

2018 No. 990 (C. 76)

FINANCIAL SERVICES

**The Bank of England and Financial Services Act 2016
(Commencement No. 5 and Transitional Provisions) Regulations
2018**

Made - - - - *10th September 2018*

The Treasury, in exercise of the powers conferred by section 41(3) and (4) of the Bank of England and Financial Services Act 2016(a), make the following Regulations:

PART 1

Introductory

Citation and interpretation

1.—(1) These Regulations may be cited as the Bank of England and Financial Services Act 2016 (Commencement No. 5 and Transitional Provisions) Regulations 2018.

(2) In these Regulations—

“the Act” means the Bank of England and Financial Services Act 2016;

“FSMA” means the Financial Services and Markets Act 2000(b);

“the appropriate regulator” has the meaning given in section 59(4) of FSMA (approval for particular arrangements)(c);

“controlled function” has the meaning given in section 59(3) of FSMA(d);

“designated senior management functions” has the meaning given in section 59ZB of FSMA (designated senior management functions)(e);

“insurer” means—

(a) a person authorised under FSMA to carry out the regulated activity of—

(i) effecting or carrying out contracts of insurance as principal; or

(ii) insurance risk transformation as specified in article 13A of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(f) (“the RAO”);

(b) the society incorporated by Lloyd’s Act 1871(g) by the name Lloyd’s;

(a) 2016 c.14.

(b) 2000 c.8.

(c) Subsection (4) of section 59 was inserted by section 14(1)(b) of the Financial Services Act 2012 (c.21).

(d) Subsection (3) of section 59 was inserted by section 14(1)(b) of the Financial Services Act 2012.

(e) Section 59ZB was inserted by paragraph 3 of Schedule 4 to the Bank of England and Financial Services Act 2016.

(f) S.I. 2001/544. Article 13A was inserted by regulation 5(1) and (3) of S.I. 2017/1212.

(g) 1871 34 Vict c.21.

- (c) a managing agent as defined in article 3(1) of the RAO;
“the PRA” means the Prudential Regulation Authority;
“statement of responsibilities” has the meaning given in section 60(2B) of FSMA (applications for approval)(a).

PART 2

Appointed Days

Appointed days for the coming into force of section 21 and Schedule 4 for insurers

2.—(1) The following provisions come into force on the appointed days only in relation to insurers.

(2) 13th September 2018 is the appointed day for the coming into force of section 21 (extension of relevant authorised persons regime to all authorised persons) (for the purpose of introducing Schedule 4 to the Act) for the purpose of making rules, giving directions, imposing requirements and making statements of policy by the appropriate regulator.

(3) 10th December 2018 is the appointed day for the coming into force of section 21, except paragraph 11 of that Schedule, for all other purposes.

(4) 10th December 2019 is the appointed day for the coming into force of paragraph 11 of Schedule 4 to the Act for all other purposes.

PART 3

Transitional Provisions

Prohibition orders

3.—(1) Paragraph (2) applies to—

- (a) a warning notice or a decision notice under section 57 of FSMA (prohibition orders: procedure and right to refer to Tribunal)(b);
- (b) a further decision notice concerning a prohibition order under section 390(2A) of FSMA (final notices)(c) relating to a decision notice under that section;
- (c) a final notice under section 390 about an order under section 56 of FSMA (prohibition orders)(d); or
- (d) a prohibition order under section 56 of FSMA,

which is given or made before 10th December 2018.

(2) The notice or prohibition order is not affected by—

- (a) the amendments made to section 59 of FSMA by section 21 of, and Schedule 4 to, the Act (in so far as they relate to insurers); or
- (b) rules made by the appropriate regulator under section 59 of FSMA before 10th December 2018 (in so far as they relate to insurers) which alter or replace a description of a controlled function to which the notice or prohibition order relates.

(3) But nothing in this regulation prevents a prohibition order that—

- (a) is made in relation to a person on or after 10th December 2018; and

(a) Subsection (2B) of section 60 was inserted by section 20 of the Financial Services (Banking Reform) Act 2013 (c.33).

(b) Section 57 was amended by section 13 of the Financial Services Act 2012.

