

Handbook Notice No 105

December 2022

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1 Overview

Legislative changes

- 1.1 On 24 November 2022, the Board of the Financial Conduct Authority (FCA) made the relevant changes to the Handbook as set out in the instrument listed below.

CP	Title of instrument	Instrument No	Changes effective
CP21/32	Non-Workplace Pensions Instrument 2022	FCA 2022/42	01/12/2023
CP22/6	British Steel Pension Scheme Consumer Redress Scheme Instrument 2022	FCA 2022/43	28/02/2023
CP22/15	Pension Transfer Redress Instrument 2022	FCA 2022/44	01/04/2023

- 1.2 On 9 December 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
CP22/13	FCA Standards Instrument: The Technical Standards (Bilateral Margining) Instrument 2022	FCA 2022/45	01/01/2023

- 1.3 On 15 December 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
CP22/17	Collective Investment Schemes (Individually Recognised Overseas Schemes and Miscellaneous Amendments) Instrument 2022	FCA 2022/46	01/01/2023
N/A	Handbook Administration (No 62) Instrument 2022	FCA 2022/47	16/12/2022; 01/04/2023

Summary of changes

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

Feedback on responses to consultations

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

FCA Board dates for 2023

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

FCA board meetings		
January	26	2023
February	23	2023
March	30	2023
April	27	2023
May	25	2023
June	29	2023
July	27	2023
September	28	2023
October	26	2023
November	23	2023
December	14	2023

2 Summary of changes

- 2.1 This Handbook Notice describes the changes to the FCA Handbook and other material made by the Financial Conduct Authority (FCA) Board under its legislative and other statutory powers on 24 November 2022, 9 December 2022 and 15 December 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 (PRA) please see <https://www.bankofengland.co.uk/news/publications>.

Non-Workplace Pensions Instrument 2022

- 2.2 Following consultation in [CP21/32](#), the FCA Board has made changes to the Handbook sections listed below:

Glossary
COBS 19.10, 19.12, TP 2
PROD 1.3, 1.4, 1.6, 6.4, 6.5

- 2.3 This instrument also makes changes to the following sections outside of the Handbook:

PERG 8 Annex 1

- 2.4 In summary, this instrument amends the Handbook in order to improve outcomes for non-workplace pension savers and deliver a pensions system that helps consumers to achieve the best outcomes within the means available to them.

- 2.5 This instrument comes into force on 1 December 2023. Feedback is published in a separate [Policy Statement](#).

British Steel Pension Scheme Consumer Redress Scheme Instrument 2022

- 2.6 Following consultation in [CP22/6](#), the FCA Board has made changes to the Handbook sections listed below:

Glossary
FEES 3.2

- 2.7 This instrument also introduces the following new chapter:

CONRED 4

- 2.8 In summary, this instrument implements a redress scheme intended, as far as practically possible, to put British Steel Pension Scheme members – who suffered a loss because of unsuitable advice to transfer

their pension – back in the position they would have been if the advice had been suitable and complied with our requirements.

- 2.9 This instrument comes into force on 28 February 2023. Feedback is published in a separate [Policy Statement](#).

Pension Transfer Redress Instrument 2022

- 2.10 Following consultation in [CP22/15](#), the FCA Board has introduced the Handbook sections listed below:

DISP App 4

- 2.11 In summary, this instrument introduces a methodology for firms to use to calculate how much redress should be paid to consumers who suffered financial loss because a firm’s non-compliant advice caused them to transfer from a defined benefit (DB) pension scheme to a defined contribution pension scheme. The methodology seeks to put consumers back in the position they would have been in if they had remained in their DB scheme.
- 2.12 This instrument comes into force on 1 April 2023. Feedback is published in a separate [Policy Statement](#).

FCA Standards Instrument: The Technical Standards (Bilateral Margining) Instrument 2022

- 2.13 Following consultation in [CP22/13](#), this instrument makes changes to our technical standards – specifically, Commission Delegated Regulation (EU) 2016/2251.
- 2.14 In summary, this instrument amends the relevant technical standard to preserve the smooth functioning of derivative markets while limiting the potential for market disruption.
- 2.15 This instrument comes into force on 15 December 2022. Feedback is published in a separate [Policy Statement](#).

