
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 Financial Services and Markets Act 2000

- 7.—(1) The Financial Services and Markets Act 2000 is amended as follows.
- (2) In section 1A(6)(1)—
- (a) at the end of paragraph (ca)(2), 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(3), in subsection (3)—
- (a) at the end of paragraph (c), 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.”
- (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—

(1) 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).

(2) Paragraph (ca) was inserted into section 1A by S.I. 2013/1773.

(3) Section 2AB was substituted, with section 2A, for section 2A by the Bank of England and Financial Services Act 2016 (c.14), section 12.

“(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(4) to this Act.
- (2) The sections referred to in subsection (1) are—
- (a) section 137T (general supplementary powers)(5), 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(6)—
- (a) in paragraph 8(3), after paragraph (e), insert—
- “(f) making technical standards in accordance with Chapter 2A of Part 9A;
 - (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—

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

(5) 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.

(6) 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.

- (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”.