
STATUTORY INSTRUMENTS

2023 No. 936 (C. 55)

FINANCIAL SERVICES AND MARKETS

**The Financial Services and Markets Act 2023 (Commencement
No. 2 and Transitional Provisions) Regulations 2023**

Made - - - - *22nd August 2023*

The Treasury make these Regulations in exercise of the powers conferred by section 86(3) to (6) of the Financial Services and Markets Act 2023⁽¹⁾.

Citation, extent and interpretation

1.—(1) These Regulations may be cited as the Financial Services and Markets Act 2023 (Commencement No. 2 and Transitional Provisions) Regulations 2023.

(2) These Regulations extend to England and Wales, Scotland, and Northern Ireland.

(3) In these Regulations—

“rule” means a rule made by the PRA or the FCA under FSMA 2000;

“the Act” means the Financial Services and Markets Act 2023.

Commencement of section 20 of, and Schedule 5 to, the Act

2.—(1) The provisions listed in paragraph (2) come into force—

(a) on 6th September 2023, for the purpose of enabling the FCA to give directions, to give guidance and to make rules;

(b) on 6th November 2023, for the purpose of the FCA receiving, but not determining, applications for permission to approve financial promotions made during the application period.

(2) The provisions are—

(a) in section 20 (financial promotion)—

(i) subsection (1), so far as it relates to the provisions referred to in paragraph (ii) to (iv) below of this sub-paragraph;

(ii) subsection (2);

(iii) subsection (3), so far as it inserts section 55NA (general requirement relating to financial promotion approval) of FSMA 2000;

(1) 2023 c. 29.

- (iv) subsection (4), so far as it relates to the provisions referred to in sub-paragraph (b);
- (b) in Schedule 5 (financial promotion: related amendments)—
 - (i) paragraph 1, so far as it relates to the provisions in sub-paragraph (ii);
 - (ii) paragraphs 2, 3, 4, 6, 7, 8, 9, 10, 11 and 12.

(3) Section 20 of, and Schedule 5 to, the Act come into force on 7th February 2024, so far as not already commenced by paragraphs (1) and (2).

(4) In paragraph (1)(b) and regulation 3(1), the “application period” means the period beginning with 6th November 2023 and ending with 6th February 2024.

Transitional provision relating to section 20 of, and Schedule 5 to, the Act

3.—(1) The amendments made by the provisions of the Act listed in paragraph (2) do not apply to—

- (a) an authorised person that has submitted an application under section 55NA(3)(a) of FSMA 2000(2) during the application period; or
- (b) a person who has communicated a communication the content of which is approved by that authorised person under section 21(2)(b) of FSMA 2000,

until the date when the application is determined.

(2) The provisions are—

- (a) section 20(2);
- (b) section 20(3), so far as it inserts section 55NA(1) and (2) into FSMA 2000;
- (c) paragraph 3 of Schedule 5.

(3) Paragraph (1) ceases to have effect in relation to the approval of the content of a communication when—

- (a) the application referred to in paragraph (1)(a) is determined; or
- (b) the application is withdrawn under section 55V(4) of FSMA 2000.

(4) An application is determined for the purposes of this regulation when—

- (a) a notice granting an application for permission under section 55V(5)(e) of FSMA 2000 (determination of applications)(3) takes effect;
- (b) an application for permission under section 55X(4)(f) of FSMA 2000 (determination of applications: warning notices and decision notices)(4) is refused.

(5) Paragraph (3) does not affect the validity of an approval given before the application is determined or withdrawn (as the case may be).

Transitional provision for PRA rules implementing Basel 3.1 standards

4.—(1) The amendments made by the provisions of the Act listed in paragraph (2) do not apply where the PRA takes a relevant action in connection with the document entitled “Implementation of the Basel 3.1 standards” published by the PRA on 30th November 2022 (PRA consultation paper 16/22)(5).

(2) Section 55NA is inserted by section 20(3) of the Financial Services and Markets Act 2023 (c. 29).

(3) Section 55V was inserted by section 11(2) of the Financial Services Act 2012 (c. 21). Sub-paragraph (e) was inserted by paragraph 8 of Schedule 5 to the Financial Services and Markets Act 2023.

(4) Section 55X was inserted by section 11(2) of the Financial Services Act 2012.

