

## STATUTORY INSTRUMENTS

# 2013 No. 3116

## FINANCIAL SERVICES AND MARKETS

### The Financial Services and Markets Act 2000 [<sup>F1</sup>(Qualifying Provisions)] (No. 2) Order 2013

*Made* - - - - *9th December 2013*  
*Laid before Parliament* *10th December 2013*  
*Coming into force* - - *1st January 2014*

The Treasury, in exercise of the powers conferred on them by the following sections of the Financial Services and Markets Act 2000 <sup>M1</sup>: 1A(6)(d); 1L(2)(b); 2A(6)(d); 39(4)(b); 66(2)(b)(ii); 66(2A)(b)(ii); 168(4)(k); 204A(2)(b), (4); 380(6)(a)(i), (9); 382(9)(a)(i), (12); 384(7)(a), (10); and paragraph 23(2)(b) of Schedule 1ZA and paragraph 31(2)(b) of Schedule 1ZB to that Act <sup>M2</sup>, makes the following Order:

**F1** Words in [Title](#) substituted (31.12.2020) by [The Financial Services and Markets Act 2000 \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/632\)](#), regs. 1(3), **190(2)**; 2020 c. 1, Sch. 5 para. 1(1)

#### Modifications etc. (not altering text)

**C1** [Order](#): power to modify conferred (11.7.2023) by [Financial Services and Markets Act 2023 \(c. 29\)](#), ss. 3, 86(3), **Sch. 1 Pt. 2**; S.I. 2023/779, reg. 2(d)

#### Marginal Citations

**M1** [2000 c. 8](#); Sections 1A to 3S were inserted by section 6 of the [Financial Services Act 2012 \(c.21\)](#); section 39(4) was substituted by Schedule 18 to that Act; section 66(2) and (2A) were substituted by Schedule 5 to that Act; section 168 was amended by Schedule 12 to that Act; sections 204A, 380, 382 and 384 were amended by Schedule 9 to that Act. There are other amendments to these provisions which are not relevant to this Order.

**M2** Schedules 1ZA and 1ZB were inserted by Schedule 3 to the Financial Services Act 2012.

#### Citation, commencement and interpretation

1.—(1) This Order may be cited as the Financial Services and Markets Act 2000 [<sup>F2</sup>(Qualifying Provisions)] (No. 2) Order 2013 and comes into force on 1st January 2014.

(2) For the purposes of this Order—

**Changes to legislation:** The Financial Services and Markets Act 2000 (Qualifying Provisions) (No. 2) Order 2013 is up to date with all changes known to be in force on or before 07 January 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

“the CRA Regulation” means Regulation 1060/2009/EC of the European Parliament and of the Council of 16 September 2009 on credit rating agencies<sup>M3</sup>;

“the CRD4 instruments” means<sup>M4</sup>—

- (a) the capital requirements regulation; and
- (b) any directly applicable regulation made under the capital requirements regulation or the capital requirements directive;

“FSMA” means the Financial Services and Markets Act 2000.

[<sup>F3</sup>]<sup>F4</sup>(3) Any reference in this Order to an EU Regulation, or part of an EU Regulation, is to be read as a reference to that EU Regulation, or that part of that EU Regulation, as amended from time to time.]

(4) In paragraph (2) in the definition of “the CRD4 instruments”—

- (a) the reference to any directly applicable regulation made under the capital requirements regulation is a reference to—
  - (i) any EU regulation, originally made under the capital requirements regulation, which is retained direct EU legislation,
  - (ii) any technical standards made in relation to the capital requirements regulation in accordance with Chapter 2A of Part 9A of the Act, and
  - (iii) any subordinate legislation (within the meaning of the Interpretation Act 1978) which is made under a power substituted for a power of an EU entity to make a directly applicable regulation under the capital requirements regulation by regulations made under section 8 of the European Union (Withdrawal) Act 2018;
- (b) the reference to any directly applicable regulation made under the capital requirements directive is a reference to—
  - (i) any EU regulation, originally made under the capital requirements directive, which is retained direct EU legislation,
  - (ii) any technical standards made in relation to the capital requirements directive in accordance with Chapter 2A of Part 9A of the Act, and
  - (iii) any subordinate legislation (within the meaning of the Interpretation Act 1978) which is made under a power substituted for a power of an EU entity to make a directly applicable regulation under the capital requirements directive by regulations made under section 8 of the European Union (Withdrawal) Act 2018.]

- F2** Words in [art. 1\(1\)](#) substituted (31.12.2020) by [The Financial Services and Markets Act 2000 \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/632\)](#), regs. 1(3), **190(2)**; 2020 c. 1, Sch. 5 para. 1(1)
- F3** Art. 1(3)(4) inserted (23.3.2019 for specified purposes, 31.12.2020 (on IP completion day) in so far as not in force) by [The Financial Services and Markets Act 2000 \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/632\)](#), regs. 1(2)(i), **1(3)**, 190(3); S.I. 2020 c. 1, **Sch. 5 para. 1(1)**
- F4** Art. 1(3) substituted (30.6.2020) by [The Financial Services \(Miscellaneous Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/628\)](#), regs. 1(2), **3**

#### Marginal Citations

- M3** OJ no L302, 17/11/2009, p.1; the Regulation was amended by Directive 2011/61/EU (OJ no L 174 1.7.2011), Regulation (EU) No 513/2011(OJ no L 145 31.5.2011) and Regulation (EC) No 462/2013 ((OJ no L 146, 31.5.2013, p. 1) and was corrected by Corrigendum, OJ L 350, 29.12.2009 p. 59.
- M4** Definitions of “capital requirements regulation” and “capital requirements directive” are inserted into section 417 of FSMA by the Capital Requirements Regulations 2013.

