

Handbook Notice No 96

February 2022

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1 Overview

Legislative changes

- 1.1 On 25 February 2022, the Board of the FCA made the relevant changes to the Handbook as set out in the instruments listed below.

CP	Title of instrument	Instrument No	Changes effective
N/A	Funeral Plans (No 3) Instrument 2022	FCA 2022/3	29/07/2022
CP21/35	Technical Standards (Markets in Financial Instruments) (Transaction Reporting) Instrument 2022	FCA 2022/4	01/04/2022
CP21/35	Enforcement Guide (EU Exit Passport Regulations) Instrument 2022	FCA 2022/5	28/02/2022

Summary of changes

- 1.3 The legislative changes referred to above are listed and briefly described in Chapter 2 of this Notice.

Feedback on responses to consultations

- 1.4 Consultation feedback is published in Chapter 3 of this Notice or in separate Policy Statements.

FCA Board dates for 2022

- 1.5 The table below lists forthcoming FCA board meetings. These dates are subject to change without prior notice.

FCA board meetings		
March	24	2022
April	28	2022

FCA board meetings		
May	26	2022
June	23	2022
July	21	2022
September	29	2022
October	20	2022
November	24	2022
December	15	2022

2 Summary of changes

- 2.1 This Handbook Notice describes the changes to the FCA Handbook and other material made by the FCA Board under its legislative and other statutory powers on 25 February 2022. Where relevant, it also refers to the development stages of that material, enabling readers to look back at developmental documents if they wish. For information on changes made by the Prudential Regulation Authority please see <https://www.bankofengland.co.uk/news/prudential-regulation>.

Funeral Plans (No 3) Instrument 2022

- 2.2 The FCA Board has made changes to the Handbook sections listed below:

FPCOB 8.1

- 2.3 In [Consultation Paper 21/4](#) we explained that the rules in chapter 8 of the Funeral Planning Conduct of Business (FPCOB) sourcebook require firms selling funeral plans to:

- ask customers questions to identify both their demands and needs
- conduct an assessment of those demands and needs
- limit the products they propose to customers to only those products which they assess as being consistent with those demands and needs. If the firm has no products which are consistent with a customer's needs, they cannot offer the consumer anything

- 2.4 Our intention was to apply these rules to all firms selling funeral plans. However, when these rules were confirmed in [Policy Statement 21/8](#) their application was limited to intermediaries. The Funeral Plans (No 3) Instrument 2022 amends the application of FPCOB 8 so that the rules also apply to funeral plan providers selling their own plans directly to customers.

- 2.5 We have made this change without consultation. Under section 138L of the Financial Services and Markets Act, we can make rules without first consulting on the changes where we consider that delay in the rules coming into force would be prejudicial to the interests of consumers.

- 2.6 This instrument comes into force on 29 July 2022, immediately after the commencement of the Funeral Plans Instrument 2021.

Technical Standards (Markets in Financial Instruments) (Transaction Reporting) Instrument 2022

- 2.7 Following consultation in [Consultation Paper 21/35](#), the FCA Board has made changes to the technical standard on transaction reporting (Regulatory Technical Standard (RTS) 22, as onshored).
- 2.8 This instrument makes changes to amend the exclusion from transaction reporting for securities financing transactions (SFTs) which is set out in Article 2(5)(a) of Markets in Financial Instruments Directive RTS 22, as onshored.
- 2.9 Currently, the exclusion is a qualified exclusion, as it does not apply to SFTs to which the counterparty is a member of the European System of Central Banks (ESCB) or the Bank of England. The amendment widens the existing exclusion of SFTs from reporting under the UK Markets in Financial Instruments Regulation to also include SFTs where the counterparty is a member of the ESCB or the Bank of England.
- 2.10 This instrument comes into force on 1 April 2022. Feedback has been published in Chapter 3 of this Handbook Notice.

Enforcement Guide (EU Exit Passport Regulations) Instrument 2022

- 2.11 Following consultation in [Consultation Paper 21/35](#), this instrument makes changes to the Enforcement Guide (EG) by adding a new section to EG 19.
- 2.12 In summary, the changes explain a power under the EU Exit Passport Regulations and how we are likely to exercise this power.
- 2.13 This instrument comes into force on 28 February 2022. Feedback has been published in Chapter 3 of this Handbook Notice.

