

2019 No. 1136 (C. 35)

FINANCIAL SERVICES

**The Bank of England and Financial Services Act 2016
(Commencement No. 6 and Transitional Provisions) Regulations
2019**

Made - - - -

17th July 2019

The Treasury make the following Regulations in exercise of the powers conferred by section 41(3), (4) and (5) of the Bank of England and Financial Services Act 2016(a).

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. 6 and Transitional Provisions) Regulations 2019.

(2) In these Regulations—

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

“authorised person” has the meaning given by section 31(2) of FSMA;

“benchmark firm” means an authorised person who—

(a) has a Part 4A permission to carry on an activity of the kind specified by article 63O or 63S of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(b), and

(b) does not have a Part 4A permission to carry on any other activity, other than any Part 4A permission to carry on an activity of the kind specified by article 64 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 so far as relevant to an activity of the kind specified by article 63O of that Order;

“controlled function” has the meaning given for the purposes of section 59 of FSMA (approval of persons to perform controlled functions)(c) by subsection (3) of that section;

“the FCA” means the Financial Conduct Authority;

(a) 2016 c. 14.

(b) S.I. 2001/544; relevant amending instruments are S.I. 2013/655, 2013/1881, 2018/135, 2018/1253.

(c) Section 59 was amended by section 14(1) of and paragraph 3 of Schedule 5 to the Financial Services Act 2012 (c. 21), section 18 of and paragraph 1 of Schedule 3 to the Financial Services (Banking Reform) Act 2013 (c. 33), paragraph 2 of Schedule 4 to the Bank of England and Financial Services Act 2016, article 3(4) of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2012 (S.I. 2012/1906) and paragraph 7 of Schedule 1 to the Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773).

- “FSMA” means the Financial Services and Markets Act 2000(a);
- “Part 4A permission” has the meaning given by section 55A(5) of FSMA(b);
- “the PRA” means the Prudential Regulation Authority;
- “regulated activity” has the same meaning as in FSMA (see section 22 of FSMA)(c);
- “solo-regulated firm” means an authorised person who is not a PRA-authorised person within the meaning given by section 2B(5) of FSMA(d).

PART 2

Appointed Days

Commencement of section 21 of and Schedule 4 to the Act for remaining purposes

2.—(1) This regulation applies to appoint days for the coming into force of section 21 of and Schedule 4 to the Act (extension of relevant authorised person regime in Part 5 of FSMA to all authorised persons) so far as those provisions are not brought into force by the Bank of England and Financial Services Act 2016 (Commencement No. 5 and Transitional Provisions) Regulations 2018(e).

(2) The day appointed for the coming into force of section 21 of and Schedule 4 to the Act for the purpose of the making of rules, the giving of directions, the imposition of requirements and the issuing of statements of policy by the FCA is the day after the day on which these Regulations are made.

(3) 9th August 2019 is the day appointed for the coming into force of section 21 of and Schedule 4 to the Act for remaining purposes in relation to authorised persons who are not solo-regulated firms.

(4) 9th December 2019 is the day appointed for the coming into force of section 21 of and Schedule 4 to the Act for remaining purposes in relation to solo-regulated firms other than benchmark firms, except as provided by paragraph (6).

(5) 7th December 2020 is the day appointed for the coming into force of section 21 of and Schedule 4 to the Act for remaining purposes in relation to benchmark firms, except as provided by paragraph (7).

(6) 9th December 2020 is the day appointed for the coming into force of the employee certification provisions for remaining purposes in relation to solo-regulated firms other than benchmark firms.

(7) 7th December 2021 is the day appointed for the coming into force of the employee certification provisions for remaining purposes in relation to benchmark firms.

(8) In paragraphs (6) and (7), “the employee certification provisions” means—

- (a) paragraph 11 of Schedule 4 to the Act (amendments to section 63E of FSMA: certification of employees), and
- (b) paragraphs 18 and 22(5) of that Schedule (repeal of section 71A of FSMA: definition of “relevant authorised person”) so far as section 71A of FSMA(f) defines “relevant authorised person” for the purposes of section 63E of FSMA(g).

