



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### PART V

#### PERFORMANCE OF REGULATED ACTIVITIES

##### Modifications etc. (not altering text)

**C1** Pt. V (ss. 56-71) modified (1.12.2001) by *S.I. 2001/3592*, **arts. 1(2)**, 114(3)(a), 128(3)(a) (with art. 23(2))

#### *Prohibition orders*

#### **56 Prohibition orders.**

[<sup>F1</sup>(1) The FCA may make a prohibition order if it appears to it that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by—

- (a) an authorised person,
- (b) a person who is an exempt person in relation to that activity, or
- (c) a person to whom, as a result of Part 20, the general prohibition does not apply in relation to that activity.

(1A) The PRA may make a prohibition order if it appears to it that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by—

- (a) a PRA-authorised person, or
- (b) a person who is an exempt person in relation to a PRA-regulated activity carried on by the person.]

(2) [<sup>F2</sup>A “prohibition order” is an order] prohibiting the individual from performing a specified function, any function falling within a specified description or any function.

(3) A prohibition order may relate to—

*Status: Point in time view as at 25/07/2014.*

*Changes to legislation: Financial Services and Markets Act 2000, Part V is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) a specified regulated activity, any regulated activity falling within a specified description or all regulated activities;
- [<sup>F3</sup>(b) all persons falling within subsection (3A) or a particular paragraph of that subsection or all persons within a specified class of person falling within a particular paragraph of that subsection.]
- [<sup>F4</sup>(3A) A person falls within this subsection if the person is—
  - (a) an authorised person,
  - (b) an exempt person, or
  - (c) a person to whom, as a result of Part 20, the general prohibition does not apply in relation to a regulated activity.]
- (4) An individual who performs or agrees to perform a function in breach of a prohibition order is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (5) In proceedings for an offence under subsection (4) it is a defence for the accused to show that he took all reasonable precautions and exercised all due diligence to avoid committing the offence.
- (6) [<sup>F5</sup>A person falling within subsection (3A)] must take reasonable care to ensure that no function of his, in relation to the carrying on of a regulated activity, is performed by a person who is prohibited from performing that function by a prohibition order.
- (7) [<sup>F6</sup>The regulator that has made a prohibition order] may, on the application of the individual named in [<sup>F7</sup>the order], vary or revoke it.
- [<sup>F8</sup>(7A) If—
  - (a) the FCA proposes to vary or revoke a prohibition order, and
  - (b) as a result of the proposed variation or revocation, an individual—
    - (i) will no longer be prohibited from performing a function of interest to the PRA, or
    - (ii) will be prohibited from performing such a function,
 the FCA must consult the PRA before varying or revoking the order.
- (7B) A function is of interest to the PRA if it is performed in relation to a regulated activity carried on by—
  - (a) a PRA-authorised person, or
  - (b) a person who is an exempt person in relation to a PRA-regulated activity carried on by the person.
- (7C) The PRA must consult the FCA before varying or revoking a prohibition order.]
- [<sup>F9</sup>(8) . . . . .
- (9) “Specified” means specified in the prohibition order.

**Textual Amendments**

**F1** S. 56(1)(1A) substituted for s. 56(1) (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 13(2), 122(3)** (with [Sch. 20](#)); [S.I. 2013/423](#), [art. 3](#), [Sch.](#)

**F2** Words in s. 56(2) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 13(3), 122(3)** (with [Sch. 20](#)); [S.I. 2013/423](#), [art. 3](#), [Sch.](#)

*Status: Point in time view as at 25/07/2014.*

*Changes to legislation: Financial Services and Markets Act 2000, Part V is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- F3** S. 56(3)(b) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), **ss. 13(4)**, 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F4** S. 56(3A) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), **ss. 13(5)**, 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F5** Words in s. 56(6) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), **ss. 13(6)**, 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F6** Words in s. 56(7) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), **ss. 13(7)(a)**, 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F7** Words in s. 56(7) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), **ss. 13(7)(b)**, 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F8** S. 56(7A)-(7C) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), **ss. 13(8)**, 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F9** S. 56(8) omitted (1.4.2013) by virtue of Financial Services Act 2012 (c. 21), **ss. 13(9)**, 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

#### **Modifications etc. (not altering text)**

- C2** S. 56 amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2)**, 3(3); S.I. 2001/3538, **art. 2(1)**  
S. 56 modified (*temp.* from 31.10.2001) by S.I. 2001/3374, **arts. 1**, 11  
S. 56 extended (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 79(1); S.I. 2001/3538, **art. 2(1)**
- C3** Ss. 56, 60 modified (*temp.*) (8.4.2002) by The Financial Services and Markets Act 2000 (Permission and Applications) (Credit Unions etc.) Order 2002 (S.I. 2002/704), **art. 7**
- C4** Ss. 56-58 applied (with modifications) (31.12.2011) by The Financial Services and Markets Act 2000 (Permissions, Transitional Provisions and Consequential Amendments) (Northern Ireland Credit Unions) Order 2011 (S.I. 2011/2832), **art. 8**
- C5** S. 56(7) extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 55(5) (with art. 23(2))
- C6** S. 56(8) amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2)**, 3(4); S.I. 2001/3538, **art. 2(1)**

#### **Commencement Information**

- I1** S. 56 wholly in force at 1.12.2001; s. 56 not in force at Royal Assent see s. 431(2); s. 56 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, **art. 2(2)**, **Sch. Pt. 2**; s. 56 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

## **57 Prohibition orders: procedure and right to refer to Tribunal.**

- (1) If [<sup>F10</sup>a regulator] proposes to make a prohibition order it must give the individual concerned a warning notice.
- (2) The warning notice must set out the terms of the prohibition.
- (3) If [<sup>F11</sup>a regulator] decides to make a prohibition order it must give the individual concerned a decision notice.
- (4) The decision notice must—
  - (a) name the individual to whom the prohibition order applies;
  - (b) set out the terms of the order; and
  - (c) be given to the individual named in the order.
- (5) A person against whom a decision to make a prohibition order is made may refer the matter to the Tribunal.

[<sup>F12</sup>(6) If—

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- (a) the FCA proposes to make a prohibition order, and
  - (b) as a result of the proposed order, an individual will be prohibited from performing a function of interest to the PRA,
- the FCA must consult the PRA before giving a warning notice under this section.
- (7) A function is of interest to the PRA if it is performed in relation to a regulated activity carried on by—
- (a) a PRA-authorised person, or
  - (b) a person who is an exempt person in relation to a PRA-regulated activity carried on by the person.
- (8) The PRA must consult the FCA before giving a warning notice under this section.]

#### Textual Amendments

- F10** Words in s. 57(1) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), ss. 13\(11\), 122\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F11** Words in s. 57(3) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), ss. 13\(11\), 122\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F12** S. 57(6)-(8) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), ss. 13\(12\), 122\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)

#### Modifications etc. (not altering text)

- C7** S. 57 excluded (1.12.2001) by [S.I. 2001/3592, arts. 1\(2\), 110\(3\)](#) (with [art. 23\(2\)](#))
- C8** Ss. 56-58 applied (with modifications) (31.12.2011) by [The Financial Services and Markets Act 2000 \(Permissions, Transitional Provisions and Consequential Amendments\) \(Northern Ireland Credit Unions\) Order 2011 \(S.I. 2011/2832\), art. 8](#)
- C9** S. 57(1) extended (1.12.2001) by [S.I. 2001/3592, arts. 1\(2\), 55\(1\)](#) (with [art. 23\(2\)](#))

#### Commencement Information

- I2** S. 57 wholly in force at 1.12.2001; s. 57 not in force at Royal Assent see s. 431(2); s. 57 in force for specified purposes at 3.9.2001 by [S.I. 2001/2632, art. 2\(2\), Sch. Pt. 2](#); s. 57 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538, art. 2\(1\)](#)

## 58 Applications relating to prohibitions: procedure and right to refer to Tribunal.

- (1) This section applies to an application for the variation or revocation of a prohibition order.
  - (2) If the [F13appropriate regulator] decides to grant the application, it must give the applicant written notice of its decision.
  - (3) If the [F13appropriate regulator] proposes to refuse the application, it must give the applicant a warning notice.
  - (4) If the [F13appropriate regulator] decides to refuse the application, it must give the applicant a decision notice.
  - (5) If the [F13appropriate regulator] gives the applicant a decision notice, he may refer the matter to the Tribunal.
- [F14(6) The appropriate regulator” means the regulator to which the application is made.]

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#### Textual Amendments

- F13** Words in s. 58(2)-(5) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 5 para. 2\(2\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.
- F14** S. 58(6) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 5 para. 2\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.

#### Modifications etc. (not altering text)

- C10** S. 58 excluded (1.12.2001) by [S.I. 2001/3592](#), [arts. 1\(2\)](#), 110(3) (with art. 23(2))
- C11** Ss. 56-58 applied (with modifications) (31.12.2011) by [The Financial Services and Markets Act 2000 \(Permissions, Transitional Provisions and Consequential Amendments\) \(Northern Ireland Credit Unions\) Order 2011 \(S.I. 2011/2832\)](#), [art. 8](#)

#### Commencement Information

- I3** S. 58 wholly in force at 1.12.2001; s. 58 not in force at Royal Assent see s. 431(2); s. 58 in force for specified purposes at 3.9.2001 by [S.I. 2001/2632](#), [art. 2\(2\)](#), [Sch. Pt. 2](#); s. 58 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), [art. 2\(1\)](#)

### Approval

#### 59 Approval for particular arrangements.

- (1) An authorised person (“A”) must take reasonable care to ensure that no person performs a controlled function under an arrangement entered into by A in relation to the carrying on by A of a regulated activity, unless [<sup>F15</sup>the appropriate regulator] approves the performance by that person of the controlled function to which the arrangement relates.
- (2) An authorised person (“A”) must take reasonable care to ensure that no person performs a controlled function under an arrangement entered into by a contractor of A in relation to the carrying on by A of a regulated activity, unless [<sup>F16</sup>the appropriate regulator] approves the performance by that person of the controlled function to which the arrangement relates.
- [<sup>F17</sup>(3) “Controlled function”—
- (a) in relation to the carrying on of a regulated activity by a PRA-authorised person, means a function of a description specified in rules made by the FCA or the PRA, and
- (b) in relation to the carrying on of a regulated activity by any other authorised person, means a function of a description specified in rules made by the FCA.
- (4) “The appropriate regulator”—
- (a) in relation to a controlled function which is of a description specified in rules made by the FCA, means the FCA, and
- (b) in relation to a controlled function which is of a description specified in rules made by the PRA, means the PRA with the consent of the FCA.
- [<sup>F18</sup>(5) .....
- [<sup>F19</sup>(6) The PRA may specify a description of function under subsection (3)(a) only if, in relation to the carrying on of a regulated activity by a PRA-authorised person, it is satisfied that the function is a senior management function as defined in section 59ZA.]

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[<sup>F20</sup>(6A) If—

- (a) a function of a description specified in rules made by the FCA under subsection (3)(a) or (b) is a controlled function in relation to the carrying on of a regulated activity by a relevant authorised person, and
- (b) the FCA is satisfied that, in relation to the carrying on of a regulated activity by a relevant authorised person, the function is a senior management function as defined in section 59ZA,

the FCA must designate the function in the rules as a senior management function.

- (6B) If a function of a description specified in rules made by the PRA under subsection (3) (a) is a controlled function in relation to the carrying on of a regulated activity by a relevant authorised person, the PRA must designate the function in the rules as a senior management function.

(6C) For the meaning of “relevant authorised person”, see section 71A.]

<sup>F21</sup>(7) .....

<sup>F21</sup>(7A) .....

