Draft Regulations laid before Parliament under section 8(5) and 12(3) of the Civil Liability Act 2018, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2021 No. 0000

FINANCIAL SERVICES AND MARKETS, ENGLAND AND WALES

The Civil Liability Act 2018 (Financial Conduct Authority) (Whiplash) Regulations 2021

Made - - - -	***
Coming into force - -	*31st May 2021*

The Treasury make these Regulations in exercise of the powers conferred by section 8 of the Civil Liability Act 2018(**a**).

In accordance with sections 8(5) and 12(3) of that Act, a draft of these Regulations has been laid before, and approved by a resolution of, each House of Parliament.

Citation and commencement

1. These Regulations may be cited as the Civil Liability Act 2018 (Financial Conduct Authority) (Whiplash) Regulations 2021 and come into force on 31st May 2021.

Monitoring of, and compliance with, rules against settlement before medical report

2.—(1) For the purposes of section 8 (regulation by the Financial Conduct Authority) of the Civil Liability Act 2018(**b**), the following provisions of the Financial Services and Markets Act 2000(**c**) apply with such modifications as may be specified.

(2) In Part 1A (the regulators)—

(a) subsection (5) of section 1A (the Financial Conduct Authority) applies insofar as it is necessary for the application of Schedule 1ZA (the Financial Conduct Authority) as applied by this regulation;

(b) Part 3 of Schedule 1ZA (the Financial Conduct Authority) applies as if in paragraph 20 for sub-paragraph (4) there were substituted "(4) For this purpose the FCA's enforcement powers are its powers under Parts 11, 14, 25, 26 and 27 of this Act.".

(3) In Part 9 (hearings and appeals)—

(**a**) 2018 c. 29.

(**b**) By virtue of section 9(1) of Civil Liability Act 2018 (c. 29), the Financial Conduct Authority is the relevant regulator for the purposes of Part 1 of that Act in relation to an authorised person (within the meaning of the Financial Services and Markets Act 2000) of a description specified in regulations made by the Treasury. See the Civil Liability (Specification of Authorised Persons) Regulations 2021 (S.I. 2021/[xxxx]).

(**c**) 2000 c. 8.

(a) section 133 (proceedings before Tribunal: general provision) applies as if in subsection (8) paragraph (b) were omitted;

(b) section 133A (proceedings before Tribunal: decision and supervisory notices, etc) applies;

(c) section 133B (offences) applies.

(4) In Part 11 (information gathering and investigations)—

(a) section 165 (regulators' power to require information: authorised persons etc) applies;

(b) section 166 (reports by skilled persons) applies as if in subsection (8) the words "or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988" were omitted;

(c) section 168 (appointment of persons to carry out investigations in particular cases) applies as if—

(i) in subsection (4), after paragraph (k), there were inserted—

"; or

(l) a person may have contravened a restriction imposed by section 6 of the Civil Liability Act 2018.";

(ii) in subsection (6)—

(aa) in paragraph (b), after "subsections (4)" there were inserted "(a) to (k)";

(bb) after paragraph (b) there were inserted—

"(c) in subsection (4)(l), the FCA.".

(d) section 170 (investigations: general) applies;

(e) section 171 (powers of persons appointed under section 167) applies insofar as it is necessary for the application of section 172 (additional power of persons appointed as a result of section 168(1) or (4)) as applied by this regulation;

(f) section 172 (additional power of persons appointed as a result of section 168(1) or (4)) applies;

(g) section 173 (powers of persons appointed as a result of section 168(2)) applies;

(h) section 174 (admissibility of statements made to investigators) applies as if, in subsection (3), paragraphs (c) and (d) were omitted;

(i) section 175 (information and documents: supplemental provisions) applies;

(j) section 176 (entry of premises under warrant) applies as if subsections (7) and (9) were omitted;

(k) section 176A (retention of documents taken under section 176) applies as if—

(i) in subsection (2), the words "or (in Scotland) the sheriff" and "or sheriff" were omitted;

(ii) in subsection (3), the words "or (in Scotland) the sheriff", "or sheriff" (wherever occurring) and "(as the case may be)" were omitted;

(l) section 177 (offences) applies as if, in subsection (7), paragraph (b) were omitted.

