Draft Regulations laid before Parliament under section 60(4) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2013 No.

FINANCIAL SERVICES AND MARKETS, ENGLAND AND WALES

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Referral Fees) Regulations 2013

Made - - - - ***

Coming into force in accordance with regulation 1

The Treasury, in exercise of the powers conferred by sections 57(7) and (8) (as applied by section 58(4)), 58, 59(1) and (2) and 60(3) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012,(**1**) make the following Regulations:

In accordance with section 60(4) of that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

PART 1

General

Citation and commencement

1. These Regulations may be cited as the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Referral Fees) Regulations 2013 and come into force on the seventh day after the day on which they are made.

Interpretation

2. In these Regulations—

"the Act" means the Legal Aid, Sentencing and Punishment of Offenders Act 2012;

"the 2000 Act" means the Financial Services and Markets Act 2000;(**2**)

(**1**) 2012 c.10. Sections 57 to 59 were amended by paragraph 138 of Schedule 18 to the Financial Services Act 2012 (c.21).
(**2**) 2000 c.8.

"approved person" means a person in relation to whom the appropriate regulator (within the meaning of section 59(4) of the 2000 Act) has given its approval under section 59(**3**) of the 2000 Act;

"authorised person" has the meaning given in section 31(2) of the 2000 Act;

"the FCA" means the Financial Conduct Authority;

"referral fees authorised person" has the meaning given in paragraph 1 of the Schedule;

"relevant referral fees authorised person" means, in relation to an approved person, the referral fees authorised person on whose application approval was given (irrespective of whether the authorised person was a referral fees authorised person at the time of the application);

"relevant requirement" means a restriction imposed by section 56 (rules against referral fees) of the Act, or any requirement imposed by or under these Regulations;

"the Tribunal" has the meaning given in section 417(1) of the 2000 Act.(**4**)

PART 2

The FCA

Functions of the FCA

3.—(1) The FCA has the functions conferred on it by these Regulations.

(2) In discharging its functions under these Regulations, the FCA must have regard to—

(a) the need to use its resources in the most efficient and economic way;

(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;

(c) the desirability of sustainable growth in the economy of the United Kingdom in the medium or long term;

(d) the general principle that consumers should take responsibility for their decisions;

(e) the responsibilities of the senior management of persons subject to the requirements referred to in paragraph (4), including those affecting consumers, in relation to compliance with those requirements;

(f) the desirability where appropriate of the FCA exercising its functions in a way that recognises differences in the nature of, and objectives of, businesses carried on by different persons subject to the requirements referred to in paragraph (4);

(g) the desirability in appropriate cases of the FCA publishing information relating to persons on whom the requirements referred to in paragraph (4) are imposed, or requiring such persons to publish information, as a means of contributing to the advancement by the Authority of its operational objectives as set out in section 1B(3) of the 2000 Act;(**5**)

(h) the principle that the FCA should exercise its functions as transparently as possible.

(3) "Consumer" has the meaning given in section 1G of the 2000 Act.(**6**)

(4) The requirements referred to in this paragraph are—

(a) in relation to a referral fees authorised person—

(**3**) Section 59 was amended by section 14 of the Financial Services Act 2012 and S.I. 2012/1906.
(**4**) The definition was inserted by S.I. 2010/22.
(**5**) Section 1B was inserted by section 6 of the Financial Services Act 2012.
(**6**) Section 1G was inserted by section 6 of the Financial Services Act 2012.

(i) a restriction imposed by section 56 of the Act;

(ii) any requirement imposed by or under these Regulations;

(b) in relation to any other person, any requirement imposed by or under these Regulations.

Monitoring and enforcement

4.—(1) The FCA must maintain arrangements designed to enable it to determine whether—

(a) referral fees authorised persons are complying with any relevant requirement applicable to them, and

(b) there has been any contravention of regulation 19.

(2) The FCA must also maintain arrangements for enforcing section 56 of the Act in relation to referral fees authorised persons and these Regulations.

Guidance

5.—(1) The FCA may give guidance consisting of such information and advice as it considers appropriate with respect to—

(a) the application of sections 56 and 57 of the Act to referral fees authorised persons;

(b) the operation of these Regulations;

(c) any matters relating to the functions of the FCA under these Regulations;

(d) any other matters about which it appears to the FCA to be desirable to give information or advice in connection with these Regulations.

(2) The FCA may—

(a) publish its guidance;

(b) offer copies of its published guidance for sale at a reasonable price;

(c) if it gives guidance in response to a request made by any person, make a reasonable charge for that guidance.

Complaints

6. The FCA must maintain arrangements designed to enable persons to submit complaints to it that a relevant requirement has been breached by a referral fees authorised person.

Fees, &c.