<sup>F21</sup>(7B) .....]

[<sup>F22</sup>(7C) A regulator may not exercise the power in subsection (3) so as to provide for a function to be a controlled function in relation to the carrying on of the regulated activity of managing an AIF by an AIFM which—

- (a) is also an AIF;
- (b) does not manage any AIF other than itself;
- (c) is a body corporate; and
- (d) is not a collective investment scheme.]

- (8) Neither subsection (1) nor subsection (2) applies to an arrangement which allows a person to perform a function if the question of whether he is a fit and proper person to perform the function is reserved under any of the single market directives [<sup>F23</sup>or the emission allowance auctioning regulation] to an authority in a country or territory outside the United Kingdom.

<sup>F24</sup>(9) .....

(10) “Arrangement”—

- (a) means any kind of arrangement for the performance of a function of A which is entered into by A or any contractor of his with another person; and
- (b) includes, in particular, that other person’s appointment to an office, his becoming a partner or his employment (whether under a contract of service or otherwise).

<sup>F25</sup>(11) .....

#### Textual Amendments

**F15** Words in s. 59(1) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), ss. 14\(1\)\(a\), 122\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)

**F16** Words in s. 59(2) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), ss. 14\(1\)\(a\), 122\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)



*Status: Point in time view as at 25/07/2014.*

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- F17** S. 59(3)-(7B) substituted for s. 59(3)-(7) (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 14(1)(b)**, 122(3) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F18** S. 59(5) omitted (25.7.2014 for specified purposes, 7.3.2016 in so far as not already in force) by virtue of [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), **ss. 18(2)**, 148(5); [S.I. 2014/1819](#), art. 2(2)(a); [S.I. 2015/490](#), art. 2(1)(b) (with savings and transitional provisions in [S.I. 2015/492](#) (as amended by [S.I. 2015/1660](#)))
- F19** S. 59(6) substituted (25.7.2014 for specified purposes, 7.3.2016 in so far as not already in force) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), **ss. 18(3)**, 148(5); [S.I. 2014/1819](#), art. 2(2)(a); [S.I. 2015/490](#), art. 2(1)(b) (with savings and transitional provisions in [S.I. 2015/492](#) (as amended by [S.I. 2015/1660](#)))
- F20** S. 59(6A)-(6C) inserted (25.7.2014 for specified purposes, 7.3.2016 in so far as not already in force) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), **ss. 18(4)**, 148(5); [S.I. 2014/1819](#), art. 2(2)(a); [S.I. 2015/490](#), art. 2(1)(b) (with savings and transitional provisions in [S.I. 2015/492](#) (as amended by [S.I. 2015/1660](#)))
- F21** S. 59(7)-(7B) omitted (25.7.2014 for specified purposes, 7.3.2016 in so far as not already in force) by virtue of [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), **ss. 18(5)**, 148(5); [S.I. 2014/1819](#), art. 2(2)(a); [S.I. 2015/490](#), art. 2(1)(b) (with savings and transitional provisions in [S.I. 2015/492](#) (as amended by [S.I. 2015/1660](#)))
- F22** S. 59(7C) inserted (22.7.2013) by [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), reg. 1, **Sch. 1 para. 7**
- F23** Words in s. 59(8) inserted (20.7.2012) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2012 \(S.I. 2012/1906\)](#), arts. 1, **3(4)**
- F24** S. 59(9) omitted (1.4.2013) by virtue of [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 5 para. 3** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F25** S. 59(11) omitted (25.7.2014 for specified purposes, 7.3.2016 in so far as not already in force) by virtue of [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), **ss. 18(5)**, 148(5); [S.I. 2014/1819](#), art. 2(2)(a); [S.I. 2015/490](#), art. 2(1)(b) (with savings and transitional provisions in [S.I. 2015/492](#) (as amended by [S.I. 2015/1660](#)))

#### Modifications etc. (not altering text)

- C12** S. 59 extended (1.12.2001) by [S.I. 2001/2636](#), **arts. 1(2)(b)**, 74(2), 76(2); [S.I. 2001/3538](#), **art. 2(1)**  
S. 59 extended (1.12.2001) by [S.I. 2001/3592](#), **arts. 1(2)**, 49(1) (with art. 23(2))
- C13** S. 59 modified (29.9.2008 at 8.00 a.m.) by [The Bradford & Bingley plc Transfer of Securities and Property etc. Order 2008 \(S.I. 2008/2546\)](#), **art. 15(1)**
- C14** S. 59 modified (1.7.2009 for certain purposes, otherwise 30.6.2010) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2009 \(S.I. 2009/1342\)](#), **arts. 1(2)**, 34, {[Sch. paras. 1, 3](#)}
- C15** S. 59 modified (1.1.2010) by [The Northern Rock plc Transfer Order 2009 \(S.I. 2009/3226\)](#), arts. 1(2)(b), **10**
- C16** S. 59(1) extended (1.12.2001) by [S.I. 2001/2636](#), **arts. 1(2)(b)**, 75(2); [S.I. 2001/3538](#), **art. 2(1)**

#### Commencement Information

- I4** S. 59 wholly in force at 1.12.2001; s. 59 not in force at Royal Assent see s. 431(2); s. 59 in force for specified purposes at 18.6.2001 by [S.I. 2001/1820](#), **art. 2**, [Sch.](#); s. 59 in force for specified purposes at 3.9.2001 by [S.I. 2001/2632](#), **art. 2(2)**, [Sch. Pt. 2](#); s. 59 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), **art. 2(1)**

#### [<sup>F26</sup>59ZASenior management functions

- (1) This section has effect for determining whether a function is for the purposes of section 59(6) or (6A) a senior management function.

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- (2) A function is a “senior management function”, in relation to the carrying on of a regulated activity by an authorised person, if—
- (a) the function will require the person performing it to be responsible for managing one or more aspects of the authorised person's affairs, so far as relating to the activity, and
  - (b) those aspects involve, or might involve, a risk of serious consequences—
    - (i) for the authorised person, or
    - (ii) for business or other interests in the United Kingdom.
- (3) In subsection (2)(a) the reference to managing one or more aspects of an authorised person's affairs includes a reference to taking decisions, or participating in the taking of decisions, about how one or more aspects of those affairs should be carried on.]

#### Textual Amendments

**F26** S. 59ZA inserted (25.7.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), **ss. 19**, 148(5); S.I. 2014/1819, art. 2(1)(a)

#### [<sup>F27</sup>59A Specifying functions as controlled functions: supplementary

- (1) The FCA must—
- (a) keep under review the exercise of its power under section 59(3)(a) to specify any [<sup>F28</sup>senior management] function as a controlled function, and
  - (b) exercise that power in a way that it considers will minimise the likelihood that approvals fall to be given by both the FCA and the PRA in respect of the performance by a person of [<sup>F28</sup>senior management] functions in relation to the carrying on of a regulated activity by the same PRA-authorised person.
- (2) The FCA and the PRA must each consult the other before exercising any power under section 59(3)(a).
- (3) Any reference in this section to the exercise of a power includes its exercise by way of amendment or revocation of provision previously made in the exercise of the power.

[ “Senior management function” has the meaning given by section 59ZA.]  
<sup>F29</sup>(3A)

- (4) “Approval” means an approval under section 59.
- (5) Any expression which is used both in this section and section 59 has the same meaning in this section as in that section.

#### Textual Amendments

**F27** Ss. 59A, 59B inserted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 14(2)**, 122(3) (with [Sch. 20](#)); S.I. 2013/113, art. 2(1)(c), [Sch. Pt. 3](#); S.I. 2013/423, art. 3, [Sch.](#)

**F28** Words in s. 59A(1)(a)(b) substituted (25.7.2014 for specified purposes, 7.3.2016 in so far as not already in force) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), [Sch. 3 para. 2\(2\)](#); S.I. 2014/1819, art. 2(4)(a); S.I. 2015/490, art. 2(1)(b) (with savings and transitional provisions in S.I. 2015/492 (as amended by S.I. 2015/1660))



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**F29** S. 59A(3A) inserted (25.7.2014 for specified purposes, 7.3.2016 in so far as not already in force) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), [Sch. 3 para. 2\(3\)](#); S.I. 2014/1819, art. 2(4)(a); S.I. 2015/490, art. 2(1)(b) (with savings and transitional provisions in S.I. 2015/492 (as amended by S.I. 2015/1660))

## **59B Role of FCA in relation to PRA decisions**

- (1) The FCA may arrange with the PRA that in such cases as may be described in the arrangements the PRA may give approval under section 59 without obtaining the consent of the FCA.
- (2) Arrangements under this section must be in writing, and must specify the date on which they come into force.
- (3) The regulators must publish any arrangements under this section in such manner as they think fit.
- (4) Section 59(4)(b) has effect subject to any arrangements in force under this section.]

### **Textual Amendments**

**F27** Ss. 59A, 59B inserted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), [ss. 14\(2\)](#), 122(3) (with [Sch. 20](#)); S.I. 2013/113, art. 2(1)(c), [Sch. Pt. 3](#); S.I. 2013/423, art. 3, [Sch.](#)

## **60 Applications for approval.**

- (1) An application for the [<sup>F30</sup>appropriate regulator's] approval under section 59 may be made by the authorised person concerned.
- (2) The application must—
  - (a) be made in such manner as the [<sup>F30</sup>appropriate regulator] may direct; and
  - (b) contain, or be accompanied by, such information as the [<sup>F30</sup>appropriate regulator] may reasonably require.

[<sup>F31</sup>(2A) If—

- (a) the application is for the approval of a person to perform a designated senior management function, and
- (b) the authorised person concerned is a relevant authorised person (see section 71A),

the appropriate regulator must require the application to contain, or be accompanied by, a statement setting out the aspects of the affairs of the authorised person concerned which it is intended that the person will be responsible for managing in performing the function.

(2B) A statement provided under subsection (2A) is known as a “statement of responsibilities”.

(2C) In subsection (2A) “designated senior management function” means a function designated as a senior management function under section 59(6A) or (6B).]

[<sup>F32</sup>(3) At any time after the application is received and before it is determined, the appropriate regulator may require the applicant to provide it with such further information as it

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reasonably considers necessary to enable it to determine the application or, as the case requires, to decide whether to give consent.]

- (4) The [<sup>F30</sup>appropriate regulator] may require an applicant to present information which he is required to give under this section in such form, or to verify it in such a way, as the [<sup>F30</sup>appropriate regulator] may direct.
- (5) Different directions may be given, and different requirements imposed, in relation to different applications or categories of application.
- (6) “The authorised person concerned” includes a person who has applied for permission under [<sup>F33</sup>Part 4A] and will be the authorised person concerned if permission is given.
- [<sup>F34</sup>(6A) Subsection (6) applies to references to a relevant authorised person as it applies to references to the authorised person concerned.]
- [<sup>F35</sup>(7) The PRA must consult the FCA before—
- (a) giving a direction under subsection (2)(a) in relation to a class of applicants, or
  - (b) imposing a requirement under subsection (2)(b) on a class of applicants.
- (8) The PRA must as soon as practicable notify the FCA of the receipt or withdrawal of an application to the PRA, unless the case is one in which by virtue of arrangements under section 59B the consent of the FCA is not required.
- (9) “The appropriate regulator”—
- (a) in relation to a controlled function which is of a description specified in rules made by the FCA, means the FCA;
  - (b) in relation to a controlled function which is of a description specified in rules made by the PRA, means the PRA, and for the purposes of subsection (3) also includes the FCA in cases where the consent of the FCA is required.]

