STATUTORY INSTRUMENTS

2015 No. 492

FINANCIAL SERVICES AND MARKETS

The Financial Services (Banking Reform) Act 2013 (Transitional and Savings Provisions) Order 2015

Made - - - -	*4th March 2015*
Laid before Parliament	*5th March 2015*
Coming into force - -	*26th March 2015*

The Treasury, in exercise of the powers conferred by section 146 of the Financial Services (Banking Reform) Act 2013(**1**), make the following Order:

PART 1

Introductory

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Financial Services (Banking Reform) Act 2013 (Transitional and Savings Provisions) Order 2015 and comes into force on 26th March 2015.

(2) In this Order—

"article 2 notice" has the meaning given in article 2(1);

"article 11 notice" has the meaning given in article 11(b);

"the appropriate regulator" means, unless the context otherwise requires—

(a) the FCA, in respect of those notified functions or notified application functions that are controlled functions specified in rules made by the FCA under section 59 (approval for particular arrangements)(**2**); and

(b) the PRA, in respect of those notified functions or notified application functions that are controlled functions specified in rules made by the PRA under section 59;

"approval" means an approval given by the FCA or the PRA to a person for the purposes of section 59;

(**1**) 2013 c.33 (the "2013 Act").

(**2**) Section 59 was amended by the Financial Services Act 2012 (c. 21), section 14(1) and Schedule 5, paragraphs 1, 3; the 2013 Act, section 18 and 35, and S.I. 2012/1906, articles 3, 4. Subsection (7C) was inserted by S.I. 2013/1773.

"branch" has the meaning given in Article 13(11) of the Solvency II Directive(**3**);

"class 1 firm" means a relevant authorised person(**4**);

"class 2 firm" means—

(a) an authorised person(**5**) which is—

(i) an insurance undertaking within the meaning of Article 13(1) of the Solvency II Directive that is not—

(aa) an insurance undertaking falling under Article 308b(1) of the Solvency II Directive; and

(bb) excluded from the scope of the Solvency II Directive by Section 2 of Chapter 1 of Title 1 of that Directive;

(ii) a reinsurance undertaking within the meaning of Article 13(4) of the Solvency II Directive that is not—

(aa) a reinsurance undertaking falling under Article 308b(1) of the Solvency II Directive; and

(bb) excluded from the scope of the Solvency II Directive by Section 2 of Chapter 1 of Title 1 of that Directive;

(iii) a special purpose vehicle within the meaning of Article 13(26) of the Solvency II Directive;

(iv) a third country insurance undertaking within the meaning of Article 13(3) of the Solvency II Directive which has a branch in the United Kingdom;

(v) a third country reinsurance undertaking within the meaning of Article 13(6) of the Solvency II Directive which has a branch in the United Kingdom;

(b) the society incorporated by Lloyd's Act 1871(**6**) by the name of Lloyd's; or

(c) an authorised person who has permission under Part 4A of FSMA to carry on the regulated activity of managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's or arranging deals in contracts of insurance written at Lloyd's(**7**);

"conditions for continuing approval" means the conditions set out in article 3;

"continuing approval" means an approval that continues to have effect on and after 7th March 2016 in accordance with article 2(4);

"controlled function" has the meaning given in section 59(3) (approval for particular arrangements) (**8**);

"designated senior management function" means a function designated as a senior management function under section 59(6A) or 59(6B) (approval for particular arrangements) (**9**);

"equivalent function" has the meaning given in article 17;

"FSMA" means the Financial Services and Markets Act 2000(**10**);

(**3**) OJ L 335, 17.12.2009, p1.
(**4**) "relevant authorised person" is defined in section 71A.
(**5**) "authorised person" is defined in section 31(2).
(**6**) 1871 c. 21.
(**7**) The regulated activities of managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's and the regulated activity of dealing in contracts of insurance written at Lloyd's are specified respectively in articles 57 and 58 of S.I. 2001/544.
(**8**) Subsection (3) was substituted by the Financial Services Act 2012 (c. 81), section 14(1), together with subsections (4) to (7B), for subsections (3) to (7) as originally enacted.
(**9**) Subsections (6A) and (6B) are inserted by the 2013 Act (c. 33), section 18.
(**10**) 2000 c.8.

