



Bank of England and Financial Services Act 2016

2016 CHAPTER 14

PART 2

FINANCIAL SERVICES

Conduct of persons working in financial services sector

21 Extension of relevant authorised persons regime to all authorised persons

Schedule 4 makes provision extending to authorised persons provisions of Part 5 of the Financial Services and Markets Act 2000 (performance of regulated activities) which now apply only to relevant authorised persons.

22 Rules about controlled functions: power to make transitional provision

- (1) The Financial Services and Markets Act 2000 is amended as follows.
- (2) After section 59A insert—

“59AB Specifying functions as controlled functions: transitional provision

- (1) In relation to rules made by the FCA or the PRA under section 59, the power conferred by section 137T(c) to make transitional provision includes in particular power—
 - (a) to provide for anything done under this Part in relation to controlled functions of a particular description to be treated as having been done in relation to controlled functions of a different description;
 - (b) to provide for anything done under this Part (including any application or order made, any requirement imposed and any approval or notice given) to cease to have effect, to continue to have effect, or

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- to continue to have effect with modifications, or subject to time limits or conditions;
 - (c) to provide for rules made by the regulator making the rules under section 59 to apply with modifications;
 - (d) to make saving provision.
- (2) The Treasury may by regulations make whatever incidental, consequential, transitional, supplemental or saving provision the Treasury consider appropriate in connection with the making of rules by the FCA or the PRA under section 59.
- (3) Regulations under subsection (2) may—
- (a) confer functions on the FCA or the PRA (including the function of making rules);
 - (b) modify, exclude or apply (with or without modifications) any primary or subordinate legislation (including any provision of, or made under, this Act)."
- (3) In section 429(2B) (regulations subject to affirmative procedure) for "contain" substitute "contain—
- (a) provision made under section 59AB(2) which modifies, excludes or applies with modifications any provision of primary legislation;".

23 Administration of senior managers regime

- (1) The Financial Services and Markets Act 2000 is amended as follows.
- (2) In section 62A(4) (changes in responsibilities of senior managers), at the end of the definition of "the appropriate regulator" insert ", except that the reference in section 60(9)(b) to subsection (3) is to be treated as a reference to subsection (2) of this section".
- (3) In section 63ZA (variation of senior manager's approval at request of authorised person)—
- (a) in subsection (1), for "application for approval under section 59 is granted" substitute "approval under section 59 has effect";
 - (b) after subsection (1) insert—
 - "(1A) Where an approval under section 59 has effect for a limited period, the authorised person concerned may apply to the appropriate regulator to vary the approval by—
 - (a) varying the period for which the approval is to have effect, or
 - (b) removing the limit on the period for which the approval is to have effect.";
 - (c) in subsection (2)(a) the words from "whichever" to the end become subparagraph (i), and at the end of that sub-paragraph insert ", or
 - (ii) if the condition has been varied before (under this section or section 63ZB), whichever of the FCA or the PRA last varied it;";
 - (d) after subsection (2)(b) insert—
 - "(c) in the case of an application for variation of an approval in a way described in subsection (1A), means—

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- (i) whichever of the FCA or the PRA imposed the limit on the period for which the approval has effect, or
 - (ii) if the limit has been varied before (under this section or section 63ZB), whichever of the FCA or the PRA last varied it.”;
 - (e) in subsection (3) for “which was imposed” substitute “, or a limit on the period for which an approval has effect, which was imposed (or last varied)”;
 - (f) after subsection (7) insert—
 - “(7A) An application may not be made under this section for the variation or removal of a condition, or a limit on the period for which an approval has effect, where the condition or limit has effect by virtue of section 66.”;
 - (g) in subsection (8), after “section 62” insert “, but as if in subsections (2), (3) and (4) the words “, or to grant the application subject to conditions or for a limited period (or both)” were omitted”.
- (4) In section 63ZB (variation of senior manager’s approval on initiative of regulator)—
 - (a) omit the “or” at the end of subsection (3)(c);
 - (b) at the beginning of subsection (3)(d) insert “where the approval has effect for an unlimited period.”;
 - (c) at the end of subsection (3)(d) insert “, or
 - (e) where the approval has effect for a limited period, varying that period or removing the limit on the period for which the approval is to have effect.”;
 - (d) after subsection (4) insert—
 - “(4A) Before one regulator varies an approval which was last varied by the other regulator, it must consult the other regulator.”
- (5) In section 204A (meaning of appropriate regulator)—
 - (a) in subsection (3)(d) for the words from “the authorised person” to the end substitute “the revised statement of responsibilities is to be provided to the PRA only.”;
 - (b) in subsection (3A), after paragraph (b) insert—
 - “(ba) a requirement under section 62A(2) where the revised statement of responsibilities is to be provided to the FCA and the PRA.”.