#### Textual Amendments

- F30** Words in s. 60 substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by *Financial Services Act 2012* (c. 21), s. 122(3), **Sch. 5 para. 4(1)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F31** S. 60(2A)-(2C) inserted (25.7.2014 for specified purposes, 7.3.2016 in so far as not already in force) by *Financial Services (Banking Reform) Act 2013* (c. 33), **ss. 20(2)**, 148(5); S.I. 2014/1819, art. 2(3); S.I. 2015/490, art. 2(1)(b) (with savings and transitional provisions in S.I. 2015/492 (as amended by S.I. 2015/1660))
- F32** S. 60(3) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by *Financial Services Act 2012* (c. 21), s. 122(3), **Sch. 5 para. 4(2)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F33** Words in s. 60(6) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by *Financial Services Act 2012* (c. 21), s. 122(3), **Sch. 5 para. 4(3)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F34** S. 60(6A) inserted (25.7.2014 for specified purposes, 7.3.2016 in so far as not already in force) by *Financial Services (Banking Reform) Act 2013* (c. 33), **ss. 20(3)**, 148(5); S.I. 2014/1819, art. 2(3); S.I. 2015/490, art. 2(1)(b) (with savings and transitional provisions in S.I. 2015/492 (as amended by S.I. 2015/1660))
- F35** S. 60(7)-(9) inserted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by *Financial Services Act 2012* (c. 21), s. 122(3), **Sch. 5 para. 4(4)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

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#### **Modifications etc. (not altering text)**

- C17** S. 60 amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2), 3(3)**; S.I. 2001/3538, **art. 2(1)**  
S. 60 modified (*temp.* from 31.10.2001) by S.I. 2001/3374, **arts. 1, 11**  
S. 60: “the authorised person concerned” extended (1.12.2001) by S.I. 2001/2511, **regs. 1(1), 10**; S.I. 2001/3538, **art. 2(1)**  
S. 60 extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2), 50(1), 51(1), 53(1)** (with art. 23(2))
- C18** Ss. 56, 60 modified (*temp.*) (8.4.2002) by The Financial Services and Markets Act 2000 (Permission and Applications) (Credit Unions etc.) Order 2002 (S.I. 2002/704), **art. 7**
- C19** S. 60 modified (1.7.2009 for certain purposes, otherwise 30.6.2010) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2009 (S.I. 2009/1342), **arts. 1(2), 34**, {Sch. paras. 1, 3}
- C20** Ss. 60-63 applied (with modifications) (31.12.2011) by The Financial Services and Markets Act 2000 (Permissions, Transitional Provisions and Consequential Amendments) (Northern Ireland Credit Unions) Order 2011 (S.I. 2011/2832), **art. 8**
- C21** S. 60(3) extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2), 50(5)** (with art. 23(2))

#### **Commencement Information**

- I5** S. 60 wholly in force at 1.12.2001; s. 60 not in force at Royal Assent see s. 431(2); s. 60(2)(4) in force for specified purposes at 18.6.2001 by S.I. 2001/1820, **art. 2, Sch.**; s. 60 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, **art. 2(2), Sch. Pt. 2**; s. 60 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

## **61 Determination of applications.**

- (1) [<sup>F36</sup>The regulator to which an application is made under section 60 may grant the application] only if it is satisfied that the person in respect of whom the application is made (“the candidate”) is a fit and proper person to perform the function to which the application relates.
- (2) In deciding that question, [<sup>F37</sup>the regulator] may have regard (among other things) to whether the candidate, or any person who may perform a function on his behalf—
- has obtained a qualification,
  - has undergone, or is undergoing, training, or
  - possesses a level of competence,
- required by general rules [<sup>F38</sup>made by that regulator] in relation to persons performing functions of the kind to which the application relates.
- [<sup>F39</sup>(2A) Subsections (1) and (2) apply in relation to the giving by the FCA of any required consent as they apply in relation to the grant of the application.]
- (3) [<sup>F40</sup>The regulator to which an application is made under section 60 must, before the end of the period for consideration, determine] whether—
- to grant the application; or
  - to give a warning notice under section 62(2).
- [<sup>F41</sup>(3A) The period for consideration”—
- in any case where the application under section 60 is made by a person applying for permission under Part 4A (see section 60(6)), means whichever ends last of—

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- (i) the period within which the application for that permission must be determined under section 55V(1) or (2), and
  - (ii) the period of 3 months beginning with the date on which the regulator receives the application under section 60, and
  - (b) in any other case, means the period of 3 months beginning with the date on which the regulator receives the application under section 60.]
- (4) If [<sup>F42</sup>a regulator] imposes a requirement under section 60(3), the period for consideration stops running on the day on which the requirement is imposed but starts running again—
- (a) on the day on which the required information is received by [<sup>F42</sup>a regulator]; or
  - (b) if the information is not provided on a single day, on the last of the days on which it is received by [<sup>F42</sup>a regulator].
- (5) A person who makes an application under section 60 may withdraw his application by giving written notice to the [<sup>F43</sup>regulator to which the application was made] at any time before the [<sup>F44</sup>regulator] determines it, but only with the consent of—
- (a) the candidate; and
  - (b) the person by whom the candidate is to be retained to perform the function concerned, if not the applicant.

#### Textual Amendments

- F36** Words in s. 61(1) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 5 para. 5\(2\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F37** Words in s. 61(2) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 5 para. 5\(3\)\(a\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F38** Words in s. 61(2) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 5 para. 5\(3\)\(b\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F39** S. 61(2A) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 5 para. 5\(4\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F40** Words in s. 61(3) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 5 para. 5\(5\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F41** S. 61(3A) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 5 para. 5\(6\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F42** Words in s. 61(4) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 5 para. 5\(7\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F43** Words in s. 61(5) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 5 para. 5\(8\)\(a\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F44** Word in s. 61(5) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 5 para. 5\(8\)\(b\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)

#### Modifications etc. (not altering text)

- C22** S. 61 modified (1.7.2009 for certain purposes, otherwise 30.6.2010) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2009 \(S.I. 2009/1342\), arts. 1\(2\), 34, {Sch. paras. 1, 3}](#)
- C23** Ss. 60-63 applied (with modifications) (31.12.2011) by [The Financial Services and Markets Act 2000 \(Permissions, Transitional Provisions and Consequential Amendments\) \(Northern Ireland Credit Unions\) Order 2011 \(S.I. 2011/2832\), art. 8](#)
- C24** S. 61(3) modified (1.12.2001) by [S.I. 2001/3592, arts. 1\(2\), 49\(3\), 53\(2\)](#) (with art. 23(2))
- C25** S. 61(3) excluded (1.1.2004) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No. 1\) Order 2003 \(S.I. 2003/1475\), arts. 1\(2\), 28\(2\)](#)

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**C26** S. 61(3) excluded (1.1.2004) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No. 2\) Order 2003 \(S.I. 2003/1476\)](#), arts. 1(2), **24(2)**, **26(2)**

#### Commencement Information

**I6** S. 61 wholly in force at 1.12.2001; s. 61 not in force at Royal Assent see s. 431(2); s. 61 in force for specified purposes at 3.9.2001 by [S.I. 2001/2632](#), art. 2(2), **Sch. Pt. 2**; s. 61 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), **art. 2(1)**

## 62 Applications for approval: procedure and right to refer to Tribunal.

- (1) [<sup>F45</sup>If the regulator to which an application is made under section 60 (“an application”) decides to grant the application, it] must give written notice of its decision to each of the interested parties.
- (2) If [<sup>F46</sup>the regulator to which an application is made] proposes to refuse [<sup>F47</sup>the application], it must give a warning notice to each of the interested parties.
- (3) If [<sup>F46</sup>the regulator to which an application is made] decides to refuse [<sup>F47</sup>the application], it must give a decision notice to each of the interested parties.
- (4) If [<sup>F46</sup>the regulator to which an application is made] decides to refuse [<sup>F47</sup>the application], each of the interested parties may refer the matter to the Tribunal.
- (5) “The interested parties”, in relation to an application, are—
  - (a) the applicant;
  - (b) the person in respect of whom the application is made (“A”); and
  - (c) the person by whom A’s services are to be retained, if not the applicant.

#### Textual Amendments

- F45** Words in s. 62(1) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 5 para. 6(2)** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F46** Words in s. 62(2)-(4) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 5 para. 6(3)(a)** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F47** Words in s. 62(2)-(4) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 5 para. 6(3)(b)** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

#### Modifications etc. (not altering text)

- C27** S. 62 modified (1.7.2009 for certain purposes, otherwise 30.6.2010) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2009 \(S.I. 2009/1342\)](#), **arts. 1(2)**, 34, {[Sch. paras. 1, 3](#)}
- C28** Ss. 60-63 applied (with modifications) (31.12.2011) by [The Financial Services and Markets Act 2000 \(Permissions, Transitional Provisions and Consequential Amendments\) \(Northern Ireland Credit Unions\) Order 2011 \(S.I. 2011/2832\)](#), **art. 8**

#### Commencement Information

**I7** S. 62 wholly in force at 1.12.2001; s. 62 not in force at Royal Assent see s. 431(2); s. 62 in force for specified purposes at 3.9.2001 by [S.I. 2001/2632](#), art. 2(2), **Sch. Pt. 2**; s. 62 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), **art. 2(1)**

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### 63 Withdrawal of approval.

- <sup>F48</sup>(1) The FCA may withdraw an approval under section 59 given by the FCA or the PRA in relation to the performance by a person of a function if the FCA considers that the person is not a fit and proper person to perform the function.
- (1A) The PRA may withdraw an approval under section 59 in relation to the performance by a person (“A”) of a function if—
- (a) the PRA gave the approval, or the FCA gave the approval and the function is a significant-influence function performed in relation to the carrying on by a PRA-authorized person of a regulated activity, and
  - (b) the PRA considers that A is not a fit and proper person to perform the function.
- (1B) “Significant-influence function” has the same meaning as in section 59.
- (1C) Before one regulator withdraws an approval given by the other regulator, it must consult the other regulator.]
- (2) When considering whether to withdraw <sup>F49</sup>an approval, the FCA or the PRA may take into account any matter which could be taken into account in] considering an application made under section 60 in respect of the performance of the function to which the approval relates <sup>F50</sup>(on the assumption, if it is not the case, that the application was one falling to be considered by it)].
- (3) If <sup>F51</sup>a regulator] proposes to withdraw <sup>F52</sup>an approval] , it must give each of the interested parties a warning notice.
- (4) If <sup>F51</sup>a regulator] decides to withdraw <sup>F52</sup>an approval], it must give each of the interested parties a decision notice.
- (5) If <sup>F51</sup>a regulator] decides to withdraw <sup>F52</sup>an approval], each of the interested parties may refer the matter to the Tribunal.
- (6) “The interested parties”, in relation to an approval, are—
- (a) the person on whose application it was given (“A”);
  - (b) the person in respect of whom it was given (“B”); and
  - (c) the person by whom B’s services are retained, if not A.

#### Textual Amendments

- F48** S. 63(1)-(1C) substituted for s. 63(1) (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 14(3)**, [122\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.
- F49** Words in s. 63(2) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. [122\(3\)](#), **Sch. 5 para. 7(2)(a)** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.
- F50** Words in s. 63(2) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. [122\(3\)](#), **Sch. 5 para. 7(2)(b)** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.
- F51** Words in s. 63(3)-(5) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. [122\(3\)](#), **Sch. 5 para. 7(3)(a)** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.
- F52** Words in s. 63(3)-(5) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. [122\(3\)](#), **Sch. 5 para. 7(3)(b)** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.

