

Draft Regulations laid before Parliament under section 429(2) of the Financial Services and Markets Act 2000 for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2024 No.

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000
(Disapplication or Modification of Financial Regulator
Rules in Individual Cases) Regulations 2024

Made - - - - *****
Coming into force - - *30th June 2024*

The Treasury have consulted the Prudential Regulation Authority in accordance with section 138BA(7) of the Financial Services and Markets Act 2000(1).

In accordance with section 429(2) of the Financial Services and Markets Act 2000(2) a draft of these Regulations has been laid before, and approved by a resolution of, each House of Parliament.

The Treasury make the following Regulations in exercise of the powers conferred by sections 138BA and 428(3) of the Financial Services and Markets Act 2000(3).

Citation, commencement, extent and interpretation

1.—(1) These Regulations may be cited as the Financial Services and Markets Act 2000 (Disapplication or Modification of Financial Regulator Rules in Individual Cases) Regulations 2024 and come into force on 30th June 2024.

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

(3) In these Regulations—

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

“specified rules” has the meaning given in regulation 3(1)(a).

(1) 2000 c. 8. Section 138BA was inserted by section 34(2) of the Financial Services and Markets Act 2023 (c. 29).
(2) Section 429(2) was amended by section 34(2) of the Financial Services and Markets Act 2023. There are other amendments to that subsection but none is relevant.
(3) Section 428(3) was amended by section 66(3) of the Financial Services and Markets Act 2023.

PRA power to disapply or modify rules in individual cases

2. Section 138BA of FSMA 2000 (disapplication or modification of rules in individual cases) applies to rules made by the PRA except for rules to which subsection (3)(a) or (b) of that section applies.

Applications for permission not to apply rules or to apply rules with modifications

3.—(1) This regulation applies to an application made by any person to the PRA under section 138BA(2) of FSMA 2000—

- (a) for permission not to apply rules specified in regulation 2 (“specified rules”) or to apply specified rules with modifications, or
 - (b) to vary an existing permission.
- (2) The application must set out—
- (a) the rules which the applicant seeks permission not to apply,
 - (b) the modifications of rules sought, or
 - (c) the variation sought.
- (3) An application must—
- (a) be made in such manner as the PRA may direct, and
 - (b) contain, or be accompanied by, such other information or documents as the PRA may reasonably require.
- (4) At any time after receiving the application and before determining it, the PRA may require the applicant to provide it with such further information or documents as it may reasonably require.
- (5) The PRA may require any information provided under this regulation to be provided in such form and verified in such manner as it may reasonably require.
- (6) The PRA may require any documents provided under this regulation to be produced at such place and authenticated in such manner as it may reasonably require.
- (7) Different directions may be given, and different requirements imposed, in relation to different applications or categories of application.

Decisions: written notices

4.—(1) Paragraph (2) applies where the PRA determines an application under subsection (2) of section 138BA of FSMA 2000, or gives a permission under that subsection with the consent of the person concerned.

- (2) The PRA must give the applicant or the person concerned a written notice stating—
- (a) its decision,
 - (b) the conditions (if any) to which the permission is subject,
 - (c) where—
 - (i) the PRA refuses an application under section 138BA(2), or
 - (ii) the PRA gives a permission under section 138BA(2) subject to conditions under section 138BA(4)(a), unless the person concerned consents to those conditions,the reasons on which the decision is based, and
 - (d) if the permission is given, the date on which the permission takes effect.
- (3) Where the PRA revokes or varies a permission under section 138BA(4)(b), it must give the person concerned a written notice stating—

- (a) that the permission is revoked or varied,
- (b) unless the person concerned consents to the revocation or variation (including any conditions to which the permission is subject), the reasons on which the decision is based,
- (c) if the permission is varied, the conditions (if any) to which the permission is subject, and
- (d) the date on which the revocation or variation takes effect.

Right to refer matters to the Tribunal

5. A person may refer the matter to the Tribunal where that person is aggrieved by a decision of the PRA—

- (a) to refuse to give it permission under section 138BA of FSMA 2000 to disapply or modify specified rules,
- (b) to make such permission subject to conditions, or
- (c) to revoke or vary such permission.

Publication of permission not to apply rules or to apply rules with modifications

6.—(1) Subject to paragraph (2), the PRA must publish a relevant notice in the way appearing to the PRA to be best calculated for bringing it to the attention of—

- (a) persons likely to be affected by it, and
- (b) persons who are, in the opinion of the PRA, likely to make an application for a similar permission.

(2) Paragraph (1) does not apply if the PRA is satisfied that it is inappropriate or unnecessary to publish the relevant notice.

(3) In deciding whether it is satisfied as mentioned in subsection (2), the PRA must consider whether the publication of the notice would—

- (a) be detrimental to the stability of the UK financial system;
- (b) prejudice, to an unreasonable degree, the commercial interests of the person concerned or any other member of the person's immediate group;
- (c) be contrary to an international obligation of the United Kingdom.

(4) The PRA may exclude from publication under paragraph (1) such material as the PRA considers appropriate to avoid detrimental effects described in any of sub-paragraphs (a) to (c) of paragraph (3).

(5) In this regulation, “relevant notice” means a written notice given under regulation 4 where—

- (a) the PRA has given a person permission not to apply rules or to apply rules with modifications, or
- (b) the PRA has varied such a permission.

Date

name
name
Two of the Lords Commissioners of His
Majesty's Treasury

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: *The Financial Services and Markets Act 2000 (Disapplication or Modification of Financial Regulator Rules in Individual Cases) Regulations 2024 No. 539*

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for section 138BA of the Financial Services and Markets Act 2000 (“FSMA 2000”) (c. 8) to apply to any rules made by the Prudential Regulation Authority under that Act, except for rules excluded by section 138BA(3). Section 138BA of FSMA 2000 enables a regulator to give a firm permission to disapply or apply with modifications that regulator’s rules on the application of the firm or with the firm’s agreement.

The Regulations also make provision about procedural matters in relation to the giving, variation or revocation of a permission under section 138BA of FSMA 2000.

A full impact assessment has not been produced for these Regulations as no, or no significant, impact on the private, voluntary or public sector is foreseen. A de minimis impact assessment of the effect of these Regulations is available from HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ and is published alongside these Regulations on www.legislation.gov.uk.