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STATUTORY INSTRUMENTS

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**2013 No. 1881**

**The Financial Services and Markets Act 2000  
(Regulated Activities) (Amendment) (No.2) Order 2013**

**PART 8**

Transitional provisions

**CHAPTER 2**

Licensing etc.

**Meaning of “relevant person” in Chapter 2**

- 30.** In this Chapter, “relevant person” means a person who—
- (a) immediately before 1st April 2014 held a licence under the 1974 Act, and
  - (b) on 1st April 2014 has a Part 4A permission to carry on a regulated activity by virtue of this Order (regardless of whether the person had permission via other means).

**Applications for a standard licence where no determination made before 1st April 2014**

- 31.**—(1) Paragraphs (3) to (9) apply if, before 1st April 2014—
- (a) the OFT received an application under section 24A of the 1974 Act (applications for standard licences)(1) for a standard licence,
  - (b) the applicant (“A”) had not withdrawn the application, and
  - (c) the OFT had not determined whether to issue a licence in accordance with the application.
- (2) It is immaterial for the purposes of this article whether the OFT had, before 1st April 2014, given notice to A under section 27 of the 1974 Act (determination of applications)(2) that the OFT was minded to refuse A’s application.
- (3) The application is to be treated as if it had been made to the appropriate regulator—
- (a) if A is an authorised person, and the appropriate regulator is the PRA, under section 55I of the Act (variation by PRA at request of authorised person)(3);
  - (b) if A is not an authorised person, under section 55A of the Act (application for permission) (4);
  - (c) if A is an authorised person and the appropriate regulator is the FCA, under section 55H of the Act (variation by the FCA at request of authorised person)(5).
- (4) The application is to be treated as relating to the following regulated activities—

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(1) Section 24A was inserted by the Consumer Credit Act 2006, section 28.  
(2) Section 27 was amended by the Enterprise Act 2002, Schedule 25, paragraph 6(9).  
(3) Section 55I was inserted by the Financial Services Act 2012, section 11.  
(4) Section 55A was inserted by the Financial Services Act 2012, section 11.  
(5) Section 55H was inserted by the Financial Services Act 2012, section 11.

- (a) if A's application related to the carrying on of an ancillary credit business in so far as it comprised or related to credit brokerage (within the meaning of the 1974 Act), the regulated activity of the kind specified by article 36A of the Regulated Activities Order (credit broking),
  - (b) if—
    - (i) A's application related to the carrying on of an ancillary credit business in so far as it comprised or related to the activity of debt-administration (within the meaning of the 1974 Act), and
    - (ii) A—
      - (aa) indicated in A's application that A envisaged carrying on a business in a manner which would, if carried on after 1st April 2014, involve the carrying on of an activity of the kind specified by article 36H of the Regulated Activities Order (operating an electronic system in relation to lending), or
      - (bb) had, before 1st April 2014, given notice to the FCA of A's intention to carry on such a business,
- a regulated activity of the kind specified by article 36H of the Regulated Activities Order,
- (c) to the extent that A's application related to any other activity, those regulated activities which are activities which were described in the application.
- (5) If—
- (a) A's application related to the carrying on of an ancillary credit business in so far as it comprised or related to the activity of debt-administration (within the meaning of the 1974 Act),
  - (b) A's application is not, by virtue of paragraph (4), treated as relating to a regulated activity of the kind specified by article 36H of the Regulated Activities Order, and
  - (c) A, before 1st June 2014, gives notice to the FCA of A's intention to carry on that activity,
- the application is, from the date on which the FCA receives the notice, to be treated as relating to that activity, in addition to any activity to which the application is to be treated as relating to under paragraph (4).
- (6) Any description of business specified in A's application is to be treated for the purposes of Part 4A of the Act as forming part of A's application.
- (7) Section 55U(1) to (4) of the Act (applications under Part 4A)(6) does not apply to A's application.
- (8) For the purposes of section 55V of the Act (determination of applications)(7), the appropriate regulator is to be treated as having received the application on 1st April 2014.
- (9) For the purpose of paragraph (4), it is the nature of the activities in relation to which a licence is sought that matters, not how they are described in the application.