## [<sup>F5</sup>qualifying provisions]

2. Articles 4(1), 5a, 8b, 8c, 8d and 25a of the CRA Regulation are specified [<sup>F6</sup>qualifying provisions] for the purposes of [<sup>F7</sup>regulation 206(1)(a) of the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 and] the following provisions of FSMA—

- (a) sections 1A(6)(d), 1L(2)(b), [<sup>F8</sup>66A(4)(b)], 168(4)(k), 204A(2)(b), 380(6)(a)(i), 382(9)(a)(i) and 384(7)(a); and
- (b) paragraph 23(2)(b) of Schedule 1ZA.

- F5** Words in art. 2 heading substituted (31.12.2020) by The Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/632), regs. 1(3), **190(4)**; 2020 c. 1, Sch. 5 para. 1(1)
- F6** Words in art. 2 substituted (31.12.2020) by The Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/632), regs. 1(3), **190(4)**; 2020 c. 1, Sch. 5 para. 1(1)
- F7** Words in art. 2 inserted (31.12.2020) by The Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/632), regs. 1(3), **190(5)**; 2020 c. 1, Sch. 5 para. 1(1)
- F8** Word in art. 2(a) substituted (21.11.2016) by The Financial Services (Banking Reform) Act 2013 (Consequential Amendments) (No. 2) Order 2016 (S.I. 2016/1023), arts. 1, **3(a)**

3. The CRD4 instruments are specified [<sup>F9</sup>qualifying provisions] for the purposes of [<sup>F10</sup>regulation 206(1)(a) of the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 and] the following provisions of FSMA—

- (a) sections 1A(6)(d), 1L(2)(b), 2A(6)(d), 39(4)(b), [<sup>F11</sup>66A(4)(b), 66B(4)(b)], 168(4)(k), 204A(2)(b), 380(6)(a)(i), 382(9)(a)(i) and 384(7)(a);
- (b) paragraph 23(2)(b) of Schedule 1ZA; and
- (c) paragraph 31(2)(b) of Schedule 1ZB.

- F9** Words in art. 3 substituted (31.12.2020) by The Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/632), regs. 1(3), **190(4)**; 2020 c. 1, Sch. 5 para. 1(1)
- F10** Words in art. 3 inserted (31.12.2020) by The Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/632), regs. 1(3), **190(6)**; 2020 c. 1, Sch. 5 para. 1(1)
- F11** Words in art. 3(a) substituted (21.11.2016) by The Financial Services (Banking Reform) Act 2013 (Consequential Amendments) (No. 2) Order 2016 (S.I. 2016/1023), arts. 1, **3(b)**

## Appropriate regulator

4. The appropriate regulator for the purposes of each provision of Part 14 and sections 380, 382 and 384 of FSMA is—

- (a) in relation to a contravention of a requirement imposed by Article 4(1), 5a, 8b, 8c or 8d of the CRA Regulation, the FCA;
- (b) in relation to a contravention of a requirement imposed by a CRD4 instrument—
  - (i) the PRA, in the case of a PRA-authorised person; and
  - (ii) the FCA, in the case of any other person.

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**Changes to legislation:** The Financial Services and Markets Act 2000 (Qualifying Provisions) (No. 2)  
Order 2013 is up to date with all changes known to be in force on or before 07 January 2024. There are  
changes that may be brought into force at a future date. Changes that have been made appear in the  
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David Evennett  
Mark Lancaster  
Two of the Lords Commissioners of Her  
Majesty's Treasury

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order specifies the following EU legislation as qualifying EU provisions for the purposes of various provisions of the Financial Services and Markets Act 2000 (c. 8) (“FSMA”):

- (a) Articles 4(1), 5a, 8b, 8c, 8d and 25a of Regulation 1060/2009/EC of the European Parliament and of the Council of 16 September 2009 on credit rating agencies (OJ no L302, 17/11/2009, p.1);
- (b) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms (OJ no L176, 27/6/2013, p.1, for corrigenda see OJ no L208, 2/8/2013 p.68 and OJ no L321, 30/11/2013 p. 6) (the “CRR”);
- (c) any directly applicable regulation made under the CRR or Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms (OJ no L176, 27/6/2013, p. 338, for corrigenda see OJ no L208, 2/8/2013, p.73).

The effect of the Order is to apply certain provisions of FSMA for purposes connected with the qualifying EU provisions.

Articles 2 and 3 specify provisions of EU law for general purposes including sections 1A and 2A of FSMA (the functions of the Financial Conduct Authority (“FCA”) and the functions of the Prudential Regulation Authority (“PRA”)), section 168 of FSMA (power of the regulators to appoint an investigator) and disciplinary measures imposed under Part 14 of FSMA.

Article 4 specifies which of the FCA or PRA is responsible for taking disciplinary action in relation to each specified provision of EU law.

An impact assessment has not been produced for this instrument as no significant impact on the costs of business or the voluntary sector is foreseen.

**Changes to legislation:**

The Financial Services and Markets Act 2000 (Qualifying Provisions) ( No. 2) Order 2013 is up to date with all changes known to be in force on or before 07 January 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

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**Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:**

- Order revoked by [2023 c. 29 Sch. 1 Pt. 2](#)