



# Financial Services Act 2012

## 2012 CHAPTER 21

### PART 9

#### MISCELLANEOUS

##### *Consumer credit*

VALID FROM 01/04/2013

#### **107 Power to make further provision about regulation of consumer credit**

- (1) Subsection (2) applies on or at any time after the making, after the passing of this Act, of an order under section 22 of FSMA 2000 which has the effect that an activity (a “transferred activity”)—
- (a) ceases to be an activity in respect of which a licence under section 21 of CCA 1974 is required or would be required but for the exemption conferred by subsection (2), (3) or (4) of that section or paragraph 15(3) of Schedule 3 to FSMA 2000, and
  - (b) becomes a regulated activity for the purposes of FSMA 2000.
- (2) The Treasury may by order do any one or more of the following—
- (a) transfer to the FCA functions of the OFT under any provision of CCA 1974 that remains in force;
  - (b) provide that any specified provision of FSMA 2000 which relates to the powers or duties of the FCA in connection with the failure of any person to comply with a requirement imposed by or under FSMA 2000 is to apply, subject to any specified modifications, in connection with the failure of any person to comply with a requirement imposed by or under a specified provision of CCA 1974;
  - (c) require the FCA to issue a statement of policy in relation to the exercise of powers conferred on it by virtue of paragraph (b);

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- (d) in connection with provision made by virtue of paragraph (b), provide that failure to comply with a specified provision of CCA 1974 no longer constitutes an offence or that a person may not be convicted of an offence under a specified provision of CCA 1974 in respect of an act or omission in a case where the FCA has exercised specified powers in relation to that person in respect of that act or omission;
  - (e) provide for the transfer to the Treasury of any functions under CCA 1974 previously exercisable by the Secretary of State;
  - (f) provide that functions of the Secretary of State under CCA 1974 are exercisable concurrently with the Treasury;
  - (g) provide for any provision of sections 162 to 165 and 174A of CCA 1974 which relates to—
    - (i) the powers of a local weights and measures authority in Great Britain or the Department of Enterprise, Trade and Investment in Northern Ireland in relation to compliance with any provision made by or under CCA 1974,
    - (ii) the powers of such an authority or that Department in relation to the commission or suspected commission of offences under any provision made by or under CCA 1974,
    - (iii) the powers that may be conferred by warrant on an officer of such an authority or that Department, or
    - (iv) things done in the exercise of any of those powers,
 to apply in relation to compliance with FSMA 2000 so far as relating to relevant regulated activities, in relation to the commission or suspected commission of a relevant offence or in relation to things done in the exercise of any of those powers as applied by the order;
  - (h) enable local weights and measures authorities to institute proceedings in England and Wales for a relevant offence;
  - (i) enable the Department of Enterprise, Trade and Investment in Northern Ireland to institute proceedings in Northern Ireland for a relevant offence;
  - (j) provide that references in a specified enactment to the FCA's functions under FSMA 2000 include references to its functions resulting from any order under this section.
- (3) If an order under this section makes provision by virtue of subsection (2)(b) enabling the FCA to exercise any of its powers under sections 205 to 206A of FSMA 2000 (disciplinary measures) by reference to an act or omission that constitutes an offence under CCA 1974, the order must also make provision by virtue of subsection (2)(d) ensuring that a person in respect of whom the power has been exercised cannot subsequently be convicted of the offence by reference to the same act or omission.
- (4) In subsection (2)(g) to (i)—
- (a) “relevant regulated activity” means an activity that is a regulated activity for the purposes of FSMA 2000 by virtue of—
    - (i) an order made under section 22(1) of that Act in relation to an investment of a kind falling within paragraph 23 or 23B of Schedule 2 to that Act, or
    - (ii) an order made under section 22(1A)(a) of that Act;
  - (b) “relevant offence” means an offence under FSMA 2000 committed in relation to such an activity.

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- (5) The Treasury may make provision by virtue of subsection (2)(i) only with the consent of the Department of Enterprise, Trade and Investment in Northern Ireland.
- (6) On or at any time after the making of an order under section 22 of FSMA 2000 of the kind mentioned in subsection (1), the Treasury may by order—
  - (a) exclude the application of any provision of CCA 1974 in relation to a transferred activity, or
  - (b) repeal any provision of CCA 1974 which relates to a transferred activity.
- (7) In exercising their powers under this section, the Treasury must have regard to—
  - (a) the importance of securing an appropriate degree of protection for consumers, and
  - (b) the principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction.
- (8) The additional powers conferred by section 115(2) on a person making an order under this Act include power for the Treasury, when making an order under this section—
  - (a) to make such consequential provision as the Treasury consider appropriate;
  - (b) to amend any enactment, including any provision of, or made under, this Act.
- (9) The provisions of this section do not limit—
  - (a) the powers conferred by section 118 or by section 22 of FSMA 2000, or
  - (b) the powers exercisable under Schedule 21 in connection with the transfer of functions from the OFT.
- (10) In this section—
  - “CCA 1974” means the Consumer Credit Act 1974;
  - “consumers” has the meaning given in section 1G of FSMA 2000;
  - “the OFT” means the Office of Fair Trading.

## **108 Suspension of licences under Part 3 of Consumer Credit Act 1974**

- (1) The Consumer Credit Act 1974 is amended as follows.
- (2) In section 32 (suspension or revocation)—
  - (a) in subsection (1), omit “or suspended”,
  - (b) in subsection (2)—
    - (i) in paragraph (a), omit “, as the case may be,” and “, or suspend it until a specified date or indefinitely,”, and
    - (ii) in paragraph (b), omit “or suspension” and “or suspend”,
  - (c) in subsection (3)—
    - (i) in paragraph (a), omit “, as the case may be,” and “, or suspend it until a specified date or indefinitely,”, and
    - (ii) in paragraph (b), omit “or suspension”,
  - (d) in subsection (4)—
    - (i) in paragraph (a), omit “, as the case may be,” and “, or suspend it until a specified date or indefinitely,”, and
    - (ii) in paragraph (b), omit “or suspension”,

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- (e) in subsections (6) and (7), omit “or suspension”,
- (f) omit subsection (8),
- (g) in subsection (9), omit “or to suspend”, and
- (h) in the heading, omit “Suspension and”.

