



Regulatory Roundup

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If any of these topics raise questions or a need for guidance or support, please do not hesitate to contact robert.easterbrook@complyport.co.uk



The Compliance Register
Platinum Awards 2015

Winner:
Customer Support Excellence



Best Compliance Services Provider

Data Protection Act 2018



Useful Links:

- [Data Protection Act 2018](#)

Key Date:

Royal Assent
23 May 2018

Of relevance to:

All regulated firms

The Data Protection Act 2018 replaces the Data Protection Act 1998 and provides a comprehensive legal framework for data protection in the UK, supplemented by the General Data Protection Regulation (“GDPR”) until the UK leaves the EU.

The four main matters provided for in the Bill are:

- general data processing,
- law enforcement data processing,
- data processing for national security purposes including processing by the intelligence services, and
- regulatory oversight and enforcement.

While the UK remains a member of the EU, all the rights and obligations of EU membership remain in force. When the UK leaves the EU, GDPR will be incorporated into the UK’s domestic law under powers in the European Union (Withdrawal) Bill, currently before Parliament.

Don’t forget: Whilst GDPR removes the requirement for data controllers to register with the Information Commissioner’s Office (“ICO”), [new UK regulations](#) require all data controllers to provide certain information and pay an annual fee to the ICO to ensure its continued funding.

ICO: Data Protection registration and fees



Useful Links:

- [ICO Guide to the data protection fee](#)
- [General Data Protection Regulation](#)

Key date

25 May 2018

Of relevance to:

All firms processing personal data, including data controllers currently registered with the ICO

The General Data Protection Regulation (“GDPR”) removes the requirement for data controllers to register with the Information Commissioner’s Office (“ICO”). However, new UK regulations, with effect from 25 May 2018, require all data controllers to provide certain information and pay an annual ICO fee to ensure its continued funding.

‘Data controller’ is defined in section 108(8) of the Digital Economy Act 2017 as a person who, alone or jointly with others, determines the purposes and means of the processing of personal data, and ‘personal data’ means any information relating to an identified or identifiable individual.

Under GDPR, data controllers must maintain their own internal data processing record.

However, in order to provide continued funding for the ICO’s activities, the Data Protection (Charges and Information) Regulations 2018 (Statutory Instrument 2018 No. 480) came into effect at the same time as the GDPR.

These Regulations set out the circumstances in which data controllers are required to provide information and pay a charge to the ICO from 25 May 2018, and replace the previous regime under the Data Protection (Notification and Notification Fees) Regulations 2000 (Statutory Instrument 2000 No. 188).

Data controllers must pay an annual ICO fee (£40, £60, or £2,900) unless all the processing of personal data is exempt processing.

Controllers who have a current registration (or notification) under the Data Protection Act 1998 do not have to pay the new fee until that registration has expired. A direct debit form will be sent with the renewal reminder. The fee is reduced by £5 for a data controller that makes payment by direct debit.

See full article on the Complyport website for more detailed information:
<https://www.complyport.com/ico-data-protection-registration-and-fees-after-25-may-2018/>

FCA Data on UK Financial Crime



Useful Links:

- [FCA Speech: Turning technology against criminals](#)

Of relevance to:

All firms

In a speech by Megan Butler, Executive Director of Supervision - Investment, Wholesale and Specialists at the Financial Conduct Authority (“FCA”), delivered at the Anti-Money Laundering TechSprint event on 22 May 2018, the FCA revealed that 2,100 firms, including all the major banks and life insurers, had responded to the annual financial crime data return by 31 December 2017.

The following were the key points:

- 2,117 terrorism related reports had been sent to the National Crime Agency;
- 13,000 restraint orders were in place to freeze customer accounts;
- 3,600 restraint orders had been made during the previous year;
- over 1,100,000 prospective customers were refused services amid financial crime concerns; and
- a further 370,000 existing customer relationships were exited for the same reason.

Smaller firms were not required to respond, so the figures do not cover all businesses the FCA supervises. Nor does it include data from the many international businesses in the UK that are structured so their UK operations are regulated elsewhere.

