
DRAFT STATUTORY INSTRUMENTS

2018 No.

The Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018

PART 3

Standards Instruments

Amendment of the Bank of England Act 1998

6. In Schedule 6A to the Bank of England Act 1998(1), in paragraph 17(9)—
- (a) after paragraph (f), insert—
 - “(fa) making technical standards in accordance with Chapter 2A of Part 9A of that Act(2);”
 - (b) after paragraph (g), insert—
 - “(h) making EU Exit instruments under the Financial Regulators' Powers (Technical Standards) (Amendment etc.) (EU Exit) Regulations 2018.”.

Amendment of the Financial Services and Markets Act 2000

- 7.—(1) The Financial Services and Markets Act 2000 is amended as follows.
- (2) In section 1A(6)(3)—
 - (a) at the end of paragraph (ca)(4), omit “or”;
 - (b) at the end of paragraph (d), insert—
 - “or
 - (e) regulations made by the Treasury under section 8 of the European Union (Withdrawal) Act 2018.”.
 - (3) In section 1B(6), after paragraph (a), insert—
 - “(aa) its function of making technical standards in accordance with Chapter 2A of Part 9A;”.
 - (4) In section 2AB(5), in subsection (3)—
 - (a) at the end of paragraph (c), omit “or”;
 - (b) at the end of paragraph (d), insert—
 - “or

(1) 1998 c.11. Schedule 6A was inserted by the Bank of England and Financial Services Act 2016 (c.14).
(2) Chapter 2A is inserted into Part 9A of the Financial Services and Markets Act 2000 by regulation 7(8) of these Regulations.
(3) Section 1A was substituted, with the rest of Part 1A, for Part 1 of the Financial Services and Markets Act 2000, by section 6(1) of the Financial Services Act 2012 (c.21).
(4) Paragraph (ca) was inserted into section 1A by S.I. 2013/1773.
(5) Section 2AB was substituted, with section 2A, for section 2A by the Bank of England and Financial Services Act 2016 (c.14), section 12.

- (e) regulations made by the Treasury under section 8 of the European Union (Withdrawal) Act 2018.”
- (5) In section 2J(1), after paragraph (a), insert—
- “(aa) its function of making technical standards in accordance with Chapter 2A of Part 9A;”.
- (6) In section 137A (the FCA’s general rules), at the end, insert—
- “(6) The FCA’s general rules may not modify, amend or revoke any retained direct EU legislation (except retained direct EU legislation which takes the form of FCA rules).”
- (7) In section 137G (the PRA’s general rules), at the end, insert—
- “(6) The PRA’s general rules may not modify, amend or revoke any retained direct EU legislation (except retained direct EU legislation which takes the form of PRA rules).”
- (8) After section 138O, insert—

“CHAPTER 2A
TECHNICAL STANDARDS

Technical standards

138P.—(1) This Chapter applies where a power for the FCA, the PRA, the Bank of England, or any combination of them to make technical standards is substituted for the power of an EU entity to make EU tertiary legislation (“the original EU power”) by regulations made under section 8 of the European Union (Withdrawal) Act 2018.

- (2) The power to make technical standards includes power to modify, amend or revoke—
- (a) any technical standards made by the regulator under that power;
 - (b) any EU tertiary legislation made by an EU entity under the original EU power which forms part of retained EU law.

(3) Where power to make a technical standard for the same purposes (as set out in the provision creating the power) and applying to the same persons or class of persons has been given to more than one regulator, no regulator may exercise the power without the consent of the other regulator or regulators.

(4) Before a regulator makes a technical standard in which another regulator has an interest, it must consult the other regulator.

- (5) For the purposes of subsection (4)—
- (a) the PRA has an interest in a technical standard which—
 - (i) applies to PRA-authorized persons or other persons connected to them, or
 - (ii) may affect the exercise of the PRA’s functions under or by virtue of this Act or under retained EU law;
 - (b) the FCA has an interest in all technical standards which a regulator or the Payment Systems Regulator has power to amend;
 - (c) the Bank of England has an interest in technical standards which—
 - (i) apply to central counterparties, to financial counterparties or non-financial counterparties within the meaning of the EMIR regulation or to central securities depositories, or
 - (ii) may affect the exercise of the Bank’s functions under or by virtue of this Act, the Banking Act 2009 or retained EU law.

- (6) For the purposes of this Chapter—

- (a) “EU tertiary legislation” has the meaning given in section 20 of the European Union (Withdrawal) Act 2018;
- (b) “regulator” means the FCA, the PRA or the Bank of England;
- (c) a person is connected with another person in the circumstances set out in section 165(11).

Standards instruments

138Q.—(1) The power to make technical standards is to be exercised by the regulator by making an instrument under this section (a “standards instrument”).

