



# Financial Services Act 2021

## 2021 CHAPTER 22

### *Miscellaneous*

#### **37 Regulated activities and application of Consumer Credit Act 1974**

- (1) This section applies on or at any time after the making of an order under section 22 of the Financial Services and Markets Act 2000, after this section comes into force, which has the effect that a relevant credit activity becomes a regulated activity for the purposes of that Act.
- (2) Section 107(6) of the Financial Services Act 2012 (power to make provision about the application of the Consumer Credit Act 1974) has effect as if—
  - (a) the reference to an order of the kind mentioned in subsection (1) of that section included an order of the kind mentioned in subsection (1) of this section, and
  - (b) the references to a transferred activity included a relevant credit activity which is the subject of an order of the kind mentioned in subsection (1) of this section.
- (3) “Relevant credit activity” means the activity of—
  - (a) entering into an agreement described in article 60F(2) or (3) of the Regulated Activities Order (certain borrower-lender-supplier agreements for fixed-sum credit or running-account credit) as lender, or
  - (b) exercising, or having the right to exercise, the lender’s rights and duties under such an agreement,so far as the activity is not a transferred activity (as defined in section 107(1) of the Financial Services Act 2012).
- (4) “The Regulated Activities Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 ([S.I. 2001/544](#)) as it has effect on the passing of this Act.

**38 Amendments of the PRIIPs Regulation etc**

- (1) In this section “the PRIIPs Regulation” means [Regulation \(EU\) No. 1286/2014](#) of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs).
- (2) After Article 4 of the PRIIPs Regulation insert—

*“Article 4A*

1. The FCA may make rules specifying whether or not a product, or category of product, falls within the definition of a PRIIP for the purposes of this Regulation.
  2. The provisions of Part 9A of FSMA listed in paragraph 3 apply to rules made under this Article as they apply to rules made by the FCA under that Act, subject to the modifications in that paragraph (if any).
  3. The provisions are—
    - (a) section 137T (general supplementary powers), as if—
      - (i) the reference in paragraph (a) to authorised persons were a reference to persons, and
      - (ii) paragraph (b) were omitted;
    - (b) section 138F (notification of rules), as if subsection (2) were omitted;
    - (c) section 138G (rule-making instruments);
    - (d) section 138I (consultation by the FCA), as if—
      - (i) subsection (1)(a) (and the “and” after it) were omitted,
      - (ii) in subsection (1)(b), “after doing so,” were omitted,
      - (iii) in subsection (2), paragraphs (c) and (d) were omitted, and
      - (iv) subsections (5)(b) and (10) were omitted;
    - (e) section 138L (consultation: general exemptions), as if—
      - (i) in subsection (1), for “Sections 138I(1)(b) and (2) to (5) and 138K do” there were substituted “Section 138I(1)(b) and (2) to (5) does”,
      - (ii) subsections (2) and (4)(b) were omitted,
      - (iii) in subsection (5)(a), “or 138J(2)(a)” were omitted, and
      - (iv) in subsection (5)(b), “or 138J(5)(a)” were omitted;
    - (f) section 141A (power to make consequential amendments of references to rules etc).”
- (3) Any requirement that arises by virtue of Article 4A(3)(d) of the PRIIPs Regulation, as inserted by subsection (2), may be satisfied by things done before that subsection comes into force (as well as by things done after that time).
- (4) In paragraph 3 of Article 8 of the PRIIPs Regulation (information to be contained in key information document), in point (d)(iii), for “performance scenarios and the assumptions made to produce them” substitute “information on performance”.
- (5) The Treasury may by regulations substitute a later date for the date that is for the time being mentioned in Article 32(1) of the PRIIPs Regulation (exemption of UCITS).
- (6) The date as substituted under subsection (5) must be no later than 31 December 2026.

(7) Regulations under subsection (5) are subject to the negative procedure.

### **39 Retention of personal data under the Market Abuse Regulation**

In Article 28 of [Regulation \(EU\) No. 596/2014](#) of the European Parliament and of the Council of 16 April 2014 on market abuse (data protection), omit “Personal data is to be retained for a maximum period of five years.”

### **40 Over the counter derivatives: clearing and procedures for reporting**

(1) [Regulation \(EU\) No. 648/2012](#) of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (the “European Market Infrastructure Regulation”) is amended as follows.

(2) In Article 4 (clearing obligation)—

(a) after paragraph 3 insert—

“3A. Clearing members and clients which provide clearing services, whether directly or indirectly, must—

- (a) provide those services under fair, reasonable, non-discriminatory and transparent commercial terms, and
- (b) take all reasonable measures to identify, prevent, manage and monitor conflicts of interest, in particular between the trading unit and the clearing unit, that may adversely affect the fair, reasonable, non-discriminatory and transparent provision of clearing services.

3B. The duty under paragraph 3A(a)—

- (a) does not oblige clearing members or clients to contract, and
- (b) does not prevent clearing members or clients from taking steps to control the risks related to the clearing services offered.

3C. The duty to take the measures described in paragraph 3A(b) includes a duty to do so where trading and clearing services are provided by different legal entities belonging to the same group.

3D. The duties under paragraph 3A (read with paragraphs 3B and 3C) apply in relation to an undertaking with an indirect contractual arrangement with a clearing member of a CCP which enables that undertaking to clear its transactions with a CCP as they apply in relation to a client.”, and

(b) after paragraph 4 insert—

“4A. The FCA may make rules specifying the conditions under which the commercial terms referred to in paragraph 3A(a) are to be considered fair, reasonable, non-discriminatory and transparent.”

