Draft Order laid before Parliament under paragraph 2 of Schedule 2 to the European Communities Act 1972, section 429(1) of the Financial Services and Markets Act 2000, and section 143(1) of the Financial Services (Banking Reform) Act 2013 for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2015 No.

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Misconduct and Appropriate Regulator) Order 2015

Made - - - - ***

Coming into force in accordance with article 1

The Treasury are designated(**a**) for the purposes of section 2(2) of the European Communities Act 1972(**b**) in relation to financial services.

The Treasury, in exercise of the powers conferred on them by section 2(2) of that Act, by section 204A(7) and section 428(3) of the Financial Services and Markets Act 2000(**c**) by section 145(1) of the Financial Services (Banking Reform) Act 2013(**d**) and by section 28(2)(a) of the Small Business, Enterprise and Employment Act 2015(**e**), make the following Order.

A draft of this Order has been laid before Parliament and approved by a resolution of each House of Parliament in accordance with paragraph 2(2) of Schedule 2 to the European Communities Act 1972, section 429(1) of the Financial Services and Markets Act 2000(**f**) and section 143(3) of the Financial Services (Banking Reform) Act 2013.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Financial Services and Markets Act 2000 (Misconduct and Appropriate Regulator) Order 2015 and comes into force on 7th March 2016 except as provided in paragraphs (2) and (3).

(**a**) S.I. 2012/1759.

(**b**) 1972 c.68. Section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c.51) and by section 3 of, and the Schedule to, the European Union (Amendment) Act 2008 (c.7). By virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c.51), regulations may be made under s. 2(2) of the European Communities Act 1972 to implement obligations of the United Kingdom created or arising by or under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073) and the Protocol adjusting the Agreement signed in Brussels on 17th March 1993 (Cm 2183).

(**c**) 2000 c.8. Section 204A of the 2000 Act was inserted by the Financial Services Act 2012 (c. 81) ("the 2012 Act"), section 37 and Schedule 9, paragraphs 1, 10; and amended by S.I.2013/1773, regulation 80 and Schedule 1, paragraphs 1,15.

(**d**) 2013 c.33.

(**e**) 2015 c.26.

(**f**) Section 429(1) of the 2000 Act was amended by the 2012 Act, section 24 and Schedule 2, paragraphs 1, 33. There are other amendments to section 429(1) but none are relevant to this Order.

(2) Article 2 comes into force immediately after section 66A(**a**) of the 2000 Act comes into force on 7th March 2016.

(3) Paragraph (d) of new subsection (3A) of section 204A of the 2000 Act (inserted by article 3(4)) comes into force immediately after section 63E of the 2000 Act comes into force on 7th March 2017.

(4) In this Order "the 2000 Act" means the Financial Services and Markets Act 2000.

Amendments to section 66A of the 2000 Act (misconduct: action by the FCA)

2.—(1) Section 66A of the 2000 Act is amended as follows.

(2) At the end of subsection (4)(a) omit "or".

(3) After subsection (4)(a) insert—

"(aa) imposed by the Alternative Investment Fund Managers Regulations 2013(**b**), or;"

.

Amendments to section 204A of the 2000 Act (meaning of "relevant requirement" and "appropriate regulator")

3.—(1) Section 204A of the 2000 Act is amended as follows.

(2) Omit subsection (3)(c).

(3) At the end of subsection (3) insert—

"(d) a requirement under section 62A(2)(**c**) where the authorised person concerned is a PRA-authorised person and the approval concerned was given by the PRA;

(e) a requirement under section 64B(2) or (5)(**d**) where the conduct rules(**e**) concerned are made by the PRA(**f**);

(f) a requirement under section 64C(1)(**g**) to notify the PRA that disciplinary action(**h**) has been taken.".

(4) After subsection (3) insert—

"(3A) Either the PRA or the FCA is "the appropriate regulator" in the case of a contravention of—

(a) a requirement under section 59(1) or (2)(**i**) where the authorised person(**j**) concerned is a PRA-authorised person(**k**) and the approval concerned falls to be given by the PRA;

(b) a requirement under section 60A(1) or (2)(**l**) where the authorised person concerned is a PRA-authorised person and the approval concerned falls to be given by the PRA;

