



Financial Services and Markets Act 2023

2023 CHAPTER 29

PART 1

REGULATORY FRAMEWORK

CHAPTER 3

ACCOUNTABILITY OF REGULATORS

FCA and PRA powers to make rules etc

29 Review of rules

- (1) FSMA 2000 is amended as follows.
- (2) After section 3R (arrangements for provision of services) insert—

“Rules

3RA Duty of FCA and PRA to review rules

- (1) Each regulator must keep under review generally any rules made by the regulator under this Act or any other enactment (whenever passed or made).
- (2) Subsection (1) does not apply to rules made for the purpose of complying with a direction or recommendation of the Financial Policy Committee of the Bank of England under—
 - (a) section 9H of the Bank of England Act 1998 (directions to FCA or PRA requiring macro-prudential measures), or
 - (b) section 9Q of that Act (recommendations to FCA and PRA).

Status: This is the original version (as it was originally enacted).

3RB Statement of policy relating to review of rules

- (1) Each regulator must prepare and publish a statement of its policy with respect to its review of rules under section 3RA.
- (2) The statement must provide information about—
 - (a) how representations (including by a statutory panel) can be made to each regulator with respect to its review of rules under section 3RA, and
 - (b) the arrangements to ensure that those representations are considered.
- (3) In this section “statutory panel” has the meaning given by section 1RB(5).
- (4) If a statement published under this section is altered or replaced by a regulator, the regulator must publish the altered or replaced statement.
- (5) A statement prepared under this section must be published by the regulator in the way appearing to that regulator to be best designed to bring it to the attention of the public.

3RC Requirement to review specified rules

- (1) The Treasury may by direction require a regulator to carry out a review of specified rules if—
 - (a) the rules have been in force for at least 12 months,
 - (b) the Treasury consider that it is in the public interest that the rules are reviewed, and
 - (c) it does not appear to the Treasury that—
 - (i) the regulator is carrying out, or proposes to carry out, a review of those rules, or
 - (ii) if the regulator proposes to carry out a review, the proposals are appropriate for the purposes of carrying out an effective review.
- (2) Subsection (1) only applies to rules falling within section 3RA(1).
- (3) The Treasury must consult the regulator concerned before giving a direction under subsection (1).
- (4) In exercising the power under this section, the Treasury must have regard to the desirability of minimising any adverse effect that the carrying out of the review may have on the exercise by the regulator of any of its other functions.
- (5) A direction under subsection (1) may—
 - (a) specify the period within which a review must be carried out;
 - (b) determine the scope and conduct of a review;
 - (c) require the provision of interim reports during the carrying out of a review.
- (6) Provision made in a direction under subsection (5)(b) may include a requirement—
 - (a) for a review to be carried out by a person appointed by the regulator who is independent of the regulator;

Status: This is the original version (as it was originally enacted).

- (b) for any such appointment to be made only with the approval of the Treasury.
- (7) As soon as practicable after giving a direction under subsection (1) the Treasury must—
 - (a) lay before Parliament a copy of the direction, and
 - (b) publish the direction in such manner as the Treasury think fit.
- (8) Subsection (7) does not apply where the Treasury consider that publication of the direction would be against the public interest.
- (9) A direction under subsection (1) may be varied or revoked by the giving of a further direction.

3RD Report on certain reviews

- (1) This section applies where the Treasury have given a direction to a regulator under section 3RC(1) to carry out a review.
- (2) The regulator must make a written report to the Treasury as to the opinion of the regulator in relation to the following matters—
 - (a) if the regulator is the FCA, whether the rules under review—
 - (i) are compatible with the FCA’s strategic objective,
 - (ii) advance one or more of the FCA’s operational objectives, and
 - (iii) advance the competitiveness and growth objective;
 - (b) if the regulator is the PRA, whether the rules under review—
 - (i) advance one or more of the PRA’s objectives, and
 - (ii) advance the PRA’s competition objective and the PRA’s competitiveness and growth objective;
 - (c) whether and to what extent the rules are functioning effectively and achieving their intended purpose;
 - (d) whether any amendments should be made to the rules and, if so, what those amendments should be;
 - (e) whether any rules should be revoked (with or without replacement);
 - (f) whether any other action should be taken and, if so, what that action should be.
- (3) As soon as practicable after receiving the report the Treasury must—
 - (a) lay before Parliament a copy of the report, and
 - (b) publish the report in such manner as the Treasury think fit.
- (4) When complying with subsection (3) the Treasury may withhold material from the report if the Treasury consider that publication of the material would be against the public interest.”