(5) The PRA consultation paper can be found at <https://www.bankofengland.co.uk/prudential-regulation/publication/2022/november/implementation-of-the-basel-3-1-standards> (last checked on 14th August 2023) and a copy can be obtained from the Prudential Regulation Authority, 20 Moorgate, London EC2R 6DA.

- (2) The provisions of the Act⁽⁶⁾ are—
- (a) section 25(4) (competitiveness and growth objective);
 - (b) section 27 (regulatory principles);
 - (c) section 28(4) to (6) (sections 25 and 27: consequential amendments);
 - (d) section 31(2) and (4) (matters to consider when making rules);
 - (e) section 32 (effect of rules etc. on deference decisions);
 - (f) section 36(2) (public consultation requirement);
 - (g) section 38(3) (engagement with parliamentary committees);
 - (h) section 43(3) (costs benefit analysis panels) so far as it inserts section 138JA(11) and (12) into FSMA 2000.
- (3) For the purposes of paragraph (1), the PRA takes a relevant action—
- (a) by the making of rules;
 - (b) by the making of standards instruments;
 - (c) by the determination of general policy and principles by reference to which the PRA performs particular functions under FSMA 2000; or
 - (d) by the taking of steps for the purposes of sub-paragraphs (a), (b) or (c),

but the taking of a relevant action does not include steps taken by the PRA necessary to amend rules or standards instruments made, or to modify policies determined, in connection with the document described in paragraph (1).

(4) Paragraph (1) applies regardless of whether the PRA makes rules or standards instruments or determines policies that—

- (a) differ from published drafts of proposed rules, standards instruments, or policies; or
- (b) result from further proposals made by the PRA in relation to matters connected with the document described in paragraph (1) (but see paragraph (3)).

(5) In this regulation, “standards instrument” means an instrument made by the PRA under Chapter 2A of Part 9A of FSMA 2000⁽⁷⁾.

Transitional provision for other PRA rules

5.—(1) This regulation applies where—

- (a) the PRA makes—
 - (i) CRR rules; or
 - (ii) section 192XA rules that are not CRR rules; and
- (b) regulation 4(1) does not disapply the provisions listed in paragraph (2) of that regulation in relation to the making of the rules described in sub-paragraph (a).

(2) The following modifications apply during the period beginning with 29 August 2023 and ending with the day on which section 1 of, and Part 4 of Schedule 1 to the Act come into force, so far as those provisions repeal sections 144C, 144D and 144E of FSMA 2000⁽⁸⁾ for all purposes.

⁽⁶⁾ Provisions mentioned in sub-paragraphs (a) to (h) are to be commenced on 29th August 2023 under regulation 4 of the Financial Services and Markets Act 2023 (Commencement No. 1) Regulations (S.I. 2023/779 (C. 40)).

⁽⁷⁾ Part 9A was inserted by section 24(1) of the Financial Services Act 2012 (c. 24), and Chapter 2A was inserted into Part 9A by Part 1 of Schedule 10 to the Financial Services and Markets Act 2023.

⁽⁸⁾ Sections 144C, 144D and 144E were inserted by paragraph 1 of Part 1 of Schedule 3 to the Financial Services Act 2021 (c. 22).

(3) To the extent that the provisions of FSMA 2000 listed in sub-paragraphs (a) to (f) would otherwise apply in relation to the making of CRR rules, those provisions are to be treated as if they were omitted—

- (a) section 144C(1) and (2);
- (b) in section 144C(5), the definition of “consumer”;
- (c) section 144D(1) and (2)(b);
- (d) section 144E(5);
- (e) section 144E(6)(a) so far as it relates to an explanation described in section 144D(2);
- (f) section 144E(7).

(4) To the extent that sections 144C, 144D and 144E of FSMA 2000 would otherwise apply by virtue of section 192XB(2)(9) of that Act in relation to the making of section 192XA rules that are not CRR rules, section 192XB(2) is to be read subject to the modifications specified in paragraphs (3) and (5).

(5) For the purposes of paragraph (4), the following provisions of FSMA 2000 are to be treated as if they were omitted, so far as those provisions apply in relation to the making of rules that are not CRR rules in a rule-making instrument made under sections 192XA and 137G(10) of FSMA 2000—

- (a) section 144C(3) and (4);
- (b) in section 144C(5), the definitions of “equivalence decision” and “territory”;
- (c) section 144C(6).

