



Financial Services (Banking Reform) Act 2013

2013 CHAPTER 33

PART 4

CONDUCT OF PERSONS WORKING IN FINANCIAL SERVICES SECTOR

Amendments of FSMA 2000

18 Functions for which approval is required

- (1) Section 59 of FSMA 2000 (approval for particular arrangements) is amended as follows.
- (2) Omit subsection (5).
- (3) For subsection (6) substitute—

“(6) The PRA may specify a description of function under subsection (3)(a) only if, in relation to the carrying on of a regulated activity by a PRA-authorized person, it is satisfied that the function is a senior management function as defined in section 59ZA.”

- (4) After subsection (6) insert—

“(6A) If—

- (a) a function of a description specified in rules made by the FCA under subsection (3)(a) or (b) is a controlled function in relation to the carrying on of a regulated activity by a relevant authorised person, and
- (b) the FCA is satisfied that, in relation to the carrying on of a regulated activity by a relevant authorised person, the function is a senior management function as defined in section 59ZA,

the FCA must designate the function in the rules as a senior management function.

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(6B) If a function of a description specified in rules made by the PRA under subsection (3)(a) is a controlled function in relation to the carrying on of a regulated activity by a relevant authorised person, the PRA must designate the function in the rules as a senior management function.

(6C) For the meaning of “relevant authorised person”, see section 71A.”

(5) Omit subsections (7) to (7B) and (11).

19 Senior management functions

After section 59 of FSMA 2000 insert—

“59ZA Senior management functions

- (1) This section has effect for determining whether a function is for the purposes of section 59(6) or (6A) a senior management function.
- (2) A function is a “senior management function”, in relation to the carrying on of a regulated activity by an authorised person, if—
 - (a) the function will require the person performing it to be responsible for managing one or more aspects of the authorised person’s affairs, so far as relating to the activity, and
 - (b) those aspects involve, or might involve, a risk of serious consequences—
 - (i) for the authorised person, or
 - (ii) for business or other interests in the United Kingdom.
- (3) In subsection (2)(a) the reference to managing one or more aspects of an authorised person’s affairs includes a reference to taking decisions, or participating in the taking of decisions, about how one or more aspects of those affairs should be carried on.”

20 Statements of responsibilities

(1) Section 60 of FSMA 2000 (applications for approval) is amended as follows.

(2) After subsection (2) insert—

“(2A) If—

- (a) the application is for the approval of a person to perform a designated senior management function, and
- (b) the authorised person concerned is a relevant authorised person (see section 71A),

the appropriate regulator must require the application to contain, or be accompanied by, a statement setting out the aspects of the affairs of the authorised person concerned which it is intended that the person will be responsible for managing in performing the function.

(2B) A statement provided under subsection (2A) is known as a “statement of responsibilities”.

(2C) In subsection (2A) “designated senior management function” means a function designated as a senior management function under section 59(6A) or (6B).”

(3) After subsection (6) insert—

“(6A) Subsection (6) applies to references to a relevant authorised person as it applies to references to the authorised person concerned.”

21 Vetting by relevant authorised persons of candidates for approval

After section 60 of FSMA 2000 insert—

“60A Vetting of candidates by relevant authorised persons

(1) Before a relevant authorised person may make an application for a regulator’s approval under section 59, the authorised person must be satisfied that the person in respect of whom the application is made (“the candidate”) is a fit and proper person to perform the function to which the application relates.

(2) In deciding that question, the authorised person must have regard, in particular, to whether the candidate, or any person who may perform a function on the candidate’s behalf—

- (a) has obtained a qualification,
- (b) has undergone, or is undergoing, training,
- (c) possesses a level of competence, or
- (d) has the personal characteristics,

required by general rules made by the regulator in relation to persons performing functions of the kind to which the application relates.

(3) For the meaning of “relevant authorised person”, see section 71A.”

22 Determination of applications for approval

In section 61 of FSMA 2000 (determination of applications), in subsection (2)—

- (a) omit the “or” at the end of paragraph (b), and
- (b) after paragraph (c) insert “or
(d) has the personal characteristics,”.

23 Power to give approval subject to conditions or for limited period

(1) Section 61 of FSMA 2000 (determination of applications) is amended as follows.

(2) For subsection (1) substitute—

“(1) The regulator to which an application for approval is made under section 60 may grant the application only if—

- (a) it is satisfied that the person in respect of whom the application is made (“the candidate”) is a fit and proper person to perform the function to which the application relates, or
- (b) in a case where the application is for approval to perform a designated senior management function in relation to the carrying on

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of a regulated activity by a relevant authorised person (a “relevant senior management application”), it is satisfied that the condition in paragraph (a) will be met if the application is granted subject to one or more conditions (as to which, see subsection (2B)).”