30 Treasury power in relation to rules

- (1) FSMA 2000 is amended as follows.
- (2) After section 3RD (inserted by section 29) insert—

“3RE Power of Treasury to require making of rules by regulations

- (1) The Treasury may by regulations require a regulator to exercise a power under this Act to make rules in relation to a specified activity or a specified description of person.
- (2) Regulations under this section may—
 - (a) specify matters that the rules must cover;
 - (b) specify a period within which the rules must be made.
- (3) But except so far as permitted by subsection (2), regulations under this section may not require rules to be made—
 - (a) in a specified form or with specified content, or
 - (b) to achieve or advance a specified outcome.
- (4) If no period is specified under subsection (2)(b) the rules must be made as soon as reasonably practicable after the coming into force of the regulations.”
- (3) In section 429 (Parliamentary control of statutory instruments) in subsection (2) after “section” insert “3RE,”.

31 Matters to consider when making rules

- (1) FSMA 2000 is amended as follows.
- (2) Before section 138F (under the italic heading “Procedural provisions”) insert—

“138EA Matters to consider when making rules

- (1) This section applies where either regulator proposes to make rules.
- (2) The regulator must have regard to any specified matters that are relevant to the making of the rules in question.
- (3) “Specified” means specified in regulations made by the Treasury for the purposes of this section.
- (4) The specification of a matter for the purposes of this section may apply generally to the making of rules or be limited in whatever way the Treasury consider appropriate, including by reference to—
 - (a) the power under which the rules are made;
 - (b) the persons to whom the rules apply;
 - (c) the activities or subject-matter to which the rules relate.
- (5) The requirement imposed by subsection (2) does not apply in respect of any rules if, or to the extent that, the rules are made for the purposes of—
 - (a) complying with a direction given by the Financial Policy Committee of the Bank of England under section 9H of the Bank of England Act 1998 (directions requiring macro-prudential measures), or
 - (b) acting in accordance with a recommendation made by that Committee under section 9Q of that Act (recommendations about the exercise of the FCA and PRA functions).

Status: This is the original version (as it was originally enacted).

- (6) The requirement to have regard to specified matters under this section when making rules is in addition to any other requirements to have regard to matters when making such rules imposed by another provision of this Act or by any other enactment.”
- (3) In section 138I (consultation by the FCA)—
- (a) in subsection (2) after paragraph (b) insert—
- “*(ba)* an explanation of the ways in which having regard to specified matters under section 138EA(2) has affected the proposed rules,”;
- (b) after subsection (8) insert—
- “(8A) The requirement to provide the explanation referred to in subsection (2)(*ba*) does not apply in relation to any rules if—
- (a) the FCA considers that the delay involved in complying with that requirement would be prejudicial to the interests of consumers (as defined in section 425A) or other persons whose interests would be protected by the rules, or
- (b) the rules change existing rules and the changes consist of, or include, changes which, in the FCA’s opinion, are not material.
- (8B) Where an explanation is not provided by virtue of subsection (8A) (b), the draft of the rules must be accompanied by a statement of the FCA’s opinion.”
- (4) In section 138J (consultation by the PRA)—
- (a) in subsection (2) after paragraph (b) insert—
- “*(ba)* an explanation of the ways in which having regard to specified matters under section 138EA(2) has affected the proposed rules,”;
- (b) after subsection (8) insert—
- “(8A) The requirement to provide the explanation referred to in subsection (2)(*ba*) does not apply in relation to any rules if—
- (a) the PRA considers that the delay involved in complying with that requirement would—
- (i) be prejudicial to the safety and soundness of PRA-
authorised persons, or
- (ii) in a case where section 2C applies, be prejudicial
to securing the appropriate degree of protection for
policyholders, or
- (b) the rules change existing rules and the changes consist of,
or include, changes which, in the PRA’s opinion, are not
material.
- (8B) Where an explanation is not provided by virtue of subsection (8A) (b), the draft of the rules must be accompanied by a statement of the PRA’s opinion.”