3 Consultation feedback

- 3.1 This chapter provides feedback on consultations that will not have a separate policy statement published by the FCA.

CP21/35: Technical Standards (Markets in Financial Instruments) (Transaction Reporting) Instrument 2022

Background

- 3.2 SFTs are excluded from reporting under the UK Markets in Financial Instruments Regulation (UK MiFIR) following the exclusion provided for in Article 2(5)(a) of RTS 22, as onshored. However, this exclusion does not apply to SFTs to which the counterparty is a member of the ESCB or the Bank of England.
- 3.3 SFTs to which a member of the ESCB is a counterparty are also reportable under the UK Securities Financing Transaction Regulation (UK SFTR). However, as a result of an exercise of the Temporary Transitional Power (TTP) by the FCA, this reporting obligation did not come into effect in January 2021.
- 3.4 The TTP direction affecting the UK SFTR reporting obligation is set to expire at the end of March 2022. In the absence of any action, SFTs to which the counterparty is a member of the ESCB would become reportable under UK SFTR and remain reportable under UK MiFIR.

Summary of proposals

- 3.5 We proposed to widen the existing exclusion of SFTs from reporting under UK MiFIR to also include SFTs where the counterparty is a member of the ESCB or Bank of England.
- 3.6 This would mean that:
- no SFTs would be subject to reporting under UK MiFIR. SFTs would be reportable only under UK SFTR, including where a member of the ESCB is a counterparty
 - SFTs where the counterparty is the Bank of England would not be reportable under either regime

Feedback

- 3.7 We received 6 responses: 5 from trade bodies and 1 from an authorised firm. All respondents agreed with our proposals.

- 3.8 One respondent requested clarity on how the securities financing transaction indicator (Field 65) should be populated.
- 3.9 Two respondents highlighted that some firms may not be able to exclude SFTs from reporting by 31 March 2022. One of these respondents suggested that these redundant reports could be filtered out based on the population of the securities financing indicator field.

Our response

- 3.10 Given the support received, we are proceeding with our proposal to exclude all SFTs from reporting under UK MiFIR. The change will take effect from 1 April 2022. This means that transaction reports should be submitted to us for transactions executed in eligible SFTs up to and including 31 March 2022.
- 3.11 The securities financing transaction indicator is a mandatory field and cannot be left unpopulated. Following existing requirements in RTS 22, as onshored, we would expect this field to be populated 'false' for all transactions that are not SFTs.
- 3.12 We expect firms to exclude SFTs from reporting under UK MiFIR as soon as possible after the changes take effect.

Cost benefit analysis

- 3.13 We explained in [CP21/35](#) that we expect firms to incur minimal or no additional costs as a result of these changes, as we are proposing to remove an existing reporting obligation. As such, we have not conducted a cost benefit analysis, as per the exemption under section 138L(3) of the Financial Services and Markets Act 2000.
- 3.14 None of the respondents to [CP21/35](#) informed us that they would incur additional costs resulting from the amendments we proposed.

Equality and diversity statement

- 3.15 We continue to believe that the rules we have made will not have a negative impact on any of the groups with protected characteristics under the Equality Act 2010 and no concerns were raised during consultation.

CP21/35 – Enforcement Guide (EU Exit Passport Regulations) Instrument 2022

Background

- 3.16 The temporary permissions regime (TPR) enables relevant firms and funds that were passporting into the UK when the transition period ended to continue operating temporarily. During this limited time, firms must seek full authorisation from us, if required, to continue to access the UK market.

