

Draft Regulations laid before Parliament under section 429(2A) of the Financial Services and Markets Act 2000, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2024 No. ****

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Designated Activities) (Supervision and Enforcement) Regulations 2024

Made - - - - ****
Coming into force - - ****

The Treasury make the following Regulations in exercise of the powers conferred by sections 71M(3)(b), 71O(10), 71Q, 71R and 428(3) of the Financial Services and Markets Act 2000(a).

In accordance with section 429(2A) of that Act(b), a draft of these Regulations has been laid before, and approved by a resolution of, each House of Parliament.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Financial Services and Markets Act 2000 (Designated Activities) (Supervision and Enforcement) Regulations 2024.

(2) These Regulations come into force on the day after that on which they are made.

(3) These Regulations extend to England and Wales, Scotland and Northern Ireland.

Amendments of Financial Services and Markets Act 2000

2. The Schedule contains amendments of the Financial Services and Markets Act 2000 relating to requirements imposed as a result of Part 5A of that Act (designated activities)(c).

Name
Name

Date Two of the Lords Commissioners of His Majesty's Treasury

(a) 2000 c. 8; sections 71M, 71O, 71Q and 71R were inserted by section 8(2) of the Financial Services and Markets Act 2023 (c. 29). Section 428(3) was amended by section 66(3)(a) of that Act.
(b) Subsections (2A) and (2B) of section 429 were inserted by section 136 of the Financial Services (Banking Reform) Act 2013 (c. 13). Subsection (2B)(aa) and (ab) were inserted by section 8(8)(a) of the Financial Services and Markets Act 2023.
(c) Part 5A was inserted by section 8(2) of the Financial Services and Markets Act 2023.

SCHEDULE

Regulation 2

Amendments of Financial Services and Markets Act 2000 relating to requirements imposed as a result of Part 5A of that Act

1. The Financial Services and Markets Act 2000 is amended as follows.

2. In Part 5A (designated activities), before section 71K insert—

“CHAPTER 1 GENERAL PROVISIONS”.

3. After section 71S insert—

“CHAPTER 2 PROVISIONS RELATING TO PARTICULAR DESIGNATED ACTIVITIES *“Relevant designated activity” and “relevant Part 5A requirement”*”

71T Meaning of “relevant designated activity” and “relevant Part 5A requirement”

(1) In this Act “relevant designated activity” means an activity that is a designated activity as a result of a provision specified in Part 1 of Schedule 6C.

(2) In this Act “relevant Part 5A requirement” means, in relation to a provision of this Act listed in the first column of the Table in Part 2 of Schedule 6C, a requirement that—

- (a) is imposed by virtue of any of the designated activity regulations specified in the corresponding entry in the second column, and
- (b) is of any of the descriptions specified in the corresponding entry in the third column.

Procedure relating to relevant Part 5A directions

71U Meaning of “relevant Part 5A direction” for purposes of this Chapter

For the purposes of this Chapter a “relevant Part 5A direction” is a direction given under section 71O by virtue of designated activity regulations that are specified in the first column of the Table in Part 3 of Schedule 6C, other than a direction (if any) of a description specified in the corresponding entry in the second column.

71V Procedure for giving, varying or revoking relevant Part 5A direction

(1) If the FCA proposes to give a relevant Part 5A direction, or gives such a direction with immediate effect, the FCA must give written notice to the person concerned (“P”).

(2) A relevant Part 5A direction takes effect—

- (a) immediately, if the notice under subsection (1) states that that is the case,
- (b) on such other date as may be specified in the notice, or
- (c) if no date is specified in the notice, when the matter to which the notice relates is no longer open to review.

(3) A relevant Part 5A direction may be expressed to take effect immediately, or on a specified date, only if the FCA, having regard to the ground on which it is exercising the power to give the direction, considers that it is necessary for the direction to take effect immediately, or on that date.

(4) The notice under subsection (1) must—

- (a) give details of the direction,
- (b) state the FCA’s reasons for the direction and for its determination as to when the direction takes effect,

(c) inform P that P may make representations to the FCA within such period as may be specified in the notice (whether or not P has referred the matter to the Tribunal), and

(d) inform P of P's right to refer the matter to the Tribunal.

(5) The FCA may extend the period allowed under the notice for making representations.

(6) If, having considered any representations made by P, the FCA decides—

(a) to give the direction proposed, or

(b) if the direction has been given, not to revoke the direction,

it must give P written notice.

