



# Financial Services Act 2012

## 2012 CHAPTER 21

### PART 9

#### MISCELLANEOUS

##### *Consumer credit*

#### **107 Power to make further provision about regulation of consumer credit**

- (1) Subsection (2) applies on or at any time after the making, after the passing of this Act, of an order under section 22 of FSMA 2000 which has the effect that an activity (a “transferred activity”)—
- (a) ceases to be an activity in respect of which a licence under section 21 of CCA 1974 is required or would be required but for the exemption conferred by subsection (2), (3) or (4) of that section or paragraph 15(3) of Schedule 3 to FSMA 2000, and
  - (b) becomes a regulated activity for the purposes of FSMA 2000.
- (2) The Treasury may by order do any one or more of the following—
- (a) transfer to the FCA functions of the OFT under any provision of CCA 1974 that remains in force;
  - (b) provide that any specified provision of FSMA 2000 which relates to the powers or duties of the FCA in connection with the failure of any person to comply with a requirement imposed by or under FSMA 2000 is to apply, subject to any specified modifications, in connection with the failure of any person to comply with a requirement imposed by or under a specified provision of CCA 1974;
  - (c) require the FCA to issue a statement of policy in relation to the exercise of powers conferred on it by virtue of paragraph (b);
  - (d) in connection with provision made by virtue of paragraph (b), provide that failure to comply with a specified provision of CCA 1974 no longer constitutes an offence or that a person may not be convicted of an offence under a specified provision of CCA 1974 in respect of an act or omission in a

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- case where the FCA has exercised specified powers in relation to that person in respect of that act or omission;
- (e) provide for the transfer to the Treasury of any functions under CCA 1974 previously exercisable by the Secretary of State;
  - (f) provide that functions of the Secretary of State under CCA 1974 are exercisable concurrently with the Treasury;
  - (g) provide for any provision of sections 162 to 165 and 174A of CCA 1974 which relates to—
    - (i) the powers of a local weights and measures authority in Great Britain or the Department of Enterprise, Trade and Investment in Northern Ireland in relation to compliance with any provision made by or under CCA 1974,
    - (ii) the powers of such an authority or that Department in relation to the commission or suspected commission of offences under any provision made by or under CCA 1974,
    - (iii) the powers that may be conferred by warrant on an officer of such an authority or that Department, or
    - (iv) things done in the exercise of any of those powers,
 to apply in relation to compliance with FSMA 2000 so far as relating to relevant regulated activities, in relation to the commission or suspected commission of a relevant offence or in relation to things done in the exercise of any of those powers as applied by the order;
  - (h) enable local weights and measures authorities to institute proceedings in England and Wales for a relevant offence;
  - (i) enable the Department of Enterprise, Trade and Investment in Northern Ireland to institute proceedings in Northern Ireland for a relevant offence;
  - (j) provide that references in a specified enactment to the FCA's functions under FSMA 2000 include references to its functions resulting from any order under this section.
- (3) If an order under this section makes provision by virtue of subsection (2)(b) enabling the FCA to exercise any of its powers under sections 205 to 206A of FSMA 2000 (disciplinary measures) by reference to an act or omission that constitutes an offence under CCA 1974, the order must also make provision by virtue of subsection (2)(d) ensuring that a person in respect of whom the power has been exercised cannot subsequently be convicted of the offence by reference to the same act or omission.
- (4) In subsection (2)(g) to (i)—
- (a) “relevant regulated activity” means an activity that is a regulated activity for the purposes of FSMA 2000 by virtue of—
    - (i) an order made under section 22(1) of that Act in relation to an investment of a kind falling within paragraph 23 or 23B of Schedule 2 to that Act, or
    - (ii) an order made under section 22(1A)(a) of that Act;
  - (b) “relevant offence” means an offence under FSMA 2000 committed in relation to such an activity.
- (5) The Treasury may make provision by virtue of subsection (2)(i) only with the consent of the Department of Enterprise, Trade and Investment in Northern Ireland.
- (6) On or at any time after the making of an order under section 22 of FSMA 2000 of the kind mentioned in subsection (1), the Treasury may by order—