(3) In subsection (2), for “deciding that question” substitute “determining the application”.

(4) After subsection (2A) insert—

“(2B) The regulator to which a relevant senior management application is made under section 60 may in particular—

- (a) grant the application subject to any conditions that the regulator considers appropriate, and
- (b) grant the application so as to give approval only for a limited period.

(2C) A regulator may exercise the power under paragraph (a) or (b) of subsection (2B) only if—

- (a) where the regulator is the FCA, it appears to the FCA that it is desirable to do so in order to advance one or more of its operational objectives, and
- (b) where the regulator is the PRA, it appears to the PRA that it is desirable to do so in order to advance any of its objectives.

(2D) Consent given by the FCA for the granting of the application may be conditional on the manner in which the PRA exercises its power under subsection (2B).”

(5) After subsection (3) insert—

“(3ZA) In the case of a relevant senior management application, the reference in subsection (3)(a) to granting the application is a reference to granting it without imposing conditions or limiting the period for which the approval has effect.”

(6) After subsection (5) insert—

“(6) In this section—

- (a) “designated senior management function” means a function designated as a senior management function under section 59(6A) or (6B);
- (b) any reference to a relevant authorised person includes a reference to a person who has applied for permission under Part 4A and will be a relevant authorised person if permission is given.

(7) For the meaning of “relevant authorised person”, see section 71A.”

(7) In section 62 of FSMA 2000 (applications for approval: procedure and right to refer to Tribunal)—

- (a) in subsection (2), after “the application” insert “, or to grant the application subject to conditions or for a limited period (or both)”;
- (b) in subsection (3), after “the application” insert “, or to grant the application subject to conditions or for a limited period (or both)”;
- (c) in subsection (4), after “the application” insert “, or to grant the application subject to conditions or for a limited period (or both)”.

24 Changes in responsibilities of senior managers

After section 62 of FSMA 2000 insert—

“62A Changes in responsibilities of senior managers

- (1) This section applies where—
 - (a) an authorised person has made an application to the appropriate regulator for approval under section 59 for a person to perform a designated senior management function,
 - (b) the application contained, or was accompanied by, a statement of responsibilities under section 60(2A), and
 - (c) the application has been granted.
- (2) If, since the granting of the application, there has been any significant change in the aspects of the authorised person’s affairs which the person is responsible for managing in performing the function, the authorised person must provide the appropriate regulator with a revised statement of responsibilities.
- (3) The appropriate regulator may require the authorised person—
 - (a) to provide information which the person is required to give under this section in such form as the appropriate regulator may direct, or
 - (b) to verify such information in such a way as the appropriate regulator may direct.
- (4) In this section—

“the appropriate regulator” has the same meaning as in section 60;
“designated senior management function” means a function designated as a senior management function under section 59(6A) or (6B).”

25 Duty to notify regulator of grounds for withdrawal of approval

In section 63 of FSMA 2000 (withdrawal of approval), after subsection (2) insert—

- “(2A) At least once a year each relevant authorised person must, in relation to every person in relation to whom an approval has been given on the application of the authorised person—
- (a) consider whether there are any grounds on which a regulator could withdraw the approval under this section, and
 - (b) if the authorised person is of the opinion that there are such grounds, notify the regulator of those grounds.
- (For the meaning of “relevant authorised person”, see section 71A.)”

26 Variation of approval

After section 63 of FSMA 2000 insert—

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

“63ZA Variation of senior manager’s approval at request of relevant authorised person

- (1) Where an application for approval under section 59 is granted subject to conditions, the authorised person concerned may apply to the appropriate regulator to vary the approval by—
 - (a) varying a condition,
 - (b) removing a condition, or
 - (c) imposing a new condition.
- (2) “The appropriate regulator”—
 - (a) in the case of an application for variation of an approval in a way described in subsection (1)(a) or (b), means whichever of the FCA or the PRA imposed the condition concerned;
 - (b) in the case of an application for variation of an approval in the way described in subsection (1)(c), means the regulator who gave the approval.
- (3) The PRA must consult the FCA before determining an application under this section, unless the application relates to the variation or removal of a condition which was imposed by the PRA in exercise of its power under section 63ZB.
- (4) The regulator to which an application is made under this section must, before the end of the period for consideration, determine whether—
 - (a) to grant the application; or
 - (b) to give a warning notice under section 62(2).
- (5) “The period for consideration” means the period of 3 months beginning with the date on which the regulator receives the application.
- (6) The FCA may refuse an application under this section if it appears to the FCA that it is desirable to do so in order to advance one or more of its operational objectives.
- (7) The PRA may refuse an application under this section if it appears to the PRA that it is desirable to do so in order to advance any of its objectives.
- (8) The following provisions apply to an application made under this section for variation of an approval as they apply to an application for approval made under section 60—
 - section 60(2) to (8),
 - section 61(4) and (5),
 - section 62.