(6) In this regulation—

- (a) “CRR rules” has the meaning given by section 144A of FSMA 2000;
- (b) “rule-making instrument” has the meaning given by section 138G(2) of FSMA 2000;
- (c) “section 192XA rules” means rules made by the PRA under section 192XA(11) of FSMA 2000.

Transitional Provision – control over authorised persons

6. The amendments made by section 61 of the Act (control over authorised persons) do not apply in relation to a decision by the appropriate regulator under sections 185(1)(b)(i) and 187 of FSMA 2000 to approve with conditions an acquisition to which a section 178 notice relates, where that notice was received by the appropriate regulator before 29th August 2023.

Scott Mann
Stuart Anderson

Two Lords Commissioners of His Majesty’s
Treasury

22nd August 2023

(9) Section 192XB was inserted by paragraph 7 of Part 2 of Schedule 3 to the Financial Services Act 2021.

(10) Section 137G was inserted by section 24(1) of the Financial Services Act 2012 (c. 24). Subsection (6) was inserted by S.I. 2018/1115 and subsection (7) was inserted by paragraphs 10 and 11 of Part 3 of Schedule 3 to the Financial Services Act 2021.

(11) Section 192XA was inserted by paragraph 7 of Part 2 of Schedule 3 to the Financial Services Act 2021.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are the second commencement regulations made under the Financial Services and Markets Act 2023 (c. 29) (“the Act”).

Regulation 2 brings section 20 (financial promotion) and Schedule 5 (financial promotion: related amendments) of the Act into force. Regulation 2(1)(a) brings certain provisions of Section 20 and Schedule 5 which are listed in regulation 2(2) into force on 6th September 2023, for the purpose of enabling the FCA to give directions, to give guidance and to make rules. Regulation 2(1)(b) brings the provisions listed in regulation 2(2) into force for the purpose of the FCA receiving applications made during the application period (“the application period” is defined in regulation 2(4) as the period beginning with 6th November 2023 and ending with 6th February 2024), so far as not already in force. Regulation 2(3) states that section 20 and Schedule 5 come into force, so far as not already in force, on 7th February 2024.

Regulation 3 makes transitional provision in respect of the commencement of section 20 and Schedule 5 of the Act (which are brought into force by regulation 2). Regulation 3(1) provides that the amendments made by the provisions listed in regulation 3(2) do not apply in relation to the approval of the content of a communication by an authorised person who has submitted an application under section 55NA(3)(a) of the Financial Services and Markets Act 2000 (c. 8) (“the 2000 Act”) during the application period (“the application period” is defined in regulation 2(4)). Section 55NA(3) is inserted by section 20(3) of the Act. Regulation 3(3) provides that regulation 3(1) ceases to have effect in relation to the approval of the content of a communication when the application is determined (as defined in regulation 3(4)), or when it is withdrawn. Regulation 3(5) confirms that Regulation 3(3) does not affect the validity of approvals that are given before that point.

Regulation 4 makes transitional provision for PRA rules, technical standards and policies implementing reforms to the so-called Basel international prudential standards for banks and other financial institutions (“the Basel standards”) and addressing related matters. In November 2022, the PRA published a consultation paper on the implementation of reforms to the Basel standards and related matters, including drafts of proposed rules. The making and content of those rules are subject to specific accountability requirements under the 2000 Act. Regulation 4 disapplies new requirements and procedural mechanisms provided for by the Act that would otherwise apply to the subject matter of the consultation paper. Paragraph 4(2) lists the provisions of the Act to be disapplied for this purpose. Those provisions come into force on 29th August 2023 by virtue of the Financial Services and Markets Act 2023 (Commencement No. 1) Regulations 2023 (S.I. 2023/779).

The PRA consultation paper can be found at <https://www.bankofengland.co.uk/prudential-regulation/publication/2022/november/implementation-of-the-basel-3-1-standards> and a copy can be obtained from the Prudential Regulation Authority, 20 Moorgate, London EC2R 6DA.

