Draft Order laid before Parliament under section 116(1) of the Financial Services Act 2012, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2013 No.*

FINANCIAL SERVICES AND MARKETS

The Financial Services Act 2012 (Consumer Credit) Order 2013

*Made - - - - * 2013*

Coming into force in accordance with article 1

In accordance with section 116(1) of the Financial Services Act 2012(**1**), a draft of this Order has been laid before Parliament and approved by a resolution of each House.

In accordance with section 107(5) of the Financial Services Act 2012, the Department of Enterprise, Trade and Investment in Northern Ireland has consented to the provisions of this Order which are made by virtue of section 107(2)(i).

The Treasury make the following Order in exercise of the powers conferred by sections 107 and 115(2) of the Financial Services Act 2012:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Financial Services Act 2012 (Consumer Credit) Order 2013 and comes into force—

(a) on the day after the day on which it is made, for the purpose of the FCA—

(i) preparing and issuing statements of policy or altering or replacing a statement of policy;

(ii) making determinations under the 1974 Act;

(iii) preparing and issuing information sheets under the 1974 Act;

(iv) giving notices, directions or certificates under the 1974 Act;

(v) imposing requirements under the 1974 Act(**2**);

(b) in so far as it is not already in force, on 1st April 2014.

(2) In this Order, "the 1974 Act" means the Consumer Credit Act 1974(**3**).

(**1**) 2012 c.21.
(**2**) See in particular section 161(2) of the 1974 Act (enforcement authorities).
(**3**) 1974 c.39.

Functions of the FCA under the 1974 Act

2. References in FSMA(**4**) to the FCA's functions under FSMA are to be treated as including the FCA's functions under the 1974 Act resulting from this Order.

Application of provisions of FSMA in connection with failure to comply with the 1974 Act

3.—(1) The following provisions of FSMA apply in relation to a requirement imposed by or under the provisions of Parts 2, 4, 5 and 6 to 12 of the 1974 Act ("a relevant requirement") with the modifications specified.

(2) Section 1L (supervision, monitoring and enforcement)(**5**) applies as if—

(a) in subsection (1) the reference to "supervising authorised persons" included a reference to determining whether authorised persons are complying with relevant requirements;

(b) in subsection (2), the reference to requirements imposed by or under FSMA in a case where the FCA is the appropriate regulator for the purposes of Part 14 of FSMA (disciplinary measures)(**6**) included a reference to relevant requirements.

(3) Section 66 (disciplinary powers)(**7**) applies as if the reference in subsection (2)(b)(i) to a requirement imposed by or under FSMA included a reference to a relevant requirement, and sections 67 (disciplinary measures: procedure and right to refer to Tribunal)(**8**) and 68 (publication)(**9**) apply as if the references to section 66 were to that section as applied by this Order.

(4) Part 9 (hearings and appeals)(**10**) applies as if in section 133 (proceedings before Tribunal: general provision)(**11**)—

(a) the references to decisions under sections 66 (disciplinary powers), 205 (public censure)(**12**), 206 (financial penalties)(**13**) and 206A (suspending permission to carry on regulated activities etc.)(**14**) of FSMA were references to decisions under those sections as applied by this Order;

(b) the references to a reference or appeal to the Tribunal includes a reference to a reference or appeal to the Tribunal under FSMA as applied by this Order.

(5) Part 11 (information gathering and investigations)(**15**) (with the exception of section 169 (investigations etc. in support of overseas regulator)(**16**)) applies as if—

(a) the reference in section 165(4) (regulators' power to require information: authorised persons etc.) to functions conferred on the FCA by or under FSMA included a reference to functions conferred on it by this Order;