Collective Investment Schemes (Individually Recognised Overseas Schemes and Miscellaneous Amendments) Instrument 2022

- 2.16 Following consultation in [CP22/17](#), the FCA Board has introduced or amended the Handbook sections listed below:

Glossary
COLL 4.3, 6.6A, 6.6B, 6.9, 9.3
DEPP 2 Annex 1, 6A.5

2.17 This instrument also makes changes to the following sections outside of the Handbook:

EG 7.1, 14.4

2.18 In summary, this instrument adds provisions to the Handbook to reflect changes to the individually recognised overseas schemes regime made by His Majesty's Treasury in the Financial Services Act 2021, together with other minor changes to COLL to reflect the UK's withdrawal from the EU.

2.19 This instrument comes into force on 1 January 2023. Feedback is published in Chapter 3 of this Notice.

Handbook Administration (No 62) Instrument 2022

2.20 The FCA Board has made minor changes to various modules of the FCA Handbook, as listed below.

2.21 These changes were not consulted on separately because they are minor amendments which correct or clarify existing provisions which have previously been consulted on. None of these changes represent any change in FCA policy.

2.22 In summary, the amendments this month consist of amendments to:

- FEES to correct the fee-block number for cryptoasset businesses
- COBS to include Annex II of the MiFID Org Regulation
- PROD to align the Handbook form with the online form on RegData
- SUP to update and correct errors in the Handbook forms

2.23 Part 2 of Annex D of this instrument comes into force on 1 April 2023. Parts 1 and 3 of Annex D, and all other parts of this instrument, come into force on 16 December 2022.

3 Consultation feedback

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

CP22/17: Collective Investment Schemes (Individually Recognised Overseas Schemes and Miscellaneous Amendments) Instrument 2022

Background

- 3.2 Overseas collective investment schemes are currently able to market in the UK through the gateway set out in sections 272 to 282C of the Financial Services and Markets Act (FSMA) (the 's.272 regime'). It is a longstanding regime which involves the FCA making scheme-by-scheme assessments of individual overseas collective investment schemes before granting recognition to eligible schemes, enabling them to be marketed to the general public in the UK.
- 3.3 His Majesty's Treasury amended the s.272 regime in the Financial Services Act 2021 (FS Act) to enhance its efficiency, but without changing the fundamental features of the in-depth assessments required for schemes accessing the UK market through this route.
- 3.4 The FS Act introduced changes to the s.272 regime, including:
- a new power for the FCA to make rules specifying which kinds of proposed alteration to a scheme will count as 'material' and therefore should be notified to us in writing by the scheme's operator in accordance with section 277
 - the addition of a power of censure to enable the FCA to inform investors of any wrongdoing by operators of overseas funds recognised under section 272
- 3.5 In [CP22/17](#), we consulted on proposals which focused on reflecting these changes in the Handbook by amending the Collective Investment Schemes sourcebook (COLL), the Decision Procedure and Penalties manual (DEPP) and the Glossary of definitions, as well as in the Enforcement Guide (EG).
- 3.6 We also took the opportunity to consult on other minor changes to COLL, where we had not amended the relevant provisions to reflect the UK's withdrawal from the EU.
- 3.7 These proposals are relevant to managers of UK authorised funds.

- 3.8 The FS Act also introduced the Overseas Funds Regime (OFR), as part of the government's post-Brexit commitment to provide a streamlined regime that would avoid the need for certain overseas funds to be assessed under the s.272 regime. The OFR is not yet operational. The s.282B public censure power is consistent with the equivalent power the FCA will have under the OFR at s.271R. We intend to consult on the relevant provisions under the OFR in due course.