**Applications for a standard licence where determination has been made but appeal period has not ended**

32.—(1) Paragraphs (2) to (4) apply if, before 1st April 2014—

- (a) the OFT had given a notice to a person ("A") of its determination to refuse to issue a standard licence to A in accordance with A's application, and
- (b) the appeal period in relation to that decision had not ended.

(6) Section 55U was inserted by the Financial Services Act 2012, section 11.

(7) Section 55V was inserted by the Financial Services Act 2012, section 11.

- (2) The notice is to be treated as—
- (a) if A does not have a Part 4A permission, a decision notice given under section 55X(4)(8) of the Act by the FCA to A of the decision to refuse A's application for Part 4A permission;
  - (b) in any other case, a decision notice given under section 55X(4) of the Act of the decision of the appropriate regulator to refuse A's application to vary A's Part 4A permission.
- (3) But if A had, before 1st April 2014, submitted a notice of appeal to the First-tier Tribunal under section 41 of the 1974 Act (appeals to First-tier Tribunal under Part 3)(9) —
- (a) section 55Z3 of the Act (right to refer matters to the Tribunal)(10) does not apply, and
  - (b) for the purposes of section 55V(4)(11) of the Act, the appropriate regulator is not to be taken as having determined the application.
- (4) The notice has effect subject to any necessary modifications.

#### **Variation of licence at request of licensee where no determination made before 1st April 2014**

**33.**—(1) Paragraphs (3) to (6) apply if, before 1st April 2014—

- (a) the OFT received an application under section 30(1) of the 1974 Act (variation by request)(12) for a variation of a standard licence,
- (b) the applicant (“A”) had not withdrawn the application,
- (c) the OFT had not determined whether to vary the licence in accordance with the application, and

A is a relevant person.

(2) It is immaterial for the purposes of this article whether the OFT had, before 1st April 2014, given notice to A under section 30(4) of the 1974 Act (variation by request) that the OFT was minded to refuse A's application.

(3) The application is to be treated as if it had been made to the appropriate regulator under section 55I(13) or 55H(14) of the Act (as the case may be).

(4) The application has effect subject to any necessary modifications.

(5) Section 55U(1) to (4) of the Act (applications under Part 4A) does not apply to A's application.

(6) For the purposes of section 55V of the Act (determination of applications), the appropriate regulator is to be treated as having received the application on 1st April 2014.

#### **Variation of licence at request of licensee where determination has been made but appeal period has not ended**

**34.**—(1) Paragraphs (2) to (4) apply if, before 1st April 2014—

- (a) the OFT had given notice to a person (“A”) of its decision to refuse to vary a standard licence in accordance with an application made by A,
- (b) the appeal period in relation to that determination had not ended, and

A is a relevant person.

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(8) Section 55X was inserted by the Financial Services Act 2012, section 11.

(9) Section 41 was amended by the Enterprise Act 2002, Schedule 25, paragraph 6(21), the Consumer Credit Act 2006, sections 33, 43, 53 and 56 and Schedule 34, paragraph 27(1)(b), and [S.I. 2001/3649](#) and [2009/1835](#).

(10) Section 55Z3 was inserted by the Financial Services Act 2012, section 11.

(11) Section 55V was inserted by the Financial Services Act 2012, section 11.

(12) Section 30(1) was amended by the Enterprise Act 2002, Schedule 25, paragraph 6(12), and the Consumer Credit Act 2006, section 31(1).

(13) Section 55I was inserted by the Financial Services Act 2012, section 11.

(14) Section 55H was inserted by the Financial Services Act 2012, section 11.

(2) The notice is to be treated as a decision notice under section 55X(4) of the Act of the decision of the appropriate regulator to refuse A's application to vary A's Part 4A permission.

(3) But if A had, before 1st April 2014, submitted a notice of appeal to the First-tier Tribunal under section 41 of the 1974 Act (appeals to First-tier Tribunal under Part 3), section 55Z3 of the Act (right to refer matters to the Tribunal) does not apply.

(4) The notice has effect subject to any necessary modifications.

