



# Financial Services Act 2012

## 2012 CHAPTER 21

An Act to amend the Bank of England Act 1998, the Financial Services and Markets Act 2000 and the Banking Act 2009; to make other provision about financial services and markets; to make provision about the exercise of certain statutory functions relating to building societies, friendly societies and other mutual societies; to amend section 785 of the Companies Act 2006; to make provision enabling the Director of Savings to provide services to other public bodies; and for connected purposes. [19th December 2012]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### PART 1

#### BANK OF ENGLAND

#### 1 Deputy Governors

- (1) In section 1 of the Bank of England Act 1998 (court of directors), for subsections (2) and (2A) substitute—

“(2) The court shall consist of the following directors appointed by Her Majesty—

- (a) a Governor,
- (b) a Deputy Governor for financial stability,
- (c) a Deputy Governor for monetary policy,
- (d) a Deputy Governor for prudential regulation, and
- (e) not more than 9 non-executive directors.”

- (2) In section 13 of that Act (Monetary Policy Committee), in subsection (2), for paragraph (a) substitute—

“(a) the Governor of the Bank,

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- (aa) the Deputy Governor for financial stability,
- (ab) the Deputy Governor for monetary policy,”.

#### Commencement Information

**II** S. 1 in force at 19.2.2013 for specified purposes by S.I. 2013/113, art. 2(2), Sch. Pt. 4

VALID FROM 01/04/2013

### 2 The Bank's financial stability objective

- (1) Section 2A of the Bank of England Act 1998 (Financial Stability Objective) is amended as follows.
- (2) In subsection (1)—
  - (a) for “contribute to protecting and enhancing” substitute “protect and enhance”, and
  - (b) for “systems” substitute “system”.
- (3) In subsection (2), for “and the Financial Services Authority)” substitute “, the Financial Conduct Authority and the Prudential Regulation Authority)”.
- (4) Omit subsection (3) (which is superseded by the amendments made by section 4 of this Act).

VALID FROM 01/04/2013

### 3 Oversight Committee

- (1) The Bank of England Act 1998 is amended as follows.
- (2) For section 3 substitute—

#### “3A Oversight Committee

- (1) There is to be a sub-committee of the court of directors of the Bank (“the Oversight Committee”) consisting of the non-executive directors of the Bank.
- (2) The functions of the Oversight Committee are—
  - (a) keeping under review the Bank's performance in relation to—
    - (i) the Bank's objectives (that is, the objectives specified in relation to it in this Act and the other objectives for the time being determined by the court of directors of the Bank),
    - (ii) the duty of the Financial Policy Committee under section 9C, and
    - (iii) the Bank's strategy as for the time being determined by the court of directors of the Bank (including its financial stability strategy);

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- (b) monitoring the extent to which the objectives set by the court of directors of the Bank in relation to the Bank's financial management have been met;
  - (c) keeping under review the internal financial controls of the Bank with a view to securing the proper conduct of its financial affairs;
  - (d) the functions conferred on the Oversight Committee by the provisions listed in subsection (4).
- (3) The court of directors of the Bank may arrange for specified functions of the Bank to be discharged by the Oversight Committee.
- (4) The provisions referred to in subsection (2)(d) are—
- (a) section 9B (review of procedures followed by Financial Policy Committee);
  - (b) section 16 (review of procedures followed by Monetary Policy Committee);
  - (c) paragraph 14 of Schedule 1 (remuneration of Governor and Deputy Governors);
  - (d) paragraph 5 of Schedule 2A (terms and conditions of office of members of Financial Policy Committee appointed under section 9B(1)(e));
  - (e) paragraph 9 of that Schedule (removal of members of Financial Policy Committee appointed under section 9B(1)(d) or (e));
  - (f) paragraph 4(2) of Schedule 3 (terms and conditions of office of members of Monetary Policy Committee appointed under section 13(2)(c));
  - (g) paragraph 9 of that Schedule (removal of members of Monetary Policy Committee appointed under section 13(2)(b) or (c));
  - (h) paragraph 15 of Schedule 1ZB to the Financial Services and Markets Act 2000 (terms of service and remuneration of members of the governing body of the Prudential Regulation Authority).

### **3B Oversight Committee: procedure**

- (1) The chair of the court (designated under paragraph 13 of Schedule 1) is to chair meetings of the Oversight Committee (when present).
- (2) The Committee is to determine its own procedure, but this is subject to subsection (1) and subsection (5).
- (3) The Committee may invite other persons to attend, or to attend and speak at, any meeting of the Committee.
- (4) The Committee may delegate any of its functions to two or more of its members.
- (5) If a member of the Committee (“M”) has any direct or indirect interest (including any reasonably likely future interest) in any dealing or business which falls to be considered by the Committee—
  - (a) M must disclose that interest to the Committee when it considers that dealing or business, and

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- (b) the Committee must decide whether M is to be permitted to participate in any proceedings of the Committee relating to any question arising from its consideration of the dealing or business, and if so to what extent and subject to what conditions (if any).

### **3C Reviews**

- (1) In the discharge of any of its functions, the Oversight Committee may arrange—
  - (a) for a review to be conducted under this section in relation to any matter by a person appointed by the Committee, and
  - (b) for the person conducting the review to make one or more reports to the Committee.
- (2) The persons who may be appointed to conduct a review include an officer or employee of the Bank.
- (3) A review under this section is a “performance review” if it—
  - (a) is arranged by the Committee in the discharge of any of its functions under section 3A(2)(a) and (b), and
  - (b) relates to past events.
- (4) If the person to be appointed to conduct a performance review is an officer or employee of the Bank, the appointment requires the consent of the Governor of the Bank.
- (5) In the case of a performance review, the Committee must have regard to the desirability of ensuring that sufficient time has elapsed—
  - (a) for the review to be effective, and
  - (b) to avoid the review having a material adverse effect on the exercise by the Bank of its functions.

### **3D Publication of reports of performance reviews**

- (1) The Bank must give the Treasury a copy of any report made to the Oversight Committee by a person appointed under section 3C to conduct a performance review (as defined by subsection (3) of that section).
- (2) Subject to subsection (3), the Bank must also publish the report.
- (3) Subsection (2) does not require the publication of information whose publication at the time when the report is made would in the opinion of the court of directors of the Bank be against the public interest.
- (4) Where the court of directors decides under subsection (3) that publication of information at the time when the report is made would be against the public interest, it must keep under consideration the question of whether publication of the information would still be against the public interest.
- (5) Where the court of directors decides that publication of any information is no longer against the public interest, the Bank must publish the information.
- (6) The Treasury must lay before Parliament a copy of any report or other information published by the Bank under this section.



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### **3E Recommendations resulting from review**

- (1) This section applies where a report made by a person appointed under section 3C to conduct a review makes recommendations to the Bank as to steps to be taken by it.
- (2) The Oversight Committee must—
  - (a) monitor the Bank's response to the report, and
  - (b) if or to the extent that the Bank accepts the recommendations, monitor the implementation of the recommendations.

### **3F Oversight Committee: further provisions**

- (1) The documents to which the Oversight Committee is to have access in the discharge of its functions include documents considered, or to be considered, by the Financial Policy Committee or the Monetary Policy Committee.
- (2) One or two members of the Oversight Committee may attend any meeting of the Financial Policy Committee or the Monetary Policy Committee, but a person attending by virtue of this subsection may not speak unless invited to do so by the person chairing the meeting.
- (3) Subsection (2) does not affect—
  - (a) anything done in relation to the Financial Policy Committee by a member of that Committee who is also a member of the Oversight Committee,
  - (b) the powers of the Financial Policy Committee under paragraph 13 of Schedule 2A, or
  - (c) the powers of the Monetary Policy Committee under paragraph 13A of Schedule 3.”
- (3) In section 4 (annual report by the Bank), in subsection (2), for paragraph (a) substitute—

“(a) a report by the Oversight Committee on the matters for which it is responsible, and”.
- (4) In section 16 (functions of court of directors)—
  - (a) in subsection (1), for “court of directors of the Bank” substitute “Oversight Committee”;
  - (b) in subsection (2)—
    - (i) for “the court's function” substitute “the function of the Oversight Committee”, and
    - (ii) for “the Committee” substitute “the Monetary Policy Committee”;
  - (c) omit subsection (3), and
  - (d) accordingly, in the heading, for “court of directors” substitute “Oversight Committee”.

## **4 Financial stability strategy and Financial Policy Committee**

- (1) After Part 1 of the Bank of England Act 1998 insert—

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## “PART 1A

### FINANCIAL STABILITY

#### *Financial stability strategy of the Bank*

#### 9A **Financial stability strategy**

- (1) The court of directors must—
  - (a) determine the Bank's strategy in relation to the Financial Stability Objective (its “financial stability strategy”), and
  - (b) from time to time review, and if necessary revise, the strategy.
- (2) Before determining or revising the Bank's financial stability strategy, the court of directors must consult about a draft of the strategy or of the revisions—
  - (a) the Financial Policy Committee, and
  - (b) the Treasury.
- (3) The Financial Policy Committee may at any time make recommendations to the court of directors as to the provisions of the Bank's financial stability strategy.
- (4) The court of directors must determine the financial stability strategy of the Bank within 6 months of the coming into force of this section.
- (5) The court of directors must carry out and complete a review of the Bank's financial stability strategy before the end of each relevant period.
- (6) The relevant period is 3 years beginning with the date on which the previous review was completed, except that in the case of the first review the relevant period is the period of 3 years beginning with the date on which the strategy was determined under subsection (4).
- (7) The Bank must publish its financial stability strategy.
- (8) If the financial stability strategy is revised, the Bank must publish the revised strategy.
- (9) Publication under subsection (7) or (8) is to be in such manner as the Bank thinks fit.

#### *Financial Policy Committee of the Bank*

#### 9B **Financial Policy Committee**

- (1) There is to be a sub-committee of the court of directors of the Bank (the “Financial Policy Committee”) consisting of—
  - (a) the Governor of the Bank,
  - (b) the Deputy Governors of the Bank,
  - (c) the Chief Executive of the FCA,

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- (d) one member appointed by the Governor of the Bank after consultation with the Chancellor of the Exchequer,
  - (e) 4 members appointed by the Chancellor of the Exchequer, and
  - (f) a representative of the Treasury.
- (2) The member appointed under subsection (1)(d) is to be a person who has executive responsibility within the Bank for the analysis of threats to financial stability.
- (3) Before appointing a person under subsection (1)(e), the Chancellor of the Exchequer must—
- (a) be satisfied that the person has knowledge or experience which is likely to be relevant to the Committee's functions, and
  - (b) consider whether the person has any financial or other interests that could substantially affect the functions as member that it would be proper for the person to discharge.
- (4) The Oversight Committee must keep the procedures followed by the Financial Policy Committee under review.
- (5) Schedule 2A has effect with respect to the Financial Policy Committee.

## 9C Objectives of the Financial Policy Committee

- (1) The Financial Policy Committee is to exercise its functions with a view to—
- (a) contributing to the achievement by the Bank of the Financial Stability Objective, and
  - (b) subject to that, supporting the economic policy of Her Majesty's Government, including its objectives for growth and employment.
- (2) The responsibility of the Committee in relation to the achievement by the Bank of the Financial Stability Objective relates primarily to the identification of, monitoring of, and taking of action to remove or reduce, systemic risks with a view to protecting and enhancing the resilience of the UK financial system.
- (3) Those systemic risks include, in particular—
- (a) systemic risks attributable to structural features of financial markets, such as connections between financial institutions,
  - (b) systemic risks attributable to the distribution of risk within the financial sector, and
  - (c) unsustainable levels of leverage, debt or credit growth.
- (4) Subsections (1)(a) and (2) do not require or authorise the Committee to exercise its functions in a way that would in its opinion be likely to have a significant adverse effect on the capacity of the financial sector to contribute to the growth of the UK economy in the medium or long term.
- (5) In this Part “systemic risk” means a risk to the stability of the UK financial system as a whole or of a significant part of that system.
- (6) For the purposes of subsection (5) it is immaterial whether the risk arises in the United Kingdom or elsewhere.

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(7) In subsection (3)(c)—

“credit growth” means the growth in lending by the financial sector to individuals in the United Kingdom and businesses carried on in the United Kingdom;

“debt” means debt owed to the financial sector by individuals in the United Kingdom and businesses carried on in the United Kingdom;

“leverage” means the leverage of the financial sector in the United Kingdom.

#### 9D Specification of matters relevant to economic policy

- (1) The Treasury may by notice in writing to the Financial Policy Committee specify for the purposes of section 9C(1)(b) what the economic policy of Her Majesty's Government is to be taken to be.
- (2) The Treasury must specify under subsection (1) the matter mentioned there—
  - (a) before the end of the period of 30 days beginning with the day on which section 9C comes into force, and
  - (b) at least once in every calendar year following that in which the first notice under that subsection is given.
- (3) Where the Treasury give notice under this section they must—
  - (a) publish the notice in such manner as they think fit, and
  - (b) lay a copy of it before Parliament.

#### 9E Recommendations by Treasury

- (1) The Treasury may at any time by notice in writing to the Financial Policy Committee make recommendations to the Committee about—
  - (a) matters that the Committee should regard as relevant to the Committee's understanding of the Bank's Financial Stability Objective;
  - (b) the responsibility of the Committee in relation to the achievement of that objective;
  - (c) the responsibility of the Committee in relation to support for the economic policy of Her Majesty's Government, including its objectives for growth and employment;
  - (d) matters to which the Committee should have regard in exercising its functions.
- (2) The Treasury must make recommendations under subsection (1)(a) or (b) (“recommendations about the objective”)—
  - (a) before the end of the period of 30 days beginning with the day on which this section comes into force, and
  - (b) at least once in every calendar year following that in which the first recommendations about the objective are made.
- (3) The Committee must respond to any recommendations made to it under subsection (1) by notifying the Treasury, in relation to each recommendation, of one or more of the following—

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- (a) action that the Committee has taken in accordance with the recommendation;
  - (b) if or to the extent that the recommendation does not relate to immediate action, the Committee's intention to act in accordance with it;
  - (c) whether or not the recommendation relates to immediate action, the Committee's reasons for not intending to act in accordance with it.
- (4) Notification under subsection (3) must be given or confirmed in writing.
- (5) The Treasury must—
- (a) publish in such manner as they think fit any notice given under subsection (1) or notification received under subsection (3), and
  - (b) lay a copy of it before Parliament.

#### 9F Other general duties

- (1) In the exercise of its functions, other than its functions under section 9A(2) or (3), the Financial Policy Committee must have regard to the Bank's financial stability strategy.
- (2) In working with the FCA or the PRA or exercising functions in relation to either of them, the Committee must, so far as it is possible to do so while complying with section 9C(1), seek to avoid exercising the Committee's functions in a way that would prejudice—
  - (a) the advancement by the FCA of any of its operational objectives, or
  - (b) the advancement by the PRA of any of its objectives.
- (3) In the exercise of its functions, the Committee must also have regard to—
  - (a) 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;
  - (b) the contribution to the achievement by the Bank of the Financial Stability Objective that the Committee can make by disclosing its views about possible systemic risks or disclosing other information about possible systemic risks;
  - (c) the international obligations of the United Kingdom, particularly where relevant to the exercise of the powers of the Committee in relation to the FCA or the PRA.

#### 9G Functions of the Financial Policy Committee

- (1) The functions of the Financial Policy Committee are—
  - (a) monitoring the stability of the UK financial system with a view to identifying and assessing systemic risks;
  - (b) giving directions under section 9H;
  - (c) making recommendations under sections 9O to 9R;
  - (d) preparing financial stability reports under section 9W.

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- (2) The court of directors may, with the consent of the Treasury, arrange for specified functions of the Bank to be discharged by the Financial Policy Committee.

*Directions by Financial Policy Committee*

**9H Directions to FCA or PRA requiring macro-prudential measures**

- (1) The Financial Policy Committee may give a direction to the FCA or the PRA (“the regulator”) requiring the regulator to exercise its functions so as to ensure the implementation, by or in relation to a specified class of regulated persons, of a macro-prudential measure described in the direction.
- (2) “Regulated person” means—
- (a) in relation to the FCA—
    - (i) an authorised person within the meaning of FSMA 2000,
    - (ii) a recognised investment exchange within the meaning of that Act, or
    - (iii) an EEA market operator as defined by section 312D of that Act;
  - (b) in relation to the PRA, a PRA-authorised person within the meaning of that Act.
- (3) “Macro-prudential measure” is to be read in accordance with section 9L.
- (4) The direction may relate to all regulated persons or to regulated persons of a specified description, but may not relate to a specified regulated person.
- (5) The direction—
- (a) may refer to the opinion of the regulator or require or authorise the exercise of a discretion by the regulator;
  - (b) may be expressed to remain in force for a specified period or until revoked.
- (6) The direction may not require its provisions to be implemented by specified means or within a specified period, but may include recommendations as to the means to be used and the timing of implementation.
- (7) A recommendation made under subsection (6) may be expressed to be one to which section 9Q(3) (duty to comply or explain) applies.
- (8) The direction may not require the regulator to do anything that it has no power to do, but the existence of the direction is relevant to the exercise of any discretion conferred on the regulator.
- (9) The direction may specify particular matters to which the regulator is or is not to have regard in complying with the direction, but those matters must be specified in relation to all regulated persons or a class of regulated person rather than a specified regulated person.
- (10) The direction may refer to a publication issued by the FCA, the PRA, another body in the United Kingdom or an international organisation, as the publication has effect from time to time.

