
STATUTORY INSTRUMENTS

2013 No. 161

**The Financial Services Act 2012 (Transitional Provisions)
(Rules and Miscellaneous Provisions) Order 2013**

PART 3

Exercise of functions by the FCA before the commencement date

Appointment of persons to discharge certain functions before the commencement date

5.—(1) The Authority may appoint one or more persons to discharge a function to which this article applies.

(2) An appointment must be made—

- (a) in writing; and
- (b) with the prior written approval of the Treasury.

(3) The persons appointed may—

- (a) discharge functions to which this article applies as if they were the governing body of the FCA;
- (b) determine their own procedure, subject to the terms and conditions of their appointment.

(4) The function of the Authority under paragraph (1) is to be treated as a function conferred on the Authority by or under FSMA 2000.

(5) An appointment under this article terminates on the earlier of—

- (a) the commencement date; and
- (b) the date specified in the appointment (if any).

Functions which may be discharged by appointed persons

6.—(1) Article 5 applies to—

- (a) the function of the FCA of designating a relevant instrument under article 2;
- (b) any other function of the FCA which is exercisable before the commencement date (“a pre-commencement function”);
- (c) the functions of the Authority of making rules under, or by virtue of—
 - (i) the Regulated Covered Bond Regulations 2008⁽¹⁾;
 - (ii) the Payment Services Regulations 2009⁽²⁾;
 - (iii) the Electronic Money Regulations 2011⁽³⁾;

(1) S.I. 2008/346.
(2) S.I. 2009/209.
(3) S.I. 2011/99.

- (d) the functions of the Authority of giving guidance in relation to rules made, or in relation to functions of the Authority, under or by virtue of an enactment listed in sub-paragraph (c).
- (2) But article 5 only applies to the functions of making of rules, and of giving guidance, under or by virtue of an enactment listed in paragraph (1)(c) if the rules or guidance come into effect on or after the commencement date.
- (3) Paragraph (1)(c) and (d) and the enactments listed in paragraph (1)(c) apply as if references to the Authority were references to the FCA.
- (4) For the purposes of paragraph (3) and the exercise of functions listed in paragraph (1)(c) and (d)—
- (a) references to provisions of FSMA 2000 in the enactments listed in paragraph (1)(c) are to be read as references to those provisions as amended by the 2012 Act or (as the case may be) as repealed and re-enacted by the 2012 Act;
 - (b) the 2012 Act is to be treated as if it were fully in force for that purpose; and
 - (c) modifications of those provisions by those enactments are to be construed accordingly.

Discharge of functions by appointed persons

- 7.—(1) Anything done before the commencement date—
- (a) in discharge of a function to which article 5 applies, and
 - (b) by persons appointed in accordance with that article,
- is to be treated as if it had been done by the FCA acting through its governing body.
- (2) Paragraph 7 of Schedule 20 to the 2012 Act (consultation) applies to the discharge of a function listed in article 6(1)(c) or (d) as it applies to the making of rules and the issuing of guidance under a provision of Part 5 or 6 of the 2012 Act or an amendment of FSMA 2000 made by any provision of the 2012 Act.
- (3) The following provisions of Schedule 1ZA to FSMA 2000 apply to persons appointed in accordance with article 5, or meetings of such persons, as if the persons were members of the governing body of the FCA—
- (a) paragraph 10 (publication of records of meetings of the governing body);
 - (b) paragraph 16 (status); and
 - (c) paragraph 25 (exemption from liability in damages).
- (4) For the purpose of paragraph (3), Schedule 3 to the 2012 Act is to be treated as if it were in force, but only to the extent that it—
- (a) substitutes the provisions listed in paragraph (3); and
 - (b) is not already in force in respect of those provisions.

Rules replicating a pre-commencement threshold condition

- 8.—(1) This article applies to rules made by the FCA—
- (a) before the commencement date;
 - (b) which come into force on the commencement date; and
 - (c) which make provision similar to any provision made in Schedule 6 to FSMA 2000 as it applied immediately before the commencement date.

(2) Sections 138I (consultation by the FCA) and 138K (consultation: mutual societies) of FSMA 2000(4) do not apply to the making of the rules.