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- (a) exclude the application of any provision of CCA 1974 in relation to a transferred activity, or
  - (b) repeal any provision of CCA 1974 which relates to a transferred activity.
- (7) In exercising their powers under this section, the Treasury must have regard to—
- (a) the importance of securing an appropriate degree of protection for consumers, and
  - (b) the principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction.
- (8) The additional powers conferred by section 115(2) on a person making an order under this Act include power for the Treasury, when making an order under this section—
- (a) to make such consequential provision as the Treasury consider appropriate;
  - (b) to amend any enactment, including any provision of, or made under, this Act.
- (9) The provisions of this section do not limit—
- (a) the powers conferred by section 118 or by section 22 of FSMA 2000, or
  - (b) the powers exercisable under Schedule 21 in connection with the transfer of functions from the OFT.
- (10) In this section—
- “CCA 1974” means the Consumer Credit Act 1974;
  - “consumers” has the meaning given in section 1G of FSMA 2000;
  - “the OFT” means the Office of Fair Trading.

#### **Commencement Information**

**II** S. 107 in force at 1.4.2013 by S.I. 2013/423, art. 3, Sch.

### **108 Suspension of licences under Part 3 of Consumer Credit Act 1974**

- (1) The Consumer Credit Act 1974 is amended as follows.
- (2) In section 32 (suspension or revocation)—
- (a) in subsection (1), omit “or suspended”,
  - (b) in subsection (2)—
    - (i) in paragraph (a), omit “, as the case may be,” and “, or suspend it until a specified date or indefinitely,”, and
    - (ii) in paragraph (b), omit “or suspension” and “or suspend”,
  - (c) in subsection (3)—
    - (i) in paragraph (a), omit “, as the case may be,” and “, or suspend it until a specified date or indefinitely,”, and
    - (ii) in paragraph (b), omit “or suspension”,
  - (d) in subsection (4)—
    - (i) in paragraph (a), omit “, as the case may be,” and “, or suspend it until a specified date or indefinitely,”, and
    - (ii) in paragraph (b), omit “or suspension”,
  - (e) in subsections (6) and (7), omit “or suspension”,

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- (f) omit subsection (8),
- (g) in subsection (9), omit “or to suspend”, and
- (h) in the heading, omit “Suspension and”.

(3) After section 32 insert—

**“32A Power to suspend licence**

- (1) If during the currency of a licence it appears to the OFT to be urgently necessary for the protection of consumers that the licence should cease to have effect immediately or on a specified date, the OFT is to proceed as follows.
- (2) In the case of a standard licence the OFT must, by notice—
  - (a) inform the licensee that the OFT is suspending the licence from the date of the notice or from a later date specified in the notice,
  - (b) state the OFT's reasons for the suspension,
  - (c) state either—
    - (i) that the suspension is to end on a specified date, which must be no later than the last day of the 12 months beginning with the day on which the suspension takes effect, or
    - (ii) that the duration of the suspension is to be as provided by section 32B,
  - (d) specify any provision to be made under section 34A, and
  - (e) invite the licensee to submit to the OFT in accordance with section 34ZA representations—
    - (i) as to the suspension, and
    - (ii) about the provision (if any) that is or should be made under section 34A.
- (3) In the case of a group licence the OFT must—
  - (a) give general notice that the OFT is suspending the licence from the date of the notice or from a later date specified in the notice,
  - (b) state in the notice the OFT's reasons for the suspension,
  - (c) state in the notice either—
    - (i) that the suspension is to end on a specified date, which must be no later than the last day of the 12 months beginning with the day on which the suspension takes effect, or
    - (ii) that the duration of the suspension is to be as provided by section 32B,
  - (d) specify in the notice any provision to be made under section 34A, and
  - (e) in the notice invite any licensee to submit to the OFT in accordance with section 34ZA representations as to the suspension.
- (4) In the case of a group licence issued on application the OFT must also—
  - (a) inform the original applicant of the matters specified under subsection (3)(a) to (d) in the general notice, and
  - (b) invite the original applicant to submit to the OFT in accordance with section 34ZA representations as to the suspension.

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- (5) Except for the purposes of sections 29 to 32 and section 33A, a licensee under a suspended licence is to be treated, in respect of the period of suspension, as if the licence had not been issued.
- (6) The suspension may, if the OFT thinks fit, be ended by notice given by it to the licensee or, in the case of a group licence, by general notice.
- (7) In this section “consumers”, in relation to a licence, means individuals who have been or may be affected by the carrying on of the business to which the licence relates, other than individuals who are themselves licensees.

