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## STATUTORY INSTRUMENTS

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# 2018 No. 1115

## The Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018

### PART 3

#### Standards Instruments

#### **Amendment of the Financial Services (Banking Reform) Act 2013**

- 10.**—(1) The Financial Services (Banking Reform) Act 2013 (“the Act”) is amended as follows.
- (2) In section 39(10) (overview), for “96 and 97” substitute “ 96 to 97D ”.
- (3) In section 71 (meaning of “compliance failure”)—
- (a) at the end of paragraph (a), omit “or”;
  - (b) at the end of paragraph (b), insert—  
“; or
  - (c) comply with rules made by the Regulator under paragraph 9A of Schedule 4.”.
- (4) After section 97 (Reports), insert—

#### *“Technical Standards*

#### **97A Technical standards**

(1) This section, section 97B, section 97C and section 97D apply where a power for the Payment Systems Regulator to make technical standards is substituted for the power of an EU entity to make EU tertiary legislation (the “ original EU power ”) by regulations made under section 8 of the European Union (Withdrawal) Act 2018.

- (2) The power to make technical standards includes power to modify, amend or revoke—
- (a) any technical standards made by the Payment Systems Regulator under that power;
  - (b) any EU tertiary legislation made by an EU entity under the original EU power which forms part of retained EU law.

(3) Before making any technical standards in which the FCA, the PRA or the Bank of England has an interest (within the meaning of section 138P(5) of the Financial Services and Markets Act 2000), the Payment Systems Regulator must consult the regulator concerned.

(4) For the purposes of this section, “EU tertiary legislation” has the meaning given in section 14 of the European Union (Withdrawal) Act 2018.

#### **97B Standards instruments**

(1) The power to make technical standards is to be exercised by the Payment Systems Regulator by making an instrument under this section (a “standards instrument”).

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(2) A standards instrument must specify the provision under which the instrument is being made.

(3) To the extent that a standards instrument does not comply with subsection (2), it is void.

(4) A standards instrument must be published by the Payment Systems Regulator in the way appearing to the regulator to be best calculated to bring it to the attention of the public.

(5) The Treasury must lay before Parliament a copy of each standards instrument made under this section.

(6) The Payment Systems Regulator may charge a reasonable fee for providing a person with a copy of a standards instrument.

### **97C Treasury approval**

(1) A standards instrument may be made only if it has been approved by the Treasury.

(2) The Treasury may refuse to approve a standards instrument if subsection (3) applies.

(3) This subsection applies if it appears to the Treasury that the instrument would—

(a) have implications for public funds (within the meaning of section 78(2) of the Banking Act 2009); or

(b) prejudice any current or proposed negotiations for an international agreement between the United Kingdom and one or more other countries, international organisations or institutions.

(4) For the purposes of subsection (3), “international organisations” includes the European Union.

(5) The Treasury must notify the Payment Systems Regulator in writing whether or not they approve a standards instrument within four weeks after the day on which that instrument is submitted to the Treasury for approval (“the relevant period”).

(6) Provision of a draft standards instrument to the Treasury for consultation does not amount to submission of the instrument for approval.

(7) If the Treasury do not approve the instrument, they must—

(a) set out in the notice given under subsection (5) the Treasury's reasons for not approving the instrument;

(b) lay before Parliament—

(i) a copy of that notice;

(ii) a copy of any statement made by the Payment Systems Regulator as to its reasons for wishing to make the instrument.

(8) If the Treasury do not give notice under subsection (5) before the end of the relevant period, the Treasury is deemed to have approved the standards instrument.

### **97D Application of section 104 of this Act and Part 9A of the Financial Services and Markets Act 2000**

(1) Section 104 (consultation in relation to generally applicable requirements) applies to making technical standards as it applies to imposing a generally applicable requirement within the meaning of section 104(1), as if—

(a) in subsection (3)(c) the reference to the Payment Systems Regulator's duties under section 49 were a reference to the Payment Systems Regulator's duties under regulation 3(2) and (4) of the Payment Card Interchange Fee Regulations 2015 (“the 2015 Regulations”);

- (b) in subsection (10), the reference to regulated payment systems were a reference to regulated persons within the meaning of regulation 2(1) of the 2015 Regulations.
- (2) The provisions of the Financial Services and Markets Act 2000 listed in subsection (3) apply to technical standards made by the Payment Systems Regulator as they apply to rules made by the FCA subject to the modifications specified in subsection (3).
- (3) The provisions referred to in subsection (2) are—
  - (a) section 137T (general supplementary powers) (ignoring paragraph (b));
  - (b) section 138E (limit on effect of contravening rules) (ignoring subsection (3));
  - (c) section 138F (notification of rules) (ignoring subsection (2));
  - (d) section 138H (verification of rules) (treating the reference in subsection (2)(c) to section 138G(4) of the Act as a reference to section 97B(4)).”
- (5) In Schedule 4—
  - (a) in paragraph 5(3), after paragraph (b), insert—
    - “(c) making technical standards in accordance with section 97A; and
    - (d) making EU Exit instruments under the Financial Regulators' Powers (Technical Standards) (Amendment etc.) (EU Exit) Regulations 2018.”;
  - (b) in paragraph 9, in the heading, insert at the end “ (participants in regulated payment systems) ”;
  - (c) after paragraph 9, insert—

**“Funding (regulated persons)**

**9A.—**(1) For the purposes mentioned in sub-paragraph (2), the Regulator may make rules requiring regulated persons within the meaning of regulation 2(1) of the Payment Card Interchange Fee Regulations 2015 <sup>MI</sup> to pay to the Regulator specified amounts or amounts calculated in a specified way.

(2) The purpose is to meet the expenses incurred, or expected to be incurred, by the Regulator in connection with any functions conferred on it by virtue of regulations made under the European Union (Withdrawal) Act 2018.

(3) Before making any rules under this paragraph, the Regulator must consult the FCA and the Treasury.

(4) In this paragraph “specified” means specified in the rules.

(5) The sections listed in sub-paragraph (6) apply, subject to the modifications specified in that sub-paragraph, to rules made by the Regulator under this paragraph as they apply to rules made by the FCA.

(6) The sections referred to in sub-paragraph (5) are—

- (a) section 137T (general supplementary powers) as if the reference in paragraph (a) to authorised person were a reference to regulated persons;
- (b) section 138A (modification or waiver of rules) as if the reference to the regulator's objectives were a reference to the payment systems objectives of the Regulator (within the meaning of section 49);
- (c) section 138B (publication of directions under section 138A);
- (d) section 138E (limits on effects of contravening rules), ignoring subsection (3);
- (e) section 138F (notification of rules), ignoring subsection (2);
- (f) section 138G (rule-making instruments);

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(g) section 138H (verification of rules).”

**Marginal Citations**

**M1** [S.I. 2015/1911](#).

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**Changes and effects yet to be applied to :**

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