administration (within the meaning of the 1974 Act),
- (ii) immediately before 1st April 2014, P carried on an activity which, if carried on after that date would be an activity of the kind specified by article 36H of the Regulated Activities Order (operating an electronic system in relation to lending), and
- (iii) immediately before that date, P also carries on an activity which, if carried on after that date, would be an activity of the kind specified by article 39G of that Order (debt administration),

the regulated activities specified in articles 36H and 39G of the Regulated Activities Order and article 64 of that Order in so far as relevant to those activities;

(d) to the extent that P's licence covers any other activities, those regulated activities which are activities which were described in the licence and article 64 of that Order in so far as relevant to those activities.

(6) Unless paragraph (12) applies, on and after the notice date, any relevant recent licensee ("P") who, immediately before 1st April 2014—

- (a) held a standard licence under the 1974 Act,
- (b) was a credit intermediary (within the meaning given by section 160A of the 1974 Act⁽³⁹⁾), but
- (c) did not carry on an activity which, if carried on after 1st April 2014, would be an activity of the kind specified by article 36H of the Regulated Activities Order,

is to be treated as having an interim permission to carry on regulated activities of the kind specified by articles 36A(1)(d) to (f) of the Regulated Activities Order and article 64 of that Order in so far as relevant to that activity, to the extent that P was carrying on such activities immediately before 1st April 2014; and such interim permission may be in addition to any interim permission the person obtains by virtue of paragraph (5).

(7) For the purposes of paragraphs (5) and (6), P is a "relevant recent licensee" if—

- (a) P had been given a standard licence under the 1974 Act in the period beginning 18th March 2014 and ending on 31st March 2014 (including both days), and
- (b) on a date in the period beginning on 1st April 2014 and ending on 14th April 2014 (including both days) ("the notice date") P notified the FCA of P's desire to obtain interim permission under this article and has in that period paid any fee which is provided for in rules made by the FCA for this purpose.

(8) Interim permission which a person ("A") is treated as having under this article does not permit A to canvass off trade premises borrower-lender-supplier agreements (within the meaning given by article 60L of the Regulated Activities Order) or regulated consumer hire agreements (within the meaning of article 60N of that Order) except to the extent that A's licence under the 1974 Act, immediately before 1st April 2014, specifically provided that A's licence covered that activity; and the reference to canvassing off trade premises is to be read with article 36B of that Order.

(9) Subject to article 61 (application of Act), an interim permission is to be treated as—

- (a) if P was an authorised person immediately before commencement, a variation of permission,

(39) Inserted by [S.I. 2010/1010](#).

(b) in any other case, a Part 4A permission.

(10) If P was, immediately before 1st April 2014, subject to a requirement imposed by the OFT under section 33A of the 1974 Act (power of OFT to impose requirements on licensees)⁽⁴⁰⁾ and P obtains interim permission under this article, that requirement is to be treated as a requirement imposed by the FCA under section 55L of the Act (subject to any necessary modifications).

(11) For the purpose of paragraphs (1) and (5), it is the effect of the licence that matters, not how the activities for which a licence is given are described.

(12) This paragraph applies if—

- (a) P has, before 1st April 2014, notified the FCA that P does not wish to obtain interim permission under this article, or
- (b) the FCA has, before 1st April 2014, notified P in writing, that in the FCA's opinion, P is not carrying on the activities which are described in P's licence.

Procedure for notifying FCA

57.—(1) Notices under article 56 must—

- (a) be made in such manner as the FCA may direct; and
- (b) contain or be accompanied by such other information as the FCA may reasonably require.

(2) Different directions may be given and different requirements imposed, in relation to different applications or categories of application.

(3) At any time after receiving the notification, the FCA may require the person giving the notification to provide the FCA with such further information as it reasonably considers necessary to enable the FCA to discharge its functions.

(4) The FCA may require information to be provided in such form, or for it to be verified in such a way, as the FCA may direct.