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## **9I Compliance with directions under section 9H**

- (1) The regulator must comply with a direction given to it under section 9H as soon as reasonably practicable.
- (2) An order under section 9L may, in relation to cases where the regulator is complying with a direction under section 9H, exclude or modify any procedural requirement that would otherwise apply under FSMA 2000 in relation to the exercise by the regulator of its functions in pursuance of the direction.
- (3) The regulator to which a direction under section 9H is given must give the Financial Policy Committee one or more reports on how it is complying or has complied with the direction.
- (4) The Financial Policy Committee may give directions to the regulator specifying the times by which reports required by subsection (3) must be given to the Committee.
- (5) “Regulator” has the same meaning as in section 9H.

## **9J Revocation of directions under section 9H**

- (1) The Financial Policy Committee may at any time by notice to the regulator revoke a direction under section 9H.
- (2) A direction under section 9H is to be taken to be revoked if the measure to which it relates ceases to be a macro-prudential measure, but this is subject to any provision made under section 9L(4)(e).
- (3) The revocation of a direction under section 9H does not affect the validity of anything previously done in accordance with it.
- (4) “Regulator” has the same meaning as in section 9H.

## **9K Further provisions about directions under section 9H**

- (1) Each of the following must be in writing—
  - (a) a direction under section 9H;
  - (b) a notice revoking such a direction;
  - (c) a report under section 9I(3).
- (2) The Financial Policy Committee must give the Treasury a copy of any direction under section 9H or any notice revoking such a direction.
- (3) The Treasury may, if they think fit, lay before Parliament a copy of a direction under section 9H or a notice revoking such a direction.
- (4) Where a direction under section 9H, or a notice revoking such a direction, is included in a record published under section 9U, the Treasury must, if they have not already done so, lay before Parliament a copy of the direction or notice in the form in which it is published in the record.

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## 9L Macro-prudential measures

- (1) For the purposes of section 9H a “macro-prudential measure” is a measure prescribed by the Treasury by order.
- (2) Before making an order under this section, the Treasury must—
  - (a) consult the Financial Policy Committee, or
  - (b) if the Treasury consider that the delay involved in consulting the Committee would be prejudicial to the stability of the UK financial system, consult the Governor of the Bank.
- (3) In prescribing a measure, the order must specify whether the measure is prescribed in relation to the FCA, the PRA, or both.
- (4) An order under this section—
  - (a) may make different provision for different cases;
  - (b) may confer a discretion on the Financial Policy Committee, the FCA or the PRA;
  - (c) may refer to rules made by the FCA or the PRA;
  - (d) may refer to a publication issued by the FCA, the PRA, another body in the United Kingdom or an international organisation, as the publication has effect from time to time;
  - (e) may contain transitional provisions and savings relating to the coming into force of any provision of the order or to the ceasing to be in force of any temporary provision made by the order.

## 9M Statements of policy by Financial Policy Committee

- (1) In relation to each macro-prudential measure prescribed under section 9L, the Financial Policy Committee must prepare and maintain a written statement of the general policy that it proposes to follow in relation to the exercise of its power of direction under section 9H so far as it relates to that measure.
- (2) The Committee may at any time alter or replace a statement maintained under this section.
- (3) The Bank must publish each statement maintained under this section.
- (4) Publication is to be in such manner as the Bank thinks fit.
- (5) Nothing in this section is to be regarded as preventing the Financial Policy Committee from exercising its power of direction under section 9H in relation to a macro-prudential measure, where it considers it necessary to do so by reason of urgency, before it has prepared a statement under this section in relation to that measure.

## 9N Parliamentary control of orders under section 9L

- (1) Except as provided by subsection (2), an order under section 9L is not to be made unless a draft of the order has been laid before and approved by resolution of each House of Parliament.



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- (2) An order under section 9L may be made without a draft having been laid and approved as mentioned in subsection (1) if the order contains a statement that the Treasury are of the opinion that, by reason of urgency, it is necessary to make the order without a draft being so laid and approved.
- (3) An order under section 9L made in accordance with subsection (2)—
  - (a) must be laid before Parliament after being made, and
  - (b) ceases to have effect at the end of the relevant period unless before the end of that period the order is approved by a resolution of each House of Parliament (but without affecting anything done under the order or the power to make a new order).
- (4) The “relevant period” is a period of 28 days beginning with the day on which the order is made.
- (5) In reckoning the relevant period no account is to be taken of any time during which Parliament is dissolved or prorogued or during which either House is adjourned for more than 4 days.

#### *Recommendations by Financial Policy Committee*

#### **9O Making of recommendations within the Bank**

- (1) The Financial Policy Committee may make recommendations within the Bank.
- (2) The recommendations may, in particular, relate to—
  - (a) the provision by the Bank of financial assistance to financial institutions;
  - (b) the exercise by the Bank of its functions in relation to payment systems, settlement systems and clearing houses.
- (3) The Committee may not make recommendations about—
  - (a) the provision by the Bank of financial assistance in relation to a particular financial institution, or
  - (b) the exercise by the Bank of its powers under Parts 1 to 3 of the Banking Act 2009 in relation to a particular institution.
- (4) The recommendations must be made or confirmed in writing.

#### **9P Recommendations to Treasury**

- (1) The Financial Policy Committee may make recommendations to the Treasury.
- (2) The recommendations may, in particular, relate to the exercise by the Treasury of their power to make orders under—
  - (a) section 9L (macro-prudential measures),
  - (b) section 22(1) or (1A) of FSMA 2000 (regulated activities),
  - (c) section 22A(1) of that Act (designation of activities requiring prudential regulation by PRA),
  - (d) section 137D(1)(b) of that Act (purposes for which FCA may make product intervention rules), or

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(e) section 165A(2)(d) of that Act (additional persons who may be required by PRA to provide information).

- (3) The recommendations must be made or confirmed in writing.
- (4) The Committee may make a recommendation under subsection (2)(e) only if it considers that the exercise by the Treasury of their power to make an order under section 165A(2)(d) of FSMA 2000 in the manner proposed is desirable for the purposes of the exercise by the Committee of its functions.
- (5) Before giving a recommendation under subsection (2)(e), the Committee must consult the Treasury.

#### 9Q Recommendations to FCA and PRA

- (1) The Financial Policy Committee may make recommendations to the FCA and the PRA about the exercise of their respective functions.
- (2) The recommendations may relate to all regulated persons or to regulated persons of a specified description, but may not relate to the exercise of the functions of the FCA or the PRA in relation to a specified regulated person.
- (3) If the recommendations are expressed to be recommendations to which this subsection applies, the body to which they are made must as soon as reasonably practicable—
  - (a) act in accordance with the recommendations, or
  - (b) if to any extent it does not, notify the Committee of the extent to which it has not acted in accordance with the recommendations and of the reasons for its decision.
- (4) The recommendations, and any notification under subsection (3)(b), must be made or confirmed in writing.
- (5) “Regulated person” has the same meaning as in section 9H.

#### 9R Recommendations to other persons

- (1) The Financial Policy Committee may make recommendations to persons other than those mentioned in sections 9O to 9Q.
- (2) The recommendations must be made or confirmed in writing.

### *Explanation*

#### 9S Duty to prepare explanation

- (1) In connection with the exercise of any of the specified powers, the Financial Policy Committee must prepare an explanation of—
  - (a) the reasons for the Committee's decision to exercise the power, in the way in which it is being exercised, and
  - (b) the Committee's reasons for believing that the exercise of the power, in the way in which it is being exercised, is compatible with the duties of the Committee under the following provisions—

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- (i) section 9C(1) (as read with section 9C(4)), and
  - (ii) section 9F.
- (2) The specified powers are—
- (a) the power to give a direction under section 9H;
  - (b) the power to make recommendations under section 9O, so far as relating to the exercise of the Bank's functions in relation to payment systems, settlement systems and clearing houses;
  - (c) the power to make recommendations under section 9P, so far as relating to the exercise by the Treasury of their power to make orders under any of the provisions mentioned in subsection (2) of that section;
  - (d) the power to make recommendations under section 9Q.
- (3) The explanation required by subsection (1) in relation to the duty in section 9F(3)(a) must include an estimate of the costs and an estimate of the benefits that would arise from compliance with the direction or recommendation in question, unless in the opinion of the Committee it is not reasonably practicable to include such an estimate.

### *Review*

#### **9T Duty to review directions and recommendations**

- (1) The Financial Policy Committee must—
- (a) before the end of each review period, review each direction given by it under section 9H, other than a direction revoked before the end of the review period, and
  - (b) prepare a summary of its conclusions.
- (2) A review period is—
- (a) in relation to the first review, the period of 12 months beginning with the day on which the direction was given, and
  - (b) in relation to subsequent reviews, the period of 12 months beginning with the day on which the previous review was completed.
- (3) The Financial Policy Committee must maintain arrangements for the review at regular intervals of any recommendations that it has made under any of sections 9O to 9R and are of continuing relevance.
- (4) The purpose of a review is—
- (a) in the case of a direction, to consider whether the direction ought to be revoked, and
  - (b) in the case of a recommendation, to consider whether the recommendation ought to be withdrawn.

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### *Publication of record of meetings*

#### **9U Publication of record of meetings**

- (1) The Bank must publish a record of each meeting of the Financial Policy Committee before the end of the period of 6 weeks beginning with the day of the meeting.
- (2) The record must specify any decisions taken at the meeting (including decisions to take no action) and must set out, in relation to each decision, a summary of the Committee's deliberations.
- (3) The decisions referred to in subsection (2) include in particular a decision—
  - (a) to give or revoke a direction under section 9H;
  - (b) to make recommendations under any of sections 9O to 9R.
- (4) Where a decision has been made to give or revoke a direction under section 9H, the record must include the text of the direction or of the notice of revocation.
- (5) Where a decision has been made to make recommendations under any of sections 9O to 9R, the record must include the recommendations.
- (6) Where since the previous meeting the Committee has received a notification under section 9Q(3)(b), the record must include the notification.
- (7) The information required by subsections (1) and (2) does not include information identifying particular members of the Committee.
- (8) Subsections (1) to (6) do not require the publication of—
  - (a) information about any recommendations made under 9O(2)(a);
  - (b) information whose publication within the time required by subsection (1) would in the opinion of the Committee be against the public interest;
  - (c) information about any decision under paragraph (b);
  - (d) information about a decision to give a direction under section 9H which has been revoked before the record of the meeting at which it was given is published;
  - (e) information about the decision to revoke a direction where information about the direction is withheld under paragraph (d).
- (9) Publication under this section or section 9V is to be in such manner as the Bank thinks fit.

#### **9V Deferred publication**

- (1) Where the Financial Policy Committee decides under subsection (8)(b) of section 9U that publication of information within the time required by subsection (1) of that section would be against the public interest—
  - (a) it must consider whether to fix a date as the earliest date on which the information may be published, and

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- (b) if it does not fix a date, it must keep under consideration the question whether publication of the information would still be against the public interest.
- (2) The Committee must from time to time determine the procedures that it will follow in complying with the duty in subsection (1)(b).
- (3) Where the Committee—
- (a) fixes a date under subsection (1)(a) as the earliest date on which any information may be published, or
  - (b) decides under subsection (1)(b) that publication of any information is no longer against the public interest,
- the Bank must publish the information at the time when it next publishes under section 9U(1) the record of a meeting of the Committee.

#### *Financial stability reports by Financial Policy Committee*

#### **9W Financial stability reports by Financial Policy Committee**

- (1) The Financial Policy Committee must prepare and publish reports relating to financial stability (“financial stability reports”).
- (2) Two financial stability reports must be published in each calendar year.
- (3) A financial stability report must include—
  - (a) the Committee's view of the stability of the UK financial system at the time when the report is prepared,
  - (b) an assessment of the developments that have influenced the current position,
  - (c) an assessment of the strengths and weaknesses of the UK financial system,
  - (d) an assessment of risks to the stability of the UK financial system, and
  - (e) the Committee's view of the outlook for the stability of the UK financial system.
- (4) A financial stability report must also include—
  - (a) a summary of the activities of the Committee in the reporting period, and
  - (b) an assessment of the extent to which the exercise by the Committee of its functions (both during the reporting period and previously) has succeeded during the reporting period in achieving the objectives set out in section 9C(1)(a) and (b).
- (5) If during the reporting period the Committee has made any decision in relation to which section 9S requires the preparation of an explanation, the financial stability report must include the required explanation.
- (6) If during the reporting period the Committee has completed the review of a direction or recommendation, the financial stability report must include a summary of the review.

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- (7) The reporting period is the period since the date of the previous financial stability report, except that in the case of the first financial stability report it is the period since the time when this section came fully into force.
- (8) Nothing in subsections (3) to (6) is to be regarded as requiring the Committee to include in a financial stability report any information whose publication would in the Committee's opinion be against the public interest.
- (9) The Committee must give a copy of each financial stability report to the Treasury.
- (10) The Treasury must lay before Parliament a copy of each financial stability report.
- (11) Publication of a financial stability report is to be in such manner as the Bank thinks fit.

#### *Meetings between Governor and Chancellor of the Exchequer*

### **9X Meetings between Governor and Chancellor of the Exchequer**

- (1) As soon as reasonably practicable after the publication by the Financial Policy Committee of a financial stability report, the Governor of the Bank and the Chancellor of the Exchequer must meet to discuss the report and any other matters relating to the stability of the UK financial system that they consider it appropriate to discuss.
- (2) The Treasury must publish a record of each meeting required by subsection (1) before the end of the period of 6 weeks beginning with the day of the meeting.
- (3) Publication under subsection (2) is to be in such manner as the Treasury think fit.
- (4) Subsection (2) does not require the publication of information whose publication within the time required by that subsection would in the opinion of the Treasury be against the public interest.
- (5) Before publishing the record of a meeting required by subsection (1), or deciding under subsection (4) not to publish such a record, the Treasury must consult the Bank about the record and its publication.

#### *Power of Bank to require FCA or PRA to provide information*

### **9Y Directions requiring information or documents**

- (1) The Bank may exercise the powers conferred by this section where it considers that information or documents are reasonably required in connection with the exercise by the Bank of its functions in pursuance of the Financial Stability Objective.
- (2) The Bank may give a direction to the FCA or the PRA (“the regulator”) requiring the regulator—
  - (a) to provide the Bank with specified information or information of a specified description, or

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- (b) to produce to the Bank specified documents or documents of a specified description.
- (3) The direction may relate to information or documents which are held by persons other than the regulator and which the regulator has power to obtain or whose production the regulator has power to require.
- (4) Any information or documents to which the direction relates are—
  - (a) where the information or documents are held by a person in relation to whom the powers conferred by subsections (1) and (3) of section 165 of FSMA 2000 are exercisable, to be taken to be information or documents to which that section applies by virtue of subsection (4) of that section, and
  - (b) where they are held by a person to whom section 165A of FSMA 2000 applies and the direction is given to the PRA, to be taken to be information or documents to which that section applies by virtue of subsection (3) of that section.
- (5) The information or documents must be provided or produced before the end of such period as may be specified.
- (6) The Bank may require any information provided under this section to be provided in such form as it may require.
- (7) The Bank may require—
  - (a) any information provided, whether in a document or otherwise, to be verified in such manner as it may require;
  - (b) any document produced to be authenticated in such manner as it may require.

#### **9Z Further provisions about directions under section 9Y**

- (1) In the exercise of its functions under section 9Y, the Bank must have regard to 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.
- (2) Before giving a direction under section 9Y to the FCA or the PRA (“the regulator”), the Bank must consult the regulator.
- (3) A direction under section 9Y must be in writing, and may be revoked by a notice in writing.
- (4) As soon as practicable after giving a direction under section 9Y, the Bank must publish the direction in such manner as it thinks appropriate for bringing the direction to the attention of persons (other than the regulator to which it is given) who may be affected by it.
- (5) Subsection (4) does not require the publication of information whose publication at the time required by that subsection would in the opinion of the Bank be against the public interest.
- (6) Where the Bank decides under subsection (5) that publication of any information would be against the public interest, it must from time to time

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review that decision and if it subsequently decides that publication is no longer against the public interest it must comply with subsection (4).