(**4**) "FSMA" is defined in section 117(1) of the Financial Services Act 2012.
(**5**) Inserted by section 6 of the Financial Services Act 2012.
(**6**) Part 14 was amended by sections 9, 10 of and Schedule 2 to the Financial Services Act 2010 (c.28) and Schedule 9 to the Financial Services Act 2012.
(**7**) Section 66 was amended by section 12 of and Schedule 2 to the Financial Services Act 2010 and Schedule 5 to the Financial Services Act 2012.
(**8**) Section 67 was amended by Schedule 2 to the Financial Services Act 2010, Schedule 5 to the Financial Services Act 2012, and S.I. 2007/126.
(**9**) Section 68 was amended by Schedule 5 to the Financial Services Act 2012.
(**10**) Part 9 was amended by section 23 of the Financial Services Act 2012 and S.I. 2010/22.
(**11**) Section 133 was amended by section 23 of the Financial Services Act 2012, S.I. 2010/22, and 2013/1388.
(**12**) Section 205 was amended by Schedule 9 to the Financial Services Act 2012.
(**13**) Section 206 was amended by section 10 of the Financial Services Act 2010 and Schedule 9 to the Financial Services Act 2012.
(**14**) Section 206A was amended by section 9 of the Financial Services Act 2010 and Schedule 9 to the Financial Services Act 2012.
(**15**) Part 11 was amended by Schedule 26 to the Criminal Justice Act 2003 (c.44), Schedule 7 to the Counter-Terrorism Act 2008 (c.28), section 18 of and Schedule 2 to the Financial Services Act 2010, Schedules 12 and 18 to the Financial Services Act 2012, S.I. 2001/1090, 2005/1433, 2007/126, 2011/1043, 2011/2382, 2012/2554.
(**16**) Amended by Schedule 12 to the Financial Services Act 2012.

(b) the reference in section 167(1) (appointment of persons to carry out general investigations) to a good reason included a good reason by virtue of the functions conferred on the FCA by this Order;

(c) in section 168 (appointment of persons to carry out investigations in particular cases)—

(i) subsection (1) included a reference to an offence under the 1974 Act;

(ii) subsection (4) included a reference to circumstances suggesting that a person may have failed to comply with a relevant requirement (excluding circumstances suggesting that an offence under the 1974 Act may have been committed).

(6) Part 13 (incoming firms: intervention by FCA or PRA)(**17**) (with the exception of sections 195 (exercise of power in support of overseas regulator), 195A (contravention by relevant EEA firm or EEA UCITS of directive requirements), 198 (power to apply to court for injunction in respect of certain overseas insurance companies) and 199A (management companies: loss of authorisation)) applies as if—

(a) in section 194(1) (general grounds on which power of intervention is exercisable) each reference to a requirement imposed by or under FSMA included a reference to a relevant requirement;

(b) in section 199 (additional procedure for EEA firms in certain cases) the reference in subsection (2)(a)(i) to a requirement imposed by the regulator under FSMA included a reference to a relevant requirement.

(7) Part 14 (disciplinary measures) applies (with the exception of sections 210 (statements of policy)(**18**) and 211 (statements of policy: procedure)(**19**)) as if in section 204A (meaning of "relevant requirement" and "appropriate regulator")(**20**)—

(a) in subsection (2), the definition of "relevant requirement" included a relevant requirement;

(b) in subsection (6), the reference to any other requirement imposed by or under the Act included a relevant requirement.

(8) Section 380 (injunctions)(**21**) applies as if the reference in subsection (6)(a)(i) to a requirement imposed by or under FSMA included a reference to a relevant requirement.

(9) Section 382 (restitution orders)(**22**) applies as if the reference in subsection (9)(a)(i) to a requirement imposed by or under FSMA included a reference to a relevant requirement.

(10) Section 384 (power of FCA or PRA to require restitution)(**23**) applies as if the reference in subsection (7)(a) to a relevant requirement imposed by or under FSMA included a reference to a relevant requirement; and accordingly sections 385 (warning notices)(**24**) and 386 (decision notices)(**25**) apply where there has been a contravention of a requirement under section 384 as applied by this Order.