63ZB Variation of senior manager’s approval on initiative of regulator

- (1) The FCA may vary an approval under section 59 given by the FCA or the PRA for the performance of a designated senior management function in relation to the carrying on of a regulated activity by a relevant authorised person if the FCA considers that it is desirable to do so in order to advance one or more of its operational objectives.

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- (2) The PRA may vary an approval under section 59 for the performance of a designated senior management function in relation to the carrying on of a regulated activity by a relevant authorised person if—
 - (a) either—
 - (i) the PRA gave the approval, or
 - (ii) the FCA gave the approval and the relevant authorised person is a PRA-authorised person, and
 - (b) the PRA considers that it is desirable to do so in order to advance any of its objectives.
- (3) A regulator may vary an approval by—
 - (a) imposing a condition,
 - (b) varying a condition,
 - (c) removing a condition, or
 - (d) limiting the period for which the approval is to have effect.
- (4) Before one regulator varies an approval given by the other regulator, it must consult the other regulator.
- (5) In this section “designated senior management function” means a function designated as a senior management function under section 59(6A) or (6B).
- (6) For the meaning of “relevant authorised person”, see section 71A.

63ZC Exercise of power under section 63ZB: procedure

- (1) This section applies to an exercise, by either regulator, of the power to vary an approval under section 63ZB.
- (2) A variation takes effect—
 - (a) immediately, if the notice given under subsection (4) states that that is the case,
 - (b) on such date as is specified in the notice, or
 - (c) if no date is specified in the notice, when the matter to which the notice relates is no longer open to review.
- (3) A variation may be expressed to take effect immediately (or on a specified date) only if the regulator concerned, having regard to the ground on which it is exercising the power to vary, reasonably considers that it is necessary for the variation to take effect immediately (or on that date).
- (4) If either regulator proposes to vary an approval or varies an approval with immediate effect, it must give each of the interested parties written notice.
- (5) The notice must—
 - (a) give details of the variation,
 - (b) state the regulator’s reasons for the variation,
 - (c) inform the interested parties that each of them may make representations to the regulator within such period as may be specified in the notice (whether or not any of the interested parties has referred the matter to the Tribunal),
 - (d) inform the interested parties of when the variation takes effect, and

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- (e) inform the interested parties of the right of each of them to refer the matter to the Tribunal.
- (6) “The interested parties”, in relation to an approval, are—
 - (a) the person on whose application it was given (“A”),
 - (b) the person in respect of whom it was given (“B”), and
 - (c) the person by whom B’s services are retained, if not A.
- (7) The regulator giving the notice may extend the period allowed under the notice for making representations.
- (8) If having considered the representations made by the interested parties, the regulator decides—
 - (a) to vary the approval, or
 - (b) if the variation has taken effect, not to rescind it,
 it must give each of the interested parties written notice.
- (9) If having considered the representations made by the interested parties, the regulator decides—
 - (a) not to vary the approval,
 - (b) to vary the approval in a different way, or
 - (c) if the variation has taken effect, to rescind it,
 it must give each of the interested parties written notice.
- (10) A notice under subsection (8) must inform the interested parties of the right of each of them to refer the matter to the Tribunal.
- (11) A notice under subsection (9)(b) must comply with subsection (5).
- (12) If a notice informs the interested parties of the right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.
- (13) For the purposes of subsection (2)(c), whether a matter is open to review is to be determined in accordance with section 391(8).
- (14) “Approval” means an approval under section 59.”

27 Statement of policy

After section 63ZC of FSMA 2000 (inserted by section 26 above) insert—

“63ZD Statement of policy relating to conditional approval and variation

- (1) Each regulator must prepare and issue a statement of its policy with respect to—
 - (a) its giving of approval under section 59 subject to conditions or for a limited period only, and
 - (b) its variation under section 63ZA or 63ZB of an approval given under section 59.
- (2) A regulator may at any time alter or replace a statement issued by it under this section.
- (3) If a statement issued under this section is altered or replaced by a regulator, the regulator must issue the altered or replacement statement.

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- (4) A statement issued under this section must be published by the regulator concerned in the way appearing to the regulator to be best calculated to bring it to the attention of the public.
- (5) A regulator may charge a reasonable fee for providing a person with a copy of a statement published under this section.
- (6) A regulator must, without delay, give the Treasury a copy of any statement which it publishes under this section.