(7) If, having considered any representations made by P, the FCA decides—

(a) not to give the direction proposed,

(b) to give a different direction, or

(c) to revoke a direction which has effect,

it must give P written notice.

(8) A notice under subsection (6) must inform P of P's right to refer the matter to the Tribunal.

(9) A notice under subsection (7)(b) must comply with subsection (4).

(10) If a notice informs P of P's right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.

(11) This section applies to the variation of a direction—

(a) on the FCA's own initiative, or

(b) in response to, but otherwise than in accordance with, an application under section 71W,

as it applies to the giving of a direction.

(12) If the FCA decides on its own initiative to revoke a direction, it must give written notice to the person concerned.

(13) For the purposes of subsection (2)(c), whether a matter is open to review is to be determined in accordance with section 391(8).

71W Application for variation or revocation of relevant Part 5A direction

(1) A person to whom a relevant Part 5A direction has been given may apply to the FCA for the variation or revocation of the direction.

(2) An application for the variation of a direction must contain a statement of the desired variation.

(3) An application under this section must—

(a) be made in such manner as the FCA may direct, and

(b) contain, or be accompanied by, such information as the FCA may reasonably require.

(4) At any time after the application is received and before it is determined, the FCA may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application.

(5) Different directions under subsection (3)(a) may be given, and different requirements under subsection (3)(b) or (4) imposed, in relation to different applications or categories of application.

(6) The FCA may require an applicant to provide information which the applicant is required to provide to it under this section in such form, or to verify it in such a way, as the FCA may direct.

(7) The applicant may withdraw the application, by giving the FCA written notice, at any time before the FCA determines it.

71X Determination of application under section 71W

(1) This section applies in relation to an application under section 71W for the variation or revocation of a direction, and in this section the applicant is referred to as “A”.

(2) If the FCA grants the application, it must give A written notice stating the date from which the variation or revocation has effect.

(3) If the FCA proposes to refuse to revoke or vary the direction, it must give A written notice.

(4) A notice under subsection (3) must—

- (a) state the FCA’s reasons for the refusal,
- (b) inform A that A may make representations to the FCA within such period as may be specified in the notice (whether or not A has referred the matter to the Tribunal), and
- (c) inform A of A’s right to refer the matter to the Tribunal.

(5) The FCA may extend the period allowed for making representations.

(6) If, having considered any representations made by A, the FCA decides to refuse to vary or revoke the direction, it must give A written notice.

(7) A notice under subsection (6) must inform A of A’s right to refer the matter to the Tribunal.

(8) If a notice informs A of A’s right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.

71Y Relevant Part 5A direction: right to refer to Tribunal

A person who is aggrieved by the exercise by the FCA of its powers in relation to a relevant Part 5A direction given to that person may refer the matter to the Tribunal.”.

4. In section 133 (proceedings before Tribunal: general provision), in subsection (7A)(a), after paragraph (k) insert—

“(ka) a decision to impose a prohibition or restriction under section 206B or to refuse an application under subsection (4) of that section;”.

5.—(1) Section 165 (regulators’ powers to require information: authorised persons etc) is amended as follows.

(2) In subsection (7), after paragraph (a) insert—

“(aa) by the FCA, to impose requirements on a person who is or has been subject to a relevant Part 5A requirement;”.

(3) After that subsection insert—

“(7A) For the purposes of the exercise by virtue of subsection (7)(aa) of the powers conferred by subsections (1) and (3) in relation to a person who is not an authorised person, the reference in subsection (4)(a) to functions conferred by or under this Act is to be read as referring only to functions so conferred which relate to the carrying on of a designated activity.”.

6.—(1) Section 166 (reports by skilled persons)(b) is amended as follows.

(2) In subsection (10), after “subsection” insert “(10A),”.

(a) Subsection (7A) was inserted by section 23(2)(c) of the Financial Services Act 2012 (c. 21). There are amendments of subsection (7A) but none is relevant.

(b) Section 166 was substituted by paragraph 5 of Schedule 12 to the Financial Services Act 2012 and amended by paragraph 6 of Schedule 2 to the Financial Services Act 2021 (c. 22) and by S.I. 2022/466.

(3) After that subsection insert—

“(10A) This subsection applies to a person who is or has been subject to a relevant Part 5A requirement.”.