(c) Subsection (2A) of section 390 was inserted by paragraph 29 of Schedule 9 to the Financial Services Act 2012.

(d) Section 56 was amended by section 13 of the Financial Services Act 2012.

- (b) relates to any functions to which a warning notice or decision notice given to the person before that date in respect of the order related,

from describing, or referring to, those functions in a different way from the way in which they were described or referred to in the notice.

Statement of responsibilities – deemed or continuing approval before 10th December 2018

4.—(1) This regulation applies where—

- (a) Condition A, B or C is met; and
- (b) Condition D is met.

(2) Condition A is that—

- (a) a person has been given an approval by the appropriate regulator for the purposes of section 59 of FSMA(a) before 10th December 2018; and
- (b) rules made by the appropriate regulator before 10th December 2018 deem the approval referred to in sub-paragraph (a) to be an approval in relation to performing a designated senior management function on or after 10th December 2018.

(3) For the purposes of Condition A a reference to an approval in paragraph (2)(a) includes a reference to an approval, however described, in an Act or any subordinate legislation made under that Act.

(4) Condition B is that a person has been given a continuing approval by the PRA for the performance of a controlled function in relation to an insurer in accordance with the Financial Services (Banking Reform) Act 2013 (Transitional and Savings Provisions) Order 2015(b).

(5) Condition C is that—

- (a) an authorised person has made an application for approval to perform a controlled function under section 59 of FSMA on or after 1st January 2016 and before 10th December 2018; and
- (b) the PRA has granted that approval on or after 7th March 2016.

(6) Condition D is that the authorised person is an insurer.

(7) An authorised person must prepare a statement of responsibilities in respect of a person referred to in Conditions A, B or C in the manner referred to in paragraph (8).

(8) The statement of responsibilities must be prepared, in accordance with section 62A of FSMA (change in responsibilities of senior managers)(c), as if there had been a significant change in the aspects of the authorised person's affairs which the person is responsible for managing in performing a controlled function.

(9) The powers of the appropriate regulator under section 62A(3) of FSMA shall apply in relation to the statement of responsibilities under this regulation as they apply where there is a significant change as set out in section 62A(2) of FSMA.

(10) For the purposes of this regulation “the appropriate regulator” has the meaning given in section 62A(4) of FSMA.

Application of section 62A of FSMA to a statement of responsibilities prepared under regulation 4

5. Where a statement of responsibilities is prepared in accordance with regulation 4(8) and (9), section 62A of FSMA has effect as if—

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- (a) Section 59 was amended by section 14 of, and paragraph 3 of Schedule 5 to, the Financial Services Act 2012, section 18 of, and paragraph 1 of Schedule 3 to, the Financial Services (Banking Reform) Act 2013, paragraph 2 of Schedule 4 to the Bank of England and Financial Services Act 2016 and S.I. 2012/1906 and 2013/1773.
 - (b) S.I. 2015/492.
 - (c) Section 62A was amended by section 24 of the Financial Services (Banking Reform) Act 2013 and section 23 of, and paragraph 7 of Schedule 4 to, the Bank of England and Financial Services Act 2016.

- (a) subsection (1) was omitted;
- (b) the reference in subsection (2) to “the granting of the application” was a reference to 10th December 2018; and
- (c) the reference in that subsection to a statement of responsibilities included a reference to a statement under regulation 4(8) and (9).

PART 4

Miscellaneous

Consultation

6.—(1) This regulation applies where any provision of Part 9A of FSMA^(a) imposes on the appropriate regulator, in connection with the making or issuing of any rules or other instrument or document under Part 5 of FSMA—

- (a) a requirement, however expressed, to publish a draft of the rules, instrument or other document with or without other material and to invite representations about it; or
- (b) a requirement, however expressed, to consult with particular persons.

(2) The requirement may be satisfied by things done (wholly or in part) by the appropriate regulator before 11th November 2018.