Duration of interim permission

58.—(1) P's interim permission, in so far as it relates to a particular regulated activity or class of activity ceases to have effect—

- (a) if P applies to the appropriate regulator for Part 4A permission to carry on that activity or (as the case may be) to vary P's permission to add that activity to those to which the permission relates, before a date specified in a direction given by the FCA ("the application date"), the date on which that application is determined;
- (b) if P does not make such an application before the application date, the application date;
- (c) in any other case, 1st April 2016.

(2) Paragraph (1) does not affect the ability of the FCA or the PRA to vary or to cancel an interim permission under the Act.

(3) For the purposes of paragraph (1)(a) the date on which an application is determined is—

- (a) if the applicant by notice withdraws the application under section 55V(4) of the Act, the date on which the notice of withdrawal takes effect;
- (b) if the application is granted by the appropriate regulator, the date on which the written notice given under section 55V(5) of the Act takes effect;
- (c) if the appropriate regulator gives a decision notice under section 388 of the Act in relation to the application, the date on which that notice takes effect.

⁽⁴⁰⁾ Inserted by section 38 of the Consumer Credit Act 2006.

- (4) Directions under this article may—
- (a) relate to classes of person (including classes of person identified by reference to whether they have, or have not, provided the FCA with a notification in a form specified in the direction by the FCA);
 - (b) contain different dates;
 - (c) relate to different descriptions of activities;
 - (d) be amended by the FCA by further direction.

Application of the Act to persons with an interim permission

59.—(1) This article applies to each person (“A”) who has an interim permission by virtue of this Order.

(2) A’s interim permission is to be disregarded for the purposes of—

- (a) section 38(2) of the Act (exemption orders)**(41)**;
- (b) section 55A(3)**(42)** of the Act (application for permission);
- (c) sections 55E and 55F of the Act (giving permission).

(3) For the purposes of section 21(2) of the Act (restrictions on financial promotions), if A does not have permission other than an interim permission, A may only approve the content of a communication if the communication invites or induces a person to—

- (a) enter into (or offer to enter into) an agreement the making or performance of which constitutes a controlled activity which corresponds to a regulated activity for which A has interim permission; or
- (b) exercise any rights conferred by a credit agreement (within the meaning of the Regulated Activities Order) to acquire, dispose of, underwrite or convert a controlled investment which is relevant to the regulated activity for which A has interim permission to carry on.

(4) For the purposes of section 39 of the Act (appointed representatives)**(43)**, A—

- (a) may not be a principal in relation to an activity for which A has interim permission;
- (b) may be an appointed representative in relation to an activity which A does not have interim permission to carry on.

(5) If A applies to the appropriate regulator—

- (a) under section 55A of the Act for Part 4A permission to carry on a regulated activity, or
- (b) under section 55H or 55I of the Act to vary a Part 4A permission that A has otherwise than by virtue of this Order by adding a regulated activity to those which the permission relates,

the application may be treated by the appropriate regulator as relating also to some or all of the regulated activities for which A has interim permission.

(6) When the FCA or PRA—

- (a) exercises its power under section 55J of the Act (variation or cancellation on initiative of regulator) in relation to A,
- (b) exercises its power under section 55H (in the case of the FCA) or section 55I of the Act (in the case of the PRA) (variation at request of authorised person) to remove a regulated activity from those for which A has interim permission, or

(41) Amended by Schedule 18 to the Financial Services Act 2012.

(42) Sections 55A to 55Z4 were inserted by section 9 of the Financial Services Act 2012.

(43) Amended by section 10 of and Schedule 18 to the Financial Services Act 2012 and [S.I. 2007/126](#).

- (c) exercises its power under section 55L of the Act (in the case of the FCA) or section 55M of the Act (in the case of the PRA) (imposition of requirements by the regulator) in relation to A,

section 55B(3) of the Act (satisfaction of threshold conditions) does not require the regulator to ensure that A will satisfy, and continue to satisfy, in relation to the regulated activities for which A has an interim permission, the threshold conditions for which that regulator is responsible.

(7) A is not to be regarded as an authorised person for the purposes of Part 12 of the Act (control over authorised person) unless A has permission otherwise than by virtue of an interim permission.