63ZE Statement of policy: procedure

- (1) Before issuing a statement of policy under section 63ZD, a regulator (“the issuing regulator”) must—
 - (a) consult the other regulator, and
 - (b) publish a draft of the proposed statement in the way appearing to the issuing regulator to be best calculated to bring it to the attention of the public.
- (2) The duty of the FCA to consult the PRA under subsection (1)(a) applies only in so far as the statement of policy applies to persons whose approval under section 59 relates to the performance of a function designated by the FCA as a senior management function under section 59(6A) in relation to the carrying on by PRA-authorised persons of regulated activities.
- (3) The draft must be accompanied by notice that representations about the proposal may be made to the issuing regulator within a specified time.
- (4) Before issuing the proposed statement, the issuing regulator must have regard to any representations made to it in accordance with subsection (3).
- (5) If the issuing regulator issues the proposed statement it must publish an account, in general terms, of—
 - (a) the representations made to it in accordance with subsection (3), and
 - (b) its response to them.
- (6) If the statement differs from the draft published under subsection (1) in a way which is in the opinion of the issuing regulator significant, the issuing regulator—
 - (a) must before issuing it carry out any consultation required by subsection (1)(a), and
 - (b) must (in addition to complying with subsection (5)) publish details of the difference.
- (7) The issuing regulator may charge a reasonable fee for providing a person with a draft published under subsection (1)(b).
- (8) This section also applies to a proposal to alter or replace a statement.”

28 Extension of limitation periods for imposing sanctions

- (1) Section 63A of FSMA 2000 (power to impose penalties) is amended as follows.
- (2) In subsection (4), for “period of three years” substitute “relevant period”.

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

(3) After subsection (5A) insert—

“(5B) The relevant period” is—

- (a) in relation to the performance of a controlled function without approval before the day on which this subsection comes into force, the period of 3 years, and
- (b) in relation to the performance of a controlled function without approval on or after that day, the period of 6 years.”

(4) Section 66 of FSMA 2000 (disciplinary powers) is amended as follows.

(5) In subsection (4), for “period of three years” substitute “relevant period”.

(6) After subsection (5) insert—

“(5ZA) The relevant period” is—

- (a) in relation to misconduct which occurs before the day on which this subsection comes into force, the period of 3 years, and
- (b) in relation to misconduct which occurs on or after that day, the period of 6 years.”

29 Certification of employees by relevant authorised persons

After section 63D of FSMA 2000 insert—

“Certification of employees

63E Certification of employees by relevant authorised persons

- (1) A relevant authorised person (“A”) must take reasonable care to ensure that no employee of A performs a specified function under an arrangement entered into by A in relation to the carrying on by A of a regulated activity, unless the employee has a valid certificate issued by A under section 63F.
- (2) “Specified function”—
 - (a) in relation to the carrying on of a regulated activity by a PRA-
authorised person, means a function of a description specified in rules made by the FCA or the PRA, and
 - (b) in relation to the carrying on of a regulated activity by any other
authorised person, means a function of a description specified in rules made by the FCA.
- (3) The FCA may specify a description of function under subsection (2)(a) or (b) only if, in relation to the carrying on of a regulated activity by a relevant authorised person of a particular description—
 - (a) the function is not a controlled function in relation to the carrying on of that activity by a relevant authorised person of that description, but
 - (b) the FCA is satisfied that the function is nevertheless a significant-harm function.
- (4) The PRA may specify a description of function under subsection (2)(a) only if, in relation to the carrying on of a regulated activity by a relevant PRA-
authorised person of a particular description—

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

- (a) the function is not a controlled function in relation to the carrying on of that activity by a relevant PRA-*authorised* person of that description, but
 - (b) the PRA is satisfied that the function is nevertheless a significant-harm function.
- (5) A function is a “significant-harm function”, in relation to the carrying on of a regulated activity by an authorised person, if—
 - (a) the function will require the person performing it to be involved in one or more aspects of the authorised person’s affairs, so far as relating to the activity, and
 - (b) those aspects involve, or might involve, a risk of significant harm to the authorised person or any of its customers.
- (6) Each regulator must—
 - (a) keep under review the exercise of its power under subsection (2) to specify any significant-harm function as a specified function, and
 - (b) exercise that power in a way that it considers will minimise the risk of employees of relevant authorised persons performing significant-harm functions which they are not fit and proper persons to perform.
- (7) Subsection (1) does not apply to an arrangement which allows an employee to perform a function if the question of whether the employee is a fit and proper person to perform the function is reserved under any of the single market directives or the emission allowance auctioning regulation to an authority in a country or territory outside the United Kingdom.
- (8) In this section—
 - “controlled function” has the meaning given by section 59(3);
 - “customer”, in relation to an authorised person, means a person who is using, or who is or may be contemplating using, any of the services provided by the authorised person;
 - “relevant PRA-*authorised* person” means a PRA-*authorised* person that is a relevant authorised person.
- (9) In this section any reference to an employee of a person (“A”) includes a reference to a person who—
 - (a) personally provides, or is under an obligation personally to provide, services to A under an arrangement made between A and the person providing the services or another person, and
 - (b) is subject to (or to the right of) supervision, direction or control by A as to the manner in which those services are provided.
- (10) For the meaning of “relevant authorised person”, see section 71A.