### *Supplementary*

#### **9ZA Interpretation of Part 1A**

In this Part—

“the FCA” means the Financial Conduct Authority;

“financial assistance” has the meaning given by section 257(1) of the Banking Act 2009;

“the Financial Policy Committee” means the Financial Policy Committee of the Bank of England;

“the financial sector” means financial institutions generally;

“FSMA 2000” means the Financial Services and Markets Act 2000;

“the PRA” means the Prudential Regulation Authority;

“systemic risk” has the meaning given by section 9C(5);

“the UK economy” means the economy of the United Kingdom;

“the UK financial system” means the financial system of the United Kingdom.”

- (2) After Schedule 2 to the Bank of England Act 1998 insert as Schedule 2A the Schedule set out in Part 1 of Schedule 1 to this Act.
- (3) The further amendments relating to the Financial Policy Committee in Part 2 of Schedule 1 have effect.
- (4) Sections 2B and 2C of the Bank of England Act 1998 (which relate to the establishment and procedure of the Financial Stability Committee) are repealed.

#### **Commencement Information**

- I2** S. 4 in force at 24.1.2013 for specified purposes by [S.I. 2013/113, art. 2\(1\)\(b\)](#), **Sch. Pt. 2**
- I3** S. 4 in force at 24.1.2013 for specified purposes by [S.I. 2013/113, art. 2\(1\)\(c\)](#), **Sch. Pt. 3**
- I4** S. 4 in force at 19.2.2013 for specified purposes by [S.I. 2013/113, art. 2\(2\)](#), **Sch. Pt. 4**

#### **5 Further amendments relating to Bank of England**

Schedule 2 contains further amendments relating to the Bank of England.

#### **Commencement Information**

- I5** S. 5 in force at 19.2.2013 for specified purposes by [S.I. 2013/113, art. 2\(2\)](#), **Sch. Pt. 4**



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## PART 2

### AMENDMENTS OF FINANCIAL SERVICES AND MARKETS ACT 2000

#### *Financial Conduct Authority and Prudential Regulation Authority*

## 6 The new Regulators

- (1) For sections 1 to 18 of the Financial Services and Markets Act 2000 (in this Act referred to as “FSMA 2000”) substitute—

### “PART 1A

#### THE REGULATORS

### CHAPTER 1

#### THE FINANCIAL CONDUCT AUTHORITY

##### *The Financial Conduct Authority*

#### **1A The Financial Conduct Authority**

- (1) The body corporate previously known as the Financial Services Authority is renamed as the Financial Conduct Authority.
- (2) The Financial Conduct Authority is in this Act referred to as “the FCA”.
- (3) The FCA is to have the functions conferred on it by or under this Act.
- (4) The FCA must comply with the requirements as to its constitution set out in Schedule 1ZA.
- (5) Schedule 1ZA also makes provision about the status of the FCA and the exercise of certain of its functions.
- (6) References in this Act or any other enactment to functions conferred on the FCA by or under this Act include references to functions conferred on the FCA by or under—
  - (a) the Insolvency Act 1986,
  - (b) the Banking Act 2009,
  - (c) the Financial Services Act 2012, or
  - (d) a qualifying EU provision that is specified, or of a description specified, for the purposes of this subsection by the Treasury by order.

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### *The FCA's general duties*

#### **1B The FCA's general duties**

- (1) In discharging its general functions the FCA must, so far as is reasonably possible, act in a way which—
  - (a) is compatible with its strategic objective, and
  - (b) advances one or more of its operational objectives.
- (2) The FCA's strategic objective is: ensuring that the relevant markets (see section 1F) function well.
- (3) The FCA's operational objectives are—
  - (a) the consumer protection objective (see section 1C);
  - (b) the integrity objective (see section 1D);
  - (c) the competition objective (see section 1E).
- (4) The FCA must, so far as is compatible with acting in a way which advances the consumer protection objective or the integrity objective, discharge its general functions in a way which promotes effective competition in the interests of consumers.
- (5) In discharging its general functions the FCA must have regard to—
  - (a) the regulatory principles in section 3B, and
  - (b) the importance of taking action intended to minimise the extent to which it is possible for a business carried on—
    - (i) by an authorised person or a recognised investment exchange, or
    - (ii) in contravention of the general prohibition, to be used for a purpose connected with financial crime.
- (6) For the purposes of this Chapter, the FCA's general functions are—
  - (a) its function of making rules under this Act (considered as a whole),
  - (b) its function of preparing and issuing codes under this Act (considered as a whole),
  - (c) its functions in relation to the giving of general guidance under this Act (considered as a whole), and
  - (d) its function of determining the general policy and principles by reference to which it performs particular functions under this Act.
- (7) Except to the extent that an order under section 50 of the Financial Services Act 2012 (orders relating to mutual societies functions) so provides, the FCA's general functions do not include functions that are transferred functions within the meaning of section 52 of that Act.
- (8) “General guidance” has the meaning given in section 139B(5).

#### **1C The consumer protection objective**

- (1) The consumer protection objective is: securing an appropriate degree of protection for consumers.

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- (2) In considering what degree of protection for consumers may be appropriate, the FCA must have regard to—
- (a) the differing degrees of risk involved in different kinds of investment or other transaction;
  - (b) the differing degrees of experience and expertise that different consumers may have;
  - (c) the needs that consumers may have for the timely provision of information and advice that is accurate and fit for purpose;
  - (d) the general principle that consumers should take responsibility for their decisions;
  - (e) the general principle that those providing regulated financial services should be expected to provide consumers with a level of care that is appropriate having regard to the degree of risk involved in relation to the investment or other transaction and the capabilities of the consumers in question;
  - (f) the differing expectations that consumers may have in relation to different kinds of investment or other transaction;
  - (g) any information which the consumer financial education body has provided to the FCA in the exercise of the consumer financial education function;
  - (h) any information which the scheme operator of the ombudsman scheme has provided to the FCA pursuant to section 232A.

### **1D The integrity objective**

- (1) The integrity objective is: protecting and enhancing the integrity of the UK financial system.
- (2) The “integrity” of the UK financial system includes—
- (a) its soundness, stability and resilience,
  - (b) its not being used for a purpose connected with financial crime,
  - (c) its not being affected by behaviour that amounts to market abuse,
  - (d) the orderly operation of the financial markets, and
  - (e) the transparency of the price formation process in those markets.

### **1E The competition objective**

- (1) The competition objective is: promoting effective competition in the interests of consumers in the markets for—
- (a) regulated financial services, or
  - (b) services provided by a recognised investment exchange in carrying on regulated activities in respect of which it is by virtue of section 285(2) exempt from the general prohibition.
- (2) The matters to which the FCA may have regard in considering the effectiveness of competition in the market for any services mentioned in subsection (1) include—
- (a) the needs of different consumers who use or may use those services, including their need for information that enables them to make informed choices,

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- (b) the ease with which consumers who may wish to use those services, including consumers in areas affected by social or economic deprivation, can access them,
- (c) the ease with which consumers who obtain those services can change the person from whom they obtain them,
- (d) the ease with which new entrants can enter the market, and
- (e) how far competition is encouraging innovation.

*Interpretation of terms used in relation to FCA's general duties*

### **1F Meaning of “relevant markets” in strategic objective**

In section 1B(2) “the relevant markets” means—

- (a) the financial markets,
- (b) the markets for regulated financial services (see section 1H(2)), and
- (c) the markets for services that are provided by persons other than authorised persons in carrying on regulated activities but are provided without contravening the general prohibition.

### **1G Meaning of “consumer”**

- (1) In sections 1B to 1E “consumers” means persons who—
  - (a) use, have used or may use—
    - (i) regulated financial services, or
    - (ii) services that are provided by persons other than authorised persons but are provided in carrying on regulated activities,
  - (b) have relevant rights or interests in relation to any of those services,
  - (c) have invested, or may invest, in financial instruments, or
  - (d) have relevant rights or interests in relation to financial instruments.
- (2) A person (“P”) has a “relevant right or interest” in relation to any services within subsection (1)(a) if P has a right or interest—
  - (a) which is derived from, or is otherwise attributable to, the use of the services by others, or
  - (b) which may be adversely affected by the use of the services by persons acting on P's behalf or in a fiduciary capacity in relation to P.
- (3) If a person is providing a service within subsection (1)(a) as trustee, the persons who are, have been or may be beneficiaries of the trust are to be treated as persons who use, have used or may use the service.
- (4) A person who deals with another person (“B”) in the course of B providing a service within subsection (1)(a) is to be treated as using the service.
- (5) A person (“P”) has a “relevant right or interest” in relation to any financial instrument if P has—
  - (a) a right or interest which is derived from, or is otherwise attributable to, investment in the instrument by others, or

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- (b) a right or interest which may be adversely affected by the investment in the instrument by persons acting on P's behalf or in a fiduciary capacity in relation to P.

### **1H Further interpretative provisions for sections 1B to 1G**

- (1) The following provisions have effect for the interpretation of sections 1B to 1G.
- (2) “Regulated financial services” means services provided—
  - (a) by authorised persons in carrying on regulated activities;
  - (b) by authorised persons in carrying on a consumer credit business in connection with the accepting of deposits;
  - (c) by authorised persons in communicating, or approving the communication by others of, invitations to engage in investment activity;
  - (d) by authorised persons who are investment firms, or credit institutions, in providing relevant ancillary services;
  - (e) by persons acting as appointed representatives;
  - (f) by payment service providers in providing payment services;
  - (g) by electronic money issuers in issuing electronic money;
  - (h) by sponsors to issuers of securities;
  - (i) by primary information providers to persons who issue financial instruments.
- (3) “Financial crime” includes any offence involving—
  - (a) fraud or dishonesty,
  - (b) misconduct in, or misuse of information relating to, a financial market,
  - (c) handling the proceeds of crime, or
  - (d) the financing of terrorism.
- (4) “Offence” includes an act or omission which would be an offence if it had taken place in the United Kingdom.
- (5) “Issuer”, except in the expression “electronic money issuer”, has the meaning given in section 102A(6).
- (6) “Financial instrument” has the meaning given in section 102A(4).
- (7) “Securities” has the meaning given in section 102A(2).
- (8) In this section—
  - “accepting”, in relation to deposits, includes agreeing to accept;
  - “consumer credit business” has the same meaning as in the Consumer Credit Act 1974;
  - “credit institution” means—
    - (a) a credit institution authorised under the banking consolidation directive, or
    - (b) an institution which would satisfy the requirements for authorisation as a credit institution under that directive if it had

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its registered office (or if it does not have a registered office, its head office) in an EEA State;

“electronic money” has the same meaning as in the Electronic Money Regulations 2011;

“electronic money issuer” means a person who is an electronic money issuer as defined in regulation 2(1) of the Electronic Money Regulations 2011 other than a person falling within paragraph (f), (g) or (j) of the definition;

“engage in investment activity” has the meaning given in section 21;

“financial instrument” has the meaning given in section 102A(4);

“payment services” has the same meaning as in the Payment Services Regulations 2009;

“payment service provider” means a person who is a payment service provider as defined in regulation 2(1) of the Payment Services Regulations 2009 other than a person falling within paragraph (g) or (h) of the definition;

“primary information provider” has the meaning given in section 89P(2);

“relevant ancillary service” means any service of a kind mentioned in Section B of Annex I to the markets in financial instruments directive the provision of which does not involve the carrying on of a regulated activity;

“sponsor” has the meaning given in section 88(2).

## **1I Meaning of “the UK financial system”**

In this Act “the UK financial system” means the financial system operating in the United Kingdom and includes—

- (a) financial markets and exchanges,
- (b) regulated activities, and
- (c) other activities connected with financial markets and exchanges.

### *Power to amend objectives*

#### **1J Power to amend objectives**

The Treasury may by order amend any of the following provisions—

- (a) in section 1E(1), paragraphs (a) and (b),
- (b) section 1G, and
- (c) section 1H(2) and (5) to (8).

### *Guidance about objectives*

#### **1K Guidance about objectives**

- (1) The general guidance given by the FCA under section 139A must include guidance about how it intends to advance its operational objectives in

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discharging its general functions in relation to different categories of authorised person or regulated activity.

- (2) Before giving or altering any guidance complying with subsection (1), the FCA must consult the PRA.

### *Supervision, monitoring and enforcement*

#### **1L Supervision, monitoring and enforcement**

- (1) The FCA must maintain arrangements for supervising authorised persons.
- (2) The FCA must maintain arrangements designed to enable it to determine whether persons other than authorised persons are complying—
  - (a) with requirements imposed on them by or under this Act, in cases where the FCA is the appropriate regulator for the purposes of Part 14 (disciplinary measures), or
  - (b) with requirements imposed on them by any qualifying EU provision that is specified, or of a description specified, for the purposes of this subsection by the Treasury by order.
- (3) The FCA must also maintain arrangements for enforcing compliance by persons other than authorised persons with relevant requirements, within the meaning of Part 14, in cases where the FCA is the appropriate regulator for the purposes of any provision of that Part.

### *Arrangements for consulting practitioners and consumers*

#### **1M The FCA's general duty to consult**

The FCA must make and maintain effective arrangements for consulting practitioners and consumers on the extent to which its general policies and practices are consistent with its general duties under section 1B.

#### **1N The FCA Practitioner Panel**

- (1) Arrangements under section 1M must include the establishment and maintenance of a panel of persons (to be known as “the FCA Practitioner Panel”) to represent the interests of practitioners.
- (2) The FCA must appoint one of the members of the FCA Practitioner Panel to be its chair.
- (3) The Treasury's approval is required for the appointment or dismissal of the chair.
- (4) The FCA must appoint to the FCA Practitioner Panel such—
  - (a) persons representing authorised persons, and
  - (b) persons representing recognised investment exchanges,as it considers appropriate.
- (5) The FCA may appoint to the FCA Practitioner Panel such other persons as it considers appropriate.

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### **1O The Smaller Business Practitioner Panel**

- (1) Arrangements under section 1M must include the establishment and maintenance of a panel of persons (to be known as “the Smaller Business Practitioner Panel”) to represent the interests of eligible practitioners.
- (2) “Eligible practitioners” means authorised persons of a description specified in a statement maintained by the FCA.
- (3) The FCA must appoint one of the members of the Smaller Business Practitioner Panel to be its chair.
- (4) The Treasury's approval is required for the appointment or dismissal of the chair.
- (5) The FCA must appoint to the Smaller Business Practitioner Panel such—
  - (a) individuals who are eligible practitioners, and
  - (b) persons representing eligible practitioners,as it considers appropriate.
- (6) The FCA may appoint to the Smaller Business Practitioner Panel such other persons as it considers appropriate.
- (7) In making the appointments, the FCA must have regard to the desirability of ensuring the representation of eligible practitioners carrying on a range of regulated activities.
- (8) The FCA may revise the statement maintained under subsection (2).
- (9) The FCA must—
  - (a) give the Treasury a copy of the statement or revised statement without delay, and
  - (b) publish the statement as for the time being in force in such manner as it thinks fit.

### **1P The Markets Practitioner Panel**

- (1) Arrangements under section 1M must include the establishment and maintenance of a panel of persons (to be known as “the Markets Practitioner Panel”) to represent the interests of practitioners who are likely to be affected by the exercise by the FCA of its functions relating to markets, including its functions under Parts 6, 8A and 18.
- (2) The FCA must appoint one of the members of the Markets Practitioner Panel to be its chair.
- (3) The Treasury's approval is required for the appointment or dismissal of the chair.
- (4) The FCA must appoint to the Markets Practitioner Panel such persons to represent the interests of persons within subsection (5) as it considers appropriate.
- (5) The persons within this subsection are—



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- (a) authorised persons,
  - (b) persons who issue financial instruments,
  - (c) sponsors, as defined in section 88(2),
  - (d) recognised investment exchanges, and
  - (e) primary information providers, as defined in section 89P(2).
- (6) The FCA may appoint to the Markets Practitioner Panel such other persons as it considers appropriate.