### **32B Duration of suspension**

- (1) This section applies where a notice under section 32A provides for the duration of a suspension under that section to be as provided by this section.
- (2) The suspension ends at the end of the period of 12 months beginning with the day on which it takes effect, but this is subject to—
  - (a) subsections (3) and (4) (where those subsections give a later time), and
  - (b) the powers of the OFT under section 32A(6) and section 33.
- (3) Subsection (4) applies where—
  - (a) the OFT gives notice under section 32 that it is minded to revoke the licence, and
  - (b) it gives that notice—
    - (i) on or before giving the notice under section 32A, or
    - (ii) after giving that notice but before the end of the period of 12 months mentioned in subsection (2).
- (4) The period of suspension is to continue until—
  - (a) the time of any determination by the OFT not to revoke the licence in pursuance of the notice under section 32, or
  - (b) where the OFT determines to revoke the licence in pursuance of the notice, the end of the appeal period.”
- (4) In section 33 (application to end suspension), for subsection (1) substitute—

“(1) On an application made by a licensee the OFT may, if it thinks fit, by notice to the licensee end the suspension of a licence under section 32A, whether the suspension was for a fixed period or for a period determined in accordance with section 32B.”
- (5) In section 33A (power of OFT to impose requirements on licensees) after subsection (6) insert—

“(6A) A requirement imposed under this section during a period of suspension cannot take effect before the end of the suspension.”
- (6) After section 34 insert—

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### **“34ZA Representations to OFT: suspension under section 32A**

- (1) Where this section applies to an invitation by the OFT to any person (“P”) to submit representations, the OFT must invite P, within 21 days after the notice containing the invitation is given to P or published, or such longer period as the OFT may allow—
  - (a) to submit P’s representations in writing to the OFT, and
  - (b) to give notice to the OFT, if P thinks fit, that P wishes to make representations orally,
 and where notice is given under paragraph (b) the OFT must arrange for the oral representations to be heard.
- (2) The OFT must reconsider its determination under section 32A and determine whether to confirm it (with or without variation) or revoke it and in doing so must take into account any representations submitted or made under this section.
- (3) The OFT must give notice of its determination under this section to the persons who were required to be invited to submit representations about the original determination under section 32A or, where the invitation to submit representations was required to be given by general notice, must give general notice of the confirmation or revocation.”
- (7) In section 34A (winding-up of standard licensee’s business), in subsection (2)—
  - (a) in paragraph (c), omit “suspend or”, and
  - (b) after paragraph (c) insert—
    - “(d) a determination to suspend such a licence under section 32A (including a determination made under section 34ZA on reconsidering a previous determination under section 32A);”.
- (8) In section 41 (appeals) after subsection (1) insert—
 

“(1ZA) References in the table to a determination as to the suspension of a standard licence or group licence are to be read as references to a determination under section 34ZA to confirm a determination to suspend a standard licence or group licence.”
- (9) Nothing in this section affects the powers conferred by section 22 of FSMA 2000 or section 107 of this Act.

### *Penalties received by Financial Services Authority or Bank of England*

#### **109 Payment to Treasury of penalties received by Financial Services Authority**

- (1) The Financial Services Authority (“the FSA”) must in respect of its financial year beginning with 1 April 2012 and each subsequent financial year pay to the Treasury its penalty receipts after deducting its enforcement costs.
- (2) The FSA’s “penalty receipts” in respect of a financial year are any amounts received by it during the year by way of penalties imposed under FSMA 2000.
- (3) The FSA’s “enforcement costs” in respect of a financial year are the expenses incurred by it during the year in connection with—