(8) Subsection (3)(a) of section 213 (compensation scheme)(44) does not apply to a person who is a relevant person (within the meaning of that section) only by virtue of having an interim permission.

Grandfathered permission for certain debt-counsellors

60.—(1) On and after 1st April 2014, a not-for-profit body which, immediately before 1st April 2014, was covered by a group licence under the 1974 Act to carry on the activity of debt-counselling (within the meaning of the 1974 Act) is to be treated for all purposes as having Part 4A permission to carry on regulated activities of the kind specified by 39D (debt adjusting), articles 39E (debt-counselling) and 89A (providing credit information services) of the Regulated Activities Order and article 64 of that Order in so far as relevant to those activities, to the extent that those regulated activities are activities which are described in the licence.

(2) In this article, a “not-for-profit body” means a body which, by virtue of its constitution or any enactment—

- (a) is required (after payment of outgoings) to apply the whole of its income and any capital it expends for charitable or public purposes, and
- (b) is prohibited from directly or indirectly distributing amongst its members any part of its assets (otherwise than for charitable or public purposes).

(3) For the purposes of this article, it is the effect of the group licence that matters, not how the activities for which a licence is given are described.

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⁽⁴⁵⁾ (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.

(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.

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.

(45) Inserted by section 8 of the Consumer Credit Act 2006.

- (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⁽⁴⁶⁾ (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.

⁽⁴⁶⁾ Inserted by section 8 of the Consumer Credit Act 2006.

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.

(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⁽⁴⁷⁾.

(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⁽⁴⁸⁾ (arrangements for discharging functions).

⁽⁴⁷⁾ Section 138H was inserted by section 24 of the Financial Services Act 2012.

⁽⁴⁸⁾ Schedule 1ZA was inserted by Schedule 3 to the Financial Services Act 2012.

CHAPTER 6

Miscellaneous

Definition of “consumers”

65.—(1) For the purposes of the provisions listed in paragraph (3), “consumers” includes persons—

- (a) who before 1st April 2014 used a relevant credit service,
- (b) who have rights or interests which are derived from, or are otherwise attributable to, the use of any such services by other persons, or
- (c) who have rights or interests which may be adversely affected by the use of any such services by persons acting on their behalf or in a fiduciary capacity in relation to them.

(2) For the purposes of paragraph (1), “relevant credit services” are services provided—

- (i) by a person who held or was covered by a licence under the 1974 Act, or
- (ii) in carrying on a consumer credit business or an ancillary credit business (in each case, within the meaning of the 1974 Act).

(3) The provisions are—

- (a) section 1G of the Act⁽⁴⁹⁾ (meaning of consumer);
- (b) section 1Q of the Act (Consumer Panel);
- (c) section 391(6)(b) of the Act⁽⁵⁰⁾ (publication);
- (d) section 68 of the Financial Services Act 2012 (cases in which Treasury may arrange independent inquiries).

(4) For the purposes of this article—

- (a) where a person provided a service mentioned in paragraph (1) as a trustee, the persons who are, have been or may be beneficiaries of the trust are to be treated as persons who use, have used or may use the service;
- (b) a person who deals, or dealt, with another person (“A”) in the course of A providing a service mentioned in paragraph (1) is to be treated as using, or having used, the service.

Information sharing

66.—(1) The OFT may disclose to the FCA any information which the OFT considers is necessary or expedient to disclose to the FCA in preparation for the commencement of any provision of this Order or any order made under section 107 of the Financial Services Act 2012 which confers functions on the FCA.

(2) A local weights and measures authority in England, Wales or Scotland and the Department of Enterprise, Trade and Investment in Northern Ireland may disclose to the FCA any information which that person considers is necessary or expedient to disclose to the FCA in preparation for the commencement of any provision of this Order or any order made under section 107 of the Financial Services Act 2012 which confers functions on the FCA.

⁽⁴⁹⁾ Section 1G was inserted by section 6 of the Financial Services Act 2012.

⁽⁵⁰⁾ Section 391(6) was substituted by Schedule 9 to the Financial Services Act 2012.