63F Issuing of certificates

- (1) A relevant authorised person may issue a certificate to a person under this section only if the authorised person is satisfied that the person is a fit and proper person to perform the function to which the certificate relates.

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

- (2) In deciding whether the person is a fit and proper person to perform the function, the relevant authorised person must have regard, in particular, to whether the person—
- (a) has obtained a qualification,
 - (b) has undergone, or is undergoing, training,
 - (c) possesses a level of competence, or
 - (d) has the personal characteristics,
- required by general rules made by the appropriate regulator in relation to employees performing functions of that kind.
- (3) In subsection (2) “the appropriate regulator” means—
- (a) in relation to employees of PRA-authorised persons, the FCA or the PRA, and
 - (b) in relation to employees of any other authorised person, the FCA.
- (4) A certificate issued by a relevant authorised person to a person under this section must—
- (a) state that the authorised person is satisfied that the person is a fit and proper person to perform the function to which the certificate relates, and
 - (b) set out the aspects of the affairs of the authorised person in which the person will be involved in performing the function.
- (5) A certificate issued under this section is valid for a period of 12 months beginning with the day on which it is issued.
- (6) If, after having considered whether a person is a fit and proper person to perform a specified function, a relevant authorised person decides not to issue a certificate to the person under this section, the authorised person must give the person a notice in writing stating—
- (a) what steps (if any) the authorised person proposes to take in relation to the person as a result of the decision, and
 - (b) the reasons for proposing to take those steps.
- (7) A relevant authorised person must maintain a record of every employee who has a valid certificate issued by it under this section.
- (8) Expressions used in this section and in section 63E have the same meaning in this section as they have in that section.”

30 Rules of conduct

- (1) Part 5 of FSMA 2000 (performance of regulated activities) is amended as follows.
- (2) Omit sections 64 and 65 (and the italic cross-heading preceding them).
- (3) Before section 66 insert—

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

“Conduct of approved persons and others

64A Rules of conduct

- (1) If it appears to the FCA to be necessary or expedient for the purpose of advancing one or more of its operational objectives, the FCA may make rules about the conduct of the following persons—
 - (a) persons in relation to whom either regulator has given its approval under section 59;
 - (b) persons who are employees of relevant authorised persons (see section 71A).
- (2) If it appears to the PRA to be necessary or expedient for the purpose of advancing any of its objectives, the PRA may make rules about the conduct of the following persons—
 - (a) persons in relation to whom it has given its approval under section 59;
 - (b) persons in relation to whom the FCA has given its approval under section 59 in respect of the performance by them of a relevant senior management function in relation to the carrying on by a PRA-authorised person of a regulated activity;
 - (c) persons who are employees of relevant PRA-authorised persons.
- (3) In subsection (2)—

“relevant PRA-authorised person” means a PRA-authorised person that is a relevant authorised person (see section 71A), and

“relevant senior management function” means a function which the PRA is satisfied is a senior management function as defined in section 59ZA (whether or not the function has been designated as such by the FCA).
- (4) Rules made under this section must relate to the conduct of persons in relation to the performance by them of qualifying functions.
- (5) In subsection (4) “qualifying function”, in relation to a person, means a function relating to the carrying on of activities (whether or not regulated activities) by—
 - (a) in the case of an approved person, the person on whose application approval was given, and
 - (b) in any other case, the person’s employer.
- (6) In this section any reference to an employee of a person (“P”) includes a reference to a person who—
 - (a) personally provides, or is under an obligation personally to provide, services to P under an arrangement made between P and the person providing the services or another person, and
 - (b) is subject to (or to the right of) supervision, direction or control by P as to the manner in which those services are provided,and “employer” is to be read accordingly.

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

64B Rules of conduct: responsibilities of relevant authorised persons

- (1) This section applies where a regulator makes rules under section 64A (“conduct rules”).
- (2) Every relevant authorised person must—
 - (a) notify all relevant persons of the conduct rules that apply in relation to them, and
 - (b) take all reasonable steps to secure that those persons understand how those rules apply in relation to them.
- (3) The steps which a relevant authorised person must take to comply with subsection (2)(b) include, in particular, the provision of suitable training.
- (4) In this section “relevant person”, in relation to an authorised person, means—
 - (a) any person in relation to whom an approval is given under section 59 on the application of the authorised person, and
 - (b) any employee of the authorised person.
- (5) If a relevant authorised person knows or suspects that a relevant person has failed to comply with any conduct rules, the authorised person must notify the regulator of that fact.
- (6) In this section “employee”, in relation to an authorised person, has the same meaning as in section 64A.
- (7) For the meaning of “relevant authorised person”, see section 71A.”