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- (a) the exercise, or consideration of the possible exercise, of any of its enforcement powers in particular cases, or
  - (b) the recovery of penalties imposed under FSMA 2000.
- (4) For this purpose the FSA's enforcement powers are—
- (a) its powers under any of the provisions mentioned in subsection (5),
  - (b) its powers under any other enactment specified by the Treasury by order,
  - (c) its powers in relation to the investigation of relevant offences, and
  - (d) its powers in England and Wales or Northern Ireland in relation to the prosecution of relevant offences.
- (5) The provisions referred to in subsection (4)(a) are the following provisions of FSMA 2000—
- (a) section 56 (prohibition orders),
  - (b) section 63A (penalties relating to performance of controlled functions without approval),
  - (c) section 66 (disciplinary powers in relation to approved persons),
  - (d) section 87M (public censure of issuer),
  - (e) section 89 (public censure of sponsor),
  - (f) section 89K (public censure of issuer),
  - (g) section 91 (penalties for breach of Part 6 rules),
  - (h) section 123 (penalties in case of market abuse),
  - (i) section 131G (short selling etc: power to impose penalty or issue censure),
  - (j) sections 205, 206 and 206A (disciplinary measures),
  - (k) section 249 (disqualification of auditor for breach of trust scheme rules),
  - (l) section 345 (disqualification of auditor or actuary), and
  - (m) Part 25 (injunctions and restitution).
- (6) “Relevant offences” are—
- (a) offences under FSMA 2000,
  - (b) offences under subordinate legislation made under that Act,
  - (c) offences falling within section 402(1) of that Act, and
  - (d) any other offences specified by the Treasury by order.
- (7) The Treasury may give directions to the FSA as to how the FSA is to comply with its duty under subsection (1).
- (8) The directions may in particular—
- (a) specify descriptions of expenditure that are, or are not, to be regarded as incurred in connection with either of the matters mentioned in subsection (3),
  - (b) relate to the calculation and timing of the deduction in respect of the FSA's enforcement costs, and
  - (c) specify the time when any payment is required to be made to the Treasury.
- (9) The directions may also require the FSA to provide the Treasury at specified times with information relating to—
- (a) penalties that the FSA has imposed under FSMA 2000, or
  - (b) the FSA's enforcement costs.

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- (10) The Treasury must pay into the Consolidated Fund any sums received by them under this section.
- (11) The scheme operated by the FSA under paragraph 16 of Schedule 1 to FSMA 2000 is, in the case of penalties received by the FSA on or after 1 April 2012, to apply only in relation to sums retained by the FSA as a result of the deduction for which subsection (1) provides.
- (12) When section 6(2) is fully in force, the Treasury may by order repeal this section.

## **110 Payment to Treasury of penalties received by Bank of England**

- (1) The Bank of England (“the Bank”) must in respect of each of its financial years pay to the Treasury its penalty receipts after deducting its enforcement costs.
- (2) The Bank's “penalty receipts” in respect of a financial year are any amounts received by the Bank during the year by way of penalties imposed under any of the following provisions—
  - (a) sections 192K and 312F of FSMA 2000, and
  - (b) section 198 of the Banking Act 2009.
- (3) The Bank's “enforcement costs” in respect of a financial year are the expenses incurred by it during the year in connection with—
  - (a) the exercise, or consideration of the possible exercise, of any of its enforcement powers in particular cases, or
  - (b) the recovery of penalties imposed under any of the provisions mentioned in subsection (2).
- (4) For this purpose the Bank's enforcement powers are—
  - (a) its powers under any of the provisions mentioned in subsection (5),
  - (b) its powers under any other enactment specified by the Treasury by order,
  - (c) its powers in relation to the investigation of offences under FSMA 2000 or of any other offences specified by the Treasury by order, and
  - (d) its powers in England and Wales or Northern Ireland in relation to the prosecution of offences under FSMA 2000 or of any other offences specified by the Treasury by order.
- (5) The provisions referred to in subsection (4)(a) are as follows—
  - (a) sections 192K to 192N of FSMA 2000 (parent undertakings), as applied to the Bank by Schedule 17A to that Act,
  - (b) sections 312E and 312F of that Act (disciplinary measures in relation to clearing houses),
  - (c) sections 380, 382 and 384 of that Act (injunctions and restitution), as applied to the Bank by Schedule 17A to that Act, and
  - (d) sections 197 to 200 and 202A of the Banking Act 2009 (inter-bank payment systems).
- (6) The Treasury may give directions to the Bank as to how the Bank is to comply with its duty under subsection (1).
- (7) The directions may in particular—



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- (a) specify descriptions of expenditure that are, or are not, to be regarded as incurred in connection with either of the matters mentioned in subsection (3),
  - (b) relate to the calculation and timing of the deduction in respect of the Bank's enforcement costs, and
  - (c) specify the time when any payment is required to be made to the Treasury.
- (8) The directions may also require the Bank to provide the Treasury at specified times with specified information relating to—
- (a) penalties that the Bank has imposed under the provisions mentioned in subsection (2), or
  - (b) the Bank's enforcement costs.
- (9) The Treasury must pay into the Consolidated Fund any sums received by them under this section.