7. In section 166A (appointment of skilled person to collect and update information)(a), after subsection (9A) insert—

“(9B) The powers conferred by this section may also be exercised by the FCA in relation to a person who is or has been subject to a relevant Part 5A requirement (and references to an authorised person are to be read accordingly).”.

8.—(1) Section 167 (appointment of persons to carry out general investigations)(b) is amended as follows.

(2) In subsection (1A), after paragraph (d) insert—

“(e) a person on whom a relevant Part 5A requirement is imposed.”.

(3) In subsection (4A), for “or (d)”, in both places, substitute “, (d) or (e)”.

(4) In subsection (5A)(d), for “or (d)” substitute “, (d) or (e)”.

9.—(1) Section 168 (appointment of persons to carry out investigations in particular cases)(c) is amended as follows.

(2) After subsection (4A) insert—

“(4B) Subsection (5) also applies if it appears to the investigating authority that there are circumstances suggesting that a person may have contravened a relevant Part 5A requirement.”.

(3) In subsection (6)(c), for “subsection (4A)” substitute “subsections (4A) and (4B)”.

10. In section 170 (investigations: general), in subsection (3)(a), for “or (4)” substitute “, (4) or (4B)”.

11.—(1) Section 172 (additional powers of persons appointed as a result of section 168(1) or (4)) is amended as follows.

(2) In the heading, for “or (4)” substitute “, (4) or (4B)”.

(3) In subsection (4), for “or (4)” substitute “, (4) or (4B)”.

12. In section 176 (entry of premises under warrant)(d), in subsection (3A), after paragraph (d) insert—

“(e) a person who is or has been subject to a relevant Part 5A requirement.”.

13.—(1) Section 205 (public censure)(e) is amended as follows.

(2) The existing text becomes subsection (1).

(3) After that subsection insert—

“(2) If the FCA considers that a person other than an authorised person has contravened a relevant Part 5A requirement imposed on the person, it may publish a statement to that effect.”.

14. In section 206 (financial penalties)(f), after subsection (1) insert—

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- (a) Section 166A was inserted by paragraph 6 of Schedule 12 to the Financial Services Act 2012; subsection (9A) was inserted by section 11(3) of the Financial Services and Markets Act 2023.
- (b) Subsections (1A) and (4A) of section 167 were inserted by paragraph 7(2) and (3) of Schedule 2 to the Financial Services Act 2021; subsection (5A) was inserted by paragraph 7(3) of Schedule 12 to the Financial Services Act 2012.
- (c) Subsection (4A) of section 168 was inserted by paragraph 8(2) of Schedule 10 to the Financial Services and Markets Act 2023; subsection (6) was substituted by paragraph 8(5) of Schedule 12 to the Financial Services Act 2012; subsection (6)(c) was inserted by paragraph 8(4) of Schedule 10 to the Financial Services and Markets Act 2023.
- (d) Subsection (3A) was inserted by paragraph 9 of Schedule 2 to the Financial Services Act 2021.
- (e) Section 205 was amended by paragraph 11 of Schedule 9 to the Financial Services Act 2012.
- (f) Section 206 was repealed in part by section 10 of the Financial Services Act 2010 (c. 28) and was amended by paragraph 12 of Schedule 9 to the Financial Services Act 2012.

“(1A) If the FCA considers that a person other than an authorised person has contravened a relevant Part 5A requirement imposed on the person, it may impose on the person a penalty, in respect of the contravention, of such amount as it considers appropriate.”.

15. After section 206A(a) insert—

“206B Prohibition or restriction on carrying on of relevant designated activities

(1) If the FCA considers that a person carrying on a relevant designated activity has contravened a relevant Part 5A requirement imposed on the person in relation to that activity, it may—

- (a) prohibit the person, for such period as it considers appropriate, from carrying on that activity, or
- (b) impose, for such period as it considers appropriate, such limitations or other restrictions in relation to the carrying on of that activity by the person as it considers appropriate.

(2) A prohibition may relate only to the carrying on of an activity in specified circumstances.

(3) A restriction may, in particular, be imposed so as to require the person concerned to take, or refrain from taking, specified action.

(4) The FCA may, on the application of the person to whom it relates—

- (a) withdraw a prohibition or restriction, or
- (b) vary a prohibition or restriction so as to reduce the period for which it has effect or otherwise to limit its effect.

(5) The power under this section may, but need not, be exercised so as to have effect in relation to all the relevant designated activities that the person concerned carries on.

(6) Any one or more of the powers under—

- (a) subsection (1)(a) and (b) of this section, and
- (b) sections 205 and 206,

may be exercised in relation to the same contravention.”.

