
D R A F T S T A T U T O R Y I N S T R U M E N T S

2021 No. XXX

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (PRA-regulated Activities) (Amendment) Order 2021

Made - - - - *****
Coming into force - - *1st January 2022*

In the opinion of the Treasury, one of the effects of these Regulations is that an activity will become a PRA-regulated activity within the meaning of the Financial Services and Markets Act 2000(a).

In accordance with section 22B(2)(a) and (3)(a) of the Financial Services and Markets Act 2000(b), a draft of this Order has been laid before Parliament and approved by a resolution of each House of Parliament.

The Treasury, in exercise of the powers conferred by sections 22A and 428(3) of the Financial Services and Markets Act 2000, make the following Order.

Citation and commencement

1.—(1) This Order may be cited as the Financial Services and Markets Act 2000 (PRA-regulated Activities) (Amendment) Order 2021.

(2) This Order comes into force on 1st January 2022.

Amendment of the Financial Services and Markets Act 2000 (PRA-regulated Activities) Order 2013

2.—(1) The Financial Services and Markets Act 2000 (PRA-regulated Activities) Order 2013(c) is amended as follows.

(2) In article 1(3)—

(a) after the definition of “the Act” insert—

““controlled function” has the meaning given by section 59(3) of the Financial Services and Markets Act 2000;”;

(a) 2000 c. 8.

(b) Section 22B was inserted, with section 22A, by section 9 of the Financial Services Act 2012 (c. 21). “PRA-regulated activity” is defined in section 22 of the Financial Services and Markets Act 2000, which has been amended by section 7(1) of the Financial Services Act 2012.

(c) S.I. 2013/556, amended by S.I. 2019/632; there is another amending instrument but it is not relevant.

- (b) after the definition of “dealing in investments as principal” insert—
- ““FCA controlled function” means a controlled function specified in rules made by the FCA;
- “PRA controlled function” means a controlled function specified in rules made by the PRA;”.
- (3) In article 3—
- (a) at the end of paragraph (1)(a), insert “and”;
- (b) omit paragraph (1)(b) and the “and” following it;
- (c) omit paragraph (3);
- (d) in paragraph (4)(b)(i), for “conditions in paragraphs (2) and (3)” substitute “condition in paragraph (2)”.
- (4) In article 9—
- (a) omit paragraph (1)(b);
- (b) in paragraph (5)(a), omit “and Bank of England”;
- (c) in paragraph (7)(b), for “to” substitute “and”.
- (5) In article 10, for paragraph (6) substitute—
- “(6) Where—
- (a) approval is given to a person by the FCA under section 59 of the Act in relation to PRA AP for the performance of an FCA controlled function, and
- (b) that approval is given before the effective date,
- that approval is to be treated from the effective date as approval given by the PRA for the performance by that person of a PRA controlled function.”(a).
- (6) In article 11, for paragraph (6) substitute—
- “(6) Where—
- (a) approval is given to a person by the PRA under section 59 of the Act in relation to AP for the performance of a PRA controlled function, and
- (b) that approval is given before the effective date,
- that approval is to be treated from the effective date as approval given by the FCA for the performance by that person of an FCA controlled function.”.

Name
Name

Date Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Financial Services and Markets Act 2000 (PRA-regulated Activities) Order 2013 (S.I. 2013/556) (“the PRA-regulated Activities Order”). The PRA-regulated Activities Order specifies, for the purposes of the Financial Services and Markets Act 2000 (c. 8), which regulated activities are “PRA-regulated activities”. These regulated activities are subject to prudential regulation by the Prudential Regulation Authority (“PRA”), rather than the Financial Conduct Authority (“FCA”).

(a) Section 59, Financial Services and Markets Act 2000, was amended by the Financial Services (Banking Reform) Act 2013 (c. 33), the Bank of England and Financial Services Act 2016 (c. 14), the Alternative Investment Fund Managers Regulations 2013/1773 and the Financial Services Act 2012 (c. 21).

The Financial Services Act 2021 (c. 22) enabled the introduction by the FCA of a tailored Investment Firm Prudential Regime (“IFPR”) which applies to non-systemic investment firms prudentially regulated by the FCA and their holding companies. Systemic investment firms will continue to be designated by the PRA. This Order enacts amendments which are required to the current regime as a result of the Financial Services Act 2021.

The activity of dealing in investments as principal is a PRA-regulated activity only to the extent designated by the PRA under article 3 of the PRA-regulated Activities Order. Designations relate to particular persons rather than a class of persons. Article 2(3) makes amendments to the conditions which must be met before the PRA can make a designation for the purposes of article 2(d) of the PRA-regulated Activities Order.

When the PRA wishes to designate a particular person under article 3 of the PRA-regulated Activities Order, the PRA must prepare and issue a statement of policy. Article 9 of the PRA-regulated Activities Order sets out the procedure that the PRA must follow in preparing a statement of policy. Article 2(4) makes amendments to that procedure which mean that the PRA will no longer have to consult the Bank of England before issuing a statement of policy.

Where the FCA has given its approval to a person under section 59 of the Financial Services and Markets Act 2000 in relation to a controlled function, that approval is to be treated as approval given by the PRA for the purposes of a controlled function. Article 2(5) makes amendments to this transitional provision so that the approval which has been given by the FCA must be in force before the effective date. The effective date is the date on which designation under Article 3 of the PRA-regulated Activities Order takes place. Article 2(5) also removes the requirement that the PRA controlled function must be substantially the same as the FCA controlled function for the approval to be treated as approval given by the PRA.

Where the PRA has given its approval to a PRA-authorized person under section 59 of the Financial Services and Markets Act 2000 in relation to a controlled function, that approval is to be treated as approval given by the FCA for the purposes of a controlled function. Article 2(6) makes amendments to this transitional provision so that the approval which has been given by the PRA must be in force before the effective date. The effective date is the date on which designation under Article 3 of the PRA-regulated Activities Order takes place. Article 2(6) also removes the requirement that the FCA controlled function must be substantially the same as the PRA controlled function for the approval to be treated as approval given by the PRA.

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. A de minimis impact assessment is available from HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ and is published with the Explanatory Memorandum alongside this instrument on www.legislation.gov.uk.