



# Financial Services Act 2012

## 2012 CHAPTER 21

### PART 2

#### AMENDMENTS OF FINANCIAL SERVICES AND MARKETS ACT 2000

##### *Performance of regulated activities*

VALID FROM 01/04/2013

#### **13 Prohibition orders**

(1) Section 56 of FSMA 2000 (performance of regulated activities: prohibition orders) is amended as follows.

(2) For subsection (1) substitute—

“(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.”

(3) In subsection (2), for “The Authority may make an order (“a prohibition order”)” substitute “A “prohibition order” is an order”.

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- (4) In subsection (3), for paragraph (b) substitute—
- “(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.”
- (5) After subsection (3) insert—
- “(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.”
- (6) In subsection (6), for “An authorised person” substitute “ A person falling within subsection (3A) ”.
- (7) In subsection (7)—
- (a) for “The Authority” substitute “ The regulator that has made a prohibition order ”, and
- (b) for “a prohibition order” substitute “ the order ”.
- (8) After subsection (7) insert—
- “(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.”
- (9) Omit subsection (8).
- (10) Section 57 of FSMA 2000 (prohibition orders: procedure and right to refer to Tribunal) is amended as follows.
- (11) In subsections (1) and (3), for “the Authority” substitute “ a regulator ”.
- (12) At the end insert—
- “(6) If—
- (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,

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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.”

## 14 Approval for particular arrangements

- (1) In section 59 of FSMA 2000 (approval for particular arrangements)—
- (a) in subsections (1) and (2), for “the Authority” substitute “ the appropriate regulator ”, and
  - (b) for subsections (3) to (7) substitute—
    - “(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.
    - (5) The FCA may specify a description of function under subsection (3) (a) or (b) only if, in relation to the carrying on of a regulated activity by an authorised person, it is satisfied that the function is—
      - (a) a customer-dealing function, or
      - (b) a significant-influence function.
    - (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 significant-influence function.
    - (7) In determining whether a function is a significant-influence function, the FCA or the PRA may take into account the likely consequences of a failure to discharge the function properly.
    - (7A) “Customer-dealing function”, in relation to the carrying on of a regulated activity by an authorised person (“A”), means a function that will involve the person performing it in dealing with—
      - (a) customers of A, or

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(b) property of customers of A,  
in a manner substantially connected with the carrying on of the activity.

(7B) “Significant-influence function”, in relation to the carrying on of a regulated activity by an authorised person, means a function that is likely to enable the person responsible for its performance to exercise a significant influence on the conduct of the authorised person's affairs, so far as relating to the activity.”

(2) After section 59 of FSMA 2000 insert—

**“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 significant-influence 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 significant-influence 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.
- (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.

**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.”

(3) In section 63 of FSMA 2000 (withdrawal of approval), for subsection (1) substitute—

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- “(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.”
- (4) In section 64 of FSMA 2000 (conduct of approved persons: statement and codes), for subsection (1) substitute—
- “(1) The FCA may issue statements of principle with respect to the conduct expected of persons in relation to whom either regulator has given its approval under section 59.
- (1A) The PRA may issue statements of principle with respect to—
- (a) the conduct expected of persons in relation to whom it has given its approval under section 59, and
  - (b) the conduct expected of persons in relation to whom the FCA has given its approval under section 59 in respect of the performance by them of significant-influence functions in relation to the carrying on by PRA-authorized persons of regulated activities.
- (1B) A statement of principle issued by either regulator may relate to conduct expected of persons in relation to—
- (a) the performance by them of controlled functions, or
  - (b) the performance by them of any other functions in relation to the carrying on by authorised persons of regulated activities.”

#### Commencement Information

**I1** S. 14 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

## 15 Further amendments relating to performance of regulated activities

Schedule 5 contains further amendments of Part 5 of FSMA 2000 (performance of regulated activities).

#### Commencement Information

**I2** S. 15 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2

**I3** S. 15 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

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