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- (a) 2000 c. 8.
 - (b) Section 55A was inserted by section 11(2) of the Financial Services Act 2012.
 - (c) Section 22 was amended by section 7(1) of the Financial Services Act 2012, section 27(4) of the Financial Guidance and Claims Act 2018 (c. 10) and regulation 38 of the Financial Services and Markets Act 2000 (Benchmarks) Regulations 2018 (S.I. 2018/135).
 - (d) Section 2B was inserted by section 6(1) of the Financial Services Act 2012.
 - (e) S.I. 2018/990 (C. 76).
 - (f) Section 71A was inserted by section 33 of the Financial Services (Banking Reform) Act 2013.
 - (g) Section 63E was inserted by section 29 of the Financial Services (Banking Reform) Act 2013 and amended by article 91(4) of the Financial Services and Markets Act 2000 (Claims Management Activity) Order 2018 (S.I. 2018/1253).

PART 3

Transitional Provisions

Application of the amendments to solo-regulated firms carrying on claims management activity

3.—(1) The amendments made by Schedule 4 to the Act so far as brought into force by regulation 2(4) do not apply in relation to an authorised person who, immediately before 9th December 2019—

- (a) had temporary permission to carry on claims management activity, and
- (b) did not have permission to carry on any other regulated activity,

until that person has full permission to carry on claims management activity or has permission to carry on any other regulated activity.

(2) The amendments made by paragraphs 11, 18 and 22(5) of Schedule 4 to the Act so far as brought into force by regulation 2(6) do not apply in relation to an authorised person who—

- (a) immediately before 9th December 2019 had temporary permission to carry on claims management activity, and
- (b) did not, immediately before 9th December 2020, have permission to carry on any other regulated activity,

until that person has had full permission to carry on claims management activity for 12 months or has permission to carry on any other regulated activity.

(3) Paragraph (2) does not apply to a person who, at any time on or after 9th December 2019 and before 9th December 2020, had permission to carry on any regulated activity other than claims management activity.

(4) For the purposes of paragraphs (1) to (3), having permission to carry on a regulated activity other than claims management activity does not include having permission to carry on an activity of the kind specified by article 64 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(a) so far as relevant to claims management activity.

(5) In this regulation—

“claims management activity” means an activity of a kind specified by any of articles 89G to 89M of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(b);

“full permission” means permission given by the FCA under Part 4A of FSMA (permission to carry on regulated activities)(c);

“permission” has the same meaning as in FSMA (see section 20(1) of FSMA(d));

“temporary permission” means permission under article 80 of the Financial Services and Markets Act 2000 (Claims Management Activity) Order 2018(e).

Prohibition orders and related notices

4.—(1) Paragraph (3) applies to—

- (a) a warning notice or a decision notice under section 57 of FSMA (prohibition orders: procedure and right to refer to Tribunal)(f),
- (b) a further decision notice under section 390(2A) of FSMA(g) about a prohibition order,

(a) Article 64 was amended by S.I. 2013/1881, 2018/135, 2018/1253.

(b) Articles 89G to 89M were inserted by S.I. 2018/1253.

(c) Part 4A was inserted by section 11(2) of the Financial Services Act 2012.

(d) Section 20(1) was amended by paragraph 2(2) of Schedule 9 to the Financial Services Act 2012.

(e) S.I. 2018/1253.

(f) Section 57 was amended by section 13(10) to (12) of the Financial Services Act 2012.

(g) Subsection (2A) of section 390 was inserted by paragraph 29(4) of Schedule 9 to the Financial Services Act 2012.

- (c) a final notice under section 390(1) or (2A) of FSMA(a) about a prohibition order, or
- (d) a prohibition order,

which is given or made before the relevant date.

(2) In this regulation—

“prohibition order” means a prohibition order under section 56 of FSMA(b);

“the relevant date” means—

- (a) where the notice or order concerns the performance of functions in relation to a regulated activity carried on by a solo-regulated firm other than a benchmark firm, 9th December 2019;
- (b) where the notice or order concerns the performance of functions in relation to a regulated activity carried on by a benchmark firm, 7th December 2020.

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

- (a) the amendments made to section 59 of FSMA (approval of persons to perform controlled functions) by Schedule 4 to the Act so far as brought into force by regulation 2(4) or (5) (as the case may be), or
- (b) rules made by the FCA or the PRA before the relevant date in connection with the coming into force of those amendments, which alter or replace a description of a controlled function to which the notice or prohibition order relates.

(4) But paragraph (3) does not prevent a prohibition order that—

- (a) is made on or after the relevant date, and
- (b) in respect of which a warning notice or a decision notice was given under section 57 of FSMA before that date,

from describing or referring to the functions to which the order relates differently from the way in which those functions were described or referred to in the notice.

Deemed approval to perform designated senior management functions: requirement to provide statement of responsibilities

5.—(1) This regulation applies to a solo-regulated firm in relation to which the conditions in paragraphs (2) and (3) are met.