- (5) In section 429 (Parliamentary procedure for statutory instruments), in subsection (2), in the list of sections beginning with “90B” insert at the appropriate place “138EA(3),”.

32 Effect of rules etc on deference decisions

- (1) FSMA 2000 is amended as follows.
- (2) In the italic heading before section 410, after “international” insert “powers and”.
- (3) Before section 410 insert—

“409A Consultation in relation to deference decisions

- (1) This section applies where a regulator is proposing to take a relevant action.
- (2) The regulator—
- (a) must consider the effect of the relevant action on notified deference decisions, and
 - (b) if having done so it appears to the regulator that there is a material risk that the relevant action would be incompatible with a notified deference decision, must consult the Treasury about the likely effect of the action on the decision.
- (3) Subsection (2) applies only if a duty to consult applies in respect of the taking of the relevant action.
- (4) For the purposes of subsection (1) a regulator proposes to take a “relevant action” if—
- (a) it proposes to make rules under this Act or any other enactment, or
 - (b) it proposes to make changes to its general policies and practices so far as relating to its supervisory functions under section 1L (FCA supervisory functions) or (as the case may be) section 2K (PRA supervisory functions).
- (5) For the purposes of subsection (2)—
- (a) “deference decision” means a decision of the Treasury that the law and practice of another country or territory is, so far as relating to financial services and markets, equivalent to the law and practice of the United Kingdom (either generally or as it relates to a particular matter);
 - (b) a deference decision is a “notified deference decision” if the Treasury have, by notice in writing, informed the regulator that it is relevant for the purposes of this section;
 - (c) a relevant action is “incompatible” with a notified deference decision if the action would result in the law and practice of the United Kingdom ceasing to be equivalent to the law and practice of the other country or territory to which the deference decision relates.
- (6) For the purposes of subsection (3) a duty to consult applies in respect of a relevant action if—
- (a) the duty imposed by section 138I or 138J to publish a draft of proposed rules applies in respect of the action, or

Status: This is the original version (as it was originally enacted).

- (b) any other duty (whether or not imposed by a provision of this Act) to publish the proposal to take the action in question applies.
- (7) Section 138M(1) (consultation: exemptions for temporary product intervention rules) is to be ignored for the purposes of subsection (6) in determining whether a duty to consult applies in respect of a relevant action.
- (8) The requirement imposed by subsection (2)(b) must be carried out before the duty to consult in respect of the relevant action is carried out.
- (9) The requirements imposed by subsection (2) do not apply to the extent that the regulator takes a relevant action—
 - (a) by the making of product intervention rules under section 137D if the condition in subsection (10) is met,
 - (b) by the making of rules under Part 9C (see instead section 143G(3)),
 - (c) by the making of rules under Part 9D (see instead section 144C(3)),
 - (d) by the making of rules under Part 12B (see instead section 192XB(2)),
 - (e) in order to comply with a direction given by the Financial Policy Committee of the Bank of England under section 9H of the Bank of England Act 1998 (directions required macro-prudential measures), or
 - (f) in order to act in accordance with a recommendation made by that Committee under section 9Q of that Act (recommendations about the exercise of functions).
- (10) The condition referred to in subsection (9)(a) is that the FCA considers it necessary not to comply with the requirement imposed by subsection (2) for the purpose of advancing—
 - (a) the consumer protection objective, or
 - (b) if an order under section 137D(1)(b) is in force, the integrity objective.”

33 Effect of rules etc on international trade obligations

In FSMA 2000 after section 409A (inserted by section 32) insert—

“409B Notification in relation to international trade obligations

- (1) This section applies where it appears to a regulator that there is a material risk that a relevant action it proposes to take would be incompatible with an international trade obligation.
- (2) The regulator must give written notice to the Treasury of the proposed action before proceeding to take it.
- (3) Subsection (2) applies only if a duty to consult applies in respect of the taking of the relevant action.
- (4) For the purposes of subsection (1) a regulator proposes to take a “relevant action” if—
 - (a) it proposes to make rules under this Act or any other enactment, or
 - (b) it proposes to make changes to its general policies and practices so far as relating to its supervisory functions under section 1L (FCA

Status: This is the original version (as it was originally enacted).

supervisory functions) or (as the case may be) section 2K (PRA supervisory function).