*Craig Whittaker
Rebecca Harris*

10th September 2018

Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations bring into force on 13th September 2018, 10th December 2018 and 10th December 2019 certain provisions of the Bank of England and Financial Services Act 2016 (c. 14) (“the Act”) relating to Part 5 of the Financial Services and Markets Act 2000 (c. 8) (“FSMA”). These are the fifth commencement regulations made under the Act.

Regulation 2 brings into force section 21 of the Act for the purposes of introducing Schedule 4 to that Act only in relation to insurers. All paragraphs of that Schedule are brought into force on 10th September 2018 for the purpose of making rules. All paragraphs of that Schedule, except paragraph 11, are brought into force on 10th December 2018, for all other purposes, in relation to insurers. Paragraph 11 of that Schedule is brought into force on 10th December 2019, for all other purposes, in relation to insurers.

Regulation 3 provides that prohibition orders, together with warning notices and decision notices related to prohibition orders, are not affected by any changes made by the commencement of the provisions in regulation 2.

Regulation 4 provides that an insurer must prepare a “statement of responsibilities” where the appropriate regulator has deemed an approval under section 59 of FSMA (Condition A), a person has been granted an approval by the PRA under section 59 of FSMA prior to the commencement of these Regulations (Condition B), or an application has been made to the PRA for approval under section 59 of FSMA between 1st January 2016 and 9th December 2018 and the approval has been granted on or after 7th March 2016 (Condition C).

(a) Part 9A was inserted by section 24 of the Financial Services Act 2012.

Regulation 5 provides that the requirement to provide a revised statement of responsibilities under section 62A of FSMA applies to statement of responsibilities prepared under regulation 4 of these Regulations.

Regulation 6 provides that the appropriate regulator may comply with any requirement under Part 9A of FSMA to publish draft rules or other documents, with or without consulting upon it, by anything done by the appropriate regulator before 11th November 2018.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

NOTE AS TO EARLIER COMMENCEMENT REGULATIONS

(This note is not part of these Regulations)

The following provisions of the Act have been brought into force by commencement regulations made before the date of these Regulations:

| <i>Provision</i> | <i>Date of Commencement</i> | <i>S.I. No.</i> |
|--|-----------------------------|-----------------|
| Section 1 (partially) | 6th July 2016 | 2016/627 |
| Section 1 (in so far as not already in force) | 1st March 2017 | 2017/43 |
| Sections 2 to 10 | 6th July 2016 | 2016/627 |
| Section 11 (for the purpose of inserting sections 7D, 7E, 7G and 7H in the Bank of England Act 1998 (c. 11)) | 6th July 2016 | 2016/627 |
| Section 11 (in so far as not already in force) | 1st March 2017 | 2017/43 |
| Sections 12 to 15 | 1st March 2017 | 2017/43 |
| Section 16 (partially) | 6th July 2016 | 2016/627 |
| Section 16 (in so far as not already in force) | 1st March 2017 | 2017/43 |
| Section 17 (partially) | 6th July 2016 | 2016/627 |
| Section 17 (in so far as not already in force) | 1st March 2017 | 2017/43 |
| Sections 18 to 20 | 6th July 2016 | 2016/627 |
| Sections 22 to 24 | 6th July 2016 | 2016/627 |
| Section 25 (partially) | 10th May 2016 | 2016/569 |
| Section 25 (in so far as not already in force) | 6th July 2016 | 2016/627 |
| Sections 26 to 29 | 6th July 2016 | 2016/627 |
| Section 32 | 13th May 2016 | 2016/579 |
| Sections 33 to 36 | 6th July 2016 | 2016/627 |
| Section 38 | 6th July 2016 | 2016/627 |
| Schedule 2, paragraphs 1, 5 to 7, 8(1), (2)(a) and (b), (3)(a), (5)(a)(ii) and (6), 9(1), (2) and (4), 11, 15 to 18, 20(1), (2) and (4) to (7), 21(1), (2) and (4) to (7) and 32 | 6th July 2016 | 2016/627 |
| Schedule 2, paragraph 68 (partially) | 6th July 2016 | 2016/627 |
| Schedule 3, paragraph 1 (partially) | 6th July 2016 | 2016/627 |
| Schedule 3, paragraph 6 | 6th July 2016 | 2016/627 |