### **Compulsory variation of a licence where no determination to vary made before 1st April 2014**

**35.**—(1) Paragraphs (2) to (4) apply if, before 1st April 2014—

- (a) the OFT had given notice to a person ("A") under section 31(2) of the 1974 Act (compulsory variation)(**15**) that it is minded to vary the terms of A's licence,
- (b) the OFT had not determined to vary A's licence under that section, and

A is a relevant person.

(2) The notice is to be treated as a written notice given under section 55Y(4) of the Act by the FCA of a proposal to vary A's Part 4A permission (except for subsections (5) and (6) of section 55Y which do not apply).

(3) The notice has effect subject to any necessary modifications.

(4) If the period for making representations under section 34 of the 1974 Act in connection with that notice had not expired before 1st April 2014, subsections (1) and (2) of that section continue to apply as if—

- (a) in subsection (1), references to the OFT (apart from the first reference) were references to the FCA or, before 1st April 2014, the OFT;
- (b) in subsection (2), the reference to the OFT was to the FCA.

### **Compulsory variation of a licence where determination to vary made before 1st April 2014**

**36.**—(1) Paragraphs (2) to (4) apply if, before 1st April 2014—

- (a) the OFT had given notice of its determination under section 31 of the 1974 Act(**16**) to vary the terms of the licence of a person ("A"),
- (b) the appeal period in relation to that determination had not ended, and

A is a relevant person.

(2) The notice is to be treated as a written notice given under section 55Y(7) of the Act by the FCA of its decision to vary A's Part 4A permission (except for subsection (9) of section 55Y which does not apply).

(3) But if A had, before 1st April 2014, submitted a notice of appeal to the First-tier Tribunal under section 41 of the 1974 Act (appeals to First-tier Tribunal under Part 3), section 55Z3 of the Act (right to refer matters to the Tribunal) does not apply.

(4) The notice has effect subject to any necessary modifications.

### **Revocation etc. of licence where no determination made before 1st April 2014**

**37.**—(1) Paragraphs (3) to (5) apply if, before 1st April 2014—

(15) Section 31(2) was amended by the Enterprise Act 2002, Schedule 25, paragraph 6(13).

(16) Section 31 was amended by the Enterprise Act 2002, Schedule 25, paragraph 6(13), and the Consumer Credit Act 2006, sections 31(2) to (4), 32(4) and 34(4) and (5).

- (a) the OFT had given a notice under section 27 of the 1974 Act (determination of applications)(17) to a person (“A”) that it is minded to refuse A’s application to renew A’s standard licence,
- (b) the OFT had not determined to refuse to renew A’s licence, and

A is a relevant person.

(2) Paragraphs (3) and (4) apply if, before 1st April 2014—

- (a) the OFT had given a notice under section 32(2) of the 1974 Act (revocation of a standard licence)(18) to a person (“A”),
- (b) the OFT had not determined to revoke A’s licence under that section, and

A is a relevant person.

(3) The notice is to be treated as—

- (a) if A has Part 4A permission only by virtue of this Order, a warning notice given under section 55Z(1)(19) of the Act by the FCA to A of the proposal by the FCA to cancel A’s Part 4A permission (except for the purposes of section 387 of the Act (warning notices)(20) which does not apply);
- (b) in any other case, a written notice under section 55Y(4) of the Act of the proposal by the FCA to vary A’s Part 4A permission (except for subsections (5) and (6) of section 55Y which do not apply).

(4) The notice has effect subject to any necessary modifications.

(5) If the period for making representations under section 34 of the 1974 Act in connection with that notice had not expired before 1st April 2014, subsections (1) and (2) of that section continue to apply as if—

- (a) in subsection (1), references to the OFT (apart from the first reference) were references to the FCA or, before 1st April 2014, the OFT;
- (b) in subsection (2), the reference to the OFT was to the FCA.

#### **Revocation etc. of licence where determination made before 1st April 2014**

**38.**—(1) Paragraphs (3) to (5) apply if, before 1st April 2014—

- (a) the OFT had given notice of its determination under section 27 of the 1974 Act not to renew the standard licence of a person (“A”),
- (b) the appeal period in relation to that determination had not ended, and

A is a relevant person.