16.—(1) Section 207 (proposal to take disciplinary measures) is amended as follows.

(2) In subsection (1)(b)—

- (a) in paragraph (a), for “205” substitute “205(1)”; and
- (b) in paragraph (b), for “206” substitute “206(1)”.

(3) After subsection (1) insert—

“(1A) If the FCA proposes—

- (a) to publish a statement in respect of a person under section 205(2),
- (b) to impose a penalty on a person under section 206(1A), or
- (c) to impose a prohibition or restriction on a person under section 206B,

it must give the person a warning notice.”.

(4) In subsection (4)(c)—

- (a) after “impose a” insert “prohibition or”; and
- (b) after “suspension” insert “, prohibition”.

17.—(1) Section 208 (decision notice) is amended as follows.

(a) Section 206A was inserted by section 9 of the Financial Services Act 2010.
(b) Subsection (1) was amended by paragraph 18 of Schedule 2 to the Financial Services Act 2010 and paragraph 14 of Schedule 9 to the Financial Services Act 2012.
(c) Subsection (4) was inserted by paragraph 18 of Schedule 2 to the Financial Services Act 2010.

- (2) In subsection (1)—
 - (a) in paragraph (a), for “205” substitute “205(1)”;
 - (b) in paragraph (b), for “206” substitute “206(1)”.
- (3) After subsection (1) insert—
 - “(1A) If the FCA decides—
 - (a) to publish a statement in respect of a person under section 205(2),
 - (b) to impose a penalty on a person under section 206(1A), or
 - (c) to impose a prohibition or restriction on a person under section 206B,
 it must without delay give the person a decision notice.”.
- (4) In subsection (3A)(a), after “suspension”, in both places, insert “, prohibition”.
- (5) In subsection (4)—
 - (a) in paragraph (a), for “205” substitute “205(1)”;
 - (b) in paragraph (b), for “206” substitute “206(1)”.
- (6) After subsection (4) insert—
 - “(5) If the FCA decides to—
 - (a) publish a statement in respect of a person under section 205(2),
 - (b) impose a penalty on a person under section 206(1A), or
 - (c) impose a prohibition or restriction on a person under section 206B,
 the person may refer the matter to the Tribunal.”.

18. After section 208 insert—

“208A Applications under section 206B(4): procedure and right to refer to Tribunal

- (1) This section applies to an application under subsection (4) of section 206B for the variation or withdrawal of a prohibition or restriction imposed under that section.
- (2) If the FCA decides to grant the application, it must give the applicant written notice of its decision.
- (3) If the FCA proposes to refuse the application, it must give the applicant a warning notice.
- (4) If the FCA decides to refuse the application, it must give the applicant a decision notice.
- (5) If the FCA gives the applicant a decision notice, the applicant may refer the matter to the Tribunal.”.

19.—(1) Section 209 (publication)(b) is amended as follows.

- (2) The existing text becomes subsection (1).
- (3) In that subsection, for “205” substitute “205(1)”.
- (4) After that subsection insert—
 - “(2) After a statement under section 205(2) is published, the FCA must send a copy of it to the person to whom the statement relates and to any person to whom a copy of the decision notice was given under section 393(4).”.

20.—(1) Section 210 (statements of policy)(c) is amended as follows.

- (2) In subsection (1)(a) and (c), after “suspensions” insert “, prohibitions”.

(a) Subsection (3A) was inserted by paragraph 19 of Schedule 2 to the Financial Services Act 2010.
 (b) Section 209 was amended by paragraph 16 of Schedule 9 to the Financial Services Act 2012.
 (c) In section 210, paragraphs (a) to (c) of subsection (1) were substituted by, and subsection (7) was amended by, paragraph 20 of Schedule 2 to the Financial Services Act 2010.

(3) In subsection (2), after “suspension” insert “, prohibition”.

(4) In subsection (7), for “or 206A” substitute “, 206A or 206B”.

21. In section 392 (application of sections 393 and 394)(a)—

(a) in paragraph (a), for “207(1),” substitute “207(1) or (1A), 208A(3),”;

(b) in paragraph (b), for “208(1),” substitute “208(1) or (1A), 208A(4),”.

22. In section 395 (the FCA’s and PRA’s procedures)(b), in subsection (13), after paragraph (ab) insert—

“(ac) section 71V or 71X;”.