24 Rules of conduct

- (1) The Financial Services and Markets Act 2000 is amended as follows.
- (2) In section 64A (power of FCA and PRA to make rules of conduct)—
 - (a) in subsection (1) after paragraph (b) insert—
 - “(c) persons who are directors of authorised persons.”;
 - (b) in subsection (2) after paragraph (c) insert—
 - “(d) persons who are directors of PRA-authorised persons.”;
 - (c) omit the “and” at the end of subsection (5)(a);
 - (d) after subsection (5)(a) insert—

- “(ab) in the case of a person who is a director of an authorised person but is not an approved person, that authorised person, and”;
- (e) after subsection (6) insert—
- “(7) In this section “director”, in relation to an authorised person, means a member of the board of directors, or if there is no such board, the equivalent body responsible for the management of the authorised person concerned.”
- (3) In section 64B (responsibilities of authorised persons in relation to rules of conduct)—
- (a) omit the “and” at the end of subsection (4)(a);
- (b) at the end of subsection (4)(b) insert “, and
- (c) any person who is a director of the authorised person.”;
- (c) omit subsection (5);
- (d) after subsection (6) insert—
- “(6A) In this section “director”, in relation to an authorised person, has the same meaning as in section 64A.”

25 Misconduct

- (1) The Financial Services and Markets Act 2000 is amended as follows.
- (2) In section 66A (misconduct: action by FCA)—
- (a) omit the “or” at the end of subsection (2)(b)(i);
- (b) at the end of subsection (2)(b)(ii) insert “, or
- (iii) a director of an authorised person.”;
- (c) omit the “or” at the end of subsection (3)(b)(i);
- (d) at the end of subsection (3)(b)(ii) insert “, or
- (iii) a director of the authorised person.”;
- (e) omit the “and” at the end of subsection (5)(b);
- (f) at the end of subsection (5)(c) insert “, and
- (d) the senior manager did not take such steps as a person in the senior manager’s position could reasonably be expected to take to avoid the contravention occurring (or continuing).”;
- (g) omit subsection (6);
- (h) in subsection (8) after the definition of “approved person” insert—
- ““director”, in relation to an authorised person, has the same meaning as in section 64A;”.
- (3) In section 66B (misconduct: action by PRA)—
- (a) omit the “or” at the end of subsection (2)(b)(i);
- (b) at the end of subsection (2)(b)(ii) insert “, or
- (iii) a director of a PRA-authorised person.”;
- (c) omit the “or” at the end of subsection (3)(b)(i);
- (d) at the end of subsection (3)(b)(ii) insert “, or
- (iii) a director of the PRA-authorised person.”;
- (e) omit the “and” at the end of subsection (5)(b);
- (f) at the end of subsection (5)(c) insert “, and

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- (d) the senior manager did not take such steps as a person in the senior manager’s position could reasonably be expected to take to avoid the contravention occurring (or continuing).”;
- (g) omit subsection (6);
- (h) in subsection (8) after the definition of “approved person” insert—
““director”, in relation to an authorised person, has the same meaning as in section 64A;”.

26 Decisions causing a financial institution to fail: meaning of insolvency

(1) Section 37 of the Financial Services (Banking Reform) Act 2013 (interpretation of section 36) is amended as follows.

(2) In subsection (10)—

- (a) after paragraph (c) insert—
 - “(ca) building society insolvency,
 - (cb) investment bank insolvency,”;
- (b) after paragraph (e) insert—
 - “(ea) building society special administration,”.

(3) After subsection (10) insert—

“(11) For the purposes of subsection (10)—

“bank administration” has the same meaning as in the Banking Act 2009 (see section 136 of that Act);

“bank insolvency” has the same meaning as in that Act (see section 90 of that Act);

“building society insolvency” and “building society special administration” have the same meaning as in the Building Societies Act 1986 (see section 119 of that Act);

“investment bank insolvency” means any procedure established by regulations under section 233 of the Banking Act 2009.”