(2) The condition in this paragraph is that, before the relevant date—

- (a) the FCA granted an application under section 60 of FSMA(c) by the firm for approval under section 59 of FSMA for a person (“the approved person”) to perform a controlled function, or
- (b) the firm was given an approval (however described) under any enactment which has effect as an approval under section 59 of FSMA for a person (“the approved person”) to perform a controlled function.

(3) The condition in this paragraph is that—

- (a) the approval mentioned in paragraph (2) is in force at the beginning of the relevant date,
- (b) that approval is deemed at that time, under rules made by the FCA before that date, to be an approval to perform a designated senior management function on or after that date, and
- (c) the approved person is, at the beginning of the relevant date, retained to perform that designated senior management function.

(a) Section 390(1) was amended by paragraph 29(2) of Schedule 9 to the Financial Services Act 2012 and paragraph 47 of Schedule 2 to the Transfer of Tribunal Functions Order 2010 (S.I. 2010/22).

(b) Section 56 was amended by section 13(1) to (9) of the Financial Services Act 2012.

(c) Section 60 was amended by paragraph 4 of Schedule 5 to the Financial Services Act 2012 and section 20 of the Financial Services (Banking Reform) Act 2013.

(4) Within five days beginning with the relevant date, the firm must prepare a statement setting out the aspects of the affairs of the firm which the approved person is, at the beginning of that date, responsible for managing in performing the designated senior management function referred to in paragraph (3).

(5) For the purposes of paragraph (4), managing an aspect of a firm's affairs includes taking decisions, or participating in the taking of decisions, about how that aspect of those affairs should be carried on.

(6) The firm is not required to prepare a statement under paragraph (4) where it has provided a statement containing the same information to the FCA in accordance with rules made by the FCA before the relevant date in connection with the coming into force of the amendments to Part 5 of FSMA made by Schedule 4 to the Act so far as brought into force by regulation 2(4) or (5) (as the case may be).

(7) Subsections (4) and (5) of section 60 of FSMA (form and verification of information in statement of responsibilities) apply in relation to the information which a solo-regulated firm is required to include in a statement under paragraph (4) as they apply in relation to the information which an authorised person is required to give in a statement of responsibilities provided under subsection (2A) of that section.

(8) In section 60(4) and (5) of FSMA as applied by paragraph (7)—

- (a) in subsection (4), references to “the appropriate regulator” are to be read as references to the FCA, and
- (b) in subsection (5), the references to applications are to be read as references to statements under paragraph (4).

(9) The requirement to prepare a statement under paragraph (4) has effect—

- (a) for the purposes of any enactment that refers to a requirement imposed by FSMA, and
- (b) so far as the context of the reference permits,

as if it were imposed (in the circumstances in which it is imposed under this regulation) under section 62A(2) of FSMA^(a).

(10) In this regulation—

“designated senior management function” has the meaning given by section 59ZB of FSMA^(b);

“the relevant date” means—

- (a) in relation to a solo-regulated firm other than a benchmark firm, 9th December 2019;
- (b) in relation to a benchmark firm, 7th December 2020.

Application of section 62A of FSMA to statement of responsibilities under regulation 5

6.—(1) Subsections (2) and (3) of section 62A of FSMA (changes in responsibilities of senior managers: requirement for revised statement) apply where a solo-regulated firm has—

- (a) prepared a statement under regulation 5(4), or
- (b) provided a statement mentioned in regulation 5(6) to the FCA,

as they apply in the circumstances in subsection (1) of that section.

(2) In section 62A(2) of FSMA as it applies by virtue of paragraph (1)—

- (a) the reference to the granting of the application is to be read as a reference to the beginning of the relevant date (within the meaning given by regulation 5(10));
- (b) the reference to “the appropriate regulator” is to be read as a reference to the FCA;

(a) Section 62A was inserted by section 24 of the Financial Services (Banking Reform) Act 2013 and amended by paragraph 7 of Schedule 4 to the Bank of England and Financial Services Act 2016.

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

- (c) the reference to a revised statement of responsibilities is to be read as a reference to a revised version of the statement prepared under regulation 5(4) or the statement mentioned in regulation 5(6), as the case may be.

(3) In section 62A(3) of FSMA as it applies by virtue of paragraph (1), the references to “the appropriate regulator” are to be read as references to the FCA.

Requirements to consult etc satisfied by things done before commencement

7.—(1) This regulation applies where any provision of Part 9A of FSMA (rules and guidance)(a) imposes a procedural requirement on the FCA or the PRA in connection with the making or issuing of any rules or other instrument or document under any provision of Part 5 of FSMA (performance of regulated activities) by virtue of an amendment to that Part (“the relevant amendment”) brought into force by these Regulations.

