
STATUTORY INSTRUMENTS

2013 No. 441

The Financial Services Act 2012 (Transitional Provisions) (Enforcement) Order 2013

PART 10

Notices

CHAPTER 1

Transfer elections

Warning notices

- 19.**—(1) Paragraph (2) applies where, before the commencement date, the Authority—
- (a) gave a warning notice under FSMA 2000; and
 - (b) had not given a decision notice or a notice of discontinuance following that warning notice.
- (2) The FCA may make a transfer election (see article 24) in respect of the whole or part of the warning notice.
- (3) This article does not apply to a warning notice given under the following provisions—
- (a) section 52(6) or (7) (determination of applications);
 - (b) section 189(4)(b) (assessment: procedure);
 - (c) section 191A(4) (objection);
 - (d) section 321(8) (requirements imposed under section 320);
 - (e) section 345(2) (disqualification), whether as a result of section 345 or of section 249;
 - (f) paragraph 19(8) of Schedule 3 (establishment).

Written notices

- 20.**—(1) Paragraph (2) applies where, before the commencement date, the Authority gave a written notice under—
- (a) section 53(4), (7) or (8)(b) (exercise of own-initiative power: procedure);
 - (b) section 197(3), (6) or (7)(b) (procedure on exercise of power of intervention);
 - (c) section 200(2) (rescission and variation of requirements).
- (2) The FCA may make a transfer election (see article 24) in relation to the whole or part of the written notice provided that, before the transfer election is made—
- (a) the written notice was not referred to the Tribunal; or
 - (b) where the written notice was referred to the Tribunal—
 - (i) the Tribunal remitted the matter to the Authority without an appeal being made in relation to the determination of the Tribunal, or

(ii) if such an appeal was brought, it was determined, and the FCA had not taken action in reliance on the written notice or given a further written notice.

Decision notices

21.—(1) Paragraph (2) applies where, before the commencement date, the Authority gave a decision notice under FSMA 2000.

(2) The FCA may make a transfer election (see article 24) in relation to the whole or part of the decision notice provided that, before the transfer election is made—

- (a) the decision notice was not referred to the Tribunal; or
- (b) where the decision notice was referred to the Tribunal—
 - (i) the Tribunal remitted the matter to the Authority without an appeal being made in relation to the determination of the Tribunal, or
 - (ii) if such an appeal was brought, it was determined, and the FCA had not given a final notice, a notice of discontinuance or a further decision notice.

(3) This article does not apply to a decision notice given under any of the following provisions—

- (a) section 52(9) (determination of applications);
- (b) section 189(7) (assessment: procedure);
- (c) section 191A(6) (objection);
- (d) section 321(9) (requirements imposed under section 320);
- (e) section 345(3) (disqualification), whether as a result of section 345 or of section 249;
- (f) paragraph 19(12) of Schedule 3 (establishment).

Final notices

22.—(1) Paragraph (2) applies where—

- (a) the Authority gave a final notice before the commencement date in accordance with section 390(3) (final notices) and, on the commencement date, the statement had not been published;
- (b) the Authority gave a final notice before the commencement date in accordance with section 390(4) and, on the commencement date, the order had not been complied with or had not yet come into effect;
- (c) the Authority gave a final notice before the commencement date in accordance with section 390(5) and, on the commencement date, the penalty had not been paid;
- (d) the Authority gave a final notice before the commencement date in accordance with section 390(6) and, on the commencement date, the required payment or distribution had not been made;
- (e) the Authority gave a final notice before the commencement date in accordance with section 390(7) and, on the commencement date, action had not yet been taken.

(2) The FCA may make a transfer election (see article 24) in relation to the whole or part of the final notice.

Suspension of permission to carry on regulated activities etc

23.—(1) Paragraph (2) applies if, before the commencement date—

- (a) the Authority had, under section 206A—
 - (i) suspended a permission, or
 - (ii) imposed a limitation or a restriction, for such period as it considered appropriate;
 - (b) the period had not expired; and
 - (c) the Authority had not withdrawn the suspension, limitation or restriction.
- (2) The FCA may make a transfer election (see article 24) in relation to the suspension, limitation or restriction.