31 Requirement to notify regulator of disciplinary action

After section 64B of FSMA 2000 (inserted by section 30 above) insert—

“64C Requirement for relevant authorised persons to notify regulator of disciplinary action

- (1) If—
 - (a) a relevant authorised person takes disciplinary action in relation to a relevant person, and
 - (b) the reason, or one of the reasons, for taking that action is a reason specified in rules made by the appropriate regulator for the purposes of this section,
 the relevant authorised person must notify that regulator of that fact.
- (2) “Disciplinary action”, in relation to a person, means any of the following—
 - (a) the issuing of a formal written warning;
 - (b) the suspension or dismissal of the person;
 - (c) the reduction or recovery of any of the person’s remuneration.
- (3) “The appropriate regulator” means—
 - (a) in relation to relevant authorised persons that are PRA-authorised persons, the FCA or the PRA;
 - (b) in relation to any other relevant authorised persons, the FCA.

- (4) “Relevant person” has the same meaning as in section 64B.
- (5) For the meaning of “relevant authorised person”, see section 71A.”

32 Definition of “misconduct”

- (1) In section 66 of FSMA 2000 (disciplinary powers)—
 - (a) after subsection (1) insert—

“(1A) For provision about when a person is guilty of misconduct for the purposes of action by a regulator—

 - (a) see section 66A, in the case of action by the FCA, and
 - (b) see section 66B, in the case of action by the PRA.”;
 - (b) omit subsections (2), (2A), (6) and (7).
- (2) After that section insert—

“66A Misconduct: action by the FCA

- (1) For the purposes of action by the FCA under section 66, a person is guilty of misconduct if any of conditions A to C is met in relation to the person.
- (2) Condition A is that—
 - (a) the person has at any time failed to comply with rules made by the FCA under section 64A, and
 - (b) at that time the person was—
 - (i) an approved person, or
 - (ii) an employee of a relevant authorised person.
- (3) Condition B is that—
 - (a) the person has at any time been knowingly concerned in a contravention of a relevant requirement by an authorised person, and
 - (b) at that time the person was—
 - (i) an approved person in relation to the authorised person, or
 - (ii) in the case of a relevant authorised person, an employee of the authorised person.
- (4) In this section “relevant requirement” means a requirement—
 - (a) imposed by or under this Act, or
 - (b) imposed by any qualifying EU provision specified, or of a description specified, for the purposes of this subsection by the Treasury by order.
- (5) Condition C is that—
 - (a) the person has at any time been a senior manager in relation to a relevant authorised person,
 - (b) there has at that time been (or continued to be) a contravention of a relevant requirement by the authorised person, and
 - (c) the senior manager was at that time responsible for the management of any of the authorised person’s activities in relation to which the contravention occurred.

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- (6) But a person (“P”) is not guilty of misconduct by virtue of subsection (5) if P satisfies the FCA that P had taken such steps as a person in P’s position could reasonably be expected to take to avoid the contravention occurring (or continuing).
- (7) For the purposes of subsection (5)—
- “senior manager”, in relation to a relevant authorised person, means a person who has approval under section 59 to perform a designated senior management function in relation to the carrying on by the authorised person of a regulated activity;
- “designated senior management function” means a function designated as a senior management function under section 59(6A) or (6B).
- (8) In this section—
- “approved person”—
- (a) means a person in relation to whom an approval is given under section 59, and
- (b) in relation to an authorised person, means a person in relation to whom such approval is given on the application of the authorised person;
- “employee”, in relation to a person, has the same meaning as in section 64A.
- (9) For the meaning of “relevant authorised person”, see section 71A.

66B Misconduct: action by the PRA

- (1) For the purposes of action by the PRA under section 66, a person is guilty of misconduct if any of conditions A to C is met in relation to the person.
- (2) Condition A is that—
- (a) the person has at any time failed to comply with rules made by the PRA under section 64A, and
- (b) at that time the person was—
- (i) an approved person, or
- (ii) an employee of a relevant PRA-authorised person.
- (3) Condition B is that—
- (a) the person has at any time been knowingly concerned in a contravention of a relevant requirement by a PRA-authorised person, and
- (b) at that time the person was—
- (i) an approved person in respect of the performance of a relevant senior management function in relation to the carrying on by the PRA-authorised person of a regulated activity, or
- (ii) in the case of a relevant PRA-authorised person, an employee of the authorised person.
- (4) In this section “relevant requirement” means a requirement—