"the notification date" means, in relation to an article 2 notice or an article 11 notice, the date on which—

(a) the notice is first received by one of the regulators(**11**), or

(b) if the authorised person concerned(**12**) provides one or more revised article 2 notices or revised article 11 notices, the date on which the last revised notice provided is first received by one of the regulators;

"notified functions" has the meaning given in article 2(3)(a);

"notified application functions" has the meaning given in article 11(b);

"post-implementation controlled function" means a controlled function which, on or after 7th March 2016, either regulator has specified for the purposes of section 59 (approval for particular arrangements);

"pre-implementation application" means an application under section 60 (applications for approval)(**13**) which—

(a) is received by the appropriate regulator (within the meaning given by section 60(9)) before 7th March 2016; and

(b) concerns the performance of controlled functions in relation to a class 1 firm or a class 2 firm;

"pre-implementation approval" means an approval which—

(a) is given by either regulator before 7th March 2016; and

(b) concerns the performance of controlled functions in relation to a class 1 firm or a class 2 firm;

"pre-implementation controlled function" means a controlled function which, before 7th March 2016, either regulator has specified for the purposes of section 59 (approval for particular arrangements);

"revised article 2 notice" has the meaning given in article 6(1);

"revised article 11 notice" has the meaning given in article 14(1);

"the rule-making date" means—

(a) the date on which both regulators make rules under article 17 specifying equivalent functions for the purposes of this Order; or

(b) if the regulators make such rules on different days, the last day on which such rules are made;

"Solvency II Directive" means Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of insurance and re-insurance (Solvency II) (recast)(**14**).

(3) A reference in this Order to a provision of an Act is a reference to a provision of FSMA except where indicated otherwise.

(4) A term used in this Order which is defined in Part 5 or Part 29 of FSMA has the same meaning as in that Act.

(5) For the purposes of this Order, a reference to a permission, approval or requirement under FSMA, or to any other thing done under or for the purposes of that Act, includes a reference to a permission, approval or requirement or other thing treated as having effect or having been done under FSMA, however described, by a statutory instrument made under—

(**11**) "regulator" is defined in section 417.
(**12**) "authorised person concerned" is defined in section 60(6).
(**13**) Section 60 was amended by the Financial Services Act 2012 (c.81), Schedule 5, paragraphs 1, 4; and the 2013 Act, section 20.
(**14**) OJ L 335, 17.12.2009, p1.

(a) section 426 (consequential and supplementary provision);

(b) section 2(2) of the European Communities Act 1972 (general implementation of Treaties)(**15**).

PART 2

Approval for particular arrangements

Requirement to give notice in relation to an approved person

2.—(1) Every class 1 firm and class 2 firm must before 8th February 2016 give a notice to the appropriate regulator in accordance with this article (an "article 2 notice") in respect of each person ("P") (subject to rules made by the regulators under paragraph (2)) in respect of whom that regulator has granted a pre-implementation approval in relation to that firm.

(2) Either or both of the regulators may make rules specifying those persons (or classes of persons) in respect of whom a class 1 or class 2 firm is not required to give a notice to the appropriate regulator under paragraph (1).

(3) In relation to an article 2 notice (or a revised article 2 notice)—

(a) the notice must specify the post-implementation controlled functions(**16**) that P will perform on and after 7th March 2016 (the "notified functions");

(b) each of the notified functions must be an equivalent function in relation to one or more pre-implementation controlled functions which, immediately before 7th March 2016, P has approval to perform; and

(c) if the notice concerns the performance of a designated senior management function in relation to a relevant authorised person(**17**) it must contain, or be accompanied by, a statement setting out the aspects of the affairs of the relevant authorised person which it is intended the person who is the subject of the notice will be responsible for managing in performing the notified functions.

(4) If—

(a) an article 2 notice is given before 7th March 2016 (whether or not that notice was given before 8th February 2016), and

(b) the conditions in article 3 are met (the "conditions for continuing approval"),

the pre-implementation approval concerned has effect on and after 7th March 2016 in accordance with article 4.