### **1Q The Consumer Panel**

- (1) Arrangements under section 1M must include the establishment and maintenance of a panel of persons (to be known as “the Consumer Panel”) to represent the interests of consumers.
- (2) The FCA must appoint one of the members of the Consumer Panel to be its chair.
- (3) The Treasury's approval is required for the appointment or dismissal of the chair.
- (4) The FCA may appoint to the Consumer Panel such consumers, or persons representing the interests of consumers, as it considers appropriate.
- (5) The FCA must secure that membership of the Consumer Panel is such as to give a fair degree of representation to those who are using, or are or may be contemplating using, services otherwise than in connection with businesses carried on by them.
- (6) Sections 425A and 425B (meaning of “consumers”) apply for the purposes of this section, but the references to consumers in this section do not include consumers who are authorised persons.

### **1R Duty to consider representations made by the Panels**

- (1) The FCA must consider representations that are made to it in accordance with arrangements made under section 1M.
- (2) The FCA must from time to time publish in such manner as it thinks fit responses to the representations.

## *Reviews*

### **1S Reviews**

- (1) The Treasury may appoint an independent person to conduct a review of the economy, efficiency and effectiveness with which the FCA has used its resources in discharging its functions.
- (2) A review may be limited by the Treasury to such functions of the FCA (however described) as the Treasury may specify in appointing the person to conduct it.

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- (3) A review is not to be concerned with the merits of the FCA's general policy or principles in complying with its general duties under section 1B(1) and (4).
- (4) On completion of a review, the person conducting it must make a written report to the Treasury—
  - (a) setting out the result of the review, and
  - (b) making such recommendations (if any) as the person considers appropriate.
- (5) A copy of the report must be—
  - (a) laid before Parliament, and
  - (b) published in such manner as the Treasury consider appropriate.
- (6) Any expenses reasonably incurred in the conduct of the review are to be met by the Treasury out of money provided by Parliament.
- (7) “Independent” means appearing to the Treasury to be independent of the FCA.

### **1T Right to obtain documents and information**

- (1) A person conducting a review under section 1S—
  - (a) has a right of access at any reasonable time to all such documents as the person may reasonably require for the purposes of the review, and
  - (b) may require any person holding or accountable for any such document to provide such information and explanation as are reasonably necessary for that purpose.
- (2) Subsection (1) applies only to documents in the custody of or under the control of the FCA.
- (3) An obligation imposed on a person as a result of the exercise of the powers conferred by subsection (1) is enforceable by injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.

## **CHAPTER 2**

### THE PRUDENTIAL REGULATION AUTHORITY

#### *The Prudential Regulation Authority*

### **2A The Prudential Regulation Authority**

- (1) The body corporate originally incorporated as the Prudential Regulation Authority Limited is renamed as the Prudential Regulation Authority.
- (2) The Prudential Regulation Authority is in this Act referred to as “the PRA”.
- (3) The PRA is to have the functions conferred on it by or under this Act.
- (4) The PRA must comply with the requirements as to its constitution set out in Schedule 1ZB.

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- (5) Schedule 1ZB also confers on the Bank of England functions in relation to the PRA and makes provision about the status of the PRA and the exercise of certain of its functions.
- (6) References in this Act or any other enactment to functions conferred on the PRA by or under this Act include references to functions conferred on the PRA by or under—
  - (a) the Insolvency Act 1986,
  - (b) the Banking Act 2009,
  - (c) the Financial Services Act 2012, or
  - (d) a qualifying EU provision that is specified, or of a description specified, for the purposes of this subsection by the Treasury by order.

### *The PRA's general duties*

#### **2B The PRA's general objective**

- (1) In discharging its general functions the PRA must, so far as is reasonably possible, act in a way which advances its general objective.
- (2) The PRA's general objective is: promoting the safety and soundness of PRA-  
authorised persons.
- (3) That objective is to be advanced primarily by—
  - (a) seeking to ensure that the business of PRA-  
authorised persons is carried on in a way which avoids any adverse effect on the stability of the UK financial system, and
  - (b) seeking to minimise the adverse effect that the failure of a PRA-  
authorised person could be expected to have on the stability of the UK financial system.
- (4) The adverse effects mentioned in subsection (3) may, in particular, result from the disruption of the continuity of financial services.
- (5) In this Act “PRA-  
authorised person” means an authorised person who has permission—
  - (a) given under Part 4A, or
  - (b) resulting from any other provision of this Act,to carry on regulated activities that consist of or include one or more PRA-  
regulated activities (see section 22A).
- (6) Subsection (1) is subject to sections 2C and 2D.

#### **2C Insurance objective**

- (1) In discharging its general functions so far as relating to a PRA-  
regulated activity relating to the effecting or carrying out of contracts of insurance or PRA-  
authorised persons carrying on that activity, the PRA must, so far as is reasonably possible, act in a way—
  - (a) which is compatible with its general objective and its insurance objective, and

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- (b) which the PRA considers most appropriate for the purpose of advancing those objectives.
- (2) The PRA's insurance objective is: contributing to the securing of an appropriate degree of protection for those who are or may become policyholders.
- (3) This section applies only if the effecting or carrying out of contracts of insurance as principal is to any extent a PRA-regulated activity.

### **2D Power to provide for additional objectives**

- (1) Subsection (2) applies to an order under section 22A which—
  - (a) is made at any time after the coming into force of the first order under that section, and
  - (b) contains a statement by the Treasury that, in their opinion, the effect (or one of the effects) of the proposed order is that an activity would become a PRA-regulated activity.
- (2) An order to which this subsection applies may specify an additional objective (“the specified objective”) in relation to specified activities that become PRA-regulated activities by virtue of the order (“the additional activities”).
- (3) In discharging its general functions so far as relating to the additional activities or PRA-authorized persons carrying on those activities, the PRA must, so far as is reasonably possible, act in a way—
  - (a) which is compatible with its general objective and the specified objective, and
  - (b) which the PRA considers most appropriate for the purpose of advancing those objectives.

### **2E Strategy**

- (1) The PRA must—
  - (a) determine its strategy in relation to its objectives, and
  - (b) from time to time review, and if necessary revise, the strategy.
- (2) Before determining or revising its strategy, the PRA must consult the court of directors of the Bank of England about a draft of the strategy or of the revisions.
- (3) The PRA must determine its strategy within 12 months of the coming into force of this section.
- (4) The PRA must carry out and complete a review of its strategy before the end of each relevant period.
- (5) The relevant period is 12 months beginning with the date on which the previous review was completed, except that in the case of the first review the relevant period is the period of 12 months beginning with the date on which the strategy was determined under subsection (3).
- (6) The PRA must publish its strategy.
- (7) If the strategy is revised the PRA must publish the revised strategy.

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- (8) Publication under subsection (6) or (7) is to be in such manner as the PRA thinks fit.

## **2F Interpretation of references to objectives**

In this Act, a reference, in relation to any function of the PRA, to the objectives of the PRA is a reference to its general objective but—

- (a) so far as the function is exercisable in relation to the activity of effecting or carrying out contracts of insurance, or PRA-authorized persons carrying on that activity, is a reference to its general objective and its insurance objective;
- (b) so far as the function is exercisable in relation to an activity to which an objective specified by order by virtue of section 2D(2) relates, or PRA-authorized persons carrying on that activity, is a reference to its general objective and the objective specified by the order.

## **2G Limit on effect of sections 2B to 2D**

Nothing in sections 2B to 2D is to be regarded as requiring the PRA to ensure that no PRA-authorized person fails.

## **2H Duty to have regard to regulatory principles**

- (1) In discharging its general functions, the PRA must also have regard to—
  - (a) the regulatory principles in section 3B, and
  - (b) the need to minimise any adverse effect on competition in the relevant markets that may result from the manner in which the PRA discharges those functions.
- (2) In subsection (1)(b) “the relevant markets” means the markets for services provided by PRA-authorized persons in carrying on regulated activities.

## **2I Guidance about objectives**

- (1) The PRA must give, and from time to time review, guidance about how it intends to advance its objectives in discharging its general functions in relation to different categories of PRA-authorized person or PRA-regulated activity.
- (2) Before giving or altering any guidance complying with subsection (1), the PRA must consult the FCA.
- (3) The PRA must publish the guidance as for the time being in force.

## **2J Interpretation of Chapter 2**

- (1) For the purposes of this Chapter, the PRA's general functions are—
  - (a) its function of making rules under this Act (considered as a whole),
  - (b) its function of preparing and issuing codes under this Act (considered as a whole), and
  - (c) its function of determining the general policy and principles by reference to which it performs particular functions under this Act.

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- (2) Except to the extent that an order under section 50 of the Financial Services Act 2012 (orders relating to mutual societies functions) so provides, the PRA's general functions do not include functions that are transferred functions within the meaning of section 52 of that Act.
- (3) For the purposes of this Chapter, the cases in which a PRA-authorised person (“P”) is to be regarded as failing include those where—
  - (a) P enters insolvency,
  - (b) any of the stabilisation options in Part 1 of the Banking Act 2009 is achieved in relation to P, or
  - (c) P falls to be taken for the purposes of the compensation scheme to be unable, or likely to be unable, to satisfy claims against P.
- (4) In subsection (3)(a) “insolvency” includes—
  - (a) bankruptcy,
  - (b) liquidation,
  - (c) bank insolvency,
  - (d) administration,
  - (e) bank administration,
  - (f) receivership,
  - (g) a composition between P and P's creditors, and
  - (h) a scheme of arrangement of P's affairs.

### *Supervision*

#### **2K Arrangements for supervision of PRA-authorised persons**

The PRA must maintain arrangements for supervising PRA-authorised persons.

#### *Arrangements for consulting practitioners*

#### **2L The PRA's general duty to consult**

The PRA must make and maintain effective arrangements for consulting PRA-authorised persons or, where appropriate, persons appearing to the PRA to represent the interests of such persons on the extent to which its general policies and practices are consistent with its general duties under sections 2B to 2H.

#### **2M The PRA Practitioner Panel**

- (1) Arrangements under section 2L must include the establishment and maintenance of a panel of persons (to be known as “the PRA Practitioner Panel”) to represent the interests of practitioners.
- (2) The PRA must appoint one of the members of the PRA Practitioner Panel to be its chair.

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- (3) The Treasury's approval is required for the appointment or dismissal of the chair.
- (4) The PRA must appoint to the PRA Practitioner Panel such persons representing PRA-authorised persons as it considers appropriate.
- (5) The PRA may appoint to the PRA Practitioner Panel such other persons as it considers appropriate.

## **2N Duty to consider representations**

- (1) The PRA must consider representations that are made to it in accordance with arrangements made under section 2L.
- (2) The PRA must from time to time publish in such manner as it thinks fit responses to the representations.

### *Reviews*

## **2O Reviews**

- (1) The Treasury may appoint an independent person to conduct a review of the economy, efficiency and effectiveness with which the PRA has used its resources in discharging its functions.
- (2) A review may be limited by the Treasury to such functions of the PRA (however described) as the Treasury may specify in appointing the person to conduct it.
- (3) A review is not to be concerned with the merits of the PRA's general policy or principles in pursuing the PRA's objectives.
- (4) On completion of a review, the person conducting it must make a written report to the Treasury—
  - (a) setting out the result of the review, and
  - (b) making such recommendations (if any) as the person considers appropriate.
- (5) A copy of the report must be—
  - (a) laid before Parliament, and
  - (b) published in such manner as the Treasury consider appropriate.
- (6) Any expenses reasonably incurred in the conduct of the review are to be met by the Treasury out of money provided by Parliament.
- (7) “Independent” means appearing to the Treasury to be independent of the PRA.

## **2P Right to obtain documents and information**

- (1) A person conducting a review under section 2O—
  - (a) has a right of access at any reasonable time to all such documents as the person may reasonably require for the purposes of the review, and

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- (b) may require any person holding or accountable for any such document to provide such information and explanation as are reasonably necessary for that purpose.
- (2) Subsection (1) applies only to documents in the custody of or under the control of the PRA.
- (3) An obligation imposed on a person as a result of the exercise of the powers conferred by subsection (1) is enforceable by injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.

## CHAPTER 3

### FURTHER PROVISIONS RELATING TO FCA AND PRA

#### *Introductory*

#### **3A Meaning of “regulator”**

- (1) This section has effect for the interpretation of this Act.
- (2) The FCA and the PRA are the “regulators”, and references to a regulator are to be read accordingly.
- (3) Subsection (2) does not affect—
  - (a) the meaning of the following expressions—
    - “home state regulator”;
    - “host state regulator”;
    - “overseas regulator”; or
  - (b) the meaning of “the appropriate regulator” in Part 18 (recognised investment exchanges and clearing houses).

#### *Regulatory principles*

#### **3B Regulatory principles to be applied by both regulators**

- (1) In relation to the regulators, the regulatory principles referred to in section 1B(5)(a) and 2H(1)(a) are as follows—
  - (a) the need to use the resources of each regulator 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;



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- (e) the responsibilities of the senior management of persons subject to requirements imposed by or under this Act, including those affecting consumers, in relation to compliance with those requirements;
  - (f) the desirability where appropriate of each regulator exercising its functions in a way that recognises differences in the nature of, and objectives of, businesses carried on by different persons subject to requirements imposed by or under this Act;
  - (g) the desirability in appropriate cases of each regulator publishing information relating to persons on whom requirements are imposed by or under this Act, or requiring such persons to publish information, as a means of contributing to the advancement by each regulator of its objectives;
  - (h) the principle that the regulators should exercise their functions as transparently as possible.
- (2) “Consumer” has the meaning given in section 1G.
- (3) “Objectives”, in relation to the FCA, means operational objectives.
- (4) The Treasury may by order amend subsection (2).

#### *Corporate governance*

### **3C Duty to follow principles of good governance**

In managing its affairs, each regulator must have regard to such generally accepted principles of good corporate governance as it is reasonable to regard as applicable to it.

#### *Relationship between FCA and PRA*

### **3D Duty of FCA and PRA to ensure co-ordinated exercise of functions**

- (1) The regulators must co-ordinate the exercise of their respective functions conferred by or under this Act with a view to ensuring—
- (a) that each regulator consults the other regulator (where not otherwise required to do so) in connection with any proposed exercise of a function in a way that may have a material adverse effect on the advancement by the other regulator of any of its objectives;
  - (b) that where appropriate each regulator obtains information and advice from the other regulator in connection with the exercise of its functions in relation to matters of common regulatory interest in cases where the other regulator may be expected to have relevant information or relevant expertise;
  - (c) that where either regulator exercises functions in relation to matters of common regulatory interest, both regulators comply with their respective duties under section 1B(5)(a) or 2H(1)(a), so far as relating to the regulatory principles in section 3B(1)(a) and (b).
- (2) The duty in subsection (1) applies only to the extent that compliance with the duty—

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- (a) is compatible with the advancement by each regulator of any of its objectives, and
  - (b) does not impose a burden on the regulators that is disproportionate to the benefits of compliance.
- (3) A function conferred on either regulator by or under this Act relates to matters of common regulatory interest if—
- (a) the other regulator exercises similar or related functions in relation to the same persons,
  - (b) the other regulator exercises functions which relate to different persons but relate to similar subject-matter, or
  - (c) its exercise could affect the advancement by the other regulator of any of its objectives.
- (4) “Objectives”, in relation to the FCA, means operational objectives.

### **3E Memorandum of understanding**

- (1) The regulators must prepare and maintain a memorandum which describes in general terms—
- (a) the role of each regulator in relation to the exercise of functions conferred by or under this Act which relate to matters of common regulatory interest, and
  - (b) how the regulators intend to comply with section 3D in relation to the exercise of such functions.
- (2) The memorandum may in particular contain provisions about how the regulators intend to comply with section 3D in relation to—
- (a) applications for Part 4A permission;
  - (b) the variation of permission;
  - (c) the imposition of requirements;
  - (d) the obtaining and disclosure of information;
  - (e) cases where a PRA-authorized person is a member of a group whose other members include one or more other authorised persons (whether or not PRA-authorized persons);
  - (f) functions under Schedule 3 (EEA passport rights) and Schedule 4 (Treaty rights);
  - (g) the making of rules;
  - (h) directions under section 138A (modification or waiver of rules);
  - (i) powers to appoint competent persons under Part 11 (information gathering and investigations) to conduct investigations on their behalf;
  - (j) functions under Part 12 (control over authorised persons);
  - (k) functions under Part 13 (incoming firms: intervention by regulator);
  - (l) functions under Part 19 (Lloyd's);
  - (m) functions under section 347 (record of authorised persons etc.);
  - (n) functions under Part 24 (insolvency);
  - (o) fees payable to either regulator.