#### Modifications etc. (not altering text)

- C29** S. 63 modified (1.7.2009 for certain purposes, otherwise 30.6.2010) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2009 \(S.I. 2009/1342\)](#), arts. [1\(2\)](#), [34](#), **Sch. paras. 1, 3**



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- C30** Ss. 60-63 applied (with modifications) (31.12.2011) by [The Financial Services and Markets Act 2000 \(Permissions, Transitional Provisions and Consequential Amendments\) \(Northern Ireland Credit Unions\) Order 2011 \(S.I. 2011/2832\)](#), [art. 8](#)
- C31** S. 63 applied (with modifications) (31.12.2011) by [The Financial Services and Markets Act 2000 \(Permissions, Transitional Provisions and Consequential Amendments\) \(Northern Ireland Credit Unions\) Order 2011 \(S.I. 2011/2832\)](#), [art. 6\(3\)](#)
- C32** S. 63(1)(3)-(6) excluded (1.12.2001) by [S.I. 2001/3592](#), [arts. 1\(2\)](#), [61\(2\)](#) (with [art. 23\(2\)](#))
- C33** S. 63(3) extended (1.12.2001) by [S.I. 2001/3592](#), [arts. 1\(2\)](#), [52\(2\)](#) (with [art. 23\(2\)](#))
- C34** S. 63(4) modified (1.12.2001) by [S.I. 2001/3592](#), [arts. 1\(2\)](#), [75\(2\)](#) (with [art. 23\(2\)](#))

#### Commencement Information

- I8** S. 63 wholly in force at 1.12.2001; s. 63 not in force at Royal Assent see s. 431(2); s. 63 in force for specified purposes at 3.9.2001 by [S.I. 2001/2632](#), [art. 2\(2\)](#), [Sch. Pt. 2](#); s. 63 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), [art. 2\(1\)](#)

### [<sup>F53</sup>63ZD] Statement of policy relating to conditional approval and variation

- (1) Each regulator must prepare and issue a statement of its policy with respect to—
  - (a) its giving of approval under section 59 subject to conditions or for a limited period only, and
  - (b) its variation under section 63ZA or 63ZB of an approval given under section 59.
- (2) A regulator may at any time alter or replace a statement issued by it under this section.
- (3) If a statement issued under this section is altered or replaced by a regulator, the regulator must issue the altered or replacement statement.
- (4) A statement issued under this section must be published by the regulator concerned in the way appearing to the regulator to be best calculated to bring it to the attention of the public.
- (5) A regulator may charge a reasonable fee for providing a person with a copy of a statement published under this section.
- (6) A regulator must, without delay, give the Treasury a copy of any statement which it publishes under this section.

#### Textual Amendments

- F53** Ss. 63ZD, 63ZE inserted (25.7.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), [ss. 27](#), [148\(5\)](#); [S.I. 2014/1819](#), [art. 2\(1\)\(b\)](#)

### 63ZE Statement of policy: procedure

- (1) Before issuing a statement of policy under section 63ZD, a regulator (“the issuing regulator”) must—
  - (a) consult the other regulator, and
  - (b) publish a draft of the proposed statement in the way appearing to the issuing regulator to be best calculated to bring it to the attention of the public.

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- (2) The duty of the FCA to consult the PRA under subsection (1)(a) applies only in so far as the statement of policy applies to persons whose approval under section 59 relates to the performance of a function designated by the FCA as a senior management function under section 59(6A) in relation to the carrying on by PRA-authorised persons of regulated activities.
- (3) The draft must be accompanied by notice that representations about the proposal may be made to the issuing regulator within a specified time.
- (4) Before issuing the proposed statement, the issuing regulator must have regard to any representations made to it in accordance with subsection (3).
- (5) If the issuing regulator issues the proposed statement it must publish an account, in general terms, of—
  - (a) the representations made to it in accordance with subsection (3), and
  - (b) its response to them.
- (6) If the statement differs from the draft published under subsection (1) in a way which is in the opinion of the issuing regulator significant, the issuing regulator—
  - (a) must before issuing it carry out any consultation required by subsection (1)(a), and
  - (b) must (in addition to complying with subsection (5)) publish details of the difference.
- (7) The issuing regulator may charge a reasonable fee for providing a person with a draft published under subsection (1)(b).
- (8) This section also applies to a proposal to alter or replace a statement.]

#### Textual Amendments

**F53** Ss. 63ZD, 63ZE inserted (25.7.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), **ss. 27, 148(5)**; S.I. 2014/1819, art. 2(1)(b)

*<sup>F54</sup>Performance of controlled functions without approval*

#### Textual Amendments

**F54** Ss. 63A-63D and preceding cross-heading inserted (8.6.2010) by [Financial Services Act 2010 \(c. 28\)](#), **ss. 11, 26(2)(b)**

### 63A Power to impose penalties

- (1) If the [<sup>F55</sup>appropriate regulator] is satisfied that—
  - (a) a person (“P”) has at any time performed a controlled function without approval, and
  - (b) at that time P knew, or could reasonably be expected to have known, that P was performing a controlled function without approval,
 it may impose a penalty on P of such amount as it considers appropriate.

*Status: Point in time view as at 25/07/2014.*

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- (2) For the purposes of this section P performs a controlled function without approval at any time if at that time—
- (a) P performs a controlled function under an arrangement entered into by an authorised person (“A”), or by a contractor of A, in relation to the carrying on by A of a regulated activity; and
  - (b) the performance by P of the function was not approved under section 59.
- (3) The [<sup>F55</sup>appropriate regulator] may not impose a penalty under this section after the end of the limitation period unless, before the end of that period, it has given a warning notice to the person concerned under section 63B(1).
- (4) “The limitation period” means the [<sup>F56</sup>relevant period] beginning with the first day on which the [<sup>F55</sup>appropriate regulator] knew that the person concerned had performed a controlled function without approval.
- (5) For this purpose the [<sup>F55</sup>appropriate regulator] is to be treated as knowing that a person has performed a controlled function without approval if it has information from which that can reasonably be inferred.
- [ The appropriate regulator” —
- <sup>F57</sup>(5A) (a) in relation to a controlled function which is of a description specified in rules made by the FCA, means the FCA, and
- (b) in relation to a controlled function which is of a description specified in rules made by the PRA, means the PRA.]
- [ The relevant period” is—
- <sup>F58</sup>(5B) (a) in relation to the performance of a controlled function without approval before the day on which this subsection comes into force, the period of 3 years, and
- (b) in relation to the performance of a controlled function without approval on or after that day, the period of 6 years.]
- (6) Any [<sup>F59</sup>other] expression which is used both in this section and section 59 has the same meaning in this section as in that section.

#### Textual Amendments

- F55** Words in s. 63A substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 5 para. 8(a)** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F56** Words in s. 63A(4) substituted (25.7.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), **ss. 28(2)**, 148(5); [S.I. 2014/1819](#), art. 2(1)(c)
- F57** S. 63A(5A) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 5 para. 8(b)** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F58** S. 63A(5B) inserted (25.7.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), **ss. 28(3)**, 148(5); [S.I. 2014/1819](#), art. 2(1)(c)
- F59** Word in s. 63A(6) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 5 para. 8(c)** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

#### Modifications etc. (not altering text)

- C35** Ss. 63A-63C applied (with modifications) (1.4.2013) by [The Financial Services Act 2012 \(Transitional Provisions\) \(Enforcement\) Order 2013 \(S.I. 2013/441\)](#), arts. 1(1), **2(2)**
- C36** S. 63A(4) applied (with modifications) (1.4.2013) by [The Financial Services Act 2012 \(Transitional Provisions\) \(Enforcement\) Order 2013 \(S.I. 2013/441\)](#), arts. 1(1), **2(3)**

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**C37** S. 63A(5) applied (with modifications) (1.4.2013) by [The Financial Services Act 2012 \(Transitional Provisions\) \(Enforcement\) Order 2013 \(S.I. 2013/441\)](#), arts. 1(1), **2(4)**

### **63B Procedure and right to refer to Tribunal**

- (1) If [<sup>F60</sup>a regulator] proposes to impose a penalty on a person under section 63A, it must give the person a warning notice.
- (2) A warning notice must state the amount of the penalty.
- (3) If [<sup>F60</sup>a regulator] decides to impose a penalty on a person under section 63A, it must give the person a decision notice.
- (4) A decision notice must state the amount of the penalty.
- (5) If [<sup>F60</sup>a regulator] decides to impose a penalty on a person under section 63A, the person may refer the matter to the Tribunal.

#### **Textual Amendments**

**F60** Words in s. 63B substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 5 para. 9** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

#### **Modifications etc. (not altering text)**

**C35** Ss. 63A-63C applied (with modifications) (1.4.2013) by [The Financial Services Act 2012 \(Transitional Provisions\) \(Enforcement\) Order 2013 \(S.I. 2013/441\)](#), arts. 1(1), **2(2)**

### **63C Statement of policy**

- (1) [<sup>F61</sup>Each regulator] must prepare and issue a statement of its policy with respect to—
  - (a) the imposition of penalties under section 63A; and
  - (b) the amount of penalties under that section.
- (2) [<sup>F62</sup>Each regulator's] policy in determining whether a penalty should be imposed, and what the amount of a penalty should be, must include having regard to—
  - (a) the conduct of the person on whom the penalty is to be imposed;
  - (b) the extent to which the person could reasonably be expected to have known that a controlled function was performed without approval;
  - (c) the length of the period during which the person performed a controlled function without approval; and
  - (d) whether the person on whom the penalty is to be imposed is an individual.
- (3) [<sup>F63</sup>Each regulator's] policy in determining whether a penalty should be imposed on a person must also include having regard to the appropriateness of taking action against the person instead of, or in addition to, taking action against an authorised person.
- (4) A statement issued under this section must include an indication of the circumstances in which [<sup>F64</sup>the regulator that has issued the statement] would expect to be satisfied that a person could reasonably be expected to have known that the person was performing a controlled function without approval.
- (5) [<sup>F65</sup>A regulator] may at any time alter or replace a statement issued [<sup>F66</sup>by it] under this section.

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- (6) If a statement issued under this section is altered or [<sup>F67</sup>replaced by a regulator, the regulator] must issue the altered or replaced statement.
- (7) [<sup>F68</sup>A regulator] must, without delay, give the Treasury a copy of any statement which it publishes under this section.
- (8) A statement issued under this section [<sup>F69</sup>by a regulator] must be published by the [<sup>F70</sup>regulator] in the way appearing to the [<sup>F70</sup>regulator] to be best calculated to bring it to the attention of the public.
- (9) The [<sup>F71</sup>regulator] may charge a reasonable fee for providing a person with a copy of the statement.
- (10) In exercising, or deciding whether to exercise, its power under section 63A in the case of any particular person, [<sup>F72</sup>a regulator] must have regard to any statement of policy published [<sup>F73</sup>by it] under this section and in force at a time when the person concerned performed a controlled function without approval.