Transfer elections

- 24.**—(1) The FCA may only make a transfer election—
- (a) within the period of 45 days which begins on the commencement date; and
 - (b) with the consent of the PRA.
- (2) A transfer election must—
- (a) be in writing;
 - (b) specify the notice, suspension, limitation or restriction to which the transfer election relates;
 - (c) in the case of a notice, specify whether the transfer election relates to the whole or to part of the notice; and
 - (d) if the transfer election relates to part of a notice, specify—
 - (i) the part to which the transfer election relates, and
 - (ii) whether that part is to be treated as if it had been given—
 - (aa) by the PRA, or
 - (bb) by both regulators.
- (3) The FCA must send the transfer election, or a copy of it, to—
- (a) in the case of a notice—
 - (i) each person to whom the notice to which the election relates was sent, and
 - (ii) each person to whom a copy of the notice to which the election relates was sent;
 - (b) in the case of a suspension, limitation or restriction, the person on whom the suspension, limitation or restriction was imposed; and
 - (c) the PRA.

Effect of a transfer election

- 25.**—(1) Where a transfer election relates to—
- (a) the whole of a notice, the notice is to be treated as if it had been given by the PRA;
 - (b) a specified part of a notice, the specified part is to be treated as if it had been given by—
 - (i) where article 24(2)(d)(ii)(aa) applies, the PRA;
 - (ii) where article 24(2)(d)(ii)(bb) applies, both regulators;and section 394(1) (access to FCA and PRA material) applies accordingly.
- (2) Where the FCA makes a transfer election in relation to a notice or part of a notice—

- (a) any representations made—
 - (i) on or before the date of the transfer election,
 - (ii) to the Authority or to the FCA, and
 - (iii) in respect of the notice or specified part to which the election relates,
 are to be treated as if they had been made to the PRA (as well as, where relevant, to the FCA);
- (b) if the period for making representations in respect of a notice or specified part had not expired before the date of the transfer election, representations are to be made to the PRA and, where article 24(2)(d)(ii)(bb) applies, the FCA, before the end of that period; and
- (c) in a case to which article 20(2)(b) or 21(2)(b) applies, any directions given by the Tribunal in relation to the notice or the specified part are to be treated as if they had been given to the PRA (as well as, where relevant, to the FCA).

CHAPTER 2

Notices under Part 4, sections 189, 191A, 197 and 321, and paragraph 19 of Schedule 3

Determination of applications under Part 4: warning notices given by the Authority

- 26.**—(1) This article applies where, before the commencement date, the Authority—
- (a) gave a warning notice under section 52(6) or (7)(2) (determination of applications); and
 - (b) had not given a decision notice or a written notice following that warning notice.
- (2) The warning notice is to be treated as if it had been given by the relevant regulator under—
- (a) section 55X(1)(a) (determination of applications: warning notices and decision notices), where the notice was given by the Authority under section 52(6)(a) and the Authority proposed to exercise its power under section 42(7)(a) or (b) (giving permission);
 - (b) section 55X(1)(b) and (e), where the notice was given by the Authority under section 52(6)(a) and the Authority proposed to exercise its power under section 43(1) (imposition of requirements);
 - (c) section 55X(1)(c), where the notice was given by the Authority under section 52(6)(b) and the Authority proposed to exercise its power under section 42(7)(a) or (b);
 - (d) section 55X(1)(d) and (e), where the notice was given by the Authority under section 52(6)(b) and the Authority proposed to exercise its power under section 43(1);
 - (e) section 55X(2), where the notice was given by the Authority under section 52(7).
- (3) Where the relevant regulator is the PRA—
- (a) any representations made to the Authority before the commencement date in respect of the warning notice are to be treated as if they had been made to the PRA; and
 - (b) if the period for making representations in respect of the warning notice had not expired before the commencement date, representations are to be made to the PRA.
- (4) In this article, the “relevant regulator” means—
- (a) in relation to section 55X(1)(e), the FCA; and
 - (b) in relation to section 55X(1)(a), (b), (c) and (d) and (2)—
 - (i) the PRA, if the application to which the warning notice relates would have been made to the PRA as the appropriate regulator within the meaning of section 55A had the application been made on the commencement date; and

(2) Sections 55A to 55Z4 are substituted for sections 40 to 55 by the 2012 Act, section 11.

- (ii) in any other case, the FCA.
- (5) For the purposes of paragraph (2)(b) and (d)—
 - (a) the service of a notice of discontinuance by the PRA in relation to part or the whole of the warning notice does not affect the validity of the notice in relation to the FCA for the purposes of section 55X(1)(e); and
 - (b) the service of a notice of discontinuance by the FCA in relation to its exercise of its power under section 55L (imposition of requirements by FCA) does not affect the validity of the notice in relation to the PRA for the purposes of section 55X(1)(b) or (d).