(2) Paragraphs (3) to (5) apply if, before 1st April 2014—

- (a) the OFT had given notice of its determination under section 32 of the 1974 Act to revoke the standard licence of a person (“A”),
- (b) the appeal period in relation to that determination had not ended, and

A is a relevant person.

(3) The notice is to be treated as—

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(17) Section 27 is applied for the purposes of applications to renew a licence by the 1974 Act, section 29.

(18) Section 32 was amended by the Enterprise Act 2002, Schedule 25, paragraph 6(14), the Consumer Credit Act 2006, section 32(5) and (6), and the Financial Services Act 2012, section 108(2).

(19) Section 55Z was inserted by the Financial Services Act 2012, section 11.

(20) Section 387 was amended by the Financial Services Act 2012, Schedule 9, paragraph 26.

- (a) if A has Part 4A permission only by virtue of this Order, a decision notice given under section 55Z(2) of the Act by the FCA to A of the decision by the FCA to cancel A's Part 4A permission;
  - (b) in any other case, a written notice under section 55Y(7) of the Act of the decision of the FCA to vary A's Part 4A permission (except for subsection (9) of section 55Y which does not apply).
- (4) But if A had, before 1st April 2014, submitted a notice of appeal to the First-tier Tribunal under section 41 of the 1974 Act (appeals to First-tier Tribunal under Part 3), section 55Z3 of the Act (right to refer matters to the Tribunal) does not apply.
- (5) The notice has effect subject to any necessary modifications.

### **Suspension of licence where determination made before 1st April 2014 but not confirmed**

**39.**—(1) Paragraphs (2) to (4) apply if, before 1st April 2014—

- (a) the OFT had given a notice to a person (“A”) under section 32A(2) of the 1974 Act (suspension of a standard licence)(**21**) that it is suspending A's licence,
- (b) the OFT had not, under section 34ZA of the 1974 Act (representations to OFT: suspension under section 32A) determined whether or not to confirm such a decision,
- (c) the suspension had not taken effect, and

A is a relevant person.

(2) The notice is to be treated as—

- (a) if A has Part 4A permission only by virtue of this Order—
  - (i) a written notice under section 55Y(4) of the Act of the decision of the FCA to vary A's Part 4A permission (except for subsections (5) and (6) of section 55Y which do not apply), and
  - (ii) a warning notice given under section 55Z(1) of the Act by the FCA to A of the proposal by the FCA to cancel A's Part 4A permission (except for the purpose of section 387 which does not apply);
- (b) in any other case, a written notice under section 55Y(4) of the Act of the decision of the FCA to vary A's Part 4A permission (except for subsections (5) and (6) of section 55Y which do not apply).

(3) The notice has effect subject to any necessary modifications.

(4) If the period for making representations under section 34ZA of the 1974 Act in connection with that notice had not expired before 1st April 2014, subsections (1) and (2) of that section continue to apply as if—

- (a) in subsection (1) each reference to the OFT (apart from the first reference) were a reference to the FCA or, before 1st April 2014, the OFT;
- (b) in subsection (2)—
  - (i) the reference to the OFT was to the FCA;
  - (ii) the words from “reconsider its determination” to “doing so must” were omitted.

### **Suspension of licence where determination made before 1st April 2014 and confirmed**

**40.**—(1) Paragraphs (2) to (4) apply if, before 1st April 2014—

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(21) Sections 32A and 34Z were inserted by the Financial Services Act 2012, section 108.

- (a) the OFT had given a notice to a person (“A”) under section 34ZA of the 1974 Act (representations to OFT: suspension under section 32A) of its determination to confirm a decision to suspend A’s licence under section 32A of that Act,
- (b) that determination had not taken effect, and

A is a relevant person.

(2) The notice is to be treated as—

(a) if A has Part 4A permission only by virtue of this Order—

- (i) a written notice under section 55Y(7) of the Act of the decision of the FCA to vary A’s Part 4A permission (except for subsection (9) of section 55Y which does not apply), and
- (ii) a decision notice given under section 55Z(2) of the Act by the FCA of the decision by the FCA to cancel A’s Part 4A permission;

(b) in any other case, a written notice under section 55Y(7) of the Act of the decision of the FCA to vary A’s Part 4A permission (except for subsection (9) of section 55Y which does not apply).