- 3.17 Alongside the TPR, the EEA Passport Rights (Amendment, etc, and Transitional Provisions) (EU Exit) Regulations 2018 (the EU Exit Passport Regulations) created the financial services contracts regime (FSCR).
- 3.18 The FSCR was created solely to allow certain EEA firms and funds to run off existing UK contracts and conduct an orderly exit from the UK market. Firms within this regime will not be able to write new UK business.
- 3.19 The FSCR is made up of 2 separate regimes: contractual run-off and supervised run-off (SRO). Our changes concern SRO only, which is relevant to EEA passporting firms (or Treaty firms) that have a UK branch or a UK top-up permission.
- 3.20 The EU Exit Passport Regulations contain certain conditions that must be met for a firm to enter SRO. Where the conditions are met, there are a number of scenarios in which a firm may enter SRO – for example:
- where a firm has not notified to go into the TPR, and it requires permission to carry out its contracts. Where these conditions are met SRO arises automatically;
 - where it has notified for TPR, it applies for permission and we decide that this should be varied to cancel or refused; or
 - where a firm notifies for TPR but does not apply for permission and applies to cancel TPR, wanting SRO to apply to enable it to wind down.
- 3.21 The scope of an SRO firm’s permission is limited to the extent that permission is required for the performance of an existing contract or to transfer rights under an existing contract.
- 3.22 While the SRO is intended to enable an orderly wind down of existing contracts, the EU Exit Passport Regulations contain a power for us to direct that SRO doesn’t apply to a particular firm.
- 3.23 The power applies to persons with deemed permission under the EU Exit Passport Regulations. It does not apply to persons with deemed permission under the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018.
- 3.24 The effect of the power would be to remove the limited deemed permission of a firm. If we exercise this power, a firm will no longer have deemed permission to wind down its existing regulated activities in the UK.
- Summary of proposals**
- 3.25 We are amending the Enforcement Guide (EG) to explain this power. The changes will provide information about when we are likely to consider using the power and who the decision maker will be.

Feedback and response

- 3.26 We received no feedback during the consultation. As such, we are implementing the proposals as consulted on.

Cost benefit analysis

- 3.27 We did not issue a cost benefit analysis. Our amendments do not impose additional obligations on firms and are not related to rule changes or guidance on rules. In any event, we do not expect that amending EG will lead to any increase in costs. If any cost increase occurs, we believe this will be of minimal significance.

Equality and diversity

- 3.28 We continue to believe that our amendments will not materially impact any of the groups with protected characteristics under the Equality Act 2010. No comments were raised during the consultation.
- 3.29 The changes made by this instrument are listed in Chapter 2 of this Notice.

4 Additional information

Making corrections

- 4.1 The FCA reserves the right to make correctional or clarificatory amendments to the instruments made at the Board meeting without further consultation should this prove necessary or desirable.

Publication of Handbook material

- 4.2 This Notice is published on the FCA website and is available in hardcopy.
- 4.3 The formal legal instruments (which contain details of the changes) can be found on the FCA's website listed by date, reference number or module at www.handbook.fca.org.uk/instrument. The definitive version of the Handbook at any time is the version contained in the legal instruments.
- 4.4 The changes to the Handbook are incorporated in the consolidated Handbook text on the website as soon as practicable after the legal instruments are published.
- 4.5 The consolidated text of the Handbook can be found on the FCA's website at www.handbook.fca.org.uk/. A print version of the Handbook is available from The Stationery Office's shop at www.tsoshop.co.uk/Financial-Conduct-Authority-FCA/.
- 4.6 Copies of the FCA's consultation papers referred to in this Notice are available on the FCA's website.

Obligation to publish feedback

- 4.7 This Notice, and the feedback to which paragraph 1.3 refers, fulfil for the relevant text made by the Board the obligations in sections 138I(4) and (5) and similar sections of the Financial Services and Markets Act 2000 ('the Act'). These obligations are: to publish an account of representations received in response to consultation and the FCA's response to them; and to publish (where applicable) details of any significant differences between the provisions consulted on and the provisions made by the Board, with a cost benefit analysis and a

statement under section 138K(4) of the Act if a proposed altered rule applies to authorised persons which include mutual societies.

Comments

- 4.8 We always welcome feedback on the way we present information in the Handbook Notice. If you have any suggestions, they should be sent to handbookproduction@fca.org.uk (or see contact details at the front of this Notice).

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This Handbook Notice describes the changes to the Handbook and other material made by the Financial Conduct Authority (FCA) Board under its legislative and other statutory powers on 25 February 2022.

It also may contain information about other publications relating to the Handbook and, if appropriate, lists minor corrections made to previous instruments made by the Board.

Contact names for the individual modules are listed in the relevant Consultation Papers and Policy Statements referred to in this Notice.

General comments and queries on the Handbook can be addressed to:

Meghan Beller

Tel: 020 7066 2111

Email: Meghan.Beller@fca.org.uk

However, queries on specific requirements in the Handbook should be addressed first to your normal supervisory contact in the FCA. For most firms this will be the FCA's Contact Centre:

Tel: 0300 500 0597

Fax: 0207 066 0991

Email: firm.queries@fca.org.uk

Post: Contact Centre
Financial Conduct Authority
12 Endeavour Square
London E20 1JN

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