(3) After section 32 insert—

**“32A Power to suspend licence**

- (1) If during the currency of a licence it appears to the OFT to be urgently necessary for the protection of consumers that the licence should cease to have effect immediately or on a specified date, the OFT is to proceed as follows.
- (2) In the case of a standard licence the OFT must, by notice—
  - (a) inform the licensee that the OFT is suspending the licence from the date of the notice or from a later date specified in the notice,
  - (b) state the OFT's reasons for the suspension,
  - (c) state either—
    - (i) that the suspension is to end on a specified date, which must be no later than the last day of the 12 months beginning with the day on which the suspension takes effect, or
    - (ii) that the duration of the suspension is to be as provided by section 32B,
  - (d) specify any provision to be made under section 34A, and
  - (e) invite the licensee to submit to the OFT in accordance with section 34ZA representations—
    - (i) as to the suspension, and
    - (ii) about the provision (if any) that is or should be made under section 34A.
- (3) In the case of a group licence the OFT must—
  - (a) give general notice that the OFT is suspending the licence from the date of the notice or from a later date specified in the notice,
  - (b) state in the notice the OFT's reasons for the suspension,
  - (c) state in the notice either—
    - (i) that the suspension is to end on a specified date, which must be no later than the last day of the 12 months beginning with the day on which the suspension takes effect, or
    - (ii) that the duration of the suspension is to be as provided by section 32B,
  - (d) specify in the notice any provision to be made under section 34A, and
  - (e) in the notice invite any licensee to submit to the OFT in accordance with section 34ZA representations as to the suspension.
- (4) In the case of a group licence issued on application the OFT must also—
  - (a) inform the original applicant of the matters specified under subsection (3)(a) to (d) in the general notice, and
  - (b) invite the original applicant to submit to the OFT in accordance with section 34ZA representations as to the suspension.

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- (5) Except for the purposes of sections 29 to 32 and section 33A, a licensee under a suspended licence is to be treated, in respect of the period of suspension, as if the licence had not been issued.
- (6) The suspension may, if the OFT thinks fit, be ended by notice given by it to the licensee or, in the case of a group licence, by general notice.
- (7) In this section “consumers”, in relation to a licence, means individuals who have been or may be affected by the carrying on of the business to which the licence relates, other than individuals who are themselves licensees.

### **32B Duration of suspension**

- (1) This section applies where a notice under section 32A provides for the duration of a suspension under that section to be as provided by this section.
- (2) The suspension ends at the end of the period of 12 months beginning with the day on which it takes effect, but this is subject to—
  - (a) subsections (3) and (4) (where those subsections give a later time), and
  - (b) the powers of the OFT under section 32A(6) and section 33.
- (3) Subsection (4) applies where—
  - (a) the OFT gives notice under section 32 that it is minded to revoke the licence, and
  - (b) it gives that notice—
    - (i) on or before giving the notice under section 32A, or
    - (ii) after giving that notice but before the end of the period of 12 months mentioned in subsection (2).
- (4) The period of suspension is to continue until—
  - (a) the time of any determination by the OFT not to revoke the licence in pursuance of the notice under section 32, or
  - (b) where the OFT determines to revoke the licence in pursuance of the notice, the end of the appeal period.”
- (4) In section 33 (application to end suspension), for subsection (1) substitute—

“(1) On an application made by a licensee the OFT may, if it thinks fit, by notice to the licensee end the suspension of a licence under section 32A, whether the suspension was for a fixed period or for a period determined in accordance with section 32B.”
- (5) In section 33A (power of OFT to impose requirements on licensees) after subsection (6) insert—

“(6A) A requirement imposed under this section during a period of suspension cannot take effect before the end of the suspension.”
- (6) After section 34 insert—

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### **“34ZA Representations to OFT: suspension under section 32A**

- (1) Where this section applies to an invitation by the OFT to any person (“P”) to submit representations, the OFT must invite P, within 21 days after the notice containing the invitation is given to P or published, or such longer period as the OFT may allow—
  - (a) to submit P’s representations in writing to the OFT, and
  - (b) to give notice to the OFT, if P thinks fit, that P wishes to make representations orally,
 and where notice is given under paragraph (b) the OFT must arrange for the oral representations to be heard.
- (2) The OFT must reconsider its determination under section 32A and determine whether to confirm it (with or without variation) or revoke it and in doing so must take into account any representations submitted or made under this section.
- (3) The OFT must give notice of its determination under this section to the persons who were required to be invited to submit representations about the original determination under section 32A or, where the invitation to submit representations was required to be given by general notice, must give general notice of the confirmation or revocation.”
- (7) In section 34A (winding-up of standard licensee’s business), in subsection (2)—
  - (a) in paragraph (c), omit “suspend or”, and
  - (b) after paragraph (c) insert—
    - “(d) a determination to suspend such a licence under section 32A (including a determination made under section 34ZA on reconsidering a previous determination under section 32A);”.
- (8) In section 41 (appeals) after subsection (1) insert—
 

“(1ZA) References in the table to a determination as to the suspension of a standard licence or group licence are to be read as references to a determination under section 34ZA to confirm a determination to suspend a standard licence or group licence.”
- (9) Nothing in this section affects the powers conferred by section 22 of FSMA 2000 or section 107 of this Act.

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