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- (3) The memorandum must contain provision about the co-ordination by the regulators of—
  - (a) the exercise of their functions relating to membership of, and their relations with, the European Supervisory Authorities (namely, the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority),
  - (b) their relations with regulatory bodies outside the United Kingdom, and
  - (c) the exercise of their functions in relation to the compensation scheme.
- (4) The regulators must review the memorandum at least once in each calendar year.
- (5) The regulators must give the Treasury a copy of the memorandum and any revised memorandum.
- (6) The Treasury must lay before Parliament a copy of any document received by them under this section.
- (7) The regulators must ensure that the memorandum as currently in force is published in the way appearing to them to be best calculated to bring it to the attention of the public.
- (8) The memorandum need not relate to any aspect of compliance with section 3D if the regulators consider—
  - (a) that publication of information about that aspect would be against the public interest, or
  - (b) that that aspect is a technical or operational matter not affecting the public.
- (9) The reference in subsection (1)(a) to matters of common regulatory interest is to be read in accordance with section 3D(3).

### **3F With-profits insurance policies**

- (1) The regulators must prepare and maintain a memorandum which describes in general terms—
  - (a) the role of each regulator in relation to the exercise of functions conferred by or under this Act so far as they relate to with-profits insurers, and
  - (b) how the regulators intend to comply with section 3D in relation to the exercise of those functions so far as they relate to the effecting or carrying out of with-profits policies by with-profits insurers.
- (2) The memorandum required by this section may be combined with the memorandum required by section 3E.
- (3) If the memorandum required by this section is contained in a separate document, the PRA and the FCA must publish the memorandum as currently in force in such manner as they think fit.
- (4) Subsections (1) to (3) apply only if the effecting or carrying out of with-profits policies is a PRA-regulated activity.

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- (5) For the purposes of this section—
- (a) a “with-profits policy” is a contract of insurance under which the policyholder is eligible to receive a financial benefit at the discretion of the insurer;
  - (b) a “with-profits insurer” is a PRA-authorized person who has a Part 4A permission, or permission resulting from any other provision of this Act, relating to the effecting or carrying out of with-profits policies (whether or not the permission also relates to contracts of insurance of other kinds).
- (6) The Treasury may by order amend the definition of “with-profits policy” applying for the purposes of this section.

### **3G Power to establish boundary between FCA and PRA responsibilities**

- (1) The Treasury may by order specify matters that, in relation to the exercise by either regulator of its functions relating to PRA-authorized persons, are to be, or are to be primarily, the responsibility of one regulator rather than the other.
- (2) The order may—
- (a) provide that one regulator is or is not to have regard to specified matters when exercising specified functions;
  - (b) require one regulator to consult the other.

### **3H Parliamentary control of orders under section 3G**

- (1) No order may be made under section 3G unless—
- (a) a draft of the order has been laid before Parliament and approved by a resolution of each House, or
  - (b) subsection (3) applies.
- (2) Subsection (3) applies if an order under section 3G contains a statement that the Treasury are of the opinion that, by reason of urgency, it is necessary to make the order without a draft being so laid and approved.
- (3) Where this subsection applies the order—
- (a) must be laid before Parliament after being made, and
  - (b) ceases to have effect at the end of the relevant period unless before the end of that period the order is approved by a resolution of each House of Parliament (but without that affecting anything done under the order or the power to make a new order).
- (4) The “relevant period” is a period of 28 days beginning with the day on which the order is made.
- (5) In calculating the relevant period no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.

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### *Power of PRA to restrain proposed action by FCA*

#### **3I Power of PRA to require FCA to refrain from specified action**

- (1) Where the first, second and third conditions are met, the PRA may give a direction under this section to the FCA.
- (2) The first condition is that the FCA is proposing—
  - (a) to exercise any of its regulatory powers in relation to PRA-authorised persons generally, a class of PRA-authorised persons or a particular PRA-authorised person, or
  - (b) to exercise any of its insolvency powers in relation to—
    - (i) a PRA-authorised person,
    - (ii) an appointed representative whose principal, or one of whose principals, is a PRA-authorised person, or
    - (iii) a person who is carrying on a PRA-regulated activity in contravention of the general prohibition.
- (3) In subsection (2)—
  - (a) “regulatory powers”, in relation to the FCA, means its powers in relation to the regulation of authorised persons, other than its powers in relation to consent for the purposes of section 55F or 55I or its powers under Part 24;
  - (b) “insolvency powers”, in relation to the FCA, means its powers under Part 24.
- (4) The second condition is that the PRA is of the opinion that the exercise of the power in the manner proposed may—
  - (a) threaten the stability of the UK financial system, or
  - (b) result in the failure of a PRA-authorised person in a way that would adversely affect the UK financial system.
- (5) The third condition is that the PRA is of the opinion that the giving of the direction is necessary in order to avoid the possible consequence falling within subsection (4).
- (6) A direction under this section is a direction requiring the FCA not to exercise the power or not to exercise it in a specified manner.
- (7) The direction may be expressed to have effect during a specified period or until revoked.
- (8) The FCA is not required to comply with a direction under this section if or to the extent that in the opinion of the FCA compliance would be incompatible with any EU obligation or any other international obligation of the United Kingdom.
- (9) The reference in subsection (4)(b) to the “failure” of a PRA-authorised person is to be read in accordance with section 2J(3) and (4).

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### **3J Power of PRA in relation to with-profits policies**

- (1) Where the first, second and third conditions are met, the PRA may give a direction under this section to the FCA.
- (2) The first condition is that the FCA is proposing to exercise any of its regulatory powers in relation to with-profits insurers, a class of with-profits insurers or a particular with-profits insurer.
- (3) In subsection (2) “regulatory powers”, in relation to the FCA, means its powers in relation to the regulation of authorised persons, including its powers under Part 24 (insolvency) but not its powers in relation to consent for the purposes of section 55F or 55I.
- (4) The second condition is that the proposed exercise of the power relates to the provision of financial benefits under with-profits policies at the discretion of the insurer, or affects or may affect the amount, timing or distribution of financial benefits that are so provided or the entitlement to future benefits that are so provided.
- (5) The third condition is that the PRA is of the opinion that the giving of the direction is desirable in order to advance the PRA's general objective or its insurance objective.
- (6) A direction under this section is a direction requiring the FCA not to exercise the power or not to exercise it in a specified manner.
- (7) The direction may be expressed to have effect during a specified period or until revoked.
- (8) The FCA is not required to comply with a direction under this section if or to the extent that in the opinion of the FCA compliance would be incompatible with any EU obligation or any other international obligation of the United Kingdom.
- (9) Subsections (1) to (8) apply only if the effecting or carrying out of with-profits policies is a PRA-regulated activity.
- (10) In this section “with-profits insurer” and “with-profits policy” have the same meaning as they have for the purposes of section 3F.

### **3K Revocation of directions under section 3I or 3J**

- (1) The PRA may at any time by notice to the FCA revoke a direction under section 3I or 3J.
- (2) The revocation of a direction under section 3I or 3J does not affect the validity of anything previously done in accordance with it.

### **3L Further provisions about directions under section 3I or 3J**

- (1) Before giving a direction under section 3I or 3J, the PRA must consult the FCA.

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- (2) A direction under section 3I or 3J must be given or confirmed in writing, and must be accompanied by a statement of the reasons for giving it.
- (3) A notice revoking a direction under section 3I or 3J must be given or confirmed in writing.
- (4) The PRA must—
  - (a) publish the direction and statement, or the notice, in such manner as it thinks fit, and
  - (b) where the direction or notice relates to a particular authorised person or a particular with-profits insurer, give a copy of the direction and statement, or the notice, to that person.
- (5) The PRA must give the Treasury a copy of—
  - (a) a direction under section 3I;
  - (b) a statement relating to such a direction;
  - (c) a notice revoking such a direction.
- (6) The Treasury must lay before Parliament any document received by them under subsection (5).
- (7) Subsection (4) does not apply where the PRA, after consulting the Treasury, decides that compliance with that subsection would be against the public interest, and at any time when this subsection excludes the application of subsection (4) in relation to a direction under section 3I, subsection (6) also does not apply.
- (8) Where the PRA decides that compliance with subsection (4) would be against the public interest, it must from time to time review that decision and if it subsequently decides that compliance is no longer against the public interest it must—
  - (a) comply with that subsection, and
  - (b) in the case of a direction under section 3I, notify the Treasury for the purposes of subsection (6).

#### *Directions relating to consolidated supervision*

### **3M Directions relating to consolidated supervision of groups**

- (1) This section applies where one of the regulators (“the supervising regulator”), but not the other, is the competent authority for the purpose of consolidated supervision that is required in relation to some or all of the members of a group (“the relevant group”) in pursuance of any of the relevant directives.
- (2) “Consolidated supervision” includes supplementary supervision.
- (3) The “relevant directives” are—
  - (a) the banking consolidation directive;
  - (b) Directive [2002/87/EC](#) of the European Parliament and of the Council on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate;

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- (c) Directive [2006/49/EC](#) on the capital adequacy of investment firms and credit institutions;
  - (d) Directive [2009/138/EC](#) of the European Parliament and the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II).
- (4) The supervising regulator may, if it considers it necessary to do so for the effective consolidated supervision of the relevant group, give the other regulator a direction under this section.
  - (5) A direction under this section is a direction requiring the other regulator to exercise, or not to exercise, a relevant function in a specified manner in relation to authorised persons who are members of the relevant group.
  - (6) The direction may relate to members of the relevant group other than the members in respect of which consolidated supervision is required.
  - (7) A “relevant function”, in relation to either regulator, is a function conferred by or under this Act which relates to the regulation of authorised persons, but does not include—
    - (a) the regulator's function of making rules under this Act;
    - (b) its function of preparing and issuing codes under this Act;
    - (c) its function of determining the general policy and principles by reference to which it performs particular functions;
    - (d) the FCA's functions in relation to the giving of general guidance;
    - (e) the PRA's functions in relation to the giving of guidance under section 2I;
    - (f) the FCA's functions in relation to consent for the purposes of section 55F or 55I.
  - (8) The direction may not require the regulator to which it is given (“the directed regulator”) to do anything that it has no power to do, but the direction is relevant to the exercise of any discretion conferred on the directed regulator.
  - (9) The directed regulator must comply with the direction as soon as practicable, but this is subject to subsections (10) and (11).
  - (10) The directed regulator is not required to comply with a direction under this section if or to the extent that in its opinion compliance would be incompatible with any EU obligation or any other international obligation of the United Kingdom.
  - (11) Directions given by the FCA under this section are subject to any directions given to the FCA under section 3I or 3J.

### **3N Revocation of directions under section 3M**

- (1) The supervising regulator may at any time by notice to the other regulator revoke a direction under section 3M.
- (2) The revocation of the direction does not affect the validity of anything previously done in accordance with it.
- (3) Expressions defined for the purposes of section 3M have the same meaning in this section.



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### **3O Further provisions about directions under section 3M**

- (1) Before giving a direction under section 3M, the supervising regulator must consult the other regulator.
- (2) A direction under section 3M must be given or confirmed in writing, and must be accompanied by a statement of the reasons for giving it.
- (3) A notice revoking a direction under section 3M must be given or confirmed in writing.
- (4) The regulator to which a direction under section 3M is given must give a copy of the direction and statement to each of the authorised persons to whom the direction relates.
- (5) The supervising regulator must publish the direction and statement, or the notice, in such manner as it thinks fit.
- (6) But subsection (4) or (5) does not apply in a case where the regulator on which the duty is imposed considers that compliance with that subsection would be against the public interest.
- (7) In a case where a regulator decides that compliance with subsection (4) or (5) would be against the public interest, the regulator must from time to time review that decision and if it subsequently decides that compliance is no longer against the public interest it must comply with the subsection.
- (8) Expressions defined for the purposes of section 3M have the same meaning in this section.

### **3P Consultation by regulator complying with direction**

- (1) If the directed regulator is required by this Act to consult any person other than the supervising regulator before exercising the relevant function to which the direction relates, the directed regulator must give the supervising regulator copies of any written representations received from the persons consulted.
- (2) Expressions defined for the purposes of section 3M have the same meaning in this section.

### *Co-operation with Bank of England*

### **3Q Co-operation by FCA and PRA with Bank of England**

- (1) Each regulator must take such steps as it considers appropriate to co-operate with the Bank of England in connection with—
  - (a) the pursuit by the Bank of its Financial Stability Objective, and
  - (b) the Bank's compliance with its duties under sections 58 and 59 of the Financial Services Act 2012 (duty to notify Treasury of possible need for public funds and of subsequent changes).
- (2) Co-operation under subsection (1) may include the sharing of information that the regulator is not prevented from disclosing.

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### *Arrangements for provision of services*

#### **3R Arrangements for provision of services**

- (1) The regulators may enter into arrangements with each other for the provision of services by one of them to the other.
- (2) Either regulator may enter into arrangements with the Bank of England for the provision of services—
  - (a) by the Bank to the regulator, or
  - (b) by the regulator to the Bank.
- (3) Either regulator may enter into arrangements with any of the bodies specified in subsection (4) for the provision of services by the regulator to that body.
- (4) Those bodies are—
  - (a) the consumer financial education body (see section 3S(2)),
  - (b) the scheme manager (see section 212(1)), and
  - (c) the scheme operator (see section 225(2)).
- (5) The FCA may enter into arrangements with—
  - (a) a local weights and measures authority in England, Wales or Scotland, or
  - (b) the Department of Enterprise, Trade and Investment in Northern Ireland,
 for the provision by the authority or department to the FCA of services which relate to activities to which this subsection applies.
- (6) Subsection (5) applies to activities that are regulated activities by virtue of—
  - (a) an order made under section 22(1) in relation to an investment of a kind falling within paragraph 23 or 23B of Schedule 2, or
  - (b) an order made under section 22(1A)(a).
- (7) Arrangements under this section are to be on such terms as may be agreed by the parties.

### *Enhancing public understanding of financial matters etc.*

#### **3S The consumer financial education body**

- (1) The consumer financial education body continues to have the consumer financial education function.
- (2) The “consumer financial education body” means the body corporate originally established by the Financial Services Authority under section 6A of this Act (as it had effect before the passing of the Financial Services Act 2012).
- (3) The consumer financial education function is to enhance—
  - (a) the understanding and knowledge of members of the public of financial matters (including the UK financial system), and

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- (b) the ability of members of the public to manage their own financial affairs.
  - (4) The consumer financial education function includes, in particular—
    - (a) promoting awareness of the benefits of financial planning;
    - (b) promoting awareness of the financial advantages and disadvantages in relation to particular decisions relating to different kinds of goods or services;
    - (c) promoting awareness of the benefits and risks associated with different kinds of financial dealing (which includes informing the FCA and other bodies of those benefits and risks);
    - (d) the publication of educational materials or the carrying out of other educational activities;
    - (e) the provision of information and advice to members of the public;
    - (f) assisting members of the public with the management of debt;
    - (g) working with other organisations which provide debt services, with a view to improving—
      - (i) the availability to the public of those services;
      - (ii) the quality of the services provided;
      - (iii) consistency in the services available, in the way in which they are provided and in the advice given.
  - (5) In subsection (4) “debt services” means debt advice or assistance with the management of debt.
  - (6) Schedule 1A makes further provision about the consumer financial education body.”
- (2) For Schedule 1 to FSMA 2000 substitute the Schedules 1ZA and 1ZB set out in Schedule 3 to this Act.

#### Commencement Information

- I6** S. 6 in force at 24.1.2013 for specified purposes by [S.I. 2013/113](#), art. 2(1)(b), [Sch. Pt. 2](#)
- I7** S. 6 in force at 24.1.2013 for specified purposes by [S.I. 2013/113](#), art. 2(1)(c), [Sch. Pt. 3](#)
- I8** S. 6 in force at 19.2.2013 for specified purposes by [S.I. 2013/113](#), art. 2(2), [Sch. Pt. 4](#)

### *Regulated activities*

## 7 Extension of scope of regulation

- (1) In section 22 of FSMA 2000 (the classes of activity and categories of investment)—
- (a) after subsection (1) insert—

“(1A) An activity is also a regulated activity for the purposes of this Act if it is an activity of a specified kind which is carried on by way of business and relates to—

    - (a) information about a person's financial standing, or
    - (b) the setting of a specified benchmark.”,
  - (b) in subsection (3), after “(1)” insert “ or (1A) ”,

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- (c) after subsection (5) insert—
- “(6) Benchmark” means an index, rate or price that—
- (a) is determined from time to time by reference to the state of the market,
  - (b) is made available to the public (whether free of charge or on payment), and
  - (c) is used for reference for purposes that include one or more of the following—
    - (i) determining the interest payable, or other sums due, under loan agreements or under other contracts relating to investments;
    - (ii) determining the price at which investments may be bought or sold or the value of investments;
    - (iii) measuring the performance of investments.”, and”
- (d) for the heading substitute “ Regulated activities ”.

(2) Schedule 2 to FSMA 2000 (regulated activities) is amended as follows.