(2) In paragraph (1) a “procedural requirement” means a requirement, however expressed, to—

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

(3) The procedural requirement may be satisfied by things done by the FCA or the PRA (as the case may be) wholly or in part before the date on which the relevant amendment comes into force.

*Alister Jack
Mike Freer*

17th July 2019

Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations bring the amendments made by section 21 of and Schedule 4 to the Bank of England and Financial Services Act 2016 (“the 2016 Act”) fully into force. Those provisions amend provisions of Part 5 of the Financial Services and Markets Act 2000 (FSMA) which regulated the conduct of persons working in banks and certain investment institutions (referred to as “relevant authorised persons”), extending those provisions to all authorised persons. The Bank of England and Financial Services Act 2016 (Commencement No. 5 and Transitional Provisions) Regulations 2018 (S.I. 2018/990 (C. 76)) bring the amendments into force in relation to insurers. These Regulations bring them into force in relation to all other authorised persons.

Regulation 2(2) brings the amendments into force on the day after the day on which these Regulations are made, for the purpose of the making of rules, the giving of directions, the imposition of requirements and the issuing of statements of policy by the Financial Conduct Authority (“the FCA”). Regulation 2(3) brings the amendments fully into force on 9th August 2019 for other purposes in relation to authorised persons other than “solo-regulated firms” (which is defined in regulation 1(2) and refers to authorised persons regulated solely by the FCA). Regulation 2(4) and (5) brings most of the amendments into force for remaining purposes on 9th December 2019 in relation to solo-regulated firms other than “benchmark firms” (defined in regulation 1(2)) and on 7th December 2020 in relation to benchmark firms. This is subject to regulation 2(6) and (7), which brings the amendments to section 63E of FSMA (requiring the certification of employees to perform particular functions) into force on 9th December 2020 in relation to solo-regulated firms other than benchmark firms and on 7th December 2021 in relation to benchmark firms.

(a) Part 9A was inserted by section 24(1) of the Financial Services Act 2012.

Regulation 3 makes transitional provision, to which the commencement of the amendments by regulation 2(6) is subject, in relation to authorised persons carrying on claims management activity.

Regulations 4 to 7 make further transitional provision.

Regulation 4 provides that prohibition orders under section 56 of FSMA, and associated notices, are not affected by the amendments to section 59 of FSMA brought into force by regulation 2(4) or (5) or by rules made by the FCA or the Prudential Regulation Authority (“the PRA”) in connection with those amendments. Section 59 provides for the approval of persons to perform “controlled functions” specified in FCA or PRA rules.

Regulation 5 applies where a person has been approved to perform “controlled functions” for the purposes of section 59 of FSMA and rules made by the FCA deem this to be an approval to perform a “designated senior management function” (within the meaning of section 59ZB of FSMA) on or after “the relevant date” (defined in regulation 5(10)). It requires a solo-regulated firm to prepare a statement about the approved person’s management responsibilities.

Regulation 6 applies section 62A of FSMA, with modifications, to statements provided under regulation 5 and similar statements provided under FCA rules. This requires a revised statement to be provided to the FCA where there has been a change in the approved person’s responsibilities.

Regulation 7 provides that consultation and other procedural requirements under Part 9A of FSMA in connection with making or issuing rules or other instruments under Part 5 of FSMA by virtue of an amendment to Part 5 brought into force by these Regulations can be satisfied by anything done before the amendment comes into force.

A full impact assessment has not been produced for this instrument because 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 the 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 (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 (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 (so far as not already in force)	1st March 2017	2017/43
Section 17 (partially)	6th July 2016	2016/627
Section 17 (so far as not already in force)	1st March 2017	2017/43
Sections 18 to 20	6th July 2016	2016/627
Section 21 (for specified purposes in relation to insurers)	13th September 2018	2018/990
Section 21 (for all other purposes in relation to insurers)	10th December 2018	2018/990
Sections 22 to 24	6th July 2016	2016/627
Section 25 (partially)	10th May 2016	2016/569

Section 25 (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
Schedule 4 (for specified purposes in relation to insurers)	13th September 2018	2018/990
Schedule 4, paragraphs 1 to 10 and 12 to 22 (for all other purposes in relation to insurers)	10th December 2018	2018/990
Schedule 4, paragraph 11 (for all other purposes in relation to insurers)	10th December 2019	2018/990

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