
DRAFT STATUTORY INSTRUMENTS

2018 No.

The Financial Services and Markets Act 2000
(Claims Management Activity) Order 2018

PART 4

Rules and guidance

Claims management related rules and guidance made by the FCA

84.—(1) This article applies in respect of rules made or guidance given by the FCA which relate to regulated claims management activity or the carrying on of such activity.

(2) Section 1B(4) of the 2000 Act (competition duty) does not apply to the extent that—

- (a) the claims management related rules are the same as, or substantially the same as, or have the same, or substantially the same, effect as any of the provisions in Part 2 of the Compensation Act 2006(1) provisions in force immediately before Part 2 of the Compensation Act 2006 was repealed; or
- (b) the claims management related guidance is the same as, or substantially the same as, or has the same, or substantially the same, effect as any of the provisions in Part 2 of the Compensation Act 2006 provisions in force immediately before Part 2 of the Compensation Act 2006 was repealed.

(3) Any requirement imposed on the FCA—

- (a) to publish a draft of rules, guidance or any other instrument or document and invite representations about it; or
- (b) to consult particular persons,

may be satisfied by things done by the FCA before the date on which this article comes into force.

(4) The Compensation Act 2006 provisions are to be treated as if they had effect in Scotland for the purposes of—

- (a) paragraph (2); and
- (b) paragraph 7 of Schedule 5 to the Financial Guidance and Claims Act 2018(2).

(5) For the purposes of this article, the “Compensation Act 2006 provisions” are—

- (a) the provisions of the Compensation Act 2006;
- (b) any subordinate legislation or rules made or guidance or codes of practice issued under that Act in force immediately before Part 2 of the Compensation Act 2006 was repealed; and
- (c) section 75 of the Consumer Credit Act 1974.

(6) For the purpose of rules that are made by the FCA in respect of the transfer of the regulation of claims management activity to the FCA, section 138I of the 2000 Act applies for the purpose of

(1) 2006 c. 29.

(2) 2018 c. 10.

the FCA's cost benefit analysis in respect of the regulation of claims management activity as if for subsections (7) and (8) there were substituted –

“(7) “Cost benefit analysis” means—

(a) an analysis of the difference between the costs and benefits of the provisions set out in subsection (7A) and the costs and benefits that will arise in the application to England and Wales and Scotland –

(i) if the proposed rules are made, or

(ii) if subsection (5) applies, from the rules that have been made, and

(b) subject to subsection (8), an estimate of that difference.

(7A) For the purposes of subsection (7), the provisions applicable are—

(a) the provisions of the Compensation Act 2006 in force immediately before Part 2 of that Act was repealed; and

(b) any subordinate legislation or rules made, or guidance or codes of practice issued, under that Act.

(7B) For the purposes of subsection (7), the provisions of the Compensation Act 2006 are to be treated as if—

(a) they had effect in Scotland; and

(b) they included section 75 of the Consumer Credit Act 1974.

(8) If, in the opinion of the FCA—

(a) the difference referred to in subsection (7) cannot reasonably be estimated; or

(b) it is not reasonably practicable to produce an estimate,

the cost benefit analysis need not estimate the difference but must include a statement of the FCA's opinion and an explanation of it.”.

(7) The requirements of section 138I of the 2000 Act (as modified above) in so far as they apply to a proposal to make rules to which this article applies may be satisfied by things done (wholly or in part) before the date on which this article comes into force.

(8) It is immaterial for the purposes of paragraph (7) if, when the things were done, they were not compatible with section 138I of the 2000 Act.

Designation by the FCA of the Regulator's Rules

85.—(1) In this article, “the Regulator” has the meaning given in paragraph 2 of Schedule 4 to the Financial Guidance and Claims Act 2018(3) (“the 2018 Act”).

(2) To designate or modify relevant rules for the purposes of paragraphs 8 and 9 of Schedule 5 to the 2018 Act (designation of Regulator's rules), the FCA must make an instrument in writing which specifies, or more than one instrument in writing which between them specify—

(a) the relevant rules;

(b) any modifications being made to the rules;

(c) the provision under Part 2 of the Compensation Act 2006 under which the relevant rules were made;

(d) the comparable provision in the 2000 Act by virtue of which the designated rule is to be treated as having been made; and

(e) the date on which the designation is to come into effect.

(3) An instrument which satisfies the requirements of paragraph (2) is a designating instrument.

(4) The FCA must publish each designating instrument in the way appearing to the designating body to be best calculated to bring it to the attention of the public.

(5) A person is not to be taken to have contravened a designating instrument if the person shows that, at the time of the alleged contravention, the designating instrument concerned had not been published.

(6) A designating instrument is to be treated as a rule-making instrument for the purposes of section 138H (verification of rules) of the 2000 Act.

(7) A designating instrument may contain provision other than that required by paragraph (2).

(8) The making of a designating instrument is a legislative function for the purposes of paragraph 8(2) of Schedule 1ZA to the 2000 Act (arrangements for discharging functions).