

# FINANCIAL SERVICES ACT 2012

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## EXPLANATORY NOTES

### COMMENTARY

#### Part 2 - Amendments of Financial Services and Markets Act 2000

##### Performance of regulated activities

##### *Section 14: Approval for particular arrangements*

226. *Section 14* makes amendments to sections 59, 63 and 64 of FSMA consequential on the replacement of the FSA by the new regulators; it also inserts *new sections 59A and 59B*.
227. *Section 59* provides that authorised persons must take reasonable care not to allow persons to perform certain functions without the approval of the regulator; a person in respect of whom approval is given is an “approved person”. The effect of the amendments made by *section 14* is that each regulator will specify in rules the functions in respect of which approval must be sought from that regulator. Both regulators may specify “significant-influence functions” (defined in new subsection (7B) of section 59) but only the FCA may specify “customer-dealing functions” (defined in new subsection (7A) of section 59). The PRA may only give approval in relation to a significant-influence function specified by the PRA with the consent of the FCA (but see *new section 59B*, below). Also, the PRA may only specify functions performed in relation to the carrying on of regulated activities by a PRA-authorised person.
228. *New section 59A* requires the regulators to consult each other before specifying significant-influence functions and for the FCA to keep its power to specify such functions under review and to exercise that power in a way designed to minimise the need for a person to be approved by both regulators. Thus the FCA should generally not specify as a significant-influence function a function which has already been specified by the PRA. Where the PRA specifies a function which the FCA has specified as a significant-influence function, the FCA should generally revoke its specification of that function.
229. *New section 59B* provides that the regulators may enter into arrangements under which the PRA does not need to obtain the consent of the FCA before giving approval to a person to carry on a significant-influence function under section 59. Such arrangements must be in writing, and the regulators must publish them. This will allow the regulators to dispense with the requirement to obtain FCA consent where the FCA has insufficient interest in the performance of the function to justify the PRA obtaining the FCA’s consent.
230. Under section 63 (as amended by *subsection (3)*), either regulator may withdraw approval from a person who is carrying on a significant-influence function in connection with a PRA-authorised person, regardless of which regulator gave approval. Only the FCA can withdraw approval to carry on a customer-dealing function.
231. Under section 64 (as amended by *subsection (4)*) both regulators may issue statements of principle with respect to the conduct expected of persons who have been given

*These notes refer to the Financial Services Act 2012  
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approval (from either regulator) to perform a significant-influence function in relation to the carrying on of a regulated activity by a PRA-authorized person. Only the FCA can issue statements of principle about the conduct expected of other approved persons.