#### Textual Amendments

- F61** Words in s. 63C(1) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 5 para. 10(2)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F62** Words in s. 63C(2) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 5 para. 10(3)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F63** Words in s. 63C(3) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 5 para. 10(3)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F64** Words in s. 63C(4) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 5 para. 10(4)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F65** Words in s. 63C(5) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 5 para. 10(5)(a)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F66** Words in s. 63C(5) inserted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 5 para. 10(5)(b)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F67** Words in s. 63C(6) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 5 para. 10(6)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F68** Words in s. 63C(7) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 5 para. 10(7)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F69** Words in s. 63C(8) inserted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 5 para. 10(8)(a)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F70** Word in s. 63C(8) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 5 para. 10(8)(b)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F71** Word in s. 63C(9) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 5 para. 10(9)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

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- F72** Words in s. 63C(10) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\)](#), [Sch. 5 para. 10\(10\)\(a\)](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(c\)](#), [Sch. Pt. 3](#); [S.I. 2013/423, art. 3](#), [Sch.](#)
- F73** Words in s. 63C(10) inserted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\)](#), [Sch. 5 para. 10\(10\)\(b\)](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(c\)](#), [Sch. Pt. 3](#); [S.I. 2013/423, art. 3](#), [Sch.](#)

#### **Modifications etc. (not altering text)**

- C35** Ss. 63A-63C applied (with modifications) (1.4.2013) by [The Financial Services Act 2012 \(Transitional Provisions\) \(Enforcement\) Order 2013 \(S.I. 2013/441\)](#), arts. 1(1), [2\(2\)](#)
- C38** S. 63C(10) applied (with modifications) (1.4.2013) by [The Financial Services Act 2012 \(Transitional Provisions\) \(Enforcement\) Order 2013 \(S.I. 2013/441\)](#), arts. 1(1), [2\(5\)](#)

### **63D Statement of policy: procedure**

- (1) Before [<sup>F74</sup>a regulator issues] a statement under section 63C, the [<sup>F75</sup>regulator] must publish a draft of the proposed statement in the way appearing to the [<sup>F75</sup>regulator] to be best calculated to bring it to the attention of the public.
- (2) The draft must be accompanied by notice that representations about the proposal may be made to the [<sup>F76</sup>regulator] within a specified time.
- (3) Before issuing the proposed statement, the [<sup>F77</sup>regulator] must have regard to any representations made to it in accordance with subsection (2).
- (4) If the [<sup>F78</sup>regulator] issues the proposed statement it must publish an account, in general terms, of—
  - (a) the representations made to it in accordance with subsection (2); and
  - (b) its response to them.
- (5) If the statement differs from the draft published under subsection (1) in a way which is, in the opinion of the [<sup>F79</sup>regulator], significant, the [<sup>F79</sup>regulator] must (in addition to complying with subsection (4)) publish details of the difference.
- (6) [<sup>F80</sup>A regulator] may charge a reasonable fee for providing a person with a copy of a draft published [<sup>F81</sup>by it] under subsection (1).
- (7) This section also applies to a proposal to alter or replace a statement.]

#### **Textual Amendments**

- F74** Words in s. 63D(1) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\)](#), [Sch. 5 para. 11\(2\)\(a\)](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(c\)](#), [Sch. Pt. 3](#); [S.I. 2013/423, art. 3](#), [Sch.](#)
- F75** Word in s. 63D(1) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\)](#), [Sch. 5 para. 11\(2\)\(b\)](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(c\)](#), [Sch. Pt. 3](#); [S.I. 2013/423, art. 3](#), [Sch.](#)
- F76** Word in s. 63D(2) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\)](#), [Sch. 5 para. 11\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(c\)](#), [Sch. Pt. 3](#); [S.I. 2013/423, art. 3](#), [Sch.](#)
- F77** Word in s. 63D(3) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\)](#), [Sch. 5 para. 11\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(c\)](#), [Sch. Pt. 3](#); [S.I. 2013/423, art. 3](#), [Sch.](#)



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- F78** Word in s. 63D(4) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 5 para. 11\(3\)](#) (with [Sch. 20](#)); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F79** Word in s. 63D(5) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 5 para. 11\(3\)](#) (with [Sch. 20](#)); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F80** Words in s. 63D(6) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 5 para. 11\(4\)\(a\)](#) (with [Sch. 20](#)); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F81** Words in s. 63D(6) inserted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 5 para. 11\(4\)\(b\)](#) (with [Sch. 20](#)); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

#### **Modifications etc. (not altering text)**

- C39** S. 63D excluded (2.4.2013) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2013 \(S.I. 2013/655\)](#), arts. 1, [9\(2\)](#)

### *f<sup>F82</sup> Certification of employees*

#### **Textual Amendments**

- F82** Ss. 63E, 63F inserted (25.7.2014 for specified purposes, 7.3.2016 for the insertion of s. 63F otherwise, 7.3.2017 in so far as not already in force) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), [ss. 29, 148\(5\)](#); S.I. 2014/1819, art. 2(2)(b); S.I. 2015/490, art. 2(1)(a)(2) (with savings and transitional provisions in S.I. 2015/492 (as amended by S.I. 2015/1660))

## **63E Certification of employees by relevant authorised persons**

- (1) A relevant authorised person (“A”) must take reasonable care to ensure that no employee of A performs a specified function under an arrangement entered into by A in relation to the carrying on by A of a regulated activity, unless the employee has a valid certificate issued by A under section 63F.
- (2) “Specified function”—
  - (a) in relation to the carrying on of a regulated activity by a PRA-authorised person, means a function of a description specified in rules made by the FCA or the PRA, and
  - (b) in relation to the carrying on of a regulated activity by any other authorised person, means a function of a description specified in rules made by the FCA.
- (3) The FCA may specify a description of function under subsection (2)(a) or (b) only if, in relation to the carrying on of a regulated activity by a relevant authorised person of a particular description—
  - (a) the function is not a controlled function in relation to the carrying on of that activity by a relevant authorised person of that description, but
  - (b) the FCA is satisfied that the function is nevertheless a significant-harm function.
- (4) The PRA may specify a description of function under subsection (2)(a) only if, in relation to the carrying on of a regulated activity by a relevant PRA-authorised person of a particular description—

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- (a) the function is not a controlled function in relation to the carrying on of that activity by a relevant PRA-authorized person of that description, but
  - (b) the PRA is satisfied that the function is nevertheless a significant-harm function.
- (5) A function is a “significant-harm function”, in relation to the carrying on of a regulated activity by an authorised person, if—
- (a) the function will require the person performing it to be involved in one or more aspects of the authorised person's affairs, so far as relating to the activity, and
  - (b) those aspects involve, or might involve, a risk of significant harm to the authorised person or any of its customers.
- (6) Each regulator must—
- (a) keep under review the exercise of its power under subsection (2) to specify any significant-harm function as a specified function, and
  - (b) exercise that power in a way that it considers will minimise the risk of employees of relevant authorised persons performing significant-harm functions which they are not fit and proper persons to perform.
- (7) Subsection (1) does not apply to an arrangement which allows an employee to perform a function if the question of whether the employee is a fit and proper person to perform the function is reserved under any of the single market directives or the emission allowance auctioning regulation to an authority in a country or territory outside the United Kingdom.
- (8) In this section—
- “controlled function” has the meaning given by section 59(3);
  - “customer”, in relation to an authorised person, means a person who is using, or who is or may be contemplating using, any of the services provided by the authorised person;
  - “relevant PRA-authorized person” means a PRA-authorized person that is a relevant authorised person.
- (9) In this section any reference to an employee of a person (“A”) includes a reference to a person who—
- (a) personally provides, or is under an obligation personally to provide, services to A under an arrangement made between A and the person providing the services or another person, and
  - (b) is subject to (or to the right of) supervision, direction or control by A as to the manner in which those services are provided.
- (10) For the meaning of “relevant authorised person”, see section 71A.

### **63F Issuing of certificates**

- (1) A relevant authorised person may issue a certificate to a person under this section only if the authorised person is satisfied that the person is a fit and proper person to perform the function to which the certificate relates.
- (2) In deciding whether the person is a fit and proper person to perform the function, the relevant authorised person must have regard, in particular, to whether the person—
  - (a) has obtained a qualification,
  - (b) has undergone, or is undergoing, training,

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- (c) possesses a level of competence, or
  - (d) has the personal characteristics,
- required by general rules made by the appropriate regulator in relation to employees performing functions of that kind.
- (3) In subsection (2) “the appropriate regulator” means—
    - (a) in relation to employees of PRA-*authorised persons*, the FCA or the PRA, and
    - (b) in relation to employees of any other *authorised person*, the FCA.
  - (4) A certificate issued by a relevant *authorised person* to a person under this section must—
    - (a) state that the *authorised person* is satisfied that the person is a fit and proper person to perform the function to which the certificate relates, and
    - (b) set out the aspects of the affairs of the *authorised person* in which the person will be involved in performing the function.
  - (5) A certificate issued under this section is valid for a period of 12 months beginning with the day on which it is issued.
  - (6) If, after having considered whether a person is a fit and proper person to perform a specified function, a relevant *authorised person* decides not to issue a certificate to the person under this section, the *authorised person* must give the person a notice in writing stating—
    - (a) what steps (if any) the *authorised person* proposes to take in relation to the person as a result of the decision, and
    - (b) the reasons for proposing to take those steps.
  - (7) A relevant *authorised person* must maintain a record of every employee who has a valid certificate issued by it under this section.
  - (8) Expressions used in this section and in section 63E have the same meaning in this section as they have in that section.]

F83 ...

**Textual Amendments**

**F83** S. 64 and cross-heading omitted (25.7.2014 for specified purposes) by virtue of [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), **ss. 30(2)**, 148(5); S.I. 2014/1819, art. 2(2)(c)

<sup>F83</sup> **64** **Conduct: statements and codes.**

.....

<sup>F84</sup> **65** **Statements and codes: procedure.**

.....

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#### Textual Amendments

**F84** S. 65 omitted (25.7.2014 for specified purposes) by virtue of [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), [ss. 30\(2\)](#), 148(5); S.I. 2014/1819, art. 2(2)(c)

### *<sup>F85</sup>Conduct of approved persons and others*

#### Textual Amendments

**F85** Ss. 64A, 64B and cross-heading inserted (25.7.2014 for specified purposes, 7.3.2016 for specified purposes) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), [ss. 30\(3\)](#), 148(5); S.I. 2014/1819, art. 2(2)(c); S.I. 2015/490, art. 2(1)(d) (as inserted by S.I. 2015/2055, art. 2(4) and with savings and transitional provisions in S.I. 2015/492 (as amended by S.I. 2015/1660))

## 64A Rules of conduct

- (1) If it appears to the FCA to be necessary or expedient for the purpose of advancing one or more of its operational objectives, the FCA may make rules about the conduct of the following persons—
  - (a) persons in relation to whom either regulator has given its approval under section 59;
  - (b) persons who are employees of relevant authorised persons (see section 71A).
- (2) If it appears to the PRA to be necessary or expedient for the purpose of advancing any of its objectives, the PRA may make rules about the conduct of the following persons—
  - (a) persons in relation to whom it has given its approval under section 59;
  - (b) persons in relation to whom the FCA has given its approval under section 59 in respect of the performance by them of a relevant senior management function in relation to the carrying on by a PRA-authorised person of a regulated activity;
  - (c) persons who are employees of relevant PRA-authorised persons.
- (3) In subsection (2)—
 

“relevant PRA-authorised person” means a PRA-authorised person that is a relevant authorised person (see section 71A), and

“relevant senior management function” means a function which the PRA is satisfied is a senior management function as defined in section 59ZA (whether or not the function has been designated as such by the FCA).
- (4) Rules made under this section must relate to the conduct of persons in relation to the performance by them of qualifying functions.
- (5) In subsection (4) “qualifying function”, in relation to a person, means a function relating to the carrying on of activities (whether or not regulated activities) by—
  - (a) in the case of an approved person, the person on whose application approval was given, and
  - (b) in any other case, the person's employer.

*Status: Point in time view as at 25/07/2014.*

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- (6) In this section any reference to an employee of a person (“P”) includes a reference to a person who—
- (a) personally provides, or is under an obligation personally to provide, services to P under an arrangement made between P and the person providing the services or another person, and
  - (b) is subject to (or to the right of) supervision, direction or control by P as to the manner in which those services are provided,
- and “employer” is to be read accordingly.