Phishing and identity theft are cited by firms as the most widespread fraud risks they now face; cybercrime now accounts for nearly 50% of all recorded crime in the UK.

This comes after claims were made at the end of 2017 that the UK, particularly the London property market, is a destination of choice to launder the proceeds of overseas crime and corruption. Latest official figures suggest £90bn is laundered in crime proceeds through the UK each year and pressure group Transparency International believes up to £4.4bn worth of British property might have been bought with suspicious wealth.

Sanctions and Anti-Money Laundering Act 2018



Useful Links:

- [Sanctions and Anti-Money Laundering Act 2018](#)

Key Date:

Royal Assent
23 May 2018

Of relevance to:

All regulated firms

The Sanctions and Anti-Money Laundering Act 2018 received Royal Assent on 23 May 2018, creating a new sanctions regime for the UK after Brexit, needed to keep UK Anti-Money Laundering (“AML”) and Counter-Terrorist Financing (“CTF”) measures up to date.

The European Union (Withdrawal) Bill currently going through Parliament will freeze current sanctions regimes in effect on the date of the UK’s withdrawal from the EU. These regimes are largely dealt with through the European Communities Act 1972, which will be repealed.

The Sanctions and Anti-Money Laundering Act 2018 will:

- enable the UK to continue to implement United Nations sanctions regimes and to use sanctions to meet national security and foreign policy objectives; and
- enable AML and CTF measures to be kept up to date, continuing to align the UK with international standards.

It also introduces the requirement for annual reports to Parliament on progress towards a register of beneficial owners of overseas entities, with the intention of having such a register fully in place within by 2021.

Most of Part 1 of the Terrorist Asset-Freezing etc. Act 2010, which deals with terrorist asset-freezing, will be repealed by this Act on a day to be announced.

Further amendments to the JMLSG Guidance



Useful Links:

- [Amendments to JMLSG Guidance](#)
- [JMLSG Guidance Part II 12: Asset finance](#)
- [JMLSG Guidance Part II 17: Syndicated lending](#)

Key Date:

With effect from
17 May 2018

Of relevance to:

All regulated firms

The Joint Money Laundering Steering Group (“JMLSG”) has published revisions to [sector 12: Asset finance](#) and [sector 17: Syndicated lending](#) in Part II of its Guidance on the prevention of money laundering and the financing of terrorism for the UK financial services industry.

The revisions do not change the substance of the guidance provisions, but seek to describe in more current terms:

- the way the sectors work,
- how to assess the risks in the sector, and
- how to identify who the customers are.

The JMLSG Guidance provides a sound basis for firms to meet their legislative and regulatory obligations when tailored by firms to their particular business risk profile.

Departures from good industry practice, and the rationale for so doing, should be documented, and may have to be justified, for example to the Financial Conduct Authority.

ESMA provides one-stop company portal



Useful Links:

- [ESMA one-stop company portal](#)
- [ESMA Registers - Application to Application Help File](#)

Of relevance to:

All financial service providers authorised within the EU

Investors seeking information on whether a financial service provider is authorised within the European Union will now be able to do so on the new companies' portal provided by the European Securities and Markets Authority ("ESMA").

ESMA's portal provides investors with a one-stop-shop register, including information for:

- MiFID investment firms including Systematic Internalisers;
- MiFID trading venues;
- MiFID data reporting service providers;
- UCITS management companies; and
- AIFMD fund managers including funds managed/marketed in the EU.

The ESMA portal also provides reference to sanctions applied by the competent authorities in the Member States under several European legislations.

The ESMA Registers system offers machine-to-machine services, including certain queries accessible via predefined URLs. These can be used to retrieve public data maintained in the Registers' repositories. Examples of these predefined queries are lists of:

- Investment firms and activities;
- AIFMs and their managed and/or marketed fund(s);
- UCITS Management Companies;
- Regulated Markets;
- Approved Prospectuses;
- European Social Entrepreneurship Fund managers and their managed funds; and
- European Venture Capital Fund managers and their managed funds.

We await clarification as to how this will operate in relation to UK operations after the Brexit transitional period ends on 31 December 2020.