(3) In Article 78 (general requirements), at the end insert—

“9. A trade repository must establish the following procedures and policies—

- (a) procedures for the effective reconciliation of data between trade repositories;

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*Status: This is the original version (as it was originally enacted).*

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- (b) procedures to verify the completeness and correctness of the data reported;
  - (c) policies for the orderly transfer of data to other trade repositories where requested by the counterparties or CCPs referred to in Article 9 or where otherwise necessary.
10. The FCA may make rules applying to trade repositories relating to—
- (a) procedures described in paragraph 9(a) and (b),
  - (b) procedures to be applied to verify compliance by counterparties and CCPs with the reporting obligation under Article 9, and
  - (c) policies described in paragraph 9(c).”
- (4) After Article 84a insert—

*“Article 84b*

***FCA rules***

1. The provisions of Part 9A of FSMA (rules and guidance) listed in paragraph 2 apply in relation to rules made by the FCA under Article 4(4A) or 78(10) as they apply in relation to rules made by the FCA under that Part of that Act, subject to the modification in paragraph 3.
  2. The provisions are—
    - (a) section 137T (general supplementary powers);
    - (b) section 138C (evidential provision);
    - (c) section 138E (limits on effect of contravening rules);
    - (d) sections 138F, 138G and 138H (notification and verification etc);
    - (e) sections 138I and 138L (consultation);
    - (f) section 141A (power to make consequential amendments of references to rules).
  3. Section 137T applies as if the reference to authorised persons were—
    - (a) for the purposes of rules made under Article 4(4A), a reference to clearing members, clients and undertakings described in Article 4(3D), and
    - (b) for the purposes of rules made under Article 78(10), a reference to trade repositories.”
- (5) The requirements of section 138I of the Financial Services and Markets Act 2000, in so far as they apply in connection with rules made under Article 4(4A) or 78(10) of the European Market Infrastructure Regulation, may be satisfied by things done before the relevant provision of this section comes into force (as well as by things done after that time).

#### **41 Regulations about financial collateral arrangements**

- (1) The Financial Collateral Arrangements (No. 2) Regulations 2003 ([S.I. 2003/3226](#)) as originally made, and all amendments made to them, have effect, and are to be treated as having had effect, despite any lack of power to make the regulations and amendments.

- (2) Accordingly, the validity of anything done under or in reliance on those regulations (whether as originally made or as amended) is to be treated as unaffected by any such lack of power.
- (3) The Banking Act 2009 is amended in accordance with subsections (4) to (6).
- (4) In section 255 (regulations about financial collateral arrangements)—
  - (a) in subsection (3)(b) omit “or purported to be done”,
  - (b) omit subsection (5), and
  - (c) after that subsection insert—
    - “(6) Regulations under this section are to be made by statutory instrument.
    - (7) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
    - (8) Section 41 of the Financial Services Act 2021 makes further provision in relation to the Financial Collateral Arrangements (No. 2) Regulations 2003 ([S.I. 2003/3226](#)).”
- (5) Omit section 256 (procedure for making regulations under section 255).
- (6) In the table in section 259(3) (procedure applying to statutory instruments), in the entry for section 255, for “affirmative resolution” substitute “draft affirmative resolution”.

#### **42 Appointment of chief executive of FCA**

- (1) Schedule 1ZA to the Financial Services and Markets Act 2000 (Financial Conduct Authority) is amended as follows.
- (2) In paragraph 2A—
  - (a) after sub-paragraph (1) insert—

“(1A) Appointment as chief executive under paragraph 2(2)(b) is to be for a period of 5 years.”, and
  - (b) in sub-paragraph (2), for “Sub-paragraph (1) does” substitute “Sub-paragraphs (1) and (1A) do”.
- (3) After paragraph 2A insert—

“2B (1) A person may not be appointed as chief executive under paragraph 2(2) (b) more than twice.

(2) For this purpose an appointment as chief executive on an acting basis, pending a further appointment being made, is to be ignored.”

#### **43 Subordinate legislation made under retained direct EU legislation**

- (1) The Financial Services and Markets Act 2000 is amended as follows.
- (2) In section 425C (“qualifying provision”)—
  - (a) the existing text becomes subsection (1),
  - (b) after paragraph (b) of that subsection insert—

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*Status: This is the original version (as it was originally enacted).*

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- “(ba) other subordinate legislation made under retained direct EU legislation;”,
  - (c) in paragraph (c) of that subsection omit “(within the meaning of the Interpretation Act 1978)”, and
  - (d) after that subsection insert—
    - “(2) In this section, “subordinate legislation” has the same meaning as in the Interpretation Act 1978 (see section 21 of that Act).”
- (3) In paragraph 8(3) of Schedule 1ZA (Financial Conduct Authority’s arrangements for discharging functions: legislative functions), in paragraph (a), after “rules” insert “under this Act or under retained direct EU legislation”.

#### **44 Payment services and the provision of cash**

In Part 2 of Schedule 1 to the Payment Services Regulations ([S.I. 2017/752](#)) (activities which do not constitute payment services), after paragraph 2 insert—

- “3
- (1) The provision of cash otherwise than through an automatic teller machine does not constitute a payment service where—
    - (a) there is a transfer of a corresponding amount from a payment account held by the recipient of the cash to a relevant person, and
    - (b) the payment account is not provided by a relevant person.
  - (2) In sub-paragraph (1), “relevant person” means—
    - (a) where the cash is provided by a person (“P1”) through one or more persons acting on P1’s behalf, P1 and each person acting (directly or indirectly) on P1’s behalf;
    - (b) where the cash is provided by a person (“P2”) otherwise than on behalf of another person or through one or more persons acting on P2’s behalf, P2.
  - (3) The execution of the transfer referred to in sub-paragraph (1)(a), and other services enabling that transfer, are not excluded from the meaning of payment services by this paragraph.”