#### **64B Rules of conduct: responsibilities of relevant authorised persons**

- (1) This section applies where a regulator makes rules under section 64A (“conduct rules”).
- (2) Every relevant authorised person must—
- (a) notify all relevant persons of the conduct rules that apply in relation to them, and
  - (b) take all reasonable steps to secure that those persons understand how those rules apply in relation to them.
- (3) The steps which a relevant authorised person must take to comply with subsection (2) (b) include, in particular, the provision of suitable training.
- (4) In this section “relevant person”, in relation to an authorised person, means—
- (a) any person in relation to whom an approval is given under section 59 on the application of the authorised person, and
  - (b) any employee of the authorised person.
- (5) If a relevant authorised person knows or suspects that a relevant person has failed to comply with any conduct rules, the authorised person must notify the regulator of that fact.
- (6) In this section “employee”, in relation to an authorised person, has the same meaning as in section 64A.
- (7) For the meaning of “relevant authorised person”, see section 71A.]

#### **[<sup>F86</sup>64C Requirement for relevant authorised persons to notify regulator of disciplinary action**

- (1) If—
- (a) a relevant authorised person takes disciplinary action in relation to a relevant person, and
  - (b) the reason, or one of the reasons, for taking that action is a reason specified in rules made by the appropriate regulator for the purposes of this section,
- the relevant authorised person must notify that regulator of that fact.
- (2) “Disciplinary action”, in relation to a person, means any of the following—
- (a) the issuing of a formal written warning;
  - (b) the suspension or dismissal of the person;
  - (c) the reduction or recovery of any of the person's remuneration.

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- (3) “The appropriate regulator” means—
- (a) in relation to relevant authorised persons that are PRA-authorised persons, the FCA or the PRA;
  - (b) in relation to any other relevant authorised persons, the FCA.
- (4) “Relevant person” has the same meaning as in section 64B.
- (5) For the meaning of “relevant authorised person”, see section 71A.]

#### Textual Amendments

**F86** S. 64C inserted (25.7.2014 for specified purposes, 7.3.2016 in so far as not already in force) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\), ss. 31, 148\(5\); S.I. 2014/1819, art. 2\(2\)\(d\); S.I. 2015/490, art. 2\(1\)\(b\) \(with savings and transitional provisions in S.I. 2015/492 \(as amended by S.I. 2015/1660\)\)](#)

## 66 Disciplinary powers.

- (1) [<sup>F87</sup>A regulator] may take action against a person under this section [<sup>F88</sup>(whether or not it has given its approval in relation to the person)] if—
- (a) it appears to the [<sup>F89</sup>regulator] that he is guilty of misconduct; and
  - (b) the [<sup>F90</sup>regulator] is satisfied that it is appropriate in all the circumstances to take action against him.
- [<sup>F91</sup>(2) For the purposes of action by the FCA, a person is guilty of misconduct if, while an approved person—
- (a) the person has failed to comply with a statement of principle issued by the FCA under section 64, or
  - (b) the person has been knowingly concerned in a contravention by the relevant authorised person of a requirement imposed on that authorised person—
    - (i) by or under this Act, <sup>F92</sup>...
    - [<sup>F93</sup>(ia) by the Alternative Investment Fund Managers Regulations 2013, or]
    - (ii) by any qualifying EU provision specified, or of a description specified, for the purposes of this subsection by the Treasury by order.
- (2A) For the purposes of action by the PRA, a person is guilty of misconduct if, while an approved person in respect of the performance of a significant-influence function in relation to the carrying on by a PRA-authorised person of a regulated activity—
- (a) the person has failed to comply with a statement of principle issued by the PRA under section 64, or
  - (b) the person has been knowingly concerned in a contravention by the relevant authorised person of a requirement imposed on that authorised person—
    - (i) by or under this Act, or
    - (ii) by any qualifying EU provision specified, or of a description specified, for the purposes of this subsection by the Treasury by order.]
- (3) If the [<sup>F94</sup>regulator] is entitled to take action under this section against a person, [<sup>F95</sup>it may do one or more of the following—]
- (a) impose a penalty on him of such amount as it considers appropriate;



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- [<sup>F96</sup>(aa) suspend, for such period as it considers appropriate, any approval of the performance by him of any function to which the approval relates;
  - (ab) impose, for such period as it considers appropriate, such limitations or other restrictions in relation to the performance by him of any function to which any approval relates as it considers appropriate;] or
  - (b) publish a statement of his misconduct.
- [<sup>F97</sup>(3A) The period for which a suspension or restriction is to have effect may not exceed two years.
- (3B) A suspension or restriction may have effect in relation to part of a function.
- (3C) A restriction may, in particular, be imposed so as to require any person to take, or refrain from taking, specified action.
- (3D) [<sup>F98</sup>The regulator taking action under this section] may—
  - (a) withdraw a suspension or restriction; or
  - (b) vary a suspension or restriction so as to reduce the period for which it has effect or otherwise to limit its effect.]
- (4) [<sup>F99</sup>A regulator] may not take action under this section after the end of the [<sup>F100</sup>relevant period] beginning with the first day on which [<sup>F101</sup>the regulator] knew of the misconduct, unless proceedings in respect of it against the person concerned were begun before the end of that period.
- (5) For the purposes of subsection (4)—
  - (a) [<sup>F102</sup>a regulator] is to be treated as knowing of misconduct if it has information from which the misconduct can reasonably be inferred; and
  - (b) proceedings against a person in respect of misconduct are to be treated as begun when a warning notice is given to him under section 67(1).
- [<sup>F103</sup>(5ZA) “The relevant period” is—
  - (a) in relation to misconduct which occurs before the day on which this subsection comes into force, the period of 3 years, and
  - (b) in relation to misconduct which occurs on or after that day, the period of 6 years.]
- [<sup>F104</sup>(5A) “Approval” means an approval given under section 59.]
- [<sup>F105</sup>(6) “Approved person” means a person in relation to whom an approval is given under that section.]
- (7) “Relevant authorised person”, in relation to an approved person, means the person on whose application approval <sup>F106</sup>. . . was given.
- [<sup>F107</sup>(8) In relation to any time while a suspension is in force under subsection (3)(aa) in relation to part of a function, any reference in section 59 or 63A to the performance of a function includes the performance of part of a function.
- (9) If at any time a restriction imposed under subsection (3)(ab) is contravened, the approval in relation to the person concerned is to be treated for the purposes of sections 59 and 63A as if it had been withdrawn at that time.]

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## Textual Amendments

- F87** Words in s. 66(1) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\)](#), [Sch. 5 para. 14\(2\)\(a\)\(i\)](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(b\)](#), [Sch. Pt. 2](#); [S.I. 2013/423, art. 3, Sch.](#)
- F88** Words in s. 66(1) inserted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\)](#), [Sch. 5 para. 14\(2\)\(a\)\(ii\)](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(b\)](#), [Sch. Pt. 2](#); [S.I. 2013/423, art. 3, Sch.](#)
- F89** Word in s. 66(1)(a) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\)](#), [Sch. 5 para. 14\(2\)\(b\)](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(b\)](#), [Sch. Pt. 2](#); [S.I. 2013/423, art. 3, Sch.](#)
- F90** Word in s. 66(1)(b) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\)](#), [Sch. 5 para. 14\(2\)\(b\)](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(b\)](#), [Sch. Pt. 2](#); [S.I. 2013/423, art. 3, Sch.](#)
- F91** S. 66(2)(2A) substituted for s. 66(2) (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\)](#), [Sch. 5 para. 14\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(b\)](#), [Sch. Pt. 2](#); [S.I. 2013/423, art. 3, Sch.](#)
- F92** Word in s. 66(2)(b) omitted (22.7.2013) by virtue of [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), [reg. 1](#), [Sch. 1 para. 8](#)
- F93** S. 66(2)(b)(ia) inserted (22.7.2013) by [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), [reg. 1](#), [Sch. 1 para. 8](#)
- F94** Word in s. 66(3) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\)](#), [Sch. 5 para. 14\(4\)](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(b\)](#), [Sch. Pt. 2](#); [S.I. 2013/423, art. 3, Sch.](#)
- F95** Words in s. 66(3) inserted (8.6.2010) by [Financial Services Act 2010 \(c. 28\)](#), [ss. 12\(2\)\(a\)](#), [26\(2\)\(b\)](#)
- F96** S. 66(3)(aa)(ab) inserted (8.6.2010) by [Financial Services Act 2010 \(c. 28\)](#), [ss. 12\(2\)\(b\)](#), [26\(2\)\(b\)](#)
- F97** S. 66(3A)-(3D) inserted (8.6.2010) by [Financial Services Act 2010 \(c. 28\)](#), [ss. 12\(3\)](#), [26\(2\)\(b\)](#)
- F98** Words in s. 66(3D) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\)](#), [Sch. 5 para. 14\(5\)](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(b\)](#), [Sch. Pt. 2](#); [S.I. 2013/423, art. 3, Sch.](#)
- F99** Words in s. 66(4) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\)](#), [Sch. 5 para. 14\(6\)\(a\)](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(b\)](#), [Sch. Pt. 2](#); [S.I. 2013/423, art. 3, Sch.](#)
- F100** Words in s. 66(4) substituted (25.7.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), [ss. 28\(5\)](#), [148\(5\)](#); [S.I. 2014/1819, art. 2\(1\)\(c\)](#)
- F101** Words in s. 66(4) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\)](#), [Sch. 5 para. 14\(6\)\(b\)](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(b\)](#), [Sch. Pt. 2](#); [S.I. 2013/423, art. 3, Sch.](#)
- F102** Words in s. 66(5)(a) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\)](#), [Sch. 5 para. 14\(7\)](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(b\)](#), [Sch. Pt. 2](#); [S.I. 2013/423, art. 3, Sch.](#)
- F103** S. 66(5ZA) inserted (25.7.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), [ss. 28\(6\)](#), [148\(5\)](#); [S.I. 2014/1819, art. 2\(1\)\(c\)](#)
- F104** S. 66(5A) inserted (8.6.2010) by [Financial Services Act 2010 \(c. 28\)](#), [ss. 24\(1\)](#), [26\(2\)\(d\)\(e\)](#), [Sch. 2 para. 8\(2\)](#)
- F105** S. 66(6) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\)](#), [Sch. 5 para. 14\(8\)](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(b\)](#), [Sch. Pt. 2](#); [S.I. 2013/423, art. 3, Sch.](#)
- F106** Words in s. 66(7) omitted (8.6.2010) by virtue of [Financial Services Act 2010 \(c. 28\)](#), [ss. 24\(1\)](#), [26\(2\)\(d\)\(e\)](#), [Sch. 2 para. 8\(3\)](#)
- F107** S. 66(8)(9) inserted (8.6.2010) by [Financial Services Act 2010 \(c. 28\)](#), [ss. 24\(1\)](#), [26\(2\)\(d\)\(e\)](#), [Sch. 2 para. 8\(4\)](#)

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**Modifications etc. (not altering text)**

- C40** S. 66 modified (1.12.2001) by S.I. 2001/2657, **arts. 1(1), 9** (which was revoked (8.10.2001) by S.I. 2001/3083, **arts. 1(2), 23**); S.I. 2001/3538, **art. 2(1)**  
S. 66 modified (1.12.2001) by S.I. 2001/3083, **arts. 1(2), 9**; S.I. 2001/3538, **art. 2(1)**
- C41** Ss. 66-70 applied (with modifications) (1.11.2009) by **The Payment Services Regulations 2009** (S.I. 2009/209), regs. 1(2)(c), 95, **Sch. 5 para. 1** (with reg. 3) (as amended (1.4.2013) by **The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013** (S.I. 2013/472), **Sch. 2 para. 155(6)(a)** (with Sch. 2 para. 156))
- C42** Ss. 66-70 applied (with modifications) (11.2.2010) by **The Cross-Border Payments in Euro Regulations 2010** (S.I. 2010/89), reg. 19, **Sch. para. 1**
- C43** Ss. 66-70 applied (with modifications) (30.4.2011) by **The Electronic Money Regulations 2011** (S.I. 2011/99), regs. 1(2)(b), 62, **Sch. 3 para. 1** (with art. 3) (as amended (1.4.2013) by **The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013** (S.I. 2013/472), **Sch. 2 para. 196(5)(a)**)
- C44** Ss. 66-70 applied (with modifications) (15.1.2013) by **The Payments in Euro (Credit Transfers and Direct Debits) Regulations 2012** (S.I. 2012/3122), reg. 1, Sch. para. 1 (as amended (1.4.2013) by **The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013** (S.I. 2013/472), Sch. 2 para. 248(6)(a))
- C45** S. 66 applied (with modifications) (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by **The Financial Services Act 2012 (Consumer Credit) Order 2013** (S.I. 2013/1882), arts. 1(1), **3(3)**
- C46** S. 66(3)(a) restricted (1.12.2001) by S.I. 2001/3592, **arts. 1(2), 60(2)** (with art. 23(2))

**67 Disciplinary measures: procedure and right to refer to Tribunal.**

(1) If [<sup>F108</sup>a regulator] proposes to take action against a person under section 66, it must give him a warning notice<sup>F109</sup>; and if it proposes to take action under subsection (3) (aa) or (ab) of that section, it must also give each of the other interested parties a warning notice.]