Alternative Finance Investment Bonds to be permitted to trade on MTFs & OTFs



Useful Links:

- [Draft Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2018](#)

Key Date:

To be announced

Of relevance to:

All firms trading Alternative Finance Investment Bonds

A draft statutory instrument (“the Order”) entitled Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2018 was laid before Parliament on 9 May 2018 and is awaiting formal approval by both Houses (Commons & Lords) before it becomes law. It ensures that Islamic finance instruments are treated equally to the conventional instruments that they mirror.

Alternative Finance Investment Bonds (“AFIBs”) are currently not permitted to trade on Multilateral Trading Facilities (“MTFs”) or Organised Trading Facilities (“OTFs”), based on the AFIB definition provided in Article 77A of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.

In practice, this means that, while conventional bonds are allowed to be traded on MTFs, AFIBs such as Sukuk (Islamic finance-equivalent bonds) are not, thereby providing for an unintended disparity in treatment between the two types of financial instruments.

The Government has a standing commitment to provide a level playing field for Islamic finance instruments in regulation and taxation in the UK to encourage market-led development of the sector on the basis of a ‘no obstacles, but no special favours’ policy and the Order ensures that Islamic finance instruments are treated equally to the conventional instruments that they mirror.

Conventional bonds are already allowed to be traded on MTFs. The proposed change would ensure that AFIBs benefit from the same regulatory treatment, thereby removing an obstacle to the use of UK venues for the issue and trading of AFIBs. No alternative to changing the definition of AFIBs in regulation has been identified to address this issue.

Existing MTF or OTF operators wishing to trade AFIBs on their trading venues will need to apply for a variation of their permission from the Financial Conduct Authority (“FCA”), which, all else being equal, would incur an application fee of £250. The usual FCA fees and levies would apply to any new applications.

There appears to be only one firm with an existing FCA permission to operate an MTF or OTF trading instruments within the current scope of Article 77A.

London Stock Exchange consultation on the International Order Book trading service



Useful Links:

- [London Stock Exchange consultation on the International Order Book trading service \(PDF\)](#)

Key Date:

Consultation ends on
1 June 2018

Of relevance to:

All firms that use or plan to use the International Order Book trading service

The London Stock Exchange (“LSE”) is conducting a consultation on the market structure and trading hours for the International Order Book (“IOB”).

IOB allows direct access to securities from 44 countries from across the globe, and is the largest market in Russian instruments outside of Moscow.

The proposal is to align IOB with the Stock Exchange Electronic Trading Service (“SETS”, the LSE’s flagship electronic order book) and the Main Market and AIM securities it supports.

This would extend trading by an additional hour and include the introduction of an intra-day auction at 12 noon.

The consultation document (downloadable via the link shown left) should be read by:

- Trading, Technology, Operations and Compliance staff at LSE member firms;
- issuers of Depositary Receipts admitted to trading on IOB;
- advisors; and
- any other interested parties that currently use or plan to use IOB in the future.