Determination of applications under Part 4: decision notices given by the Authority

- 27.—(1) This article applies where before the commencement date, the Authority—
- (a) gave a decision notice under section 52(9); and
 - (b) had not given a final notice on taking the action to which the decision notice related.
- (2) The decision notice is to be treated as if it had been given by the relevant regulator under—
- (a) section 55X(4)(a), where the notice was given by the Authority under section 52(9)(a) and the Authority decided to exercise its power under section 42(7)(a) or (b);
 - (b) section 55X(4)(b) and (e), where the notice was given by the Authority under section 52(9)(a) and the Authority decided to exercise its power under section 43(1);
 - (c) section 55X(4)(c), where the notice was given by the Authority under section 52(9)(b) and the Authority decided to exercise its power under section 42(7)(a) or (b);
 - (d) section 55X(4)(d) and (e), where the notice was given by the Authority under section 52(9)(b) and the Authority decided to exercise its power under section 43(1);
 - (e) section 55X(4)(f), where the notice was given by the Authority under section 52(9)(c).
- (3) In this article, the “relevant regulator” means—
- (a) where the decision notice had been referred to the Tribunal before the commencement date, the FCA; and
 - (b) where the decision notice had not been referred to the Tribunal before the commencement date—
 - (i) in relation to section 55X(4)(e), the FCA; and
 - (ii) in relation to section 55X(4)(a), (b), (c), (d) and (f)—
 - (aa) the PRA, if the application to which the decision notice relates would have been made to the PRA as the appropriate regulator within the meaning of section 55A (application for permission) had the application been made on the commencement date; and
 - (bb) in any other case, the FCA.
- (4) For the purposes of paragraph (2)(b) and (d)—
- (a) the service of a notice of discontinuance by the PRA in relation to part or the whole of the decision notice does not affect the validity of the notice in relation to the FCA for the purposes of section 55X(4)(e); and
 - (b) the service of a notice of discontinuance by the FCA in relation to its exercise of its power under section 55L does not affect the validity of the decision notice in relation to the PRA for the purposes of section 55X(4)(b) or (d).

Exercise of own-initiative power under Part 4: procedure

- 28.**—(1) This article applies where—
- (a) the Authority gave a written notice under section 53 before the commencement date; and
 - (b) (i) the variation was expressed to take effect before the commencement date and the period for making representations in respect of the notice had not expired before the commencement date, or
 - (ii) the date on which the variation is expressed to take effect is, or is after, the commencement date.
- (2) A written notice given under—
- (a) section 53(4) is to be treated as if it had been given under section 55Y(4);
 - (b) section 53(7) is to be treated as if it had been given under section 55Y(7);
 - (c) section 53(8)(b) is to be treated as if it had been given under section 55Y(8)(b).
- (3) The written notice is to be treated as if it had been given by the FCA except to the extent that the FCA—
- (a) makes a transfer election in relation to the notice or part of the notice in accordance with this Order; or
 - (b) is treated as having made such a transfer election.
- (4) The FCA is to be treated as having made such a transfer election where—
- (a) paragraph (1)(b)(i) applies; and
 - (b) the variation is to be treated as if it had been imposed by the PRA under section 55M (imposition of requirements by PRA) by virtue of an order made under section 119(3).

Cancellation of permission under Part 4: notices given by the Authority

- 29.**—(1) Paragraph (2) applies where, before the commencement date, the Authority—
- (a) gave a warning notice under section 54(1) (cancellation of Part 4 permission: procedure); and
 - (b) had not given a decision notice or a notice of discontinuance following that warning notice.
- (2) The warning notice is to be treated as if it had been given by the relevant regulator under section 55Z(1) (cancellation of Part 4A permission: procedure).
- (3) Paragraph (4) applies where, before the commencement date, the Authority—
- (a) gave a decision notice under section 54(2); and
 - (b) had not given a final notice or a notice of discontinuance following that decision notice.
- (4) The decision notice is to be treated as if it had been given by the relevant regulator under section 55Z(2).
- (5) In this article, the “relevant regulator” means the FCA unless the FCA makes a transfer election in accordance with this Order in relation to the relevant notice.