(11) Part 26 (notices)(**26**) applies as if—

(**17**) Part 13 was amended by Schedule 25 to the Enterprise Act 2002 (c.40), section 33 of the Consumer Credit Act 2006 (c.14), section 3 of the Financial Services Act 2010, Schedule 4 to the Financial Services Act 2012, S.I. 2000/2952, 2004/3379, 2007/126, 2007/2194, 2007/3253, 2011/1043, 2011/1613, 2012/916 and 2012/2015.
(**18**) Section 210 was amended by Schedule 2 to the Financial Services Act 2010 and Schedule 9 to the Financial Services Act 2012.
(**19**) Section 211 was amended by Schedule 9 to the Financial Services Act 2012.
(**20**) Inserted by Schedule 9 to the Financial Services Act 2012.
(**21**) Amended by Schedule 9 to the Financial Services Act 2012.
(**22**) Amended by Schedule 9 to the Financial Services Act 2012.
(**23**) Section 384 was amended by Schedule 9 to the Financial Services Act 2012 and S.I. 2007/126.
(**24**) Section 385 was amended by Schedule 9 to the Financial Services Act 2012.
(**25**) Section 386 was amended by Schedule 9 to the Financial Services Act 2012.
(**26**) Part 26 was amended by Schedule 4 to the Regulation of Investigatory Powers Act 2000 (c.23), section 13 of and Schedule 2 to the Financial Services Act 2010 , sections 17, 18, 19, 24 of, and Schedules 8, 9, 13 to the Financial Services Act 2012, S.I.2005/ 381, 2005/1433, 2007/126, 2007/1973, 2009/534, 2010/22 and 2012/916.

(a) in section 391 (publication)(**27**), the references in subsection (1ZB) to warning notices given under sections 67 (disciplinary measures: procedure and right to refer to Tribunal) and 207 (proposal to take disciplinary measures)(**28**) of FSMA were to warning notices given under those sections as applied by this Order;

(b) in section 392 (application of sections 393 and 394)(**29**), the references to a warning notice and a decision notice given under any of the provisions specified in that section included a warning notice and a decision notice given under any of those provisions as applied by this Order.

(12) Part 27 (offences)(**30**) applies as if—

(a) references to an offence under FSMA included an offence under that Act as applied by this Order;

(b) in section 401 (proceedings for offences)(**31**), in subsection (1), the definition of "offence" included an offence under the 1974 Act.

Statements of policy

4.—(1) The FCA must prepare and issue a statement of its policy with respect to—

(a) the imposition of penalties, suspensions or restrictions imposed under sections 66 (disciplinary powers), 205 (public censure), 206 (financial penalties) and 206A (suspending permission to carry on regulated activities etc.) of FSMA as applied by article 3;

(b) the amount of penalties imposed under sections 66 and 206 of FSMA as so applied;

(c) the period for which suspensions or restrictions imposed under sections 66 and 206A of FSMA as so applied are to have effect.

(2) The FCA's policy in determining what the amount of a penalty should be, or what the period for which a suspension or restriction is to have effect should be, must include having regard to—

(a) the seriousness of the failure in question in relation to the nature of the requirement concerned;

(b) the extent to which that failure was deliberate or reckless; and

(c) whether the person against whom the action is to be taken is an individual.

(3) The FCA may at any time alter or replace a statement issued by it under this article.

(4) If a statement issued under this article is altered or replaced by the FCA, the FCA must issue the altered or replacement statement.

(5) The FCA must, without delay, give the Treasury a copy of any statement which it publishes under this article.

(6) A statement by the FCA issued under this article must be published by the FCA in the way appearing to the FCA to be best calculated to bring it to the attention of the public.

(7) In exercising, or deciding whether to exercise, its powers under section 66, 205, 206 or 206A of FSMA as applied by article 3 in the case of any particular contravention, the FCA must have regard

(**27**) Section 391 was amended by sections 13 and 24 of the Financial Services Act 2010, Schedule 9 to the Financial Services Act 2012, S.I. 2012/916 and 2013/1388.
(**28**) Section 207 was amended by Schedule 2 to the Financial Services Act 2010 and Schedule 9 to the Financial Services Act 2012.
(**29**) Section 392 was amended by Schedule 2 to the Financial Services Act 2010, section 18 of and Schedules 8, 9, 13 to the Financial Services Act 2012, S.I. 2007/126 and 2013/1388.
(**30**) Part 27 was amended by Schedule 25 to the Enterprise Act 2002, Schedule 7 to the Counter Terrorism Act 2008, section 95 of and Schedule 9 to the Financial Services Act 2012 and S.I. 2012/2554.
(**31**) Section 401 was amended by Schedule 25 to the Enterprise Act 2002 and Schedule 9 to the Financial Services Act 2012.