(2) A standards instrument must specify the provision under which the instrument is being made.

(3) To the extent that a standards instrument does not comply with subsection (2), it is void.

(4) A standards instrument must be published by the regulator making the instrument in the way appearing to the regulator to be best calculated to bring it to the attention of the public.

(5) The Treasury must lay before Parliament a copy of each standards instrument made under this section.

(6) The regulator making the instrument may charge a reasonable fee for providing a person with a copy of a standards instrument.

Treasury approval

138R.—(1) A standards instrument may be made only if it has been approved by the Treasury.

(2) The Treasury may refuse to approve a standards instrument if subsection (3) or (5) applies.

(3) This subsection applies if it appears to the Treasury that the instrument would—

- (a) have implications for public funds (within the meaning of section 78(2) of the Banking Act 2009); or
- (b) prejudice any current or proposed negotiations for an international agreement between the United Kingdom and one or more other countries, international organisations or institutions.

(4) For the purposes of subsection (3), “international organisations” includes the European Union.

(5) This subsection applies if it appears to the Treasury that they may direct the regulator not to make the standards instrument under section 410 (international obligations).

(6) The Treasury must notify the regulator in writing whether or not they approve a standards instrument within four weeks after the day on which that instrument is submitted to the Treasury for approval (“the relevant period”).

(7) Provision of a draft standards instrument to the Treasury for consultation does not amount to submission of the instrument for approval.

(8) If the Treasury do not approve the instrument, they must—

- (a) set out in the notice given under subsection (6) the Treasury’s reasons for not approving the instrument;
- (b) lay before Parliament—
 - (i) a copy of that notice;

(ii) a copy of any statement made by the regulator as to its reasons for wishing to make the instrument.

(9) If the Treasury do not give notice under subsection (6) before the end of the relevant period, the Treasury is deemed to have approved the standards instrument.

Application of Chapters 1 and 2

138S.—(1) The sections listed in subsection (2) apply, subject to the modifications specified in that subsection, to—

- (a) technical standards made by the FCA or the PRA as they apply to rules made by the FCA or the PRA;
- (b) technical standards made by the Bank of England, as they apply to rules made by the Bank under this Act in accordance with paragraph 10(1), (3) and (4) of Schedule 17A(6) to this Act.

(2) The sections referred to in subsection (1) are—

- (a) section 137T (general supplementary powers)(7), as if—
 - (i) the reference in paragraph (a) to authorised persons were a reference to persons,
 - (ii) the reference in paragraph (b) to rules included a reference to technical standards;
- (b) section 138C (evidential provisions);
- (c) section 138E (limit on effect of contravening rules);
- (d) section 138F (notification of rules);
- (e) section 138H (verification of rules), treating the reference in subsection (2)(c) to section 138G(4) of the Act as a reference to section 138Q(4);
- (f) section 138I (consultation by the FCA), as if—
 - (i) subsection (1)(a) were omitted, and
 - (ii) references to making rules were references to submitting a standards instrument to the Treasury for approval;
- (g) section 138J (consultation by the PRA), as if—
 - (i) subsection (1)(a) were omitted, and
 - (ii) references to making rules were references to submitting a standards instrument to the Treasury for approval;
- (h) section 138K (consultation: mutual societies);
- (i) section 138L (consultation: general exemptions), as if references to making rules were references to submitting a standards instrument to the Treasury for approval.”

(9) In Schedule 1ZA(8)—

- (a) in paragraph 8(3), after paragraph (e), insert—
 - “(f) making technical standards in accordance with Chapter 2A of Part 9A;

(6) Schedule 17A was inserted into the Financial Services and Markets Act 2000 by Schedule 7 to the Financial Services Act 2012 (c.21).

(7) Section 137T was substituted, with the rest of Part 9A (sections 137A to 141A) for Part X of the Financial Services and Markets Act 2000 by section 24(1) of the Financial Services Act 2012.

(8) Schedule 1ZA and 1ZB were substituted for Schedule 1 to the Financial Services and Markets Act 2000 (c.8) by Schedule 3 to the Financial Services Act 2012.

- (g) making EU Exit instruments under the Financial Regulators' Powers (Technical Standards) (Amendment etc.) (EU Exit) Regulations 2018.”;
- (b) in paragraph 23(2)(a), after “(ca)” insert “and (e)”.
- (10) In Schedule 1ZB, in paragraph 31(2)(a), for “other Acts” substitute “other enactments”.
- (11) In Schedule 17A—
 - (a) in paragraph 10, after sub-paragraph (4), insert—

“(5) Rules made by the Bank under any provision made by or under this Act may not modify, amend or revoke any retained direct EU legislation (except retained direct EU legislation which takes the form of rules made by the Bank).”;
 - (b) in paragraph 36—
 - (i) at the end of sub-paragraph (2)(b), omit “and”;
 - (ii) after sub-paragraph (b), insert—

“(ba) its functions under or as a result of regulations made under section 8 of the European Union (Withdrawal) Act 2018; and”.