(2) A warning notice about a proposal to impose a penalty must state the amount of the penalty.

[<sup>F110</sup>(2A) A warning notice about a proposal—

- (a) to suspend an approval, or
  - (b) to impose a restriction in relation to the performance of a function,
- must state the period for which the suspension or restriction is to have effect.]

(3) A warning notice about a proposal to publish a statement must set out the terms of the statement.

(4) If [<sup>F111</sup>a regulator] decides to take action against a person under section 66, it must give him a decision notice<sup>F112</sup>; and if it decides to take action under subsection (3)(aa) or (ab) of that section, it must also give each of the other interested parties a decision notice.]

(5) A decision notice about the imposition of a penalty must state the amount of the penalty.

[<sup>F113</sup>(5A) A decision notice about—

- (a) the suspension of an approval, or
- (b) the imposition of a restriction in relation to the performance of a function,

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must state the period for which the suspension or restriction is to have effect.]

- (6) A decision notice about the publication of a statement must set out the terms of the statement.
- (7) If [<sup>F114</sup>a regulator] decides to take action against a person under section 66, he may refer the matter to the Tribunal<sup>F115</sup>; and if [<sup>F116</sup>the regulator] decides to take action under section 66(3)(aa) or (ab), each of the other interested parties may also refer the matter to the Tribunal.]
- [<sup>F117</sup>(8) Approval” means an approval given under section 59.
- (9) “Other interested parties”, in relation to [<sup>F118</sup>a person (“A”) in relation to whom approval has been given,] are—
- (a) the person on whose application the approval was given (“B”); and
  - (b) the person by whom A's services are retained, if not B.
- <sup>F119</sup> ...]

#### Textual Amendments

- F108** Words in s. 67(1) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 5 para. 15(2)** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.
- F109** Words in s. 67(1) inserted (8.6.2010) by [Financial Services Act 2010 \(c. 28\)](#), ss. 24(1), 26(2)(d)(e), **Sch. 2 para. 9(2)**
- F110** S. 67(2A) inserted (8.6.2010) by [Financial Services Act 2010 \(c. 28\)](#), ss. 24(1), 26(2)(d)(e), **Sch. 2 para. 9(3)**
- F111** Words in s. 67(4) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 5 para. 15(2)** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.
- F112** Words in s. 67(4) inserted (8.6.2010) by [Financial Services Act 2010 \(c. 28\)](#), ss. 24(1), 26(2)(d)(e), **Sch. 2 para. 9(4)**
- F113** S. 67(5A) inserted (8.6.2010) by [Financial Services Act 2010 \(c. 28\)](#), ss. 24(1), 26(2)(d)(e), **Sch. 2 para. 9(5)**
- F114** Words in s. 67(7) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 5 para. 15(3)(a)** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.
- F115** Words in s. 67(7) inserted (8.6.2010) by [Financial Services Act 2010 \(c. 28\)](#), ss. 24(1), 26(2)(d)(e), **Sch. 2 para. 9(6)**
- F116** Words in s. 67(7) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 5 para. 15(3)(b)** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.
- F117** S. 67(8)(9) inserted (8.6.2010) by [Financial Services Act 2010 \(c. 28\)](#), ss. 24(1), 26(2)(d)(e), **Sch. 2 para. 9(7)**
- F118** Words in s. 67(9) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 5 para. 15(4)(a)** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.
- F119** Words in s. 67(9) omitted (1.4.2013) by virtue of [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 5 para. 15(4)(b)** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.

#### Modifications etc. (not altering text)

- C44** Ss. 66-70 applied (with modifications) (15.1.2013) by [The Payments in Euro \(Credit Transfers and Direct Debits\) Regulations 2012 \(S.I. 2012/3122\)](#), reg. 1, Sch. para. 1 (as amended (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), Sch. 2 para. 248(6)(a))
- C47** S. 67 excluded (1.12.2001) by [S.I. 2001/3592](#), **arts. 1(2)**, 61(3), 85(5) (with art. 23(2))
- C48** Ss. 66-70 applied (with modifications) (1.11.2009) by [The Payment Services Regulations 2009 \(S.I. 2009/209\)](#), regs. 1(2)(c), 95, **Sch. 5 para. 1** (with reg. 3) (as amended (1.4.2013) by [The Financial](#)

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- Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), Sch. 2 para. 155(6)(a) (with **Sch. 2 para. 156**)
- C49** Ss. 66-70 applied (with modifications) (11.2.2010) by The Cross-Border Payments in Euro Regulations 2010 (S.I. 2010/89), reg. 19, **Sch. para. 1**
- C50** Ss. 66-70 applied (with modifications) (30.4.2011) by The Electronic Money Regulations 2011 (S.I. 2011/99), regs. 1(2)(b), 62, **Sch. 3 para. 1** (with art. 3) (as amended (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 196(5)(a)**)
- C51** S. 67 applied (with modifications) (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by The Financial Services Act 2012 (Consumer Credit) Order 2013 (S.I. 2013/1882), arts. 1(1), **3(3)**
- C52** S. 67(4) modified (1.12.2001) by S.I. 2001/3592, **arts. 1(2), 73(2), 74(2)** (with art. 23(2))

## 68 Publication.

After a statement under section 66 is published, [<sup>F120</sup>the regulator publishing it] must send a copy of it to the person concerned and to any person to whom a copy of the decision notice was given.

### Textual Amendments

- F120** Words in s. 68 substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 5 para. 16** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

### Modifications etc. (not altering text)

- C44** Ss. 66-70 applied (with modifications) (15.1.2013) by The Payments in Euro (Credit Transfers and Direct Debits) Regulations 2012 (S.I. 2012/3122), reg. 1, Sch. para. 1 (as amended (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), Sch. 2 para. 248(6)(a))
- C53** Ss. 66-70 applied (with modifications) (1.11.2009) by The Payment Services Regulations 2009 (S.I. 2009/209), regs. 1(2)(c), 95, **Sch. 5 para. 1** (with reg. 3) (as amended (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), Sch. 2 para. 155(6)(a) (with **Sch. 2 para. 156**))
- C54** Ss. 66-70 applied (with modifications) (11.2.2010) by The Cross-Border Payments in Euro Regulations 2010 (S.I. 2010/89), reg. 19, **Sch. para. 1**
- C55** Ss. 66-70 applied (with modifications) (30.4.2011) by The Electronic Money Regulations 2011 (S.I. 2011/99), regs. 1(2)(b), 62, **Sch. 3 para. 1** (with art. 3) (as amended (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 196(5)(a)**)
- C56** S. 68 applied (with modifications) (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by The Financial Services Act 2012 (Consumer Credit) Order 2013 (S.I. 2013/1882), arts. 1(1), **3(3)**

## 69 Statement of policy.

- (1) [<sup>F121</sup>Each regulator must] prepare and issue a statement of its policy with respect to—
- [<sup>F122</sup>(a) the imposition of penalties, suspensions[<sup>F123</sup>, conditions or limitations] under section 66;
  - (b) the amount of penalties under that section; <sup>F124</sup>...
  - (c) the period for which suspensions or [<sup>F125</sup>conditions] under that section are to have effect.][<sup>F126</sup>, and

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- (d) the period for which approvals under section 59 are to have effect as a result of a limitation under section 66.]
- (2) [<sup>F127</sup>A regulator's] policy in determining what the amount of a penalty should be [<sup>F128</sup>, or what the period for which a suspension or restriction is to have effect should be,] must include having regard to—
- (a) the seriousness of the misconduct in question in relation to the nature of the principle or requirement concerned;
  - (b) the extent to which that misconduct was deliberate or reckless; and
  - (c) whether [<sup>F129</sup>the person against whom action is to be taken] is an individual.
- (3) [<sup>F130</sup>A regulator] may at any time alter or replace a statement issued [<sup>F131</sup>by it] under this section.
- (4) If a statement issued under this section is altered or [<sup>F132</sup>replaced by a regulator, the regulator] must issue the altered or replacement statement.
- (5) [<sup>F133</sup>A regulator] must, without delay, give the Treasury a copy of any statement which it publishes under this section.
- (6) A statement issued under this section [<sup>F134</sup>by a regulator] must be published by [<sup>F135</sup>the regulator] in the way appearing to [<sup>F135</sup>the regulator] to be best calculated to bring it to the attention of the public.
- (7) The [<sup>F136</sup>regulator] may charge a reasonable fee for providing a person with a copy of the statement.
- (8) In exercising, or deciding whether to exercise, its power under section 66 in the case of any particular misconduct, [<sup>F137</sup>a regulator] must have regard to any statement of policy published [<sup>F138</sup>by it] under this section and in force at the time when the misconduct in question occurred.