23. In section 417 (definitions), in subsection (1), after the definition of “reinsurance undertaking” insert—

““relevant designated activity” has the meaning given in section 71T(1);

“relevant Part 5A requirement” is to be read in accordance with section 71T(2);”.

24. After Schedule 6B insert—

“SCHEDULE 6C

Sections 71T, 71U

LISTED DESIGNATED ACTIVITY REGULATIONS AND REQUIREMENTS FOR PURPOSES OF CERTAIN PROVISIONS

PART 1

PROVISIONS DESIGNATING RELEVANT DESIGNATED ACTIVITIES

Part 2 of the Short Selling Regulations 2024.

Part 2 of the Consumer Composite Investments (Designated Activities) Regulations 2024.

PART 2

RELEVANT PART 5A REQUIREMENTS FOR PURPOSES OF SPECIFIED PROVISIONS

<i>Provision of this Act</i>	<i>Designated activity regulations</i>	<i>Descriptions of requirement</i>
Part 11	(1) Short Selling Regulations 2024. (2) Consumer Composite Investments (Designated Activities) Regulations 2024.	(1) Requirements imposed by designated activity rules. (2) Requirements imposed by directions under section 71O.
Part 14	(1) Short Selling Regulations 2024. (2) Consumer Composite Investments (Designated Activities) Regulations 2024.	(1) Requirements imposed by designated activity rules. (2) Requirements imposed by directions under section 71O. (3) Requirements imposed by or under Part 11 by reason of the

(a) Section 392 has been amended but none of the amendments is relevant.

(b) In section 395, subsection (13)(ab) was inserted by S.I. 2016/1239. There are other amendments but none is relevant.

		person concerned being, or having been, subject to a requirement of a kind mentioned in paragraph (1) or (2). (4) Requirements imposed under section 206B.
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PART 3

RELEVANT PART 5A DIRECTIONS FOR PURPOSES OF CHAPTER 2 OF PART 5A

<i>Designated activity regulations</i>	<i>Excluded directions</i>
Short Selling Regulations 2024.	
Consumer Composite Investments (Designated Activities) Regulations 2024.	A direction that the FCA publishes under section 71O(9) instead of proceeding under section 71O(8).”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments of the Financial Services and Markets Act 2000 (c. 8) (“FSMA 2000”) relating to the supervision and enforcement by the Financial Conduct Authority (“FCA”) of requirements imposed as a result of “designated activity regulations” (defined in section 71K of that Act). Part 5A of FSMA 2000 enables the Treasury to make regulations providing for an activity to be a “designated activity” for the purposes of that Act and giving the FCA power to make rules and give directions relating to that activity.

The amendments are set out in the Schedule to the Regulations.

The amendments relate only to requirements imposed as a result of—

- Part 2 of the Short Selling Regulations 2024, or
- the Consumer Composite Investments (Designated Activities) Regulations 2024.

Paragraph 3 of the Schedule, together with the related amendment made by paragraph 24, insert in Part 5A of FSMA 2000—

- a definition of “relevant designated activity” for the purpose of that Act,
- a definition of “relevant Part 5A requirement” for the purposes of Part 11 of that Act (information gathering and investigations) and Part 14 of that Act (disciplinary measures), and
- a definition of “relevant Part 5A direction” for the purposes of Chapter 2 of Part 5A of that Act.

The provisions inserted by paragraph 3 in Part 5A of FSMA 2000 also include procedural requirements relating to the giving of a “relevant Part 5A direction”. These include a provision giving the person to whom a direction is given the right to make a reference to the Upper Tribunal.

Paragraph 4 of the Schedule amends section 133 of FSMA 2000 in connection with the amendment made by paragraph 15 of the Schedule.

Paragraphs 5 to 12 of the Schedule amend Part 11 of FSMA 2000 so as to enable powers conferred by provisions of that Part to be exercised in relation to persons who are or have been subject to “relevant Part 5A requirements” as defined.

Paragraphs 13 to 20 of the Schedule amend Part 14 of FSMA 2000 so as to enable the FCA to enforce “relevant Part 5A requirements” as defined.

Paragraphs 21 to 23 of the Schedule make further consequential amendments of FSMA 2000 relating to notices and to interpretation.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

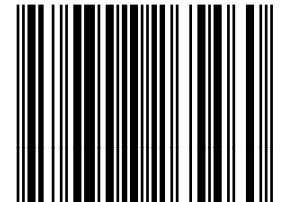
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