Amendment of the Banking Act 2009

8. In section 244 (Immunity) of the Banking Act 2009⁽⁹⁾, in subsection (2)(c), after “Markets Act 2000” insert “, of its functions under or as a result of regulations made under section 8 of the European Union (Withdrawal) Act 2018”.

Amendment of the Financial Services Act 2012

- 9.** In section 85 of the Financial Services Act 2012—
- (a) in subsection (4), after paragraph (f)⁽¹⁰⁾, insert—
 - “(g) making technical standards in accordance with Chapter 2A of Part 9A of FSMA 2000;
 - (h) making EU Exit instruments under the Financial Regulators' Powers (Technical Standards) (Amendment etc.) (EU Exit) Regulations 2018.”;
 - (b) in subsection (5), after paragraph (e), insert—
 - “(f) making technical standards in accordance with Chapter 2A of Part 9A of FSMA 2000;
 - (g) making EU Exit instruments under the Financial Regulators' Powers (Technical Standards) (Amendment etc.) (EU Exit) Regulations 2018.”.

Amendment of the Financial Services (Banking Reform) Act 2013

- 10.**—(1) The Financial Services (Banking Reform) Act 2013 (“the Act”) is amended as follows.
- (2) In section 39(10) (overview), for “96 and 97” substitute “96 to 97D”.
 - (3) In section 71 (meaning of “compliance failure”)—
 - (a) at the end of paragraph (a), omit “or”;
 - (b) at the end of paragraph (b), insert—

“; or

⁽⁹⁾ 2009 c.1. Section 244(2)(c) was amended by paragraph 3 of Schedule 2 to the Financial Services Act 2012, and S.I. 2014/3329.

⁽¹⁰⁾ Paragraph (f) was inserted by paragraph 17 of Schedule 3 to the Pension Schemes Act 2015 (c.8).

- (c) comply with rules made by the Regulator under paragraph 9A of Schedule 4.”.
- (4) After section 97 (Reports), insert—

“Technical Standards

Technical standards

97A.—(1) This section, section 97B, section 97C and section 97D apply where a power for the Payment Systems Regulator to make technical standards is substituted for the power of an EU entity to make EU tertiary legislation (the “original EU power”) by regulations made under section 8 of the European Union (Withdrawal) Act 2018.

- (2) The power to make technical standards includes power to modify, amend or revoke—
- (a) any technical standards made by the Payment Systems Regulator under that power;
 - (b) any EU tertiary legislation made by an EU entity under the original EU power which forms part of retained EU law.

(3) Before making any technical standards in which the FCA, the PRA or the Bank of England has an interest (within the meaning of section 138P(5) of the Financial Services and Markets Act 2000), the Payment Systems Regulator must consult the regulator concerned.

(4) For the purposes of this section, “EU tertiary legislation” has the meaning given in section 14 of the European Union (Withdrawal) Act 2018.

Standards instruments

97B.—(1) The power to make technical standards is to be exercised by the Payment Systems Regulator by making an instrument under this section (a “standards instrument”).

(2) A standards instrument must specify the provision under which the instrument is being made.

(3) To the extent that a standards instrument does not comply with subsection (2), it is void.

(4) A standards instrument must be published by the Payment Systems Regulator in the way appearing to the regulator to be best calculated to bring it to the attention of the public.

(5) The Treasury must lay before Parliament a copy of each standards instrument made under this section.

(6) The Payment Systems Regulator may charge a reasonable fee for providing a person with a copy of a standards instrument.

Treasury approval

97C.—(1) A standards instrument may be made only if it has been approved by the Treasury.

(2) The Treasury may refuse to approve a standards instrument if subsection (3) applies.

(3) This subsection applies if it appears to the Treasury that the instrument would—

- (a) have implications for public funds (within the meaning of section 78(2) of the Banking Act 2009); or
- (b) prejudice any current or proposed negotiations for an international agreement between the United Kingdom and one or more other countries, international organisations or institutions.

(4) For the purposes of subsection (3), “international organisations” includes the European Union.

(5) The Treasury must notify the Payment Systems Regulator in writing whether or not they approve a standards instrument within four weeks after the day on which that instrument is submitted to the Treasury for approval (“the relevant period”).

(6) Provision of a draft standards instrument to the Treasury for consultation does not amount to submission of the instrument for approval.