- (5) For the purposes of subsection (3) a duty to consult applies in respect of a relevant action if—
- (a) the duty imposed by section 138I or 138J to publish a draft of proposed rules applies in respect of the action, or
 - (b) any other duty (whether or not imposed by a provision of this Act) to publish the proposal to take the action in question applies.
- (6) Section 138M(1) (consultation: exemptions for temporary product intervention rules) is to be ignored for the purposes of subsection (5) in determining whether a duty to consult applies in respect of a relevant action.
- (7) The requirement imposed by subsection (2) must be carried out before the duty to consult in respect of the relevant action is carried out.
- (8) The requirement imposed by subsection (2) does not apply to the extent that the regulator takes a relevant action—
- (a) by the making of product intervention rules under section 137D if the condition in subsection (9) is met,
 - (b) in order to comply with a direction given by the Financial Policy Committee of the Bank of England under section 9H of the Bank of England Act 1998 (directions requiring macro-prudential measures), or
 - (c) in order to act in accordance with a recommendation made by that Committee under section 9Q of that Act (recommendations about the exercise of functions).
- (9) The condition referred to in subsection (8)(a) is that the FCA considers it necessary not to comply with the requirement imposed by subsection (2) for the purpose of advancing—
- (a) the consumer protection objective, or
 - (b) if an order under section 137D(1)(b) is in force, the integrity objective.
- (10) Subsection (11) applies in a case where a notice under subsection (2) is not given because of subsection (3) or (8)(a).
- (11) The regulator must give written notice to the Treasury of the relevant action it has taken as soon as reasonably practicable after taking it if it appears to the regulator that there is a material risk that the action is incompatible with an international trade obligation.
- (12) In this section “international trade obligation” means an obligation of the United Kingdom that relates to financial services or markets under—
- (a) a free trade agreement, as defined by section 5(1) of the Trade Act 2021, or
 - (b) the agreement establishing the World Trade Organisation signed at Marrakesh on 15 April 1994.”

34 Power to disapply or modify rules

- (1) FSMA 2000 is amended as follows.
- (2) After section 138B insert—

Status: This is the original version (as it was originally enacted).

“138BA Disapplication or modification of rules in individual cases

- (1) This section applies to rules made by a regulator if, or to the extent that, regulations made by the Treasury provide for it to apply.
 - (2) The regulator may, on the application or with the consent of a person who is subject to the rules, give the person a permission that enables the person—
 - (a) not to apply the rules, or
 - (b) to apply the rules with the modifications specified in the permission.
 - (3) Subsections (1) and (2) do not apply to—
 - (a) rules made by either regulator under section 64A (rules of conduct);
 - (b) rules made by either regulator under section 137O (threshold condition code);
 - (c) rules made by the FCA under section 247 (trust scheme rules), section 248 (scheme particular rules), section 261I (contractual scheme rules) or section 261J (contractual scheme particulars rules);
 - (d) rules made by the FCA under section 309Z(1) (rules of conduct).
 - (4) The regulator may—
 - (a) give permission under this section subject to conditions, and
 - (b) revoke or vary permission given under this section.
 - (5) Regulations under subsection (1) may make provision about procedural matters in relation to the giving of permission under this section.
 - (6) Provision under subsection (5) may (among other things) include provision about—
 - (a) the making of applications;
 - (b) the determination of applications (including matters to be taken into account in doing so);
 - (c) the giving and withdrawal of consent;
 - (d) requirements as to notification or publication of decisions of a regulator under this section;
 - (e) appeals in respect of decisions of a regulator under this section.
 - (7) Before making regulations under this section in relation to rules made by a regulator the Treasury must consult the regulator.”
- (3) In section 429 (Parliamentary control of statutory instruments), in subsection (2), in the list of sections beginning with “90B” insert at the appropriate place “138BA,”.