



# Financial Services (Banking Reform) Act 2013

## 2013 CHAPTER 33

### PART 4

#### CONDUCT OF PERSONS WORKING IN FINANCIAL SERVICES SECTOR

##### *Amendments of FSMA 2000*

#### **29 Certification of employees by relevant authorised persons**

After section 63D of FSMA 2000 insert—

##### *“Certification of employees*

#### **63E Certification of employees by relevant authorised persons**

- (1) A relevant authorised person (“A”) must take reasonable care to ensure that no employee of A performs a specified function under an arrangement entered into by A in relation to the carrying on by A of a regulated activity, unless the employee has a valid certificate issued by A under section 63F.
- (2) “Specified function”—
  - (a) in relation to the carrying on of a regulated activity by a PRA-  
authorised person, means a function of a description specified in rules  
made by the FCA or the PRA, and
  - (b) in relation to the carrying on of a regulated activity by any other  
authorised person, means a function of a description specified in rules  
made by the FCA.
- (3) The FCA may specify a description of function under subsection (2)(a) or (b)  
only if, in relation to the carrying on of a regulated activity by a relevant  
authorised person of a particular description—

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*Status: This is the original version (as it was originally enacted).*

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- (a) the function is not a controlled function in relation to the carrying on of that activity by a relevant authorised person of that description, but
  - (b) the FCA is satisfied that the function is nevertheless a significant-harm function.
- (4) The PRA may specify a description of function under subsection (2)(a) only if, in relation to the carrying on of a regulated activity by a relevant PRA-authorised person of a particular description—
  - (a) the function is not a controlled function in relation to the carrying on of that activity by a relevant PRA-authorised person of that description, but
  - (b) the PRA is satisfied that the function is nevertheless a significant-harm function.
- (5) A function is a “significant-harm function”, in relation to the carrying on of a regulated activity by an authorised person, if—
  - (a) the function will require the person performing it to be involved in one or more aspects of the authorised person’s affairs, so far as relating to the activity, and
  - (b) those aspects involve, or might involve, a risk of significant harm to the authorised person or any of its customers.
- (6) Each regulator must—
  - (a) keep under review the exercise of its power under subsection (2) to specify any significant-harm function as a specified function, and
  - (b) exercise that power in a way that it considers will minimise the risk of employees of relevant authorised persons performing significant-harm functions which they are not fit and proper persons to perform.
- (7) Subsection (1) does not apply to an arrangement which allows an employee to perform a function if the question of whether the employee is a fit and proper person to perform the function is reserved under any of the single market directives or the emission allowance auctioning regulation to an authority in a country or territory outside the United Kingdom.
- (8) In this section—
  - “controlled function” has the meaning given by section 59(3);
  - “customer”, in relation to an authorised person, means a person who is using, or who is or may be contemplating using, any of the services provided by the authorised person;
  - “relevant PRA-authorised person” means a PRA-authorised person that is a relevant authorised person.
- (9) In this section any reference to an employee of a person (“A”) includes a reference to a person who—
  - (a) personally provides, or is under an obligation personally to provide, services to A under an arrangement made between A and the person providing the services or another person, and
  - (b) is subject to (or to the right of) supervision, direction or control by A as to the manner in which those services are provided.
- (10) For the meaning of “relevant authorised person”, see section 71A.

### **63F Issuing of certificates**

- (1) A relevant authorised person may issue a certificate to a person under this section only if the authorised person is satisfied that the person is a fit and proper person to perform the function to which the certificate relates.
- (2) In deciding whether the person is a fit and proper person to perform the function, the relevant authorised person must have regard, in particular, to whether the person—
  - (a) has obtained a qualification,
  - (b) has undergone, or is undergoing, training,
  - (c) possesses a level of competence, or
  - (d) has the personal characteristics,required by general rules made by the appropriate regulator in relation to employees performing functions of that kind.
- (3) In subsection (2) “the appropriate regulator” means—
  - (a) in relation to employees of PRA-*authorised persons*, the FCA or the PRA, and
  - (b) in relation to employees of any other authorised person, the FCA.
- (4) A certificate issued by a relevant authorised person to a person under this section must—
  - (a) state that the authorised person is satisfied that the person is a fit and proper person to perform the function to which the certificate relates, and
  - (b) set out the aspects of the affairs of the authorised person in which the person will be involved in performing the function.
- (5) A certificate issued under this section is valid for a period of 12 months beginning with the day on which it is issued.
- (6) If, after having considered whether a person is a fit and proper person to perform a specified function, a relevant authorised person decides not to issue a certificate to the person under this section, the authorised person must give the person a notice in writing stating—
  - (a) what steps (if any) the authorised person proposes to take in relation to the person as a result of the decision, and
  - (b) the reasons for proposing to take those steps.
- (7) A relevant authorised person must maintain a record of every employee who has a valid certificate issued by it under this section.
- (8) Expressions used in this section and in section 63E have the same meaning in this section as they have in that section.”