



# Financial Services Act 2012

## 2012 CHAPTER 21

### PART 9

#### MISCELLANEOUS

##### *Consumer credit*

#### **107 Power to make further provision about regulation of consumer credit**

- (1) Subsection (2) applies on or at any time after the making, after the passing of this Act, of an order under section 22 of FSMA 2000 which has the effect that an activity (a “transferred activity”)—
- (a) ceases to be an activity in respect of which a licence under section 21 of CCA 1974 is required or would be required but for the exemption conferred by subsection (2), (3) or (4) of that section or paragraph 15(3) of Schedule 3 to FSMA 2000, and
  - (b) becomes a regulated activity for the purposes of FSMA 2000.
- (2) The Treasury may by order do any one or more of the following—
- (a) transfer to the FCA functions of the OFT under any provision of CCA 1974 that remains in force;
  - (b) provide that any specified provision of FSMA 2000 which relates to the powers or duties of the FCA in connection with the failure of any person to comply with a requirement imposed by or under FSMA 2000 is to apply, subject to any specified modifications, in connection with the failure of any person to comply with a requirement imposed by or under a specified provision of CCA 1974;
  - (c) require the FCA to issue a statement of policy in relation to the exercise of powers conferred on it by virtue of paragraph (b);
  - (d) in connection with provision made by virtue of paragraph (b), provide that failure to comply with a specified provision of CCA 1974 no longer constitutes an offence or that a person may not be convicted of an offence under a specified provision of CCA 1974 in respect of an act or omission in a

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*Changes to legislation: Financial Services Act 2012, Section 107 is up to date with all changes known to be in force on or before 21 June 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*

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- case where the FCA has exercised specified powers in relation to that person in respect of that act or omission;
- (e) provide for the transfer to the Treasury of any functions under CCA 1974 previously exercisable by the Secretary of State;
  - (f) provide that functions of the Secretary of State under CCA 1974 are exercisable concurrently with the Treasury;
  - <sup>F1</sup>(g) .....
  - (h) enable local weights and measures authorities to institute proceedings in England and Wales for a relevant offence;
  - (i) enable the Department of Enterprise, Trade and Investment in Northern Ireland to institute proceedings in Northern Ireland for a relevant offence;
  - (j) provide that references in a specified enactment to the FCA's functions under FSMA 2000 include references to its functions resulting from any order under this section.
- (3) If an order under this section makes provision by virtue of subsection (2)(b) enabling the FCA to exercise any of its powers under sections 205 to 206A of FSMA 2000 (disciplinary measures) by reference to an act or omission that constitutes an offence under CCA 1974, the order must also make provision by virtue of subsection (2)(d) ensuring that a person in respect of whom the power has been exercised cannot subsequently be convicted of the offence by reference to the same act or omission.
- (4) In subsection [<sup>F2</sup>(2)(h) and (i)]—
- (a) “relevant regulated activity” means an activity that is a regulated activity for the purposes of FSMA 2000 by virtue of—
    - (i) an order made under section 22(1) of that Act in relation to an investment of a kind falling within paragraph 23 or 23B of Schedule 2 to that Act, or
    - (ii) an order made under section 22(1A)(a) of that Act;
  - (b) “relevant offence” means an offence under FSMA 2000 committed in relation to such an activity.
- (5) The Treasury may make provision by virtue of subsection (2)(i) only with the consent of the Department of Enterprise, Trade and Investment in Northern Ireland.
- (6) On or at any time after the making of an order under section 22 of FSMA 2000 of the kind mentioned in subsection (1), the Treasury may by order—
- (a) exclude the application of any provision of CCA 1974 in relation to a transferred activity, or
  - (b) repeal any provision of CCA 1974 which relates to a transferred activity.
- (7) In exercising their powers under this section, the Treasury must have regard to—
- (a) the importance of securing an appropriate degree of protection for consumers, and
  - (b) the principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction.
- (8) The additional powers conferred by section 115(2) on a person making an order under this Act include power for the Treasury, when making an order under this section—
- (a) to make such consequential provision as the Treasury consider appropriate;

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- (b) to amend any enactment, including any provision of, or made under, this Act.
- (9) The provisions of this section do not limit—
- (a) the powers conferred by section 118 or by section 22 of FSMA 2000, or
  - (b) the powers exercisable under Schedule 21 in connection with the transfer of functions from the OFT.
- (10) In this section—
- “CCA 1974” means the Consumer Credit Act 1974;
  - “consumers” has the meaning given in section 1G of FSMA 2000;
  - “the OFT” means the Office of Fair Trading.

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**Textual Amendments**

- F1** S. 107(2)(g) omitted (1.10.2015) by virtue of [Consumer Rights Act 2015 \(c. 15\)](#), s. 100(5), [Sch. 6 para. 84\(2\)](#); S.I. 2015/1630, art. 3(i) (with art. 8)
- F2** Words in s. 107(4) substituted (1.10.2015) by [Consumer Rights Act 2015 \(c. 15\)](#), s. 100(5), [Sch. 6 para. 84\(3\)](#); S.I. 2015/1630, art. 3(i)

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

- C1** S. 107(6) modified (1.7.2021) by [Financial Services Act 2021 \(c. 22\)](#), [ss. 37, 49\(5\)](#); S.I. 2021/739, [reg. 3\(s\)](#)

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**Commencement Information**

- I1** S. 107 in force at 1.4.2013 by [S.I. 2013/423](#), art. 3, [Sch.](#)

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

- Act power to apply conferred (temp.) by [2014 c. 21 s. 79\(4\)](#)
- Act power to apply conferred (temp.) by [2014 c. 21 s. 81\(10\)](#)