Regulation 5 makes transitional provision for PRA rules that are not in scope of regulation 4 where those rules are (i) CRR rules (as defined in section 144A of the 2000 Act) or (ii) rules made under section 192XA of the 2000 Act that are not CRR rules. Requirements in sections 144C, 144D and 144E of the 2000 Act apply to CRR rules and, by virtue of section 192XB(2) of the 2000 Act, to rules made under section 192XA that are not CRR rules. Section 1 of, and Part 4 of Schedule 1 to the Act provide for the repeal of these requirements, which is yet to be brought into force. Regulation 5 makes transitional provision disapplying sections 144C, 144D and 144E to the extent that these provisions overlap with the new accountability requirements established by Chapter 3 of Part 1 of the Act, which come into force on 29th August 2023 pursuant to the Financial Services and Markets Act

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2023 (Commencement No. 1) Regulations 2023. In relation to deference decisions, regulation 5(5) disapplies the requirement in section 144C(3) to the extent that it would otherwise apply where the PRA makes rules that are not CRR rules in a rule-making instrument made under sections 192XA and 137G of the 2000 Act: such rules will be subject to the accountability mechanism in section 409A of the 2000 Act (as inserted by section 32 of the Act).

Regulation 6 makes transitional provision in respect of the commencement of section 61 of the Act (control over authorised persons). Section 61 is commenced by section 86(2) (commencement) of the Act. Section 61 amends section 187(2) of the 2000 Act which provides the regulators with a power to impose conditions when approving an application for an acquisition of control, or for an increase in control, over a UK authorised person under section 178 of the 2000 Act (obligation to notify the appropriate regulator: acquisitions of control). The amendment made by section 61 allows the regulators to approve such an application with conditions where it is desirable to do so in order to advance that regulator's objectives. The transitional provision in regulation 6 states that this amendment will not apply in relation to any applications made under section 178 which were received by the regulators before section 61 commences on 29th August 2023.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen. A full impact assessment has been published in relation to the Act and copies can be obtained from HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ or at <https://bills.parliament.uk/publications/49053/documents/2621>.

NOTE AS TO EARLIER COMMENCEMENT REGULATIONS

(This note is not part of the Regulations)

| <i>Provision</i> | <i>Date of Commencement</i> | <i>S.I. No.</i> |
|--------------------------------|-----------------------------|----------------------------------|
| Section 1(1) (in part) | 11th July 2023 | 2023/779 (C. 40) |
| Section 1(1) (in part) | 29th August 2023 | 2023/779 (C. 40) |
| Section 1(1) (in part) | 1st January 2024 | 2023/779 (C. 40) |
| Section 1(2), (4), (5) and (6) | 11th July 2023 | 2023/779 (C. 40) |
| Section 2(1) (in part) | 29th August 2023 | 2023/779 (C. 40) |
| Section 2(2) and (3) | 11th July 2023 | 2023/779 (C. 40) |
| Section 3 | 11th July 2023 | 2023/779 (C. 40) |
| Sections 4 to 6 | 29th August 2023 | 2023/779 (C. 40) |
| Section 7 | 11th July 2023 | 2023/779 (C. 40) |
| Section 8 | 29th August 2023 | 2023/779 (C. 40) |
| Section 9(6) | 29th August 2023 | 2023/779 (C. 40) |
| Section 11 | 29th August 2023 | 2023/779 (C. 40) |
| Sections 13 to 19 | 29th August 2023 | 2023/779 (C. 40) |
| Section 23 | 29th August 2023 | 2023/779 (C. 40) |
| Sections 25 and 26 | 29th August 2023 | 2023/779 (C. 40) |
| Section 27 (in part) | 29th August 2023 | 2023/779 (C. 40) |
| Sections 28 to 32 | 29th August 2023 | 2023/779 (C. 40) |
| Sections 34 to 40 | 29th August 2023 | 2023/779 (C. 40) |