(**a**) Section 66A of the 2000 Act is inserted by section 32(2) of the Financial Services (Banking Reform) Act 2013 ("the 2013 Act") as from 7th March 2016.
(**b**) S.I. 2013/1773.
(**c**) Section 62A of the 2000 Act is inserted by the 2013 Act, section 24, as from 7th March 2016.
(**d**) Section 64B of the 2000 Act was inserted by the 2013 Act, section 31, for the purpose of making rules and comes into force for all purposes as from 7th March 2016.
(**e**) "Conduct rules" is defined in section 64B(1) of the 2000 Act.
(**f**) Section 2A of the 2000 Act provides that the Prudential Regulation Authority is referred to in the Act as "the PRA".
(**g**) Section 64C of the 2000 Act was inserted by the 2013 Act, section 31, for the purpose of making rules and comes into force for all purposes as from 7th March 2016.
(**h**) "Disciplinary action" is defined in section 64C(2) of the 2000 Act.
(**i**) Section 59 of the 2000 Act was amended by the 2012 Act, section 14, and is amended by the 2013 Act, section 35 and Schedule 3, paragraph 1, as from 7th March 2016.
(**j**) "Authorised person" is defined in section 31 of the 2000 Act. Section 31 was amended by section 11 of the Financial Services Act 2012 (c.21).
(**k**) "PRA-authorised person" is defined in section 2B(5) of the 2000 Act. There are amendments to section 2B(5) but none are relevant to this Order.
(**l**) Section 60A of the 2000 Act is inserted by the 2013 Act, section 31, as from 7th March 2016.

(c) a requirement under section 63(2A)(**a**) where the approval concerned is within section 63(1A)(a)(**b**);

(d) a requirement under section 63E(1)(**c**) where the authorised person concerned is a PRA-authorised person and the function concerned is of a description specified in rules made by the PRA;

(e) a requirement under section 63F(1), (2), (4), (6) or (7)(**d**) where the authorised person concerned is a PRA-authorised person and the certificate concerned relates to a function of a description specified in rules made by the PRA.".

Transitional provision: contravention of section 59(1) or (2) of the 2000 Act

4.—(1) Paragraph (2) applies to a contravention of a requirement mentioned in paragraph (a) of section 204A(3A) of the 2000 Act (as inserted by article 3(4)) which—

(a) begins before 7th March 2016; and

(b) ends on or after that date.

(2) Section 204(3A) applies in relation to the whole of the contravention, including the part of it occurring before 7th March 2016.

Review

5.—(1) The Treasury must from time to time—

(a) carry out a review of the relevant provisions of the 2000 Act;

(b) set out the conclusions of the review in a report, and

(c) publish the report.

(2) The relevant provisions of the 2000 Act are—

(a) section 66A (as amended by article 2);

(b) section 204A(3) (as amended by article 3, paragraphs (1) to (3));

(c) section 204A(3A) (as inserted by article 3(4)).

(3) The report must in particular—

(a) set out the objectives intended to be achieved by the regulatory provision made by sections 204A(3) and (3A) of the 2000 Act,

(b) assess the extent to which those objectives are achieved, and

(c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) The first report under this article must be published before the end of the period of five years beginning with the day on which this Order comes into force.

(5) Reports under this article are afterwards to be published at intervals not exceeding five years.

Name
Name
Date Two of the Lords Commissioners of Her Majesty's Treasury

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(**a**) Section 63(2A) of the 2000 Act is inserted by the 2013 Act, section 25, as from 7th March 2016.
(**b**) Section 63(1A) was inserted by section 14(3) of the 2012 Act and is amended by the 2013 Act, section 35 and Schedule 3, paragraph 3, as from 7th March 2016.
(**c**) Section 63E of the 2000 Act was inserted by the 2013 Act, section 29, for the purpose of making rules and comes into force for all purposes as from 7th March 2017.
(**d**) Section 63F of the 2000 Act was inserted by the 2013 Act, section 29, for the purpose of making rules and comes into force for all purposes as from 7th March 2016.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Financial Services and Markets Act 2000 (c.8) ("the 2000 Act") to confer additional disciplinary powers on the Financial Conduct Authority (the "FCA") and the Prudential Regulation Authority (the "PRA").

Article 2 amends section 66A of the 2000 Act to confer disciplinary powers on the FCA in relation to cases where an individual working in a financial services firm is knowingly concerned in a breach by that firm of a requirement imposed by the Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773). This article implements articles 46(2)(i) and 48(1) of Directive 2011/61/EU of the European Parliament and of the Council of 8th June 2011 on Alternative Investment Fund Managers (OJ L 174, 1.7.2011, p.1).

Article 3 amends section 204A of the 2000 Act to make the PRA the "appropriate regulator" for the purpose of enforcing, in certain circumstances, certain requirements of Part 5 of the 2000 Act. In relation to certain other of the requirements of Part 5 of the 2000 Act, section 204A is amended to make either the PRA or the FCA the "appropriate regulator".

Article 4 makes transitional provision in relation to contraventions of section 59(1) or (2) of the 2000 Act.

An impact assessment has not been produced for this instrument as no impact on the cost of business or the voluntary sector is foreseen.

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