(3) For paragraph 23 (and the italic heading before it) substitute—

**23 “Loans and other forms of credit**

- (1) Rights under any contract under which one person provides another with credit.
- (2) “Credit” includes any cash loan or other financial accommodation.
- (3) “Cash” includes money in any form.
- (4) It is immaterial for the purposes of sub-paragraph (1) whether or not the obligation of the borrower is secured on property of any kind.”

(4) After paragraph 23A insert—

**23B “Contracts for hire of goods**

- (1) Rights under a contract for the bailment or (in Scotland) hiring of goods to a person other than a body corporate.
- (2) “Goods” has the meaning given in section 61(1) of the Sale of Goods Act 1979.
- (3) It is immaterial for the purposes of sub-paragraph (1) whether the rights of the person to whom the goods are bailed or hired have been assigned to a body corporate.”

(5) After paragraph 24 insert—

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## “PART 2A

### REGULATED ACTIVITIES RELATING TO INFORMATION ABOUT PERSONS' FINANCIAL STANDING

#### 24A *General*

The matters with respect to which provision may be made under section 22(1A)(a) include, in particular, those described in general terms in this Part of this Schedule.

#### 24B *Providing credit reference services*

Furnishing persons with information that—

- (a) is relevant to the financial standing of persons other than bodies corporate, and
- (b) is collected for that purpose by the person furnishing it.

#### 24C *Providing credit information services*

- (1) Taking steps on behalf of a person other than a body corporate in connection with information relevant to that person's financial standing that is or may be held by a regulated person.
- (2) “Regulated person” means—
  - (a) a person who is carrying on a regulated activity, or
  - (b) a person who is carrying on a business in respect of which a licence under section 21 of the Consumer Credit Act 1974 is required.

#### 24D Giving advice to a person other than a body corporate in relation to the taking of any steps of the kind mentioned in paragraph 24C(1).

## PART 2B

### REGULATED ACTIVITIES RELATING TO THE SETTING OF BENCHMARKS

#### 24E *General*

The matters with respect to which provisions may be made under section 22(1A)(b) include, in particular, those described in general terms in this Part of this Schedule.

#### 24F *Providing information*

Providing any information or expression of opinion that—

- (a) is required by another person in connection with the determination of a benchmark, and
- (b) is provided to that person for that purpose.

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#### 24G **Administration**

- (1) Administering the arrangements for determining a benchmark.
- (2) Collecting, analysing or processing information or expressions of opinion for the purpose of the determination of a benchmark.

#### 24H **Determining or publishing benchmark or publishing connected information**

- (1) Determining a benchmark.
- (2) Publishing a benchmark or information connected with a benchmark.”

#### **Commencement Information**

**I9** S. 7 in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), Sch. Pt. 1

### **8 Orders under section 22 of FSMA 2000**

- (1) Schedule 2 to FSMA 2000 (regulated activities) is amended as follows.
- (2) In paragraph 25(1)—
  - (a) after “22(1)” insert “ or (1A) ”, and
  - (b) for “the Authority”, in each place, substitute “ either regulator ”.
- (3) For paragraph 26 substitute—

#### 26 **“Parliamentary control**

- (1) This paragraph applies to any order made under section 22(1) or (1A) which contains a statement by the Treasury that, in their opinion, the effect (or one of the effects) of the proposed order would be that an activity which is not a regulated activity would become a regulated activity.
- (2) No order to which this paragraph applies may be made unless—
  - (a) a draft of the order has been laid before Parliament and approved by a resolution of each House, or
  - (b) sub-paragraph (4) applies.
- (3) Sub-paragraph (4) applies if an order to which this paragraph applies also contains a statement that the Treasury are of the opinion that, by reason of urgency, it is necessary to make the order without a draft being so laid and approved.
- (4) Where this sub-paragraph applies the order—
  - (a) must be laid before Parliament after being made, and
  - (b) ceases to have effect at the end of the relevant period unless before the end of that period the order is approved by a resolution of each House of Parliament (but without that affecting anything done under the order or the power to make a new order).

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- (5) The “relevant period” is a period of 28 days beginning with the day on which the order is made.
- (6) In calculating the relevant period no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.”

#### Commencement Information

**I10** S. 8 in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), Sch. Pt. 1

## 9 Designation of activities requiring prudential regulation by PRA

After section 22 of FSMA 2000 insert—

### “22A Designation of activities requiring prudential regulation by PRA

- (1) The Treasury may by order specify the regulated activities that are “PRA-regulated activities” for the purposes of this Act.
- (2) An order under subsection (1) may—
  - (a) provide for exceptions;
  - (b) confer powers on the Treasury or either regulator;
  - (c) authorise the making of rules or other instruments by either regulator for purposes of, or connected with, any relevant provision;
  - (d) make provision in respect of any information or document which in the opinion of the Treasury or either regulator is relevant for purposes of, or connected with, any relevant provision;
  - (e) make such consequential, transitional, or supplemental provision as the Treasury consider appropriate for purposes of, or connected with, any relevant provision.
- (3) Provision made as a result of subsection (2)(e) may amend any primary or subordinate legislation, including any provision of, or made under, this Act.
- (4) “Relevant provision” means this section or any provision made under this section.

### 22B Parliamentary control in relation to certain orders under section 22A

- (1) This section applies to the first order made under section 22A(1).
- (2) This section also applies to any subsequent order made under section 22A(1) which—
  - (a) contains a statement by the Treasury that, in their opinion, the effect (or one of the effects) of the proposed order would be—
    - (i) that an activity would become a PRA-regulated activity, or
    - (ii) that a PRA-regulated activity would become a regulated activity that is not a PRA-regulated activity, or
  - (b) amends primary legislation.

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- (3) No order to which this section applies may be made unless—
- (a) a draft of the order has been laid before Parliament and approved by a resolution of each House, or
  - (b) subsection (5) applies.
- (4) Subsection (5) applies if an order to which this section applies contains a statement that the Treasury are of the opinion that, by reason of urgency, it is necessary to make the order without a draft being so laid and approved.
- (5) Where this subsection applies the order—
- (a) must be laid before Parliament after being made, and
  - (b) ceases to have effect at the end of the relevant period unless before the end of that period the order is approved by a resolution of each House of Parliament (but without that affecting anything done under the order or the power to make a new order).
- (6) The “relevant period” is a period of 28 days beginning with the day on which the order is made.
- (7) In calculating the relevant period no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.”

#### Commencement Information

**III** S. 9 in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), Sch. Pt. 1

VALID FROM 01/04/2013

### *Appointed representatives*

#### **10 Appointed representatives**

- (1) Section 39 of FSMA 2000 (appointed representatives) is amended as follows.
- (2) After subsection (1B) insert—
- “(1C) Subsection (1D) applies where an authorised person (“A”)—
- (a) has permission under Part 4A, or permission resulting from any other provision of this Act, only in relation to one or more qualifying activities,
  - (b) is a party to a contract with another authorised person (A’s “principal”) which—
    - (i) permits or requires A to carry on business of a prescribed description (“the relevant business”), and
    - (ii) complies with such requirements as may be prescribed, and
  - (c) is someone for whose activities in carrying on the whole or part of the relevant business A’s principal has accepted responsibility in writing.



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(1D) Sections 20(1) and (1A) and 23(1A) do not apply in relation to the carrying on by A of a relevant additional activity.

(1E) In subsections (1C) and (1D)—

(a) “qualifying activity” means a regulated activity which is of a prescribed kind and relates—

(i) to rights under a contract of the kind mentioned in paragraph 23 of Schedule 2, other than one under which the obligation of the borrower to repay is secured on land, or

(ii) to rights under a contract of the kind mentioned in paragraph 23B of that Schedule;

(b) “relevant additional activity” means a regulated activity which—

(i) is not one to which A's permission relates, and

(ii) is comprised in the carrying on of the business for which A's principal has accepted responsibility.”

(3) For subsection (2) substitute—

“(2) In this Act “appointed representative” means—

(a) a person who is exempt as a result of subsection (1), or

(b) a person carrying on a regulated activity in circumstances where, as a result of subsection (1D), sections 20(1) and (1A) and 23(1A) do not apply.”

### *Permission to carry on regulated activities*

## **11 Permission to carry on regulated activities**

(1) In section 31 (authorised persons), in subsection (1)(a), for “Part IV permission” substitute “Part 4A permission”.

(2) For sections 40 to 55 of FSMA 2000 substitute—

### **“PART 4A**

#### PERMISSION TO CARRY ON REGULATED ACTIVITIES

### *Application for permission*

#### **55A Application for permission**

(1) An application for permission to carry on one or more regulated activities may be made to the appropriate regulator by—

(a) an individual,

(b) a body corporate,

(c) a partnership, or

(d) an unincorporated association.

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- (2) “The appropriate regulator”, in relation to an application under this section, means—
- (a) the PRA, in a case where—
    - (i) the regulated activities to which the application relates consist of or include a PRA-regulated activity, or
    - (ii) the applicant is a PRA-authorized person otherwise than by virtue of a Part 4A permission;
  - (b) the FCA, in any other case.
- (3) An authorised person who has a permission under this Part which is in force may not apply for permission under this section.
- (4) An EEA firm may not apply for permission under this section to carry on a regulated activity which it is, or would be, entitled to carry on in exercise of an EEA right, whether through a United Kingdom branch or by providing services in the United Kingdom.
- (5) A permission given by the appropriate regulator under this Part or having effect as if so given is referred to in this Act as “a Part 4A permission”.

### **55B The threshold conditions**

- (1) “The threshold conditions”, in relation to a regulated activity, means the conditions set out in or specified under Schedule 6, as read with any threshold condition code made by either regulator under section 137O.
- (2) Any reference in this Part to the threshold conditions for which either regulator is responsible is to be read as a reference to the conditions set out in or specified under Schedule 6 that are expressed to be relevant to the discharge by that regulator of its functions, as read with any threshold condition code made by that regulator under section 137O.
- (3) In giving or varying permission, imposing or varying a requirement, or giving consent, under any provision of this Part, each regulator must ensure that the person concerned will satisfy, and continue to satisfy, in relation to all of the regulated activities for which the person has or will have permission, the threshold conditions for which that regulator is responsible.
- (4) But the duty imposed by subsection (3) does not prevent a regulator, having due regard to that duty, from taking such steps as it considers are necessary, in relation to a particular person, in order to advance—
- (a) in the case of the FCA, any of its operational objectives;
  - (b) in the case of the PRA, any of its objectives.

### **55C Power to amend Schedule 6**

- (1) The Treasury may by order amend Parts 1 and 2 of Schedule 6 by altering, adding or repealing provisions, or by substituting for those Parts as they have effect for the time being provisions specified in the order.
- (2) Different provision may be made under this section—
- (a) in relation to the discharge of the functions of each regulator;
  - (b) in relation to different regulated activities;

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- (c) in relation to persons who carry on, or seek to carry on, activities that consist of or include a PRA-regulated activity and in relation to other persons.

#### **55D Firms based outside EEA**

- (1) This section applies in relation to a person (“the non-EEA firm”)—
  - (a) who is a body incorporated in, or formed under the law of, or is an individual who is a national of, any country or territory outside the EEA, and
  - (b) who is carrying on a regulated activity in any country or territory outside the United Kingdom in accordance with the law of that country or territory (“the overseas state”).
- (2) In determining whether the non-EEA firm is satisfying or will satisfy, and continue to satisfy, any one or more of the threshold conditions for which a UK regulator is responsible, the UK regulator may have regard to any opinion notified to it by a regulatory authority in the overseas state (“the overseas regulator”) which relates to the non-EEA firm and appears to the UK regulator to be relevant to compliance with those conditions.
- (3) In considering how much weight (if any) to attach to the opinion, the UK regulator must have regard to the nature and scope of the supervision exercised in relation to the non-EEA firm by the overseas regulator.
- (4) In this section “UK regulator” means the FCA or the PRA.

#### **55E Giving permission: the FCA**

- (1) This section applies where the FCA is the appropriate regulator in relation to an application for permission under section 55A.
- (2) The FCA may give permission for the applicant to carry on the regulated activity or activities to which the application relates or such of them as may be specified in the permission.
- (3) If the applicant is a member of a group which includes a PRA-authorized person, the FCA must consult the PRA before determining the application.
- (4) If it gives permission, the FCA must specify the permitted regulated activity or activities, described in such manner as the FCA considers appropriate.
- (5) The FCA may—
  - (a) incorporate in the description of a regulated activity such limitations (for example as to circumstances in which the activity may, or may not, be carried on) as it considers appropriate;
  - (b) specify a narrower or wider description of regulated activity than that to which the application relates;
  - (c) give permission for the carrying on of a regulated activity which is not included among those to which the application relates and is not a PRA-regulated activity.

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### **55F Giving permission: the PRA**

- (1) This section applies where the PRA is the appropriate regulator in relation to an application for permission under section 55A.
- (2) The PRA may with the consent of the FCA give permission for the applicant to carry on the regulated activity or activities to which the application relates or such of them as may be specified in the permission.
- (3) If it gives permission, the PRA must specify the permitted regulated activity or activities, described in such manner as the PRA considers appropriate.
- (4) The PRA may—
  - (a) incorporate in the description of a regulated activity such limitations (for example as to circumstances in which the activity may, or may not, be carried on) as it considers appropriate;
  - (b) specify a narrower or wider description of regulated activity than that to which the application relates;
  - (c) give permission for the carrying on of a regulated activity which is not included among those to which the application relates.
- (5) Consent given by the FCA for the purposes of this section may be conditional on the manner in which the PRA exercises its powers under subsections (3) and (4).
- (6) Subsections (3) and (4)(b) and (c) do not enable the PRA to give permission that relates only to activities that are not PRA-regulated activities, except where the applicant is a PRA-authorised person otherwise than by virtue of a Part 4A permission.

### **55G Giving permission: special cases**

- (1) “The applicant” means an applicant for permission under section 55A.
- (2) If the applicant—
  - (a) in relation to a particular regulated activity, is exempt from the general prohibition as a result of section 39(1) or an order made under section 38(1), but
  - (b) has applied for permission in relation to another regulated activity, the application is to be treated as relating to all the regulated activities which, if permission is given, the applicant will carry on.
- (3) If the applicant—
  - (a) in relation to a particular regulated activity, is exempt from the general prohibition as a result of section 285(2) or (3), but
  - (b) has applied for permission in relation to another regulated activity, the application is to be treated as relating only to that other regulated activity.
- (4) If the applicant—
  - (a) is a person to whom, in relation to a particular regulated activity, the general prohibition does not apply as a result of Part 19, but
  - (b) has applied for permission in relation to another regulated activity,

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the application is to be treated as relating only to that other regulated activity.

- (5) Subsection (6) applies where either regulator (“the responsible regulator”) receives an application for permission under section 55A which is in the regulator’s opinion similar to an application which was previously made to the other regulator and was either—
  - (a) treated by the other regulator as not being a valid application to that regulator because of the regulated activities to which it related, or
  - (b) refused by the other regulator after being considered.
- (6) The responsible regulator must have regard to the desirability of minimising—
  - (a) the additional work for the applicant in dealing with the new application, and
  - (b) the time taken to deal with the new application.

#### *Variation and cancellation of Part 4A permission*

##### **55H Variation by FCA at request of authorised person**

- (1) This section applies in relation to an authorised person who has a Part 4A permission but is not a PRA-authorised person.
- (2) The FCA may, on the application of the authorised person, vary the permission by—
  - (a) adding a regulated activity, other than a PRA-regulated activity, to those to which the permission relates;
  - (b) removing a regulated activity from those to which the permission relates;
  - (c) varying the description of a regulated activity to which the permission relates.
- (3) The FCA may, on the application of the authorised person, cancel the permission.
- (4) The FCA may refuse an application under this section if it appears to it that it is desirable to do so in order to advance any of its operational objectives.
- (5) If the applicant is a member of a group which includes a PRA-authorised person, the FCA must consult the PRA before determining the application.
- (6) If as a result of a variation of a Part 4A permission under this section there are no longer any regulated activities for which the authorised person concerned has permission, the FCA must, once it is satisfied that it is no longer necessary to keep the permission in force, cancel it.
- (7) The FCA’s power to vary a Part 4A permission under this section extends to including in the permission as varied any provision that could be included if a fresh permission were being given by it in response to an application under section 55A.