#### **Commencement Information**

- I2** S. 110 in force at 24.1.2013 for specified purposes by [S.I. 2013/113, art. 2\(1\)\(b\)](#), [Sch. Pt. 2](#)
- I3** S. 110 in force at 1.4.2013 in so far as not already in force by [S.I. 2013/423, art. 3, Sch.](#)

### *Amendments of Companies Act 1989*

#### **111 Amendments of Companies Act 1989**

- (1) Section 166 of the Companies Act 1989 (power of Secretary of State to give directions to recognised investment exchange or recognised clearing house) is amended as follows.
- (2) In subsection (2)(a)—
- (a) for “Authority”, in the first place, substitute “ appropriate regulator ”, and
  - (b) for “Authority”, in the second place, substitute “ regulator ”.
- (3) In subsection (2)(b)—
- (a) for “Authority”, in the first place, substitute “ appropriate regulator ”, and
  - (b) for “Authority”, in the second place, substitute “ regulator ”.
- (4) In subsection (3)—
- (a) for “Authority” substitute “ appropriate regulator ”,
  - (b) omit the “or” following paragraph (a), and
  - (c) at the end insert—
    - “(c) in either case, that the direction is necessary having regard to the public interest in the stability of the financial system of the United Kingdom, or
    - (d) in either case, that the direction is necessary—
      - (i) to facilitate a proposed or possible use of a power under Part 1 of the Banking Act 2009 (special resolution regime), or
      - (ii) in connection with a particular exercise of a power under that Part.”
- (5) In subsection (7)—

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- (a) for “Authority”, in the first place, substitute “ appropriate regulator ”, and,
  - (b) omit the words from “The Authority shall not” to the end.
- (6) After that subsection insert—
- “(7A) Where the exchange or clearing house is acting in accordance with a direction under subsection (2)(a) that was given only by virtue of paragraph (a) of subsection (3), the appropriate regulator shall not give a direction under subsection (7) unless it is satisfied that the direction under that subsection will not impede or frustrate the proper and efficient conduct of the default proceedings.
- (7B) Where the exchange or clearing house has taken action under its default rules without being directed to do so, the appropriate regulator shall not give a direction under subsection (7) unless—
- (a) it is satisfied that the direction under that subsection will not impede or frustrate the proper and efficient conduct of the default proceedings, or
  - (b) it is satisfied that the direction is necessary—
    - (i) having regard to the public interest in the stability of the financial system of the United Kingdom,
    - (ii) to facilitate a proposed or possible use of a power under Part 1 of the Banking Act 2009 (special resolution regime), or
    - (iii) in connection with a particular exercise of a power under that Part.”
- (7) In subsection (8), for “Authority” substitute “ regulator which gave the direction ”.
- (8) At the end insert—
- “(9) The appropriate regulator”—
- (a) in relation to a recognised UK investment exchange, means the FCA, and
  - (b) in relation to a recognised UK clearing house, means the Bank of England.”
- (9) In the heading, omit “of Secretary of State”.

**Commencement Information**

**I4** S. 111 in force at 1.4.2013 by S.I. 2013/423, art. 3, Sch.

*Settlement systems*

**112 Evidencing and transfer of title to securities without written instrument**

In section 785 of the Companies Act 2006 (provision enabling procedures for evidencing and transferring title), at the end insert—

- “(7) The regulations may confer functions on any person, including—
- (a) the function of giving guidance or issuing a code of practice in relation to any provision made by the regulations, and

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(b) the function of making rules for the purposes of any provision made by the regulations.

(8) The regulations may, in prescribed cases, confer immunity from liability in damages.”

#### **Commencement Information**

**I5** S. 112 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2

**I6** S. 112 in force at 1.4.2013 in so far as not already in force by S.I. 2013/423, art. 3, Sch.

### *Director of Savings*

#### **113 Provision of services by Director of Savings**

- (1) The Director of Savings (“the Director”) may enter into arrangements with a public body for the provision by the Director, or persons authorised by the Director, of services to the body.
- (2) Arrangements are to be on such terms, including terms as to payment, as may be agreed.
- (3) “Public body” means a person or body whose functions are of a public nature.

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