(7) If the Treasury do not approve the instrument, they must—

- (a) set out in the notice given under subsection (5) the Treasury’s reasons for not approving the instrument;
- (b) lay before Parliament—
 - (i) a copy of that notice;
 - (ii) a copy of any statement made by the Payment Systems Regulator as to its reasons for wishing to make the instrument.

(8) If the Treasury do not give notice under subsection (5) before the end of the relevant period, the Treasury is deemed to have approved the standards instrument.

Application of section 104 of this Act and Part 9A of the Financial Services and Markets Act 2000

97D.—(1) Section 104 (consultation in relation to generally applicable requirements) applies to making technical standards as it applies to imposing a generally applicable requirement within the meaning of section 104(1), as if—

- (a) in subsection (3)(c) the reference to the Payment Systems Regulator’s duties under section 49 were a reference to the Payment Systems Regulator’s duties under regulation 3(2) and (4) of the Payment Card Interchange Fee Regulations 2015 (“the 2015 Regulations”);
- (b) in subsection (10), the reference to regulated payment systems were a reference to regulated persons within the meaning of regulation 2(1) of the 2015 Regulations.

(2) The provisions of the Financial Services and Markets Act 2000 listed in subsection (3) apply to technical standards made by the Payment Systems Regulator as they apply to rules made by the FCA subject to the modifications specified in subsection (3).

(3) The provisions referred to in subsection (2) are—

- (a) section 137T (general supplementary powers) (ignoring paragraph (b));
- (b) section 138E (limit on effect of contravening rules) (ignoring subsection (3));
- (c) section 138F (notification of rules) (ignoring subsection (2));
- (d) section 138H (verification of rules) (treating the reference in subsection (2)(c) to section 138G(4) of the Act as a reference to section 97B(4)).”

(5) In Schedule 4—

(a) in paragraph 5(3), after paragraph (b), insert—

“(c) making technical standards in accordance with section 97A; and

(d) making EU Exit instruments under the Financial Regulators’ Powers (Technical Standards) (Amendment etc.) (EU Exit) Regulations 2018.”;

(b) in paragraph 9, in the heading, insert at the end “(participants in regulated payment systems)”;

(c) after paragraph 9, insert—

“Funding (regulated persons)

9A.—(1) For the purposes mentioned in sub-paragraph (2), the Regulator may make rules requiring regulated persons within the meaning of regulation 2(1) of the Payment Card Interchange Fee Regulations 2015⁽¹¹⁾ to pay to the Regulator specified amounts or amounts calculated in a specified way.

(2) The purpose is to meet the expenses incurred, or expected to be incurred, by the Regulator in connection with any functions conferred on it by virtue of regulations made under the European Union (Withdrawal) Act 2018.

(3) Before making any rules under this paragraph, the Regulator must consult the FCA and the Treasury.

(4) In this paragraph “specified” means specified in the rules.

(5) The sections listed in sub-paragraph (6) apply, subject to the modifications specified in that sub-paragraph, to rules made by the Regulator under this paragraph as they apply to rules made by the FCA.

(6) The sections referred to in sub-paragraph (5) are—

- (a) section 137T (general supplementary powers) as if the reference in paragraph (a) to authorised person were a reference to regulated persons;
- (b) section 138A (modification or waiver of rules) as if the reference to the regulator’s objectives were a reference to the payment systems objectives of the Regulator (within the meaning of section 49);
- (c) section 138B (publication of directions under section 138A);
- (d) section 138E (limits on effects of contravening rules), ignoring subsection (3);
- (e) section 138F (notification of rules), ignoring subsection (2);
- (f) section 138G (rule-making instruments);
- (g) section 138H (verification of rules).”

Amendments of the Payment Card Interchange Fee Regulations 2015

11.—(1) The Payment Card Interchange Fee Regulations 2015 are amended as follows.

(2) In regulation 3—

(a) in paragraph (2)—

(i) for sub-paragraph (a), substitute—

“(a) determine whether regulated persons comply in the United Kingdom with obligations, prohibitions and restrictions imposed on them by—

(i) the interchange fee regulation, read together with regulations 22 (weighted average interchange fees for domestic debit card transactions) and 23 (exemption from maximum interchange fees for certain three party payment card schemes); or

(ii) a technical standard made under section 97A of the 2013 Act”;

(b) in paragraph (5)—

(i) at the end of sub-paragraph (a), omit “and”;

(ii) at the end of sub-paragraph (b), insert—

(11) S.I. 2015/1911.

- “(c) the function of making technical standards under section 97A of the 2013 Act; and
- (d) the function of making EU Exit instruments under the Financial Regulators’ Powers (Technical Standards) (Amendment etc.) (EU Exit) Regulations 2018.”