7.—(1) The functions of the FCA under these Regulations are to be treated for the purposes of paragraph 23 (fees) of Schedule 1ZA to the 2000 Act(**7**) as qualifying functions conferred on the FCA under that Act except that—

(a) section 3B(**8**) (regulatory principles to be applied by both regulators) of the 2000 Act does not apply to the making of rules under paragraph 23 by virtue of this regulation,

(b) rules made under paragraph 23 by virtue of this regulation are not regulating provisions for the purposes of Chapter 4 of Part 9A (competition scrutiny)(**9**) of the 2000 Act, and

(c) in paragraph 23(7) after "under this Act" insert "or under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Referral Fees) Regulations 2013".

(**7**) Schedule 1ZA was inserted by Schedule 3 to the Financial Services Act 2012.
(**8**) Section 3B was inserted by section 6 of the Financial Services Act 2012.
(**9**) Chapter 4 of Part 9A was inserted by section 24 of the Financial Services Act 2012.

(2) Paragraphs 19 to 22 (penalties) of Schedule 1ZA to the 2000 Act apply for the purposes of these Regulations with the modifications set out in paragraphs (3) to (6).

(3) In paragraph 19 for "under this Act" substitute "under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Referral Fees) Regulations 2013".

(4) In paragraph 20—

(a) in both sub-paragraphs (2) and (3)(b) for "under this Act" substitute "under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Referral Fees) Regulations 2013";

(b) for sub-paragraph (4) substitute—

"(4) For this purpose the FCA's enforcement powers are—

(a) its powers under regulations 14 to 18 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Referral Fees) Regulations 2013,

(b) its powers under Part 25 of this Act (injunctions and restitution) as applied by regulation 24 of those Regulations, and

(c) its powers in relation to the investigation or prosecution of the offences under regulation 19 of those Regulations.";

(c) omit sub-paragraph (5).

(5) In paragraph 21(1) after "paragraph 20(1)" insert "as applied by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Referral Fees) Regulations 2013".

(6) In paragraphs 21(1), (3), (4) and (5) and 22(2) and (9) for "financial penalty scheme" substitute "referral fees financial penalty scheme" (in each place).

Exemption from liability in damages

8. The functions of the FCA under these Regulations are to be treated for the purposes of paragraph 25 (exemption from liability in damages) of Schedule 1ZA to the 2000 Act as functions conferred on the FCA.

PART 3

Referral fees

Certain payments to be treated as referral fees

9.—(1) Paragraph (2) applies where—

(a) a referral of prescribed legal business has been made by or to a referral fees authorised person, or

(b) a referral fees authorised person has made an arrangement as mentioned in section 56(2)(a) of the Act,

and it appears to the FCA that a payment made to or by the referral fees authorised person may be a payment for the referral or for making the arrangement (a "referral fee").

(2) The payment made to or by the authorised person is to be treated as a referral fee unless the referral fees authorised person can show the payment was made—

(a) as consideration for the provision of services, or

(b) for another reason,

and not as a referral fee.

PART 4

Reporting and information

Reporting requirements

10.—(1) A referral fees authorised person ("P") must give the FCA such information in respect of—

(a) any referrals of prescribed legal business either to or from P,

(b) any arrangements as described in section 56(2) of the Act, and

(c) P's compliance with requirements imposed by or under these Regulations,

as the FCA may direct.

(2) Information required under this regulation must be given at such times and in such form, and verified in such manner, as the FCA may direct.

Restrictions on disclosure of information

11.—(1) Sections 348 (restrictions on disclosure of information by FCA, PRA etc), 349 (exceptions from section 348), and 352 (offences)(**10**) of the 2000 Act apply for the purposes of these Regulations with the following modifications.

(2) In section 348—

(a) in subsection (2)(b) for the words from ", the PRA" to the end, substitute "under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Referral Fees) Regulations 2013";

(b) in subsection (3)(a) for "this Act" substitute "the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Referral Fees) Regulations 2013";

(c) in subsection (5)—

(i) omit paragraphs (aa) and (c);

(ii) in paragraph (d) omit "to collect or update information under section 166A or";

(iii) in paragraph (e) for "a person mentioned in paragraphs (a) to (c)" substitute "the FCA";

(iv) in paragraph (ea) for "a person mentioned in those paragraphs" substitute "the FCA";

(v) in paragraph (f) for "a person mentioned in those paragraphs" substitute "the FCA";

(d) in subsection (6)—

(i) omit paragraph (a);

(ii) in paragraph (b) omit ", the PRA or the Secretary of State" and at the end insert "as applied by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Referral Fees) Regulations 2013".

(3) In section 349 omit subsections (3A) and (3B).

(4) In section 352—

(a) in subsection (1) omit "or 350(5)";

(b) omit subsection (4);

(**10**) Sections 348 and 349 were amended by Schedule 12 to the Financial Services Act 2012. Section 349 was also amended by section 964 of the Companies Act 2006 and S.I. 2007/1093. Section 352 was amended by the Criminal Justice Act 2003; Schedule 26, paragraph 54.