

FINANCIAL SERVICES (BANKING REFORM) ACT 2013

EXPLANATORY NOTES

COMMENTARY

Part 4 – Conduct of Persons Working in Financial Services Sector

Amendments of FSMA

Section 35 and Schedule 3: Consequential amendments relating to Part 4

204. *Section 35 and Schedule 3* make various minor and consequential amendments to FSMA and the Financial Services Act 2012 which are necessary in connection with *sections 21 to 33*.
205. *Paragraph 1 and 4* of Schedule 3 make consequential amendments to sections 59 and 63A of FSMA respectively, arising from the introduction of the power for the regulators to give conditional approval to an application to perform a senior management function in relation to a relevant authorised person.
206. *Paragraph 2* of the Schedule amends section 59A of FSMA, which requires the FCA and the PRA to co-ordinate how they specify controlled functions. It removes references in section 59A to the concept of a “significant-influence function” and replaces them with references to a “senior management function”.
207. *Paragraph 3* of the Schedule amends section 63 of FSMA, replacing references to a significant-influence function with references to a senior management function. The effect is that the PRA can withdraw a person’s approval if they were approved by the FCA but the function is a senior management function performed in relation to a PRA-authorised person.
208. *Paragraph 5* of the Schedule makes consequential amendments to section 66 of FSMA, which sets out the disciplinary powers of the regulators in relation to approved persons. It give regulators the power to impose conditions rather than ‘restrictions’, reflecting the regulators’ power to grant conditional approvals.
209. *Paragraph 6* of the Schedule makes consequential changes to section 67 of FSMA, which sets out the procedure the regulators must follow when taking disciplinary action against approved persons. The changes are consequential on the changes to section 66 of FSMA. It also requires the regulators, if they propose to limit the time for which an approval has effect, to state in a warning notice how long the approval would have effect for (*paragraph 6(4)*). The same information would also have to be provided in a decision notice about limiting the period of an approval (*paragraph 6(7)*).
210. *Paragraph 7* of the Schedule makes consequential changes to section 69 of FSMA, which requires the regulators to issue statements of policy about the imposition of penalties on approved persons. These changes also reflect the grant to the regulators of the power to give conditional approvals.

*These notes refer to the Financial Services (Banking Reform) Act
2013 (c.33) which received Royal Assent on 18 December 2013*

211. *Paragraphs 8 and 9* of the Schedule make changes necessary to reflect the power for the regulators to make rules of conduct under new section 64A. *Paragraph 8* ensures that the regulators may not modify or waive rules of conduct made under section 64A in relation to a particular person. *Paragraph 9* ensures that a private person cannot bring an action for damages if they suffer loss as the result of a contravention by an approved person of a rule of conduct made under section 64A.
212. *Paragraph 10* of the Schedule removes references to section 64 from section 140A, a consequential change required by the repeal of section 64.
213. *Paragraph 11* of the Schedule makes a consequential amendment to section 347 of FSMA (which makes provision about the record of authorised persons to be kept by the FCA), by replacing references to a “relevant authorised person” in that section with references to an “authorised person concerned” (defined in subsection (9), as inserted by *section 34*), to avoid confusion with the definition in section 71A.
214. *Paragraphs 12 to 14* of the Schedule make consequential changes to the provisions of FSMA setting out what must be included in a decision notice and a warning notice, and to the provisions of FSMA requiring the regulators to determine their procedure for making decisions which would require them to issue a supervisory notice.
215. *Paragraph 15* of the Schedule makes consequential changes to section 415B of FSMA, which makes provision about consultation between the regulators about the taking of certain enforcement action.
216. *Paragraphs 16 and 17* of the Schedule make consequential changes to Schedules 1ZA and 1ZB to FSMA to ensure that the issuing of a policy about the grant and variation of conditional approvals by the PRA or the FCA is treated as a legislative function which must be done through their governing bodies.
217. *Paragraphs 18 and 19* of the Schedule make consequential changes to the Financial Services Act 2012 to ensure that issuing a policy statement about the grant and variation of conditional approvals by the PRA or the FCA is a legislative function for the purposes of a complaints scheme under section 85 of that Act. This means that the regulators do not have to make arrangements for the investigation by an independent person of complaints relating to the issuing of policy statements about the exercise of the new powers. (Complaints about the granting or variation of conditional approvals in individual cases will be considered under the complaints scheme).