Control over authorised persons

- 30.**—(1) Paragraphs (2), (3) and (4) apply if—
- (a) before the commencement date, the Authority—
 - (i) gave a warning notice under—

- (aa) section 189(4)(b)(3) (assessment: procedure), or
- (bb) section 191A(4) (objection by the Authority), and
- (ii) had not given a decision notice or a notice of discontinuance following that warning notice; and
- (b) the warning notice relates to the acquisition of, or increase in, control over a UK authorised person who is, on the commencement date, a PRA-authorised person.
- (2) The warning notice is to be treated as if it had been given by the PRA.
- (3) Any representations made to the Authority before the commencement date in respect of the warning notice are to be treated as if they had been made to the PRA.
- (4) If the period for making representations in respect of the warning notice had not expired before the commencement date, representations are to be made to the PRA.
- (5) Paragraph (6) applies if—
 - (a) before the commencement date, the Authority—
 - (i) gave a decision notice under—
 - (aa) section 189(7), or
 - (bb) section 191A(6), and
 - (ii) had not given a final notice on taking the action to which the decision notice related or a notice of discontinuance; and
 - (b) the decision notice relates to the acquisition of, or increase in, control over a UK authorised person who is, on the commencement date, a PRA-authorised person.
- (6) The decision notice is to be treated as if it had been given by the PRA.

Variation or revocation of requirements imposed on former underwriting members

- 31.**—(1) Paragraphs (2), (3) and (4) apply if—
- (a) before the commencement date, the Authority gave a warning notice under section 321(8)(4) (requirements imposed under section 320), and
 - (b) had not given a decision notice or a notice of discontinuance following that warning notice.
 - (2) The warning notice is to be treated as if it had been given by the PRA.
 - (3) Any representations made to the Authority before the commencement date in respect of the warning notice are to be treated as if they had been made to the PRA.
 - (4) If the period for making representations in respect of the warning notice had not expired before the commencement date, representations are to be made to the PRA.
 - (5) Paragraph (6) applies if—
 - (a) before the commencement date, the Authority gave a decision notice under section 321(9), and
 - (b) had not given a final notice on taking the action to which the decision notice related or a notice of discontinuance.
 - (6) The decision notice is to be treated as if it had been given by the PRA.
 - (7) This article does not apply in the event that, on the commencement date, the activity of effecting or carrying out contracts of insurance as principal is not to any extent a PRA-regulated activity.

(3) Section 178, 189 and 191A were substituted by [S.I. 2009/534](#) and are amended by the 2012 Act, section 26.

(4) Section 321 is amended by the 2012 Act, section 40.

UK firm seeking to establish a branch

32.—(1) This article applies where—

- (a) before the commencement date, the Authority received a notice of intention within the meaning of paragraph 19(2)(5) of Schedule 3 (establishment); and
 - (b) the notice would have been sent to the PRA as the appropriate UK regulator (within the meaning of paragraph 18A(6) of that Schedule (meaning of “the appropriate UK regulator”)) had the notice been sent on the commencement date.
- (2) Paragraph (3) applies if, before the commencement date, the Authority—
- (a) gave a warning notice under paragraph 19(8) of Schedule 3; and
 - (b) had not given a decision notice or a notice of discontinuance following that warning notice.
- (3) The warning notice is to be treated as if it had been given by the PRA.
- (4) Paragraph (5) applies if, before the commencement date—
- (a) the Authority—
 - (i) gave a decision notice under paragraph 19(12) of that Schedule; and
 - (ii) had not given a final notice or notice of discontinuance following that decision notice; and
 - (b) the decision notice was not referred to the Tribunal.
- (5) The decision notice is to be treated as if it had been given by the PRA.

CHAPTER 3

Publication of information concerning a warning notice

Publication

33. Section 391(1)(c)(7) (publication) does not apply to a warning notice given before the commencement date.

(5) Paragraph 19 was amended by S.I. 2003/1473 and 2066, 2007/126 and 3253, 2011/1613, 2012/916 and 1906 and is further amended by the 2012 Act, Schedule 4, Part 1, paragraph 10.

(6) Paragraph 18A is inserted by the 2012 Act, Schedule 4, Part 1, paragraph 9.

(7) Section 391 was amended by the Financial Services Act 2010, section 13 and Schedule 2, Part 1, paragraph 28 and S.I. 2012/916, and is further amended by the 2012 Act, section 24 and Schedule 9, Part 6, paragraph 30.