Key Dates



Key Date	Topic
1 June 2018	Consultation closes on FCA CP18/10 : FCA regulated fees and levies: Rates proposals 2018/19
28 June 2018	Consultation closes on FCA GC18/1 : Proposed guidance on financial crime systems and controls: insider dealing and market manipulation
1 July 2018	FCA move offices to Stratford – new address: 12 Endeavour Square, London E20 1JN
5 July 2018	Consultation closes on FCA CP18/9 : Remedies following the asset management market study
27 July 2018	New ESMA requirements for managers of Money Market Funds when reporting to the FCA
1 August 2018	Consultation closes on FCA CP18/11 : Reviewing the funding of the Financial Services Compensation Scheme
Summer 2018	FCA Policy Statement expected on SME access to the Financial Ombudsman Service
7 September 2018	Consultation closes on FCA GC18/2 : Fairness of variation terms in financial services consumer contracts under the Consumer Rights Act 2015
1 October 2018	Insurance Distribution Directive into force in Europe and the Insurance Distribution (Regulated Activities and Miscellaneous Amendments) Order 2018 into force in the UK
	FCA rules apply re transfer value comparator and the appropriate pension transfer analysis
Autumn 2018	FCA Policy Statement expected on improving the quality of pension transfer advice
21 January 2019	ESMA Technical Advice under the Prospectus Regulation in force, covering the areas of format and content of a prospectus, the EU Growth prospectus and the scrutiny and approval of a prospectus.
10 March 2019	Internalised Settlement reporting requirements – ESMA to issue regulatory and implementing technical standards
13 March 2019	Competition and Markets Authority due to complete their investigation into the supply and acquisition of investment consultancy services and fiduciary management services to institutional investors, including pension schemes, charities, insurance companies and endowment funds
11pm on Friday 29 March 2019	Brexit – European Union (Withdrawal) Bill will repeal the European Communities Act 1972 and make other provision in connection with the withdrawal of the UK from the EU
Spring 2019	Financial Guidance and Claims Bill – FCA takes over regulation of Claims Management Services
	Senior Managers & Certification Regime to cover all FSMA authorised firms, replacing the Approved Persons Regime
1 April 2019	FCA requires managers of dual-priced authorised funds to pay box profits to the fund for the benefit of investors or to individual investors who have bought or sold units
6 April 2019	New FCA rules on pension transfer assumptions to use when revaluing benefits
3 July 2020	End of 30-month period during which the US Securities and Exchange Commission provides market participants with greater certainty regarding their US regulated activities and compliance with MiFID II rules on Investment Research
July 2020	5 th Money Laundering Directive to be adopted throughout Europe
October 2020	Pension transfer specialists to obtain the investment advice qualification
31 December 2020	Brexit – end of transitional period

FCA Business Plan 2018/19

Update on market-based activity



Firms' culture and governance	Publication type	Timings
*Establishing a public register	Consultation Paper	Q2 2018/19
Accountability	Policy Statement	Q2 2018/19
Innovation, big data, technology and competition	Publication type	Timings
*Review of Cryptocurrencies	Assessment report with HMT and BoE	Q2 2018/19
Treatment of existing customers	Publication type	Timings
Providing SMEs access to FOS	Policy Statement	Q2 2018/19
Pensions and retirement income	Publication type	Timings
Retirement Outcomes Review	Final report and Consultation Paper	Q2 2018/19
Non-workplace pensions	Feedback Statement	Q3 2018/19
Fair treatment of with-profits customers		Q3 2018/19
*Unsuitable pension transfer advice	Policy Statement	Q3 2018/19
*Savings adequacy	Occasional Paper	Q4 2018/19
Retail Banking	Publication type	Timings
Strategic Review of Retail Banking Business Models	Consultation Paper	Q3 2018/19
Improving competition in current accounts	Policy Statement	Q3 2018/19
Financial crime	Publication type	Timings
Financial crime review of e-money	Report	Q2 2018/19
General Insurance and protection	Publication type	Timings
Wholesale Insurance Brokers Market Study	Interim report	Q3 2018/19
Value in the distribution chain (Phase 1)		Q2 2018/19
*Assessing claims inflation in General Insurance		Q4 2018/19
Retail Investments	Publication type	Timings
Investment Platforms Market Study	Interim Report	Q2 2018/19
Outcomes testing on auto advice		Q4 2018/19
High-Risk Complex Investments		Q3 2018/19
Investment Management	Publication type	Timings
Asset Management Market Study remedies	Policy Statement	Q4 2018/19
Mortgages and mutuals	Publication type	Timings
Mortgages Market Study	Interim report	Q1 2018/19
Consumer credit	Publication type	Timings
Motor finance	Final Report	Q3 2018/19
Consumer Credit Act retained provisions review	Consultation Paper	Q4 2018/19
Debt Management Sector Review		Q4 2018/19
*Market Study On Credit Information	Terms of Reference	Q4 2018/19
High-Cost Credit Review	Consultation Paper and Policy Statement	Q4 2018/19
Wholesale financial markets	Publication type	Timings
LIBOR Transition		2020/2021
Implementation of the EU Benchmark Regulation	Policy Statement	Q1 2018/19
Reforms to the listing regime	Consultation Paper	Q2 2018/19
*Money Laundering in Capital Markets	Report	Q1 2019/20
*Approach to Market Integrity	Report for Consultation	Q4 2018/19

* **New projects**

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