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### **55I Variation by PRA at request of authorised person**

- (1) On the application of a PRA-authorised person with a Part 4A permission, the PRA may with the consent of the FCA vary the permission by—
  - (a) adding a regulated activity to those to which the permission relates;
  - (b) removing a regulated activity from those to which the permission relates;
  - (c) varying the description of a regulated activity to which the permission relates.
- (2) On the application of a PRA-authorised person with a Part 4A permission, the PRA may, after consulting the FCA, cancel the permission.
- (3) On the application of an authorised person other than a PRA-authorised person, the PRA may with the consent of the FCA vary the permission by adding to the regulated activities to which the permission relates one or more regulated activities which include a PRA-regulated activity.
- (4) The PRA may refuse an application under this section if it appears to it that it is desirable to do so in order to advance any of its objectives.
- (5) The FCA may withhold its consent to a proposed variation under this section if it appears to it that it is desirable to do so in order to advance one or more of its operational objectives.
- (6) If as a result of a variation of a Part 4A permission under this section there are no longer any regulated activities for which the authorised person concerned has permission, the PRA must, once it is satisfied after consulting the FCA that it is no longer necessary to keep the permission in force, cancel it.
- (7) The PRA's power to vary a Part 4A permission under this section extends to including in the permission as varied any provision that could be included if a fresh permission were being given by it in response to an application under section 55A.
- (8) Consent given by the FCA for the purposes of subsection (1) may be conditional on the manner in which the PRA exercises its powers under section 55F(3) and (4) (as a result of subsection (7)).

### **55J Variation or cancellation on initiative of regulator**

- (1) Either regulator may exercise its power under this section in relation to an authorised person with a Part 4A permission (“A”) if it appears to the regulator that—
  - (a) A is failing, or is likely to fail, to satisfy the threshold conditions for which the regulator is responsible,
  - (b) A has failed, during a period of at least 12 months, to carry on a regulated activity to which the Part 4A permission relates, or
  - (c) it is desirable to exercise the power in order to advance—
    - (i) in the case of the FCA, one or more of its operational objectives,
    - (ii) in the case of the PRA, any of its objectives.

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- (2) The FCA's power under this section is the power—
  - (a) to vary the Part 4A permission by—
    - (i) adding a regulated activity other than a PRA-regulated activity to those to which the permission relates,
    - (ii) removing a regulated activity from those to which the permission relates, or
    - (iii) varying the description of a regulated activity to which the permission relates in a way which, if it is a PRA-regulated activity, does not, in the opinion of the FCA, widen the description, or
  - (b) to cancel the Part 4A permission.
- (3) The PRA's power under this section is the power—
  - (a) in the case of a PRA-authorized person, to vary the Part 4A permission in any of the ways mentioned in section 55I(1) or to cancel it;
  - (b) in the case of an authorized person who is not a PRA-authorized person, to vary the Part 4A permission by adding a PRA-regulated activity to those to which the permission relates and, if the PRA does so, to vary the Part 4A permission in any of the other ways mentioned in section 55I(1).
- (4) The FCA—
  - (a) must consult the PRA before exercising its power under this section in relation to—
    - (i) a PRA-authorized person, or
    - (ii) a member of a group which includes a PRA-authorized person, and
  - (b) in the case of a PRA-authorized person, may exercise the power so as to add a new activity to those to which the permission relates or to widen the description of a regulated activity to which the permission relates, only with the consent of the PRA.
- (5) The PRA—
  - (a) must consult the FCA before exercising its power under this section, and
  - (b) may exercise the power so as to add a new activity to those to which the permission relates or to widen the description of a regulated activity to which the permission relates, only with the consent of the FCA.
- (6) Without prejudice to the generality of subsections (1) to (3), a regulator may, in relation to an authorized person who is an investment firm, exercise its power under this section to cancel the Part 4A permission if it appears to it that any of the conditions in section 55K is met.
- (7) Without prejudice to the generality of subsections (1) and (2), the FCA may, in relation to an authorized person who has permission to carry on the regulated activity specified in article 24A of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (which relates to bids in emission allowance auctions), exercise its power under this section to vary the Part 4A permission of the person concerned by removing that activity from those to which the permission relates if it appears to the FCA that the person has

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seriously and systematically infringed the provisions of paragraph 2 or 3 of Article 59 of the emission allowance auctioning regulation.

- (8) If, as a result of a variation of a Part 4A permission under this section, there are no longer any regulated activities for which the authorised person concerned has permission, the regulator responsible for the variation must, once it is satisfied that it is no longer necessary to keep the permission in force, cancel it.
- (9) Before cancelling under subsection (8) a Part 4A permission which relates to a person who (before the variation) was a PRA-authorised person, the regulator must consult the other regulator.
- (10) The power of either regulator to vary a Part 4A permission under this section extends to including in the permission as varied any provision that could be included if a fresh permission were being given in response to an application to that regulator under section 55A.
- (11) Consent given by one regulator for the purpose of subsection (4)(b) or (5)(b) may be conditional on the manner in which the other regulator exercises its powers under section 55E(4) and (5) or 55F(3) and (4) (as a result of subsection (10)).
- (12) The power of the FCA or the PRA under this section is referred to in this Part as its own-initiative variation power.

#### **55K Investment firms: particular conditions that enable cancellation**

- (1) The conditions referred to in section 55J(6) are as follows—
  - (a) that the firm has failed, during a period of at least 6 months, to carry on a regulated activity which is an investment service or activity for which it has a Part 4A permission;
  - (b) that the firm obtained the Part 4A permission by making a false statement or by other irregular means;
  - (c) that the firm no longer satisfies the requirements for authorisation pursuant to Chapter I of Title II of the markets in financial instruments directive, or pursuant to or contained in any EU legislation made under that Chapter, in relation to a regulated activity which is an investment service or activity for which it has a Part 4A permission;
  - (d) that the firm has seriously and systematically infringed the operating conditions pursuant to Chapter II of Title II of the markets in financial instruments directive, or pursuant to or contained in any EU legislation made under that Chapter, in relation to a regulated activity which is an investment service or activity for which it has a Part 4A permission.
- (2) For the purposes of this section a regulated activity is an investment service or activity if it falls within the definition of “investment services and activities” in section 417(1).



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### *Imposition and variation of requirements*

#### **55L Imposition of requirements by FCA**

- (1) Where a person has applied (whether to the FCA or the PRA) for a Part 4A permission or the variation of a Part 4A permission, the FCA may impose on that person such requirements, taking effect on or after the giving or variation of the permission, as the FCA considers appropriate.
- (2) The FCA may exercise its power under subsection (3) in relation to an authorised person with a Part 4A permission (whether given by it or by the PRA) (“A”) if it appears to the FCA that—
  - (a) A is failing, or is likely to fail, to satisfy the threshold conditions for which the FCA is responsible,
  - (b) A has failed, during a period of at least 12 months, to carry on a regulated activity to which the Part 4A permission relates, or
  - (c) it is desirable to exercise the power in order to advance one or more of the FCA's operational objectives.
- (3) The FCA's power under this subsection is a power—
  - (a) to impose a new requirement,
  - (b) to vary a requirement imposed by the FCA under this section, or
  - (c) to cancel such a requirement.
- (4) The FCA's power under subsection (3) is referred to in this Part as its own-initiative requirement power.
- (5) The FCA may, on the application of an authorised person with a Part 4A permission—
  - (a) impose a new requirement,
  - (b) vary a requirement imposed by the FCA under this section, or
  - (c) cancel such a requirement.
- (6) The FCA may refuse an application under subsection (5) if it appears to it that it is desirable to do so in order to advance any of its operational objectives.
- (7) The FCA must consult the PRA before imposing or varying a requirement which relates to—
  - (a) a person who is, or will on the granting of an application for Part 4A permission be, a PRA-authorised person, or
  - (b) a person who is a member of a group which includes a PRA-authorised person.

#### **55M Imposition of requirements by PRA**

- (1) Where—
  - (a) a person has applied for a Part 4A permission in relation to activities which consist of or include a PRA-regulated activity,
  - (b) a PRA-authorised person has applied for a Part 4A permission or the variation of a Part 4A permission, or

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- (c) an authorised person other than a PRA-authorized person has applied for a Part 4A permission to be varied by adding to the regulated activities to which it relates one or more regulated activities which include a PRA-regulated activity,  
the PRA may impose on that person such requirements, taking effect on or after the giving or variation of the permission, as the PRA considers appropriate.
- (2) The PRA may exercise its power under subsection (3) in relation to a PRA-authorized person with a Part 4A permission (“P”) if it appears to the PRA that—
  - (a) P is failing, or is likely to fail, to satisfy the threshold conditions for which the PRA is responsible,
  - (b) P has failed, during a period of at least 12 months, to carry on a regulated activity to which the Part 4A permission relates, or
  - (c) it is desirable to exercise the power in order to advance any of the PRA's objectives.
- (3) The PRA's power under this subsection is a power—
  - (a) to impose a new requirement,
  - (b) to vary a requirement imposed by the PRA under this section, or
  - (c) to cancel such a requirement.
- (4) The PRA's power under subsection (3) is referred to in this Part as its own-initiative requirement power.
- (5) The PRA may, on the application of a PRA-authorized person with a Part 4A permission—
  - (a) impose a new requirement,
  - (b) vary a requirement imposed by the PRA under this section, or
  - (c) cancel such a requirement.
- (6) The PRA may refuse an application under subsection (5) if it appears to it that it is desirable to do so in order to advance any of its objectives.
- (7) The PRA must consult the FCA before imposing or varying a requirement.

#### **55N Requirements under section 55L or 55M: further provisions**

- (1) A requirement may, in particular, be imposed—
  - (a) so as to require the person concerned to take specified action, or
  - (b) so as to require the person concerned to refrain from taking specified action.
- (2) A requirement may extend to activities which are not regulated activities.
- (3) A requirement may be imposed by reference to the person's relationship with—
  - (a) the person's group, or
  - (b) other members of the person's group.
- (4) A requirement may be expressed to expire at the end of such period as the regulator imposing it may specify, but the imposition of a requirement that

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expires at the end of a specified period does not affect the regulator's power to impose a new requirement.

- (5) A requirement may refer to the past conduct of the person concerned (for example, by requiring the person concerned to review or take remedial action in respect of past conduct).
- (6) In this section “requirement” means a requirement imposed under section 55L or 55M.

### **55O Imposition of requirements on acquisition of control**

- (1) This section applies if it appears to the appropriate regulator that—
  - (a) a person has acquired control over a UK authorised person who has a Part 4A permission, but
  - (b) there are no grounds for exercising its own-initiative requirement power.
- (2) If it appears to the appropriate regulator that the likely effect of the acquisition of control on the UK authorised person, or on any of its activities, is uncertain, the appropriate regulator may—
  - (a) impose on the UK authorised person a requirement that could be imposed by that regulator under section 55L or 55M (as the case may be) on the giving of permission, or
  - (b) vary a requirement imposed by that regulator under that section on the UK authorised person.
- (3) “The appropriate regulator” means—
  - (a) in a case where the UK authorised person is a PRA-authorised person, the FCA or the PRA;
  - (b) in any other case, the FCA.
- (4) This section does not affect any duty of the appropriate regulator to consult or obtain the consent of the other regulator in connection with the imposition of the requirement.
- (5) Any reference to a person having acquired control is to be read in accordance with Part 12.

### **55P Prohibitions and restrictions**

- (1) This section applies if—
  - (a) on a person being given a Part 4A permission, either regulator imposes an assets requirement on that person,
  - (b) an assets requirement is imposed on an authorised person, or
  - (c) an assets requirement previously imposed on such a person is varied.
- (2) A person on whom an assets requirement is imposed is referred to in this section as “A”.
- (3) The “appropriate regulator” is the regulator which imposed the requirement.
- (4) “Assets requirement” means a requirement under section 55L or 55M—

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- (a) prohibiting the disposal of, or other dealing with, any of A's assets (whether in the United Kingdom or elsewhere) or restricting such disposals or dealings, or
  - (b) that all or any of A's assets, or all or any assets belonging to consumers but held by A or to A's order, must be transferred to and held by a trustee approved by the appropriate regulator.
- (5) If the appropriate regulator—
- (a) imposes a requirement of the kind mentioned in subsection (4)(a), and
  - (b) gives notice of the requirement to any institution with whom A keeps an account,
- the notice has the effects mentioned in subsection (6).
- (6) Those effects are that—
- (a) the institution does not act in breach of any contract with A if, having been instructed by A (or on A's behalf) to transfer any sum or otherwise make any payment out of A's account, it refuses to do so in the reasonably held belief that complying with the instruction would be incompatible with the requirement, and
  - (b) if the institution complies with such an instruction, it is liable to pay to the appropriate regulator an amount equal to the amount transferred from, or otherwise paid out of, A's account in contravention of the requirement.
- (7) If the appropriate regulator imposes a requirement of the kind mentioned in subsection (4)(b), no assets held by a person as trustee in accordance with the requirement may, while the requirement is in force, be released or dealt with except with the consent of the appropriate regulator.
- (8) If, while a requirement of the kind mentioned in subsection (4)(b) is in force, A creates a charge over any assets of A held in accordance with the requirement, the charge is (to the extent that it confers security over the assets) void against the liquidator and any of A's creditors.
- (9) Assets held by a person as trustee (“T”) are to be taken to be held by T in accordance with any requirement mentioned in subsection (4)(b) only if—
- (a) A has given T written notice that those assets are to be held by T in accordance with the requirement, or
  - (b) they are assets into which assets to which paragraph (a) applies have been transposed by T on the instructions of A.
- (10) A person who contravenes subsection (7) is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (11) “Charge” includes a mortgage (or in Scotland a security over property).
- (12) Subsections (7) and (9) do not affect any equitable interest or remedy in favour of a person who is a beneficiary of a trust as a result of a requirement of the kind mentioned in subsection (4)(b).

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### *Exercise of power in support of overseas regulator*

#### **55Q Exercise of power in support of overseas regulator**

- (1) Either UK regulator's own-initiative powers may be exercised in respect of an authorised person at the request of, or for the purpose of assisting, an overseas regulator of a prescribed kind.
- (2) Subsection (1) applies whether or not the UK regulator has powers which are exercisable in relation to the authorised person by virtue of any provision of Part 13.
- (3) Subsection (1) does not affect any duty of one UK regulator to consult or obtain the consent of the other UK regulator in relation to the exercise of its own-initiative powers.
- (4) If a request to a UK regulator for the exercise of its own-initiative powers has been made by an overseas regulator who is—
  - (a) of a prescribed kind, and
  - (b) acting in pursuance of provisions of a prescribed kind,the UK regulator must, in deciding whether or not to exercise those powers in response to the request, consider whether it is necessary to do so in order to comply with an EU obligation.
- (5) In deciding whether or not to do so, in any case in which the UK regulator does not consider that the exercise of its own-initiative powers is necessary in order to comply with an EU obligation, it may take into account in particular—
  - (a) whether in the country or territory of the overseas regulator concerned, corresponding assistance would be given to a United Kingdom regulatory authority;
  - (b) whether the case concerns the breach of a law, or other requirement, which has no close parallel in the United Kingdom or involves the assertion of a jurisdiction not recognised by the United Kingdom;
  - (c) the seriousness of the case and its importance to persons in the United Kingdom;
  - (d) whether it is otherwise appropriate in the public interest to give the assistance sought.
- (6) The UK regulator may decide not to exercise its own-initiative powers, in response to a request, unless the overseas regulator concerned undertakes to make such contribution towards the cost of their exercise as the UK regulator considers appropriate.
- (7) Subsection (6) does not apply if the UK regulator decides that it is necessary for it to exercise its own-initiative powers in order to comply with an EU obligation.
- (8) In subsection (6) “request” means a request of a kind mentioned in subsection (1).
- (9) In this section—
  - (a) “UK regulator” means the FCA or the PRA;

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- (b) “overseas regulator” means a regulator outside the United Kingdom;
- (c) “own-initiative powers”, in relation to the FCA or the PRA, means its own-initiative variation power and its own-initiative requirement power.

### *Connected persons*

#### **55R Persons connected with an applicant**

- (1) In considering—
  - (a) an application for a Part 4A permission,
  - (b) whether to vary or cancel a Part 4A permission,
  - (c) whether to impose or vary a requirement under this Part, or
  - (d) whether to give any consent required by any provision of this Part,
 the regulator concerned may have regard to any person appearing to it to be, or likely to be, in a relationship with the applicant or a person given permission which is relevant.
- (2) Before—
  - (a) giving permission in response to an application under section 55A made by a person who is connected with an EEA firm (other than an EEA firm falling within paragraph 5(e) of Schedule 3 (insurance and reinsurance intermediaries)), or
  - (b) cancelling or varying a Part 4A permission given to such a person,
 the regulator concerned must in prescribed circumstances consult the firm's home state regulator.
- (3) A person (“A”) is connected with an EEA firm if—
  - (a) A is a subsidiary undertaking of the firm, or
  - (b) A is a subsidiary undertaking of a parent undertaking of the firm.