(5) If an article 2 notice has been given in respect of a person but in relation to one or more pre-implementation controlled functions for which approval has been given in respect of that person—

(a) that notice does not specify a notified function, or

(b) the notified function specified in that notice is not an equivalent function,

the pre-implementation approval given in respect of that person ceases to have effect at the beginning of 7th March 2016 in relation to the pre-implementation controlled functions concerned.

(6) If notice is required under paragraph (1) in respect of a person but before 7th March 2016—

(a) notice has not been given in respect of that person; or

(**15**) 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).
(**16**) "controlled function" is defined in section 59.
(**17**) "relevant authorised person" is defined in section 71A. Section 71A is inserted by the 2013 Act, section 33.

(b) a notice to which paragraph (3)(c) applies has been given in respect of that person but that notice does not meet the requirements in paragraph (3)(c),

the pre-implementation approval given in respect of that person ceases to have effect at the beginning of 7th March 2016 in relation to all of the functions for which it has been given.

Conditions for continuation of an approval

3. In relation to a pre-implementation approval, the conditions for continuing approval are that—

(a) the pre-implementation approval has not been withdrawn before 7th March 2016; and

(b) in relation to each notified function specified in an article 2 notice concerning the person ("P") to whom the pre-implementation approval has been given—

(i) on the notification date P is performing a function which falls within the description of that notified function; and

(ii) immediately before 7th March 2016 P is continuing to perform that function.

Treatment of a continuing approval

4.—(1) In relation to a person ("P") a continuing approval is to be treated as if it had been given—

(a) in relation to the notified functions specified in an article 2 notice concerning P, and

(b) by the appropriate regulator.

(2) Where, immediately before 7th March 2016, the pre-implementation approval is subject to a suspension or limitation imposed under section 66(3)(disciplinary powers)(**18**), that suspension or limitation is from the beginning of 7th March 2016 to be treated as if it were imposed by the appropriate regulator in respect of the notified functions.

(3) Where, immediately before 7th March 2016, the pre-implementation approval is subject to a restriction imposed under section 66(3)(ab)(disciplinary powers)(**19**), that restriction is from the beginning of 7th March 2016 to be treated as if it were a condition imposed under section 66(3)(ab).

(4) This article applies whether or not one of the regulators has given a warning notice or a decision notice to P under—

(a) section 63 (withdrawal of approval)(**20**);

(b) section 63B (procedure and right to refer to tribunal)(**21**); or

(c) section 67 (disciplinary measures: procedure and right to refer to Tribunal)(**22**).

Regulators' power to impose requirements for an article 2 notice

5.—(1) An article 2 notice (or a revised article 2 notice) must—

(a) be given in such form as the appropriate regulator may direct; and

(b) contain, or be accompanied by, such information as the appropriate regulator may reasonably require.

(**18**) Section 66 was amended by the Financial Services Act 2010 (c. 28), section 12, section 24 and Schedule 2, Part 1, paragraphs 1,8; the Financial Services Act 2012 (c. 21), Schedule 5, paragraphs 1, 14; S.I. 2013/1773, Schedule 1, Part 1, Paragraphs 7, 8; and the 2013 Act, section 28, 32 and Schedule 3, paragraph 5.

(**19**) Section 66(3)(ab) is substituted together with subsection (ac) for section 66(3)(ab) by the 2013 Act, Schedule 3, paragraph 5.

(**20**) Section 63 is amended by the Financial Services Act 2012 (c. 81), section 14(3) and Schedule 5, paragraphs 1, 7; and the 2013 Act, section 25 and Schedule 3, paragraph 3.

(**21**) Section 63B was amended by the Financial Services Act 2012 (c.81), Schedule 5, paragraphs 1, 9.

(**22**) Section 67 was amended by the Financial Services Act 2010 (c. 28), section 24 and Schedule 2, Part 1, paragraphs 1, 9; the Financial Services Act 2012 (c. 81), Schedule 5, paragraphs 1, 15; and the 2013 Act, Schedule 3, paragraph 6.