(3) But if A had, before 1st April 2014, submitted a notice of appeal to the First-tier Tribunal under section 41 of the 1974 Act (appeals to First-tier Tribunal under Part 3), section 55Z3 of the Act (right to refer matters to the Tribunal) does not apply.

(4) The notice has effect subject to any necessary modifications.

#### **Imposition of requirements etc. where no determination made before 1st April 2014**

**41.**—(1) Paragraphs (2) to (5) apply if, before 1st April 2014—

- (a) the OFT had given a notice under section 33D(2) of the 1974 Act (notice of intention of OFT to impose requirements on licensee)<sup>(22)</sup> to a person (“A”) that the OFT is minded to make a determination to impose a requirement on A under section 33A of the 1974 Act<sup>(23)</sup> or to vary or revoke a requirement imposed under section 33A of that Act,
- (b) the OFT had not determined to impose a requirement on A or to vary or revoke a requirement imposed on A, and

A is a relevant person.

(2) The notice is to be treated as written notice under section 55Y(4) of the Act of a proposal by the FCA to impose a requirement on A or to vary or to cancel a requirement (except for subsections (5) and (6) of section 55Y which do not apply).

(3) The notice has effect subject to any necessary modifications.

(4) In deciding whether to impose a requirement on A, the FCA must have regard to the guidance prepared by the OFT under section 33E of the 1974 Act in force immediately before 1st April 2014.

(5) If the period for making representations under section 34 of the 1974 Act in connection with that notice had not expired before 1st April 2014, subsections (1) and (2) of that section continue to apply as if—

- (a) in subsection (1), references to the OFT (apart from the first reference) were references to the FCA or, before 1st April 2014, the OFT;
- (b) in subsection (2), the reference to the OFT was to the FCA.

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<sup>(22)</sup> Inserted by the Consumer Credit Act 2006, section 41.

<sup>(23)</sup> Sections 33A to 33E inserted by the Consumer Credit Act 2006, sections 38 to 41, and amended by the Financial Services Act 2012, section 107.

**Imposition of requirements etc. where determination made but appeal period has not ended**

**42.**—(1) Paragraphs (2) to (4) apply if, before 1st April 2014—

- (a) the OFT had given notice to a person (“A”) under section 33D of the 1974 Act of its determination to impose a requirement on A under section 33A of the 1974 Act or to vary or revoke a requirement imposed under section 33A of that Act,
- (b) the appeal period in relation to that determination had not ended, and

A is a relevant person.

(2) The notice is to be treated as written notice under section 55Y(7) of the Act of the decision by the FCA under section 55L of the Act to impose a requirement on A or to vary or to cancel a requirement (except for subsection (9) of section 55Y which does not apply).

(3) But if A had, before 1st April 2014, submitted a notice of appeal to the First-tier Tribunal under section 41 of the 1974 Act (appeals to First-tier Tribunal under Part 3), section 55Z3 of the Act (right to refer matters to the Tribunal) does not apply.

(4) The notice has effect subject to any necessary modifications.

**Failure to comply with information requirement**

**43.**—(1) Paragraph (2) applies if, before 1st April 2014, a relevant person (“A”) had failed to do something A was required to do by virtue of section 36B or 36C of the 1974 Act (power of OFT to require information or to require access to premises)(**24**).

(2) Section 36E of the 1974 Act (failure to comply with information requirement) continues to apply in connection with A’s failure as if the reference to the OFT were a reference to the FCA.

**Civil penalties – where no determination made before 1st April 2014**

**44.**—(1) Paragraphs (2) to (7) apply if, before 1st April 2014—

- (a) the OFT had given a notice under section 39B(1) of the 1974 Act (notice that OFT is minded to impose a civil penalty)(**25**) to a person (“A”) that it is minded to impose a penalty on A under section 39A of the 1974 Act (power to impose civil penalties)(**26**), and
- (b) the OFT had not before 1st April 2014—
  - (i) given A a penalty notice under section 39A of the 1974 Act, or
  - (ii) given notice to A under section 34 of the 1974 Act of its determination not to give such a penalty notice.