| <i>Provision</i> | <i>Date of Commencement</i> | <i>S.I. No.</i> |
|--|-----------------------------|------------------|
| Section 41 (in part) | 29th August 2023 | 2023/779 (C. 40) |
| Section 42 (in part) | 29th August 2023 | 2023/779 (C. 40) |
| Section 43 (in part) | 29th August 2023 | 2023/779 (C. 40) |
| Sections 44 and 45 | 29th August 2023 | 2023/779 (C. 40) |
| Section 46(1) (in part) | 29th August 2023 | 2023/779 (C. 40) |
| Section 46(2), (7) and (9) (in part) | 29th August 2023 | 2023/779 (C. 40) |
| Section 47 | 29th August 2023 | 2023/779 (C. 40) |
| Section 51 (in part) | 29th August 2023 | 2023/779 (C. 40) |
| Section 53 | 29th August 2023 | 2023/779 (C. 40) |
| Section 57 | 29th August 2023 | 2023/779 (C. 40) |
| Section 59 | 29th August 2023 | 2023/779 (C. 40) |
| Section 63 | 29th August 2023 | 2023/779 (C. 40) |
| Sections 65 to 69 | 29th August 2023 | 2023/779 (C. 40) |
| Section 73 | 29th August 2023 | 2023/779 (C. 40) |
| Section 75 | 29th August 2023 | 2023/779 (C. 40) |
| Section 76 | 29th August 2023 | 2023/779 (C. 40) |
| Section 79 | 29th August 2023 | 2023/779 (C. 40) |
| Schedule 1, Part 1 (in part) | 11th July 2023 | 2023/779 (C. 40) |
| Schedule 1, Part 1 (in part) | 1st January 2024 | 2023/779 (C. 40) |
| Schedule 1, Part 2 (in part) | 11th July 2023 | 2023/779 (C. 40) |
| Schedule 1, Part 2 (in part) | 29th August 2023 | 2023/779 (C. 40) |
| Schedule 1, Part 2 (in part) | 1st January 2024 | 2023/779 (C. 40) |
| Schedule 1, Part 3 (in part) | 1st January 2024 | 2023/779 (C. 40) |
| Schedule 1, Part 4 (in part) | 1st January 2024 | 2023/779 (C. 40) |
| Schedule 2, Part 1, paragraphs 5, 6, 9, 13 to 16 | 29th August 2023 | 2023/779 (C. 40) |
| Schedule 2, Part 1 paragraph 19 (in part) | 29th August 2023 | 2023/779 (C. 40) |
| Schedule 2, Part 1, paragraph 25 (in part) | 29th August 2023 | 2023/779 (C. 40) |
| Schedule 2, Parts 2, 3 and 6 | 29th August 2023 | 2023/779 (C. 40) |
| Schedule 3 | 29th August 2023 | 2023/779 (C. 40) |
| Schedule 4 | 29th August 2023 | 2023/779 (C. 40) |
| Schedule 7, paragraph 1 (in part) | 29th August 2023 | 2023/779 (C. 40) |
| Schedule 7, paragraph 2 (in part) | 29th August 2023 | 2023/779 (C. 40) |
| Schedule 7, paragraph 3 (in part) | 29th August 2023 | 2023/779 (C. 40) |
| Schedule 7, paragraphs 4 to 6 | 29th August 2023 | 2023/779 (C. 40) |

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| <i>Provision</i> | <i>Date of Commencement</i> | <i>S.I. No.</i> |
|--|-----------------------------|------------------|
| Schedule 7, paragraph 7 (in part) | 29th August 2023 | 2023/779 (C. 40) |
| Schedule 7, paragraphs 9 to 13 | 29th August 2023 | 2023/779 (C. 40) |
| Schedule 11, paragraph 3(9) to (11) | 29th August 2023 | 2023/779 (C. 40) |
| Schedule 11, paragraph 13(5) to (7) | 29th August 2023 | 2023/779 (C. 40) |
| Schedule 11, paragraph 16 | 29th August 2023 | 2023/779 (C. 40) |
| Schedule 11, paragraph 20 | 29th August 2023 | 2023/779 (C. 40) |
| Schedule 11, paragraph 22(10) to (12) | 29th August 2023 | 2023/779 (C. 40) |
| Schedule 11, paragraph 25(2), (3), (5) and (8) | 29th August 2023 | 2023/779 (C. 40) |
| Schedule 11, paragraph 32(3) to (5) | 29th August 2023 | 2023/779 (C. 40) |
| Schedule 11, paragraph 75 | 29th August 2023 | 2023/779 (C. 40) |
| Schedule 11, paragraph 76 | 29th August 2023 | 2023/779 (C. 40) |
| Schedule 11, paragraph 78 | 29th August 2023 | 2023/779 (C. 40) |
| Schedule 11, paragraph 85 | 29th August 2023 | 2023/779 (C. 40) |
| Schedule 11, paragraph 87 | 29th August 2023 | 2023/779 (C. 40) |
| Schedule 11, paragraph 154 | 29th August 2023 | 2023/779 (C. 40) |
| Schedule 11, paragraph 165 | 29th August 2023 | 2023/779 (C. 40) |
| Schedule 14 | 29th August 2023 | 2023/779 (C. 40) |