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- (a) imposed by or under this Act, or
 - (b) imposed by any qualifying EU provision specified, or of a description specified, for the purposes of this subsection by the Treasury by order.
- (5) Condition C is that—
- (a) the person has at any time been a senior manager in relation to a relevant PRA-authorised person,
 - (b) there has at that time been (or continued to be) a contravention of a relevant requirement by the authorised person, and
 - (c) the senior manager was at that time responsible for the management of any of the authorised person’s activities in relation to which the contravention occurred.
- (6) But a person (“P”) is not guilty of misconduct by virtue of subsection (5) if P satisfies the PRA that P had taken such steps as a person in P’s position could reasonably be expected to take to avoid the contravention occurring (or continuing).
- (7) For the purposes of subsection (5)—
- “senior manager”, in relation to a relevant PRA-authorised person, means a person who has approval under section 59 to perform a designated senior management function in relation to the carrying on by the authorised person of a regulated activity;
- “designated senior management function” means a function designated as a senior management function under section 59(6A) or (6B).
- (8) In this section—
- “approved person”—
- (a) means a person in relation to whom—
 - (i) the PRA has given its approval under section 59, or
 - (ii) the FCA has given its approval under section 59 in respect of the performance by the person of a relevant senior management function in relation to the carrying on by a PRA-authorised person of a regulated activity, and
 - (b) in relation to an authorised person, means a person in relation to whom approval under section 59 is given on the application of the authorised person;
- “employee”, in relation to a person, has the same meaning as in section 64A;
- “relevant PRA-authorised person” means a PRA-authorised person that is a relevant authorised person;
- “relevant senior management function” means a function which the PRA is satisfied is a senior management function as defined in section 59ZA (whether or not the function has been designated as such by the FCA).
- (9) For the meaning of “relevant authorised person”, see section 71A.”

33 Meaning of “relevant authorised person”

In Part 5 of FSMA 2000 (performance of regulated activities), after section 71 insert—

““Relevant authorised person”

71A Meaning of “relevant authorised person”

- (1) In this Part “relevant authorised person” means a UK institution which—
 - (a) meets condition A or B, and
 - (b) is not an insurer.
- (2) Condition A is that the institution has permission under Part 4A to carry on the regulated activity of accepting deposits.
- (3) Condition B is that—
 - (a) the institution is an investment firm,
 - (b) it has permission under Part 4A to carry on the regulated activity of dealing in investments as principal, and
 - (c) when carried on by it, that activity is a PRA-regulated activity.
- (4) The Treasury may by order provide that authorised persons falling within any of the following descriptions are “relevant authorised persons” for the purposes of this Part—
 - (a) non-UK institutions (or non-UK institutions of a specified description) that are credit institutions;
 - (b) non-UK institutions that are investment firms of a specified description.

“Specified” means specified in the order.
- (5) If the Treasury propose to make an order under subsection (4) they must consult—
 - (a) the FCA,
 - (b) the PRA,
 - (c) any organisations that appear to them to be representative of interests substantially affected by the proposals, and
 - (d) any other persons that they consider appropriate.
- (6) In this section—
 - (a) “UK institution” means an institution which is incorporated in, or formed under the law of any part of, the United Kingdom;
 - (b) “non-UK institution” means an institution that is not a UK institution;
 - (c) “credit institution” means any credit institution as defined in Article 4.1(1) of [Regulation \(EU\) No 575/2013](#) of the European Parliament and of the Council;
 - (d) “insurer” means an institution which is authorised under this Act to carry on the regulated activity of effecting or carrying out contracts of insurance as principal.
- (7) Subsections (2), (3) and (6)(d) are to be read in accordance with Schedule 2, taken with any order under section 22.”

34 Recording information about senior managers

(1) Section 347 of FSMA 2000 (the record of authorised persons etc.) is amended as follows.

(2) In subsection (2)—

(a) in paragraph (g), after sub-paragraph (iii) insert—

“(iv) in a case where the authorised person concerned is a relevant authorised person, whether or not the person is a senior manager;”;

(b) after that paragraph insert—

“(h) in the case of an approved person who is a senior manager in relation to a relevant authorised person—

(i) whether a final notice has been given to the person under section 390; and

(ii) if so, any information about the matter to which the notice relates which has been published under section 391(4).”

(3) After subsection (8) insert—

“(8A) In this section—

“relevant authorised person” has the same meaning as in Part 5 (see section 71A),

“senior manager”, in relation to a relevant authorised person, means a person who has approval under section 59 to perform a designated senior management function in relation to the carrying on by the authorised person of a regulated activity, and

“designated senior management function” means a function designated as a senior management function under section 59(6A) or (6B).”

(4) For subsection (9) substitute—

“(9) The authorised person concerned”, in relation to an approved person, means the person on whose application approval was given.”