(2) The notice is to be treated as a warning notice given by the FCA to A under section 207(1)(b) of the Act(**27**) (except for the purposes of sections 210 (statements of policy) and 387 (warning notices) which do not apply).

(3) The notice has effect subject to any necessary modifications.

(4) For the purposes of this article, each reference in Part 14 of the Act and any provision made under Part 14 of the Act to an “authorised person” is to be treated as including a reference to A.

(5) If the period for making representations under section 34 of the 1974 Act in connection with that notice had not expired before 1st April 2014, subsections (1) and (2) of that section continue to apply as if—

(24) Section 36B was inserted by the Consumer Credit Act 2006, section 46. Section 36C was inserted by section 47 of that Act.

(25) Inserted by the Consumer Credit Act 2006, section 53.

(26) Inserted by the Consumer Credit Act 2006, section 52.

(27) Amended by the Financial Services Act 2010, Schedule 2, paragraphs 1 and 18, and the Financial Services Act 2012, Schedule 9, paragraphs 1 and 14.



- (a) in subsection (1), references to the OFT (apart from the first reference) were references to the FCA or, before 1st April 2014, the OFT;
  - (b) in subsection (2), the reference to the OFT was to the FCA.
- (6) In determining what if any financial penalty to impose on A, the FCA must have regard to—
- (a) any penalty or fine that has been imposed on A by another body in relation to the conduct giving rise to the possible imposition of the penalty;
  - (b) other steps the OFT or FCA has taken, or the FCA might take, in relation to that conduct;
  - (c) the statement of policy prepared by the OFT under section 39C of the 1974 Act<sup>(28)</sup> as most recently published at the time the conduct occurred.
- (7) The financial penalty imposed on A by the FCA in relation to each failure to comply with a requirement may not exceed £50,000.
- (8) Section 210 of the Act (statement of policy) does not apply to a penalty imposed by the FCA by virtue of this article.

#### **Civil penalties – where determination made but appeal period has not ended**

- 45.—(1) Paragraphs (2) to (5) apply if, before 1st April 2014—
- (a) the OFT had given A a penalty notice under section 39A of the 1974 Act, and
  - (b) the appeal period in relation to that notice had not expired.
- (2) The notice is to be treated as a decision notice given by the FCA to A under section 208(1) (b) of the Act<sup>(29)</sup> (except for the purposes of section 210 which does not apply).
- (3) But if A has, before 1st April 2014, submitted a notice of appeal to the First-tier Tribunal under section 41 of the 1974 Act (appeals to First-tier Tribunal under Part 3), section 208(4) of the Act (right to refer matters to the Tribunal) does not apply.
- (4) The notice has effect subject to any necessary modifications.
- (5) For the purposes of this article, each reference in Part 14 of the Act (disciplinary measures) and any provision made under Part 14 of the Act to an “authorised person” is to be treated as including a reference to A.

#### **Civil penalties – where determination made before 1st April 2014 and penalty due**

- 46.—(1) Paragraphs (2) to (4) apply if, before 1st April 2014—
- (a) the OFT had given A a penalty notice under section 39A of the 1974 Act<sup>(30)</sup>, and
  - (b) the appeal period in relation to that notice had expired.
- (2) The penalty is payable to the FCA (rather than the OFT).
- (3) If a defaulter (within the meaning of section 39A of the 1974 Act) had not paid to the OFT before 1st April 2014 the penalty imposed under that section—
- (a) the defaulter must pay the unpaid balance to the FCA;
  - (b) section 39A(5) of the 1974 Act continues to apply to the defaulter with the following modifications—
    - (i) omit “to the OFT”;
    - (ii) the reference to the OFT in paragraph (b) is to be treated as a reference to the FCA.

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<sup>(28)</sup> Inserted by the Consumer Credit Act 2006, section 54.

<sup>(29)</sup> Amended by the Financial Services Act 2010, Schedule 2, paragraphs 1 and 19, and the Financial Services Act 2012, Schedule 9, paragraphs 1 and 15.

