



Financial Services (Banking Reform) Act 2013

2013 CHAPTER 33

PART 4

CONDUCT OF PERSONS WORKING IN FINANCIAL SERVICES SECTOR

Amendments of FSMA 2000

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—

Changes to legislation: There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013, Section 29. (See end of Document for details)

- (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—
- (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.

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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.
- (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.”

Commencement Information

- I1** S. 29 in force at 25.7.2014 for specified purposes by S.I. 2014/1819, art. 2(2)(b)
- I2** S. 29 in force at 7.3.2016 for specified purposes by S.I. 2015/490, art. 2(1)(a) (with savings and transitional provisions in S.I. 2015/492 (as amended by S.I. 2015/1660))

Changes to legislation: *There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013, Section 29. (See end of Document for details)*

- I3** [S. 29](#) in force at 7.3.2017 in so far as not already in force by [S.I. 2015/490](#), **art. 2(2)** (with savings and transitional provisions in [S.I. 2015/492](#) (as amended by [S.I. 2015/1660](#)))

Changes to legislation:

There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013, Section 29.