35 Consequential amendments relating to Part 4

Schedule 3 (which contains further amendments relating to the provisions of this Part) has effect.

Offence

36 Offence relating to a decision causing a financial institution to fail

(1) A person (“S”) commits an offence if—

(a) at a time when S is a senior manager in relation to a financial institution (“F”), S—

(i) takes, or agrees to the taking of, a decision by or on behalf of F as to the way in which the business of a group institution is to be carried on, or

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- (ii) fails to take steps that S could take to prevent such a decision being taken,
 - (b) at the time of the decision, S is aware of a risk that the implementation of the decision may cause the failure of the group institution,
 - (c) in all the circumstances, S’s conduct in relation to the taking of the decision falls far below what could reasonably be expected of a person in S’s position, and
 - (d) the implementation of the decision causes the failure of the group institution.
- (2) A “group institution”, in relation to a financial institution (“F”), means F or any other financial institution that is a member of F’s group for the purpose of FSMA 2000 (see section 421 of that Act).
- (3) Subsections (1) and (2) are to be read with the interpretative provisions in section 37.
- (4) A person guilty of an offence under this section is liable—
- (a) on summary conviction—
 - (i) in England and Wales, to imprisonment for a term not exceeding 12 months (or 6 months, if the offence was committed before the commencement of section 154(1) of the Criminal Justice Act 2003) or a fine, or both;
 - (ii) in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum, or both;
 - (iii) in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum, or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 7 years or a fine, or both.

37 Section 36: interpretation

- (1) This section has effect for the interpretation of section 36.
- (2) “Financial institution” means a UK institution which—
- (a) meets condition A or B, and
 - (b) is not an insurer or a credit union.
- (3) Condition A is that it has permission under Part 4A of FSMA 2000 to carry on the regulated activity of accepting deposits.
- (4) Condition B is that—
- (a) it is for the purposes of FSMA 2000 an investment firm (see section 424A of that Act),
 - (b) it has permission under Part 4A of that Act to carry on the regulated activity of dealing in investments as principal, and
 - (c) when carried on by it, that activity is a PRA-regulated activity.
- (5) In subsection (2)—
- (a) “UK institution” means an institution which is incorporated in, or formed under the law of any part of, the United Kingdom;
 - (b) “insurer” means an institution which is authorised under FSMA 2000 to carry on the regulated activity of effecting or carrying out contracts of insurance as principal;

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- (c) “credit union” means a credit union as defined by section 31 of the Credit Unions Act 1979 or a credit union as defined by Article 2(2) of the Credit Unions (Northern Ireland) Order 1985.
- (6) Subsections (3), (4) and (5)(b) are to be read in accordance with sections 22 and 22A of FSMA 2000, taken with Schedule 2 to that Act and any order under section 22.
- (7) A person is a “senior manager” in relation to a financial institution if, under an arrangement entered into by the institution, or by a contractor of the institution, in relation to the carrying on by the institution of a regulated activity, the person performs a senior management function.
- (8) A “senior management function” is a function designated as such—
 - (a) by the FCA under subsection (6A) of section 59 of FSMA 2000 (approval for particular arrangements), or
 - (b) by the PRA under subsection (6B) of that section.
- (9) A financial institution (“F”) is to be regarded as failing where—
 - (a) F enters insolvency,
 - (b) any of the stabilisation options in Part 1 of the Banking Act 2009 is achieved in relation to F, or
 - (c) F is taken for the purposes of the Financial Services Compensation Scheme to be unable, or likely to be unable, to satisfy claims against F.
- (10) In subsection (9)(a) “insolvency” includes—
 - (a) bankruptcy,
 - (b) liquidation,
 - (c) bank insolvency,
 - (d) administration,
 - (e) bank administration,
 - (f) receivership,
 - (g) a composition between F and F’s creditors, and
 - (h) a scheme of arrangement of F’s affairs.

38 Institution of proceedings

- (1) In this section “an offence” means an offence under section 36.
- (2) Proceedings for an offence may be instituted in England and Wales only—
 - (a) by the FCA, the PRA or the Secretary of State, or
 - (b) by or with the consent of the Director of Public Prosecutions.
- (3) Proceedings for an offence may be instituted in Northern Ireland only—
 - (a) by the FCA, the PRA or the Secretary of State, or
 - (b) by or with the consent of the Director of Public Prosecutions for Northern Ireland.
- (4) In exercising its power to institute proceedings for an offence, the FCA or the PRA must comply with any conditions or restrictions imposed in writing by the Treasury.
- (5) Conditions or restrictions may be imposed under subsection (4) in relation to—
 - (a) proceedings generally, or

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- (b) such proceedings, or categories of proceedings, as the Treasury may direct.