#### Textual Amendments

- F121** Words in s. 69(1) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by *Financial Services Act 2012* (c. 21), s. 122(3), **Sch. 5 para. 17(2)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F122** S. 69(1)(a)-(c) substituted (8.6.2010) for s. 69(1)(a)(b) by *Financial Services Act 2010* (c. 28), ss. 24(1), 26(2)(d)(e), **Sch. 2 para. 10(2)**
- F123** Words in s. 69(1)(a) substituted (25.7.2014) by *Financial Services (Banking Reform) Act 2013* (c. 33), s. 148(5), **Sch. 3 para. 7(a)**; S.I. 2014/1819, art. 2(4)(b)
- F124** Word in s. 69(1)(b) omitted (25.7.2014) by virtue of *Financial Services (Banking Reform) Act 2013* (c. 33), s. 148(5), **Sch. 3 para. 7(b)**; S.I. 2014/1819, art. 2(4)(b)
- F125** Word in s. 69(1)(c) substituted (25.7.2014) by *Financial Services (Banking Reform) Act 2013* (c. 33), s. 148(5), **Sch. 3 para. 7(c)**; S.I. 2014/1819, art. 2(4)(b)
- F126** S. 69(1)(d) and word inserted (25.7.2014) by *Financial Services (Banking Reform) Act 2013* (c. 33), s. 148(5), **Sch. 3 para. 7(d)**; S.I. 2014/1819, art. 2(4)(b)
- F127** Words in s. 69(2) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by *Financial Services Act 2012* (c. 21), s. 122(3), **Sch. 5 para. 17(3)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F128** Words in s. 69(2) inserted (8.6.2010) by *Financial Services Act 2010* (c. 28), ss. 24(1), 26(2)(d)(e), **Sch. 2 para. 10(3)(a)**
- F129** Words in s. 69(2)(c) inserted (8.6.2010) by *Financial Services Act 2010* (c. 28), ss. 24(1), 26(2)(d)(e), **Sch. 2 para. 10(3)(b)**



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- F130** Words in s. 69(3) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\)](#), [Sch. 5 para. 17\(4\)\(a\)](#) (with [Sch. 20](#)); S.I. 2013/113, art. 2(1)(c), [Sch. Pt. 3](#); S.I. 2013/423, art. 3, [Sch.](#)
- F131** Words in s. 69(3) inserted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\)](#), [Sch. 5 para. 17\(4\)\(b\)](#) (with [Sch. 20](#)); S.I. 2013/113, art. 2(1)(c), [Sch. Pt. 3](#); S.I. 2013/423, art. 3, [Sch.](#)
- F132** Words in s. 69(4) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\)](#), [Sch. 5 para. 17\(5\)](#) (with [Sch. 20](#)); S.I. 2013/113, art. 2(1)(c), [Sch. Pt. 3](#); S.I. 2013/423, art. 3, [Sch.](#)
- F133** Words in s. 69(5) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\)](#), [Sch. 5 para. 17\(6\)](#) (with [Sch. 20](#)); S.I. 2013/113, art. 2(1)(c), [Sch. Pt. 3](#); S.I. 2013/423, art. 3, [Sch.](#)
- F134** Words in s. 69(6) inserted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\)](#), [Sch. 5 para. 17\(7\)\(a\)](#) (with [Sch. 20](#)); S.I. 2013/113, art. 2(1)(c), [Sch. Pt. 3](#); S.I. 2013/423, art. 3, [Sch.](#)
- F135** Words in s. 69(6) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\)](#), [Sch. 5 para. 17\(7\)\(b\)](#) (with [Sch. 20](#)); S.I. 2013/113, art. 2(1)(c), [Sch. Pt. 3](#); S.I. 2013/423, art. 3, [Sch.](#)
- F136** Word in s. 69(7) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\)](#), [Sch. 5 para. 17\(8\)](#) (with [Sch. 20](#)); S.I. 2013/113, art. 2(1)(c), [Sch. Pt. 3](#); S.I. 2013/423, art. 3, [Sch.](#)
- F137** Words in s. 69(8) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\)](#), [Sch. 5 para. 17\(9\)\(a\)](#) (with [Sch. 20](#)); S.I. 2013/113, art. 2(1)(c), [Sch. Pt. 3](#); S.I. 2013/423, art. 3, [Sch.](#)
- F138** Words in s. 69(8) inserted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\)](#), [Sch. 5 para. 17\(9\)\(b\)](#) (with [Sch. 20](#)); S.I. 2013/113, art. 2(1)(c), [Sch. Pt. 3](#); S.I. 2013/423, art. 3, [Sch.](#)

#### **Modifications etc. (not altering text)**

- C44** Ss. 66-70 applied (with modifications) (15.1.2013) by [The Payments in Euro \(Credit Transfers and Direct Debits\) Regulations 2012 \(S.I. 2012/3122\)](#), reg. 1, [Sch. para. 1](#) (as amended (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), [Sch. 2 para. 248\(6\)\(a\)](#))
- C57** Ss. 66-70 applied (with modifications) (1.11.2009) by [The Payment Services Regulations 2009 \(S.I. 2009/209\)](#), regs. 1(2)(c), 95, [Sch. 5 para. 1](#) (with reg. 3) (as amended (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), [Sch. 2 para. 155\(6\)\(a\)](#) (with [Sch. 2 para. 156](#)))
- C58** Ss. 66-70 applied (with modifications) (11.2.2010) by [The Cross-Border Payments in Euro Regulations 2010 \(S.I. 2010/89\)](#), reg. 19, [Sch. para. 1](#)
- C59** S. 69 applied (with modifications) (7.6.2010) by [The Credit Rating Agencies Regulations 2010 \(S.I. 2010/906\)](#), [reg. 22\(1\)](#)
- C60** Ss. 66-70 applied (with modifications) (30.4.2011) by [The Electronic Money Regulations 2011 \(S.I. 2011/99\)](#), regs. 1(2)(b), 62, [Sch. 3 para. 1](#) (with art. 3) (as amended (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), [Sch. 2 para. 196\(5\)\(a\)](#))
- C61** S. 69 applied (E.W.) (9.7.2013) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Referral Fees\) Regulations 2013 \(S.I. 2013/1635\)](#), regs. 1, [29\(1\)](#)

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## 70 Statements of policy: procedure.

- (1) Before [<sup>F139</sup>a regulator issues] a statement under section 69, the [<sup>F140</sup>regulator] must publish a draft of the proposed statement in the way appearing to the [<sup>F140</sup>regulator] to be best calculated to bring it to the attention of the public.
- (2) The draft must be accompanied by notice that representations about the proposal may be made to the [<sup>F141</sup>regulator] within a specified time.
- (3) Before issuing the proposed statement, the [<sup>F142</sup>regulator] must have regard to any representations made to it in accordance with subsection (2).
- (4) If the [<sup>F143</sup>regulator] issues the proposed statement it must publish an account, in general terms, of—
  - (a) the representations made to it in accordance with subsection (2); and
  - (b) its response to them.
- (5) If the statement differs from the draft published under subsection (1) in a way which is, in the opinion of the [<sup>F144</sup>regulator], significant, the [<sup>F144</sup>regulator] must (in addition to complying with subsection (4)) publish details of the difference.
- (6) [<sup>F145</sup>A regulator] may charge a reasonable fee for providing a person with a copy of a draft published [<sup>F146</sup>by it] under subsection (1).
- (7) This section also applies to a proposal to alter or replace a statement.

### Textual Amendments

- F139** Words in s. 70(1) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\)](#), [Sch. 5 para. 18\(2\)\(a\)](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(c\)](#), [Sch. Pt. 3](#); [S.I. 2013/423, art. 3](#), [Sch.](#)
- F140** Word in s. 70(1) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\)](#), [Sch. 5 para. 18\(2\)\(b\)](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(c\)](#), [Sch. Pt. 3](#); [S.I. 2013/423, art. 3](#), [Sch.](#)
- F141** Word in s. 70(2) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\)](#), [Sch. 5 para. 18\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(c\)](#), [Sch. Pt. 3](#); [S.I. 2013/423, art. 3](#), [Sch.](#)
- F142** Word in s. 70(3) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\)](#), [Sch. 5 para. 18\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(c\)](#), [Sch. Pt. 3](#); [S.I. 2013/423, art. 3](#), [Sch.](#)
- F143** Word in s. 70(4) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\)](#), [Sch. 5 para. 18\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(c\)](#), [Sch. Pt. 3](#); [S.I. 2013/423, art. 3](#), [Sch.](#)
- F144** Word in s. 70(5) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\)](#), [Sch. 5 para. 18\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(c\)](#), [Sch. Pt. 3](#); [S.I. 2013/423, art. 3](#), [Sch.](#)
- F145** Words in s. 70(6) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\)](#), [Sch. 5 para. 18\(4\)\(a\)](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(c\)](#), [Sch. Pt. 3](#); [S.I. 2013/423, art. 3](#), [Sch.](#)
- F146** Words in s. 70(6) inserted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\)](#), [Sch. 5 para. 18\(4\)\(b\)](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(c\)](#), [Sch. Pt. 3](#); [S.I. 2013/423, art. 3](#), [Sch.](#)

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#### **Modifications etc. (not altering text)**

- C44** Ss. 66-70 applied (with modifications) (15.1.2013) by The Payments in Euro (Credit Transfers and Direct Debits) Regulations 2012 (S.I. 2012/3122), reg. 1, Sch. para. 1 (as amended (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), Sch. 2 para. 248(6)(a))
- C62** Ss. 66-70 applied (with modifications) (1.11.2009) by The Payment Services Regulations 2009 (S.I. 2009/209), regs. 1(2)(c), 95, **Sch. 5 para. 1** (with reg. 3) (as amended (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), Sch. 2 para. 155(6)(a) (with **Sch. 2 para. 156**))
- C63** Ss. 66-70 applied (with modifications) (11.2.2010) by The Cross-Border Payments in Euro Regulations 2010 (S.I. 2010/89), reg. 19, **Sch. para. 1**
- C64** S. 70 applied (with modifications) (7.6.2010) by The Credit Rating Agencies Regulations 2010 (S.I. 2010/906), **reg. 22(1)**
- C65** Ss. 66-70 applied (with modifications) (30.4.2011) by The Electronic Money Regulations 2011 (S.I. 2011/99), regs. 1(2)(b), 62, **Sch. 3 para. 1** (with art. 3) (as amended (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 196(5)(a)**)
- C66** S. 70 applied (E.W.) (9.7.2013) by The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Referral Fees) Regulations 2013 (S.I. 2013/1635), regs. 1, **29(1)**

#### *Breach of statutory duty*

### **71 Actions for damages.**

- (1) A contravention of section 56(6) or 59(1) or (2) is actionable at the suit of a private person who suffers loss as a result of the contravention, subject to the defences and other incidents applying to actions for breach of statutory duty.
- (2) In prescribed cases, a contravention of that kind which would be actionable at the suit of a private person is actionable at the suit of a person who is not a private person, subject to the defences and other incidents applying to actions for breach of statutory duty.
- (3) “Private person” has such meaning as may be prescribed.

#### **Commencement Information**

- I9** S. 71 wholly in force at 1.12.2001; s. 71 not in force at Royal Assent see s. 431(2); s. 71(2)(3) in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b), **Sch. Pt. 2**; s. 71 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

*[<sup>F147</sup> “Relevant authorised person”*

#### **Textual Amendments**

- F147** S. 71A and cross-heading inserted (25.7.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), **ss. 33**, 148(5); S.I. 2014/1819, art. 2(1)(d)

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## **71A Meaning of “relevant authorised person”**

- (1) In this Part “relevant authorised person” means a UK institution which—
  - (a) meets condition A or B, and
  - (b) is not an insurer.
- (2) Condition A is that the institution has permission under Part 4A to carry on the regulated activity of accepting deposits.
- (3) Condition B is that—
  - (a) the institution is an investment firm,
  - (b) it has permission under Part 4A to carry on the regulated activity of dealing in investments as principal, and
  - (c) when carried on by it, that activity is a PRA-regulated activity.
- (4) The Treasury may by order provide that authorised persons falling within any of the following descriptions are “relevant authorised persons” for the purposes of this Part—
  - (a) non-UK institutions (or non-UK institutions of a specified description) that are credit institutions;
  - (b) non-UK institutions that are investment firms of a specified description.“Specified” means specified in the order.
- (5) If the Treasury propose to make an order under subsection (4) they must consult—
  - (a) the FCA,
  - (b) the PRA,
  - (c) any organisations that appear to them to be representative of interests substantially affected by the proposals, and
  - (d) any other persons that they consider appropriate.
- (6) In this section—
  - (a) “UK institution” means an institution which is incorporated in, or formed under the law of any part of, the United Kingdom;
  - (b) “non-UK institution” means an institution that is not a UK institution;
  - (c) “credit institution” means any credit institution as defined in Article 4.1(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council;
  - (d) “insurer” means an institution which is authorised under this Act to carry on the regulated activity of effecting or carrying out contracts of insurance as principal.
- (7) Subsections (2), (3) and (6)(d) are to be read in accordance with Schedule 2, taken with any order under section 22.]

**Status:**

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**Changes to legislation:**

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