



Financial Services Act 2012

2012 CHAPTER 21

PART 2

AMENDMENTS OF FINANCIAL SERVICES AND MARKETS ACT 2000

Regulated activities

7 Extension of scope of regulation

(1) In section 22 of FSMA 2000 (the classes of activity and categories of investment)—

(a) after subsection (1) insert—

“(1A) An activity is also a regulated activity for the purposes of this Act if it is an activity of a specified kind which is carried on by way of business and relates to—

- (a) information about a person's financial standing, or
- (b) the setting of a specified benchmark.”,

(b) in subsection (3), after “(1)” insert “or (1A)”,

(c) after subsection (5) insert—

“(6) Benchmark” means an index, rate or price that—

- (a) is determined from time to time by reference to the state of the market,
- (b) is made available to the public (whether free of charge or on payment), and
- (c) is used for reference for purposes that include one or more of the following—
 - (i) determining the interest payable, or other sums due, under loan agreements or under other contracts relating to investments;
 - (ii) determining the price at which investments may be bought or sold or the value of investments;

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(iii) measuring the performance of investments.”, and”

(d) for the heading substitute “Regulated activities”.

(2) Schedule 2 to FSMA 2000 (regulated activities) is amended as follows.

(3) For paragraph 23 (and the italic heading before it) substitute—

“Loans and other forms of credit

23 (1) Rights under any contract under which one person provides another with credit.

(2) “Credit” includes any cash loan or other financial accommodation.

(3) “Cash” includes money in any form.

(4) It is immaterial for the purposes of sub-paragraph (1) whether or not the obligation of the borrower is secured on property of any kind.”

(4) After paragraph 23A insert—

“Contracts for hire of goods

23B (1) Rights under a contract for the bailment or (in Scotland) hiring of goods to a person other than a body corporate.

(2) “Goods” has the meaning given in section 61(1) of the Sale of Goods Act 1979.

(3) It is immaterial for the purposes of sub-paragraph (1) whether the rights of the person to whom the goods are bailed or hired have been assigned to a body corporate.”

(5) After paragraph 24 insert—

“PART 2A

REGULATED ACTIVITIES RELATING TO INFORMATION
 ABOUT PERSONS' FINANCIAL STANDING

General

24A The matters with respect to which provision may be made under section 22(1A)(a) include, in particular, those described in general terms in this Part of this Schedule.

Providing credit reference services

24B Furnishing persons with information that—

(a) is relevant to the financial standing of persons other than bodies corporate, and

(b) is collected for that purpose by the person furnishing it.

Providing credit information services

- 24C (1) Taking steps on behalf of a person other than a body corporate in connection with information relevant to that person's financial standing that is or may be held by a regulated person.
- (2) “Regulated person” means—
- (a) a person who is carrying on a regulated activity, or
 - (b) a person who is carrying on a business in respect of which a licence under section 21 of the Consumer Credit Act 1974 is required.
- 24D Giving advice to a person other than a body corporate in relation to the taking of any steps of the kind mentioned in paragraph 24C(1).

PART 2B

REGULATED ACTIVITIES RELATING TO THE SETTING OF BENCHMARKS

General

- 24E The matters with respect to which provisions may be made under section 22(1A)(b) include, in particular, those described in general terms in this Part of this Schedule.

Providing information

- 24F Providing any information or expression of opinion that—
- (a) is required by another person in connection with the determination of a benchmark, and
 - (b) is provided to that person for that purpose.

Administration

- 24G (1) Administering the arrangements for determining a benchmark.
- (2) Collecting, analysing or processing information or expressions of opinion for the purpose of the determination of a benchmark.

Determining or publishing benchmark or publishing connected information

- 24H (1) Determining a benchmark.
- (2) Publishing a benchmark or information connected with a benchmark.”

8 Orders under section 22 of FSMA 2000

- (1) Schedule 2 to FSMA 2000 (regulated activities) is amended as follows.
- (2) In paragraph 25(1)—
- (a) after “22(1)” insert “or (1A)”, and

(b) for “the Authority”, in each place, substitute “either regulator”.

(3) For paragraph 26 substitute—

“Parliamentary control

- 26 (1) This paragraph applies to any order made under section 22(1) or (1A) which contains a statement by the Treasury that, in their opinion, the effect (or one of the effects) of the proposed order would be that an activity which is not a regulated activity would become a regulated activity.
- (2) No order to which this paragraph applies may be made unless—
- (a) a draft of the order has been laid before Parliament and approved by a resolution of each House, or
 - (b) sub-paragraph (4) applies.
- (3) Sub-paragraph (4) applies if an order to which this paragraph applies also contains a statement that the Treasury are of the opinion that, by reason of urgency, it is necessary to make the order without a draft being so laid and approved.
- (4) Where this sub-paragraph applies the order—
- (a) must be laid before Parliament after being made, and
 - (b) ceases to have effect at the end of the relevant period unless before the end of that period the order is approved by a resolution of each House of Parliament (but without that affecting anything done under the order or the power to make a new order).
- (5) The “relevant period” is a period of 28 days beginning with the day on which the order is made.
- (6) In calculating the relevant period no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.”

9 Designation of activities requiring prudential regulation by PRA

After section 22 of FSMA 2000 insert—

“22A Designation of activities requiring prudential regulation by PRA

- (1) The Treasury may by order specify the regulated activities that are “PRA-regulated activities” for the purposes of this Act.
- (2) An order under subsection (1) may—
 - (a) provide for exceptions;
 - (b) confer powers on the Treasury or either regulator;
 - (c) authorise the making of rules or other instruments by either regulator for purposes of, or connected with, any relevant provision;
 - (d) make provision in respect of any information or document which in the opinion of the Treasury or either regulator is relevant for purposes of, or connected with, any relevant provision;

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- (e) make such consequential, transitional, or supplemental provision as the Treasury consider appropriate for purposes of, or connected with, any relevant provision.
- (3) Provision made as a result of subsection (2)(e) may amend any primary or subordinate legislation, including any provision of, or made under, this Act.
- (4) “Relevant provision” means this section or any provision made under this section.

22B Parliamentary control in relation to certain orders under section 22A

- (1) This section applies to the first order made under section 22A(1).
- (2) This section also applies to any subsequent order made under section 22A(1) which—
 - (a) contains a statement by the Treasury that, in their opinion, the effect (or one of the effects) of the proposed order would be—
 - (i) that an activity would become a PRA-regulated activity, or
 - (ii) that a PRA-regulated activity would become a regulated activity that is not a PRA-regulated activity, or
 - (b) amends primary legislation.
- (3) No order to which this section applies may be made unless—
 - (a) a draft of the order has been laid before Parliament and approved by a resolution of each House, or
 - (b) subsection (5) applies.
- (4) Subsection (5) applies if an order to which this section applies contains a statement that the Treasury are of the opinion that, by reason of urgency, it is necessary to make the order without a draft being so laid and approved.
- (5) Where this subsection applies the order—
 - (a) must be laid before Parliament after being made, and
 - (b) ceases to have effect at the end of the relevant period unless before the end of that period the order is approved by a resolution of each House of Parliament (but without that affecting anything done under the order or the power to make a new order).
- (6) The “relevant period” is a period of 28 days beginning with the day on which the order is made.
- (7) In calculating the relevant period no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.”