(5) In Part 14 (disciplinary measures)—

(a) section 204A (meaning of "relevant requirement" and "appropriate regulator") applies as if—

(i) in subsection (2), after paragraph (a) there were inserted—

"(aza) by virtue of section 6 of the Civil Liability Act 2018, to comply with the restrictions imposed on regulated persons (within the meaning of Part 1 of that Act) by that section;";

(ii) in subsection (6), in paragraph (aa), at the start there were inserted "by virtue of section 6 or";

(b) section 205 (public censure) applies;

(c) section 206 (financial penalties) applies;

(d) section 206A (suspending permission to carry on regulated activities etc) applies;

(e) section 207 (proposal to take disciplinary measures) applies;

(f) section 208 (decision notice) applies;

(g) section 209 (publication) applies.

(6) In Part 23 (public record, disclosure of information and co-operation)—

(a) section 348 (restrictions on disclosure of confidential information by FCA, PRA etc) applies;

(b) section 349 (exceptions from section 348) applies as if—

(i) subsection (6) were omitted;

(ii) in subsection (7) the words from "and also includes" to the end were omitted;

(c) section 350 (disclosure of information by the Inland Revenue) applies;

(d) section 352 (offences) applies.

(7) In Part 25 (injunctions and restitution)—

(a) section 380 (injunctions) applies as if—

(i) in subsection (4) the words "and the Court of Session" were omitted;

(ii) after subsection (6)(a)(vi) there were inserted—

"; or

(vii) by virtue of section 6 of the Civil Liability Act 2018, to comply with the restrictions imposed on regulated persons (within the meaning of Part 1 of that Act) by that section;";

(iii) subsection (7) were omitted.

(b) section 382 (restitution orders) applies as if after the second sub-paragraph (iii) of subsection (9)(a) there were inserted—

"; or

(iv) by virtue of section 6 of the Civil Liability Act 2018, to comply with the restrictions imposed on regulated persons (within the meaning of Part 1 of that Act) by that section;";

(c) section 384 (power of FCA or PRA to require restitution) applies as if after subsection (7)(c) there were inserted—

"; or

(d) the requirement by virtue of section 6 of the Civil Liability Act 2018, to comply with the restrictions imposed on regulated persons (within the meaning of Part 1 of that Act) by that section.";

(d) section 385 (warning notices) applies;

(e) section 386 (decision notices) applies.

(8) In Part 26 (notices)—

(a) section 387 (warning notices) applies;

(b) section 388 (decision notices) applies;

(c) section 389 (notices of discontinuance) applies;

(d) section 390 (final notices) applies as if in subsection (10) the words "or, in Scotland, by an order under section 45 of the Court of Session Act 1988" were omitted;

(e) section 391 (publication) applies;

(f) section 392 (application of sections 393 and 394) applies as if for subsections (a) and (b) there were substituted—

"(a) a warning notice given in accordance with section 385(1) in connection with the requirement referred to in section 384(7)(d);

(b) a decision notice given in accordance with section 386(1) in connection with that requirement.";

(g) section 393 (third party rights) applies;

(h) section 394 (access to FCA or PRA material) applies.

(9) In Part 27 (offences)—

(a) section 398 (misleading FCA or PRA: residual cases) applies;

(b) section 401 (proceedings for offences) applies as if subsection (3) were omitted;

(c) section 403 (jurisdiction and procedure in respect of offences) applies as if in subsection (4), paragraphs (b) and (c) were omitted.

(10) In Part 28 (miscellaneous)—

(a) section 404C (enforcement) applies;

(b) section 413 (protected items) applies;

(c) section 415B (consultation in relation to taking certain enforcement action) applies.

(11) In Part 29 (interpretation) section 417 (definitions) applies as if after subsection (4), there were inserted—

"(5) In this Act, references to this Act, a Part or any provision of this Act, is a reference to this Act as applied by the Civil Liability Act 2018 (Financial Conduct Authority) (Whiplash) Regulations 2021.".

Name
Name

Date

Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

This instrument enables the Financial Conduct Authority ("FCA") to use its supervisory and enforcement powers under the Financial Services and Markets Act 2000 (c. 8) in order to monitor and enforce compliance with the requirements of section 6 of the Civil Liability Act 2018 (c. 29). It also enables the FCA to impose financial penalties and charge fees in respect of fulfilling its functions under the Civil Liability Act 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.

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