Summary of proposals

Specifying 'material alteration'

- 3.9 With effect from 1 January 2023, fund operators will not need to provide written notice of any proposed alteration to the scheme under section 277(1) of FSMA unless it amounts to a 'material alteration'. The FS Act 2021 gives us the power to make rules defining what is meant by 'material alteration', so that we can ensure such notifications are proportionate and not overly burdensome.
- 3.10 We proposed a new rule in COLL 9.3 to specify when a proposed alteration to a scheme recognised under the s.272 regime would fall within the scope of being a 'material alteration'. The rule identifies some specific changes which we believe will always be material or will generally be considered material. We proposed guidance to help scheme operators determine whether or not an alteration is material, including a non-exhaustive list of examples.
- 3.11 This rule and guidance will not apply to changes that must already be notified to us under paragraphs 3, 3B or 4 of section 277. We also proposed new guidance under COLL 9.3 to remind operators of section 272 recognised schemes of their existing notification obligations.

Exercising our power of public censure

- 3.12 The Treasury commenced the s.282B power of public censure on 23 February 2022.
- 3.13 We proposed that FCA staff would be able to decide whether to exercise the censure power using 'executive procedures', in line with the definition in our Handbook. This is consistent with DEPP 2.5.12G and DEPP 2.5.13G, which describe the modified procedures applicable to collective investment schemes and certain other cases.
- 3.14 When deciding whether to revoke recognition, issue a public censure or to do both, the FCA will act proportionately. We proposed to make this clear by inserting new guidance in DEPP 6A confirming that the same principles would apply in collective investment scheme cases as when, in other situations, powers to impose suspensions, restrictions, conditions, limitations or disciplinary prohibitions sit alongside powers to impose penalties or public censures.

- 3.15 We also proposed to add the section 282B censure power to the definitions of 'breach' and 'public censure' in the Glossary.

Other amendments to COLL

- 3.16 We consulted on a few other minor changes to COLL, where we had not amended the relevant provisions as we should have done to reflect UK withdrawal from the EU.
- 3.17 None of these modifications represent a change in our policy position, as they are all aligned with previous decisions made by the UK authorities about the scope and treatment of retained EU law in our Handbook.

Feedback

- 3.18 We received one response, which welcomed our approach but also expressed concern that despite the changes, the s.272 regime remains an inefficient and not commercially viable route to obtain 'recognition' status for marketing in the UK for the majority of Undertakings for Collective Investment in Transferable Securities (UCITS) authorised in European Economic Area (EEA) states.
- 3.19 While the respondent acknowledged that EEA schemes previously passported into the UK can still access the UK market via the Temporary Marketing Permissions Regime (TMPR), this is only a temporary solution. Where fund managers have established EEA schemes that are not registered under the TMPR, those schemes would be unable to access the UK market. More fund managers are hence having to consider the s.272 regime despite its inefficiencies.
- 3.20 The respondent considered it imperative that the OFR should be operationalised at the earliest opportunity and encouraged the Treasury and FCA to prioritise the operationalisation of the OFR for EEA UCITS.

Our response

- 3.21 Given the support we received following our consultation, we are proceeding with our proposals as consulted on. We note the respondent's comments on the desirability of proceeding with the OFR, and we are working closely with the Treasury to support development of the OFR.

Cost benefit analysis

- 3.22 Our view that we were not required to publish a cost benefit analysis as set out in [CP22/17](#) remains unchanged.
- 3.23 We believe that no cost benefit analysis is required, as the 3 proposals are not likely to result in cost increases or that any increases will be of minimal significance.

3.24 The proposal on specifying 'material' alterations might lead to a decrease in cost. While fund operators are currently required to notify us of all alterations in relation to a s.272 scheme, the changes to the regime will allow such operators to consider making fewer notifications to us going forward by focusing only on 'material' scheme alterations in a more efficient way. The remaining proposals are unlikely to have a direct impact on cost.

Equality and diversity statement

3.25 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.

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 hard copy.
- 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 1.4 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 handbookfeedback@fca.org.uk (or see contact details at the end 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 24 November 2022, 9 December 2022 and 15 December 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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