<sup>(30)</sup> Inserted by the Consumer Credit Act 2006, section 52.

- (4) For the purposes of Part 3 of Schedule 1ZA to the Act (penalties and fees)(31)—
- (a) any amounts received by the FCA by virtue of this article are to be treated as amounts received by way of penalties imposed under the Act;
  - (b) any expenses incurred by the FCA in connection with the recovery of penalties due to it by virtue of this article are to be treated as incurred in connection with the recovery of penalties imposed under the Act.

#### **Civil penalties – where no formal action taken before 1st April 2014**

- 47.—(1) Paragraphs (2) to (6) apply if—
- (a) the FCA is satisfied that a person (“A”) had, before 1st April 2014, failed to comply with a requirement imposed on A under section 33A, 33B or 36A of the 1974 Act(32), and
  - (b) the OFT had not, before 1st April 2014, given a notice under section 39B(1) of the 1974 Act to A that the OFT was minded to impose a penalty on A under section 39A of the 1974 Act.
- (2) The FCA may impose a penalty, in respect of the failure, on A under section 206 of the Act (financial penalties)(33).
- (3) For the purposes of this article, each reference in Part 14 of the Act and any provision made under Part 14 of the Act to an “authorised person” is to be treated as including a reference to A.
- (4) In determining what if any financial penalty to impose on A, the FCA must have regard to—
- (a) any penalty or fine that has been imposed on A by another body in relation to the conduct giving rise to the possible imposition of the penalty;
  - (b) other steps the OFT or FCA has taken, or the FCA might take, in relation to that conduct;
  - (c) the statement of policy prepared by the OFT under section 39C of the 1974 Act as most recently published at the time the conduct occurred.
- (5) The financial penalty imposed on A by the FCA in relation to each failure to comply with a requirement may not exceed £50,000.
- (6) Section 210 of the Act (statement of policy) does not apply to a penalty imposed by the FCA by virtue of this article.

#### **Enforcement of agreements made by unlicensed trader**

- 48.—(1) This article applies to a regulated agreement entered into before 1st April 2014 (“a relevant agreement”).
- (2) A relevant agreement is not enforceable against the debtor or hirer by a person carrying on a regulated activity of the kind specified by article 60B(2) or 60N(2) of the Regulated Activities Order (as the case may be) if that person does not have permission to carry on that activity.
- (3) Section 40(1A) and (2) of the 1974 continue to apply to a relevant agreement with the following modifications—
- (a) after “Unless the OFT has” insert “before 1st April 2014”;
  - (b) after “applies to the agreement” insert “or the FCA has given a notice under section 28A of the Financial Services and Markets Act 2000 by virtue of subsection (1B)”;
  - (c) after subsection (1A) there is inserted—

(31) Substituted by the Financial Services Act 2012, Schedule 3.

(32) Section 36A inserted by the Consumer Credit Act 2006, section 45.

(33) Amended by the Financial Services Act 2010, section 10, and the Financial Services Act 2012, Schedule 9, paragraphs 1 and 12.

“(1B) Sections 28A and 28B of the Financial Services and Markets Act 2000<sup>(34)</sup> apply to a regulated agreement which is not enforceable by virtue of subsection (1A) with the following modifications—

- (a) subsection (2) and paragraph (b) of subsection (3) of section 28A do not apply;
- (b) for subsections (4) to (6) of section 28A substitute—

“(4) In considering whether to allow the agreement to be enforced the FCA must have regard to whether the relevant firm reasonably believed that a licence under the Consumer Credit Act 1974 was not required by the creditor or owner (as the case may be) to enter into the agreement.”;

- (c) for subsection (8) of section 28A substitute—

“(8) “The relevant firm” means the person who (disregarding the effect of subsection (1A)), would be entitled to enforce the agreement.””

### **Offences committed under the 1974 Act before 1st April 2014**

**49.** Section 402(1) of the Act (power of FCA to institute proceedings for certain offences)<sup>(35)</sup> applies as if it included a reference to offences committed under the 1974 Act before 1st April 2014.

### **Information and investigation powers**

**50.**—(1) Section 165 of the Act (regulators’ power to require information)<sup>(36)</sup> has effect as if each reference to “authorised person” (except in subsection (7)) included a reference to a person who at any time held a standard licence under the 1974 Act.

(2) Section 168 of the Act (appointment of persons to carry out investigations in particular cases)<sup>(37)</sup> applies as if—

- (a) subsection (1) included a reference to an offence under the 1974 Act;
- (b) subsection (4) included a reference to circumstances suggesting that a person may have, before 1st April 2014, failed to comply with a requirement imposed on that person under section 33A, 33B or 36A of the 1974 Act.

(3) Part 27 of the Act (offences) <sup>(38)</sup> applies as if references to an offence included references to an offence under Part 11 of the Act as modified by this Order.

### **Applications made to the OFT which have not been determined by 1st April 2014**

**51.**—(1) Any application which before 1st April 2014—

- (a) had been made to the OFT under the 1974 Act, and
- (b) had not been determined by the OFT,

is to be treated as having been made to the FCA, unless paragraph (2) applies.

(2) This paragraph applies if the application had been made under a provision of the 1974 Act which is repealed by this Order.

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<sup>(34)</sup> Sections 28A and 28B were inserted by the Financial Services Act 2012, Schedule 9, paragraphs 1 and 8.

<sup>(35)</sup> Amended by the Counter-Terrorism Act 2008 (c.28), Schedule 7, paragraph 33(4), and the Financial Services Act 2012, Schedule 9, paragraphs 1 and 39.

<sup>(36)</sup> Amended by the Financial Services Act 2010, Schedule 2, paragraphs 1 and 15, and the Financial Services Act 2012, Schedule 12, paragraph 1.

<sup>(37)</sup> Amended by the Counter-Terrorism Act 2008, Schedule 7, paragraph 33(3), the Financial Services Act 2010, Schedule 2, paragraphs 1 and 16, the Financial Services Act 2012, Schedule 12, paragraph 8, and [S.I. 2007/126](#) and [2012/2554](#).

<sup>(38)</sup> Part 27 was amended by the Enterprise Act 2002, Schedule 25, paragraph 40(16) and (17), the Counter Terrorism Act 2008, Schedule 7, paragraph 33(4), the Financial Services Act 2012, section 95 and Schedule 9, paragraphs 1, 36 and 40, and [S.I. 2012/2554](#).

### Decision notices

**52.** In relation to any notice which is, by virtue of this Chapter of this Part, to be treated as a decision notice given under the Act—

- (a) it is immaterial whether the notice complies with section 388(1)(b) to (e) of the Act (decision notices)(**39**), and
- (b) that section applies as if, for subsections (3) and (4), there were substituted—

“(3) The regulator concerned may, before it takes the action to which a decision notice (“the original notice”) relates, give the person concerned a further decision notice.

(4) A further decision notice given under subsection (3) may in particular—

- (a) relate to different action in respect of the same matter, or
- (b) vary the original notice.”.

### Waivers

**53.** Any of the following given or made by the OFT which are in effect immediately before 1st April 2014 are to have effect as if they had been given or made by the FCA—

- (a) a direction given under section 60(3) of the 1974 Act (form and content of agreements)(**40**);
- (b) a determination made under regulations made under section 64(4) of the 1974 Act (duty to give notice of cancellation rights)(**41**);
- (c) a direction given under section 101(8) or (8A) of the 1974 Act (right to terminate hire agreement)(**42**);
- (d) a direction given under section 160(1) of the 1974 Act (alternative procedure for business consumers)(**43**).

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(39) Amended by the Financial Services Act 2012, Schedule 9, paragraphs 1 and 27.

(40) Amended by the Enterprise Act 2002, Schedule 25, paragraph 6(1) and (23).

(41) Amended by the Enterprise Act 2002, Schedule 25, paragraph 6(1) and (24).

(42) Amended by the Enterprise Act 2002, Schedule 25, paragraph 6(1) and (26), and by the Consumer Credit Act 2006, section 63.

(43) Amended by the Enterprise Act 2002, Schedule 25, paragraph 6(1) and (31).