### *Additional permissions*

#### **55S Duty of FCA or PRA to consider other permissions**

- (1) “Additional Part 4A permission” —
  - (a) in relation to either regulator, means a Part 4A permission which is in force in relation to an EEA firm or a Treaty firm, and
  - (b) in relation to the FCA, also includes a Part 4A permission which is in force in relation to a person authorised as a result of paragraph 1(1) of Schedule 5.
- (2) If either regulator is considering whether, and if so how, to exercise its own-initiative variation power or its own-initiative requirement power in relation to an additional Part 4A permission, it must take into account—
  - (a) the home state authorisation of the authorised person concerned,
  - (b) any relevant directive, and
  - (c) relevant provisions of the Treaty.

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### *Persons whose interests are protected*

#### **55T Persons whose interests are protected**

For the purpose of any provision of this Part which refers to the FCA's operational objectives, or the PRA's objectives in relation to the exercise of a power in relation to a particular person, it does not matter whether there is a relationship between that person and the persons whose interests will be protected by the exercise of the power.

#### *Procedure*

#### **55U Applications under this Part**

- (1) An application for a Part 4A permission must—
  - (a) contain a statement of the regulated activity or regulated activities which the applicant proposes to carry on and for which the applicant wishes to have permission, and
  - (b) give the address of a place in the United Kingdom for service on the applicant of any notice or other document which is required or authorised to be served on the applicant under this Act.
- (2) An application for the variation of a Part 4A permission must contain a statement—
  - (a) of the desired variation, and
  - (b) of the regulated activity or regulated activities which the applicant proposes to carry on if the permission is varied.
- (3) An application for the variation of a requirement imposed under section 55L or 55M or for the imposition of a new requirement must contain a statement of the desired variation or requirement.
- (4) An application under this Part must—
  - (a) be made in such manner as the regulator to which it is to be made may direct, and
  - (b) contain, or be accompanied by, such other information as that regulator may reasonably require.
- (5) At any time after the application is received and before it is determined, the appropriate regulator may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application or, as the case requires, to decide whether to give consent.
- (6) In subsection (5), the “appropriate regulator” means—
  - (a) in a case where the application is made to the FCA, the FCA;
  - (b) in a case where the application is made to the PRA, the FCA or the PRA.
- (7) Different directions may be given, and different requirements imposed, in relation to different applications or categories of application.

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- (8) Each regulator may require an applicant to provide information which the applicant is required to provide to it under this section in such form, or to verify it in such a way, as the regulator may direct.
- (9) The PRA must consult the FCA before—
  - (a) giving a direction under this section in relation to a class of applications, or
  - (b) imposing a requirement under this section in relation to a class of applications.

### **55V Determination of applications**

- (1) An application under this Part must be determined by the regulator to which it is required to be made (“the appropriate regulator”) before the end of the period of 6 months beginning with the date on which it received the completed application.
- (2) The appropriate regulator may determine an incomplete application if it considers it appropriate to do so; and it must in any event determine such an application within 12 months beginning with the date on which it received the application.
- (3) Where the application cannot be determined by the appropriate regulator without the consent of the other regulator, the other regulator's decision must also be made within the period required by subsection (1) or (2).
- (4) The applicant may withdraw the application, by giving the appropriate regulator written notice, at any time before the appropriate regulator determines it.
- (5) If the appropriate regulator grants an application—
  - (a) for Part 4A permission,
  - (b) for the variation or cancellation of a Part 4A permission,
  - (c) for the variation or cancellation of a requirement imposed under section 55L or 55M, or
  - (d) for the imposition of a new requirement under either of those sections, it must give the applicant written notice.
- (6) The notice must state the date from which the permission, variation, cancellation or requirement has effect.
- (7) A notice under this section which is given by the PRA and relates to the grant of an application for Part 4A permission or for the variation of a Part 4A permission must state that the FCA has given its consent to the grant of the application.

### **55W Applications under this Part: communications between regulators**

The PRA must as soon as practicable notify the FCA of the receipt or withdrawal of—

- (a) an application for permission under section 55A,
- (b) an application under section 55I, or



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- (c) an application under section 55M(5).

### **55X Determination of applications: warning notices and decision notices**

- (1) If a regulator proposes—
- (a) to give a Part 4A permission but to exercise its power under section 55E(5)(a) or (b) or 55F(4)(a) or (b),
  - (b) to give a Part 4A permission but to exercise its power under section 55L(1) or 55M(1) in connection with the application for permission,
  - (c) to vary a Part 4A permission on the application of an authorised person but to exercise its power under section 55E(5)(a) or (b) or 55F(4)(a) or (b),
  - (d) to vary a Part 4A permission but to exercise its power under section 55L(1) or 55M(1) in connection with the application for variation, or
  - (e) in the case of the FCA, to exercise its power under section 55L(1) in connection with an application to the PRA for a Part 4A permission or the variation of a Part 4A permission,
- it must give the applicant a warning notice.
- (2) If a regulator proposes to refuse an application made under this Part, it must (unless subsection (3) applies) give the applicant a warning notice.
- (3) This subsection applies if it appears to the regulator that—
- (a) the applicant is an EEA firm, and
  - (b) the application is made with a view to carrying on a regulated activity in a manner in which the applicant is, or would be, entitled to carry on that activity in the exercise of an EEA right whether through a United Kingdom branch or by providing services in the United Kingdom.
- (4) If a regulator decides—
- (a) to give a Part 4A permission but to exercise its power under section 55E(5)(a) or (b) or 55F(4)(a) or (b),
  - (b) to give a Part 4A permission but to exercise its power under section 55L(1) or 55M(1) in connection with the giving of the permission,
  - (c) to vary a Part 4A permission on the application of an authorised person but to exercise its power under section 55E(5)(a) or (b) or 55F(4)(a) or (b),
  - (d) to vary a Part 4A permission on the application of an authorised person but to exercise its power under section 55L(1) or 55M(1) in connection with the variation,
  - (e) in the case of the FCA, to exercise its power under section 55L(1) in connection with an application to the PRA for a Part 4A permission or the variation of a Part 4A permission, or
  - (f) to refuse an application under this Part,
- it must give the applicant a decision notice.

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### **55Y Exercise of own-initiative power: procedure**

- (1) This section applies to an exercise of either regulator's own-initiative variation power or own-initiative requirement power in relation to an authorised person ("A").
- (2) A variation of a permission or the imposition or variation of a requirement takes effect—
  - (a) immediately, if the notice given under subsection (4) states that that is the case,
  - (b) on such date as may be specified in the notice, or
  - (c) if no date is specified in the notice, when the matter to which the notice relates is no longer open to review.
- (3) A variation of a permission, or the imposition or variation of a requirement, may be expressed to take effect immediately (or on a specified date) only if the regulator concerned, having regard to the ground on which it is exercising its own-initiative variation power or own-initiative requirement power, reasonably considers that it is necessary for the variation, or the imposition or variation of the requirement, to take effect immediately (or on that date).
- (4) If either regulator proposes to vary a Part 4A permission or to impose or vary a requirement, or varies a Part 4A permission or imposes or varies a requirement, with immediate effect, it must give A written notice.
- (5) The notice must—
  - (a) give details of the variation of the permission or the requirement or its variation,
  - (b) state the regulator's reasons for the variation of the permission or the imposition or variation of the requirement,
  - (c) inform A that A may make representations to the regulator within such period as may be specified in the notice (whether or not A has referred the matter to the Tribunal),
  - (d) inform A of when the variation of the permission or the imposition or variation of the requirement takes effect, and
  - (e) inform A of A's right to refer the matter to the Tribunal.
- (6) The regulator may extend the period allowed under the notice for making representations.
- (7) If, having considered any representations made by A, the regulator decides—
  - (a) to vary the permission, or impose or vary the requirement, in the way proposed, or
  - (b) if the permission has been varied or the requirement imposed or varied, not to rescind the variation of the permission or the imposition or variation of the requirement,
 it must give A written notice.
- (8) If, having considered any representations made by A, the regulator decides—
  - (a) not to vary the permission, or impose or vary the requirement, in the way proposed,

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- (b) to vary the permission or requirement in a different way, or impose a different requirement, or
  - (c) to rescind a variation or requirement which has effect,it must give A written notice.
- (9) A notice under subsection (7) must inform A of A's right to refer the matter to the Tribunal.
- (10) A notice under subsection (8)(b) must comply with subsection (5).
- (11) If a notice informs A of A's right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.
- (12) For the purposes of subsection (2)(c), whether a matter is open to review is to be determined in accordance with section 391(8).

### **55Z Cancellation of Part 4A permission: procedure**

- (1) If a regulator proposes to cancel an authorised person's Part 4A permission otherwise than at the person's request, it must give the person a warning notice.
- (2) If a regulator decides to cancel an authorised person's Part 4A permission otherwise than at the person's request, it must give the person a decision notice.

### *Notification*

#### **55Z1 Notification of ESMA**

A regulator must notify ESMA of—

- (a) the giving by it of a Part 4A permission to an investment firm, where the regulated activities to which the permission relates are investment services and activities,
- (b) the giving by it of a Part 4A permission to a management company (as defined in section 237(2)), where the regulated activities to which the permission relates fall within paragraph 8 of Schedule 2,
- (c) the cancellation by it of a Part 4A permission of a description falling within paragraph (b), or
- (d) the cancellation by it of a Part 4A permission under section 55J(6), in reliance on any one or more of the conditions in section 55K(1) (b) to (d).

#### **55Z2 Notification of EBA**

- (1) A regulator must notify EBA of—
  - (a) the giving by it of a Part 4A permission to a credit institution, where the regulated activity to which the permission relates falls within paragraph 4 of Schedule 2, or
  - (b) the cancellation by it of a Part 4A permission of a description falling within paragraph (a).
- (2) “Credit institution” has the meaning given in section 1H(8).

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### *References to the Tribunal*

#### **55Z3 Right to refer matters to the Tribunal**

- (1) An applicant who is aggrieved by the determination of an application made under this Part may refer the matter to the Tribunal.
- (2) An authorised person who is aggrieved by the exercise by either regulator of its own-initiative variation power or its own-initiative requirement power may refer the matter to the Tribunal.

### *Interpretation*

#### **55Z4 Interpretation of Part 4A**

In this Part—

“own-initiative requirement power”, in relation to the FCA or the PRA, is to be read in accordance with section 55L(4) or 55M(4);

“own-initiative variation power”, in relation to the FCA or the PRA, is to be read in accordance with section 55J(12).”

- (3) In Schedule 6 to FSMA 2000 (the threshold conditions), omit paragraph 9.

#### **Commencement Information**

**I12** S. 11 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

**I13** S. 11 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2

### *Passporting*

## **12 Passporting: exercise of EEA rights and Treaty rights**

Schedule 4 contains amendments of the following provisions of FSMA 2000—

- (a) Schedule 3 (EEA passport rights),
- (b) Schedule 4 (Treaty rights),
- (c) sections 34 and 35 (EEA firms and Treaty firms), and
- (d) Part 13 (incoming firms: powers of intervention).

#### **Commencement Information**

**I14** S. 12 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

**I15** S. 12 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2

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### Performance of regulated activities

VALID FROM 01/04/2013

#### 13 Prohibition orders

- (1) Section 56 of FSMA 2000 (performance of regulated activities: prohibition orders) is amended as follows.
- (2) For subsection (1) substitute—
  - “(1) The FCA may make a prohibition order if it appears to it that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by—
    - (a) an authorised person,
    - (b) a person who is an exempt person in relation to that activity, or
    - (c) a person to whom, as a result of Part 20, the general prohibition does not apply in relation to that activity.
  - (1A) The PRA may make a prohibition order if it appears to it that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by—
    - (a) a PRA-authorised person, or
    - (b) a person who is an exempt person in relation to a PRA-regulated activity carried on by the person.”
- (3) In subsection (2), for “The Authority may make an order (“a prohibition order”)” substitute “ A “prohibition order” is an order ”.
- (4) In subsection (3), for paragraph (b) substitute—
  - “(b) all persons falling within subsection (3A) or a particular paragraph of that subsection or all persons within a specified class of person falling within a particular paragraph of that subsection.”
- (5) After subsection (3) insert—
  - “(3A) A person falls within this subsection if the person is—
    - (a) an authorised person,
    - (b) an exempt person, or
    - (c) a person to whom, as a result of Part 20, the general prohibition does not apply in relation to a regulated activity.”
- (6) In subsection (6), for “An authorised person” substitute “ A person falling within subsection (3A) ”.
- (7) In subsection (7)—
  - (a) for “The Authority” substitute “ The regulator that has made a prohibition order ”, and
  - (b) for “a prohibition order” substitute “ the order ”.
- (8) After subsection (7) insert—
  - “(7A) If—

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- (a) the FCA proposes to vary or revoke a prohibition order, and
- (b) as a result of the proposed variation or revocation, an individual—
  - (i) will no longer be prohibited from performing a function of interest to the PRA, or
  - (ii) will be prohibited from performing such a function,
 the FCA must consult the PRA before varying or revoking the order.
- (7B) A function is of interest to the PRA if it is performed in relation to a regulated activity carried on by—
  - (a) a PRA-authorised person, or
  - (b) a person who is an exempt person in relation to a PRA-regulated activity carried on by the person.
- (7C) The PRA must consult the FCA before varying or revoking a prohibition order.”
- (9) Omit subsection (8).
- (10) Section 57 of FSMA 2000 (prohibition orders: procedure and right to refer to Tribunal) is amended as follows.
- (11) In subsections (1) and (3), for “the Authority” substitute “ a regulator ”.
- (12) At the end insert—
  - “(6) If—
    - (a) the FCA proposes to make a prohibition order, and
    - (b) as a result of the proposed order, an individual will be prohibited from performing a function of interest to the PRA,
 the FCA must consult the PRA before giving a warning notice under this section.
  - (7) A function is of interest to the PRA if it is performed in relation to a regulated activity carried on by—
    - (a) a PRA-authorised person, or
    - (b) a person who is an exempt person in relation to a PRA-regulated activity carried on by the person.
  - (8) The PRA must consult the FCA before giving a warning notice under this section.”

## 14 Approval for particular arrangements

- (1) In section 59 of FSMA 2000 (approval for particular arrangements)—
  - (a) in subsections (1) and (2), for “the Authority” substitute “ the appropriate regulator ”, and
  - (b) for subsections (3) to (7) substitute—
    - “(3) Controlled function”—
      - (a) in relation to the carrying on of a regulated activity by a PRA-authorised person, means a function of a description specified in rules made by the FCA or the PRA, and

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- (b) in relation to the carrying on of a regulated activity by any other authorised person, means a function of a description specified in rules made by the FCA.
  - (4) “The appropriate regulator”—
    - (a) in relation to a controlled function which is of a description specified in rules made by the FCA, means the FCA, and
    - (b) in relation to a controlled function which is of a description specified in rules made by the PRA, means the PRA with the consent of the FCA.
  - (5) The FCA may specify a description of function under subsection (3) (a) or (b) only if, in relation to the carrying on of a regulated activity by an authorised person, it is satisfied that the function is—
    - (a) a customer-dealing function, or
    - (b) a significant-influence function.
  - (6) The PRA may specify a description of function under subsection (3) (a) only if, in relation to the carrying on of a regulated activity by a PRA-authorised person, it is satisfied that the function is a significant-influence function.
  - (7) In determining whether a function is a significant-influence function, the FCA or the PRA may take into account the likely consequences of a failure to discharge the function properly.
  - (7A) “Customer-dealing function”, in relation to the carrying on of a regulated activity by an authorised person (“A”), means a function that will involve the person performing it in dealing with—
    - (a) customers of A, or
    - (b) property of customers of A,in a manner substantially connected with the carrying on of the activity.
  - (7B) “Significant-influence function”, in relation to the carrying on of a regulated activity by an authorised person, means a function that is likely to enable the person responsible for its performance to exercise a significant influence on the conduct of the authorised person's affairs, so far as relating to the activity.”
- (2) After section 59 of FSMA 2000 insert—

**“59A Specifying functions as controlled functions: supplementary**

- (1) The FCA must—
  - (a) keep under review the exercise of its power under section 59(3)(a) to specify any significant-influence function as a controlled function, and
  - (b) exercise that power in a way that it considers will minimise the likelihood that approvals fall to be given by both the FCA and the PRA in respect of the performance by a person of significant-influence functions in relation to the carrying on of a regulated activity by the same PRA-authorised person.

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- (2) The FCA and the PRA must each consult the other before exercising any power under section 59(3)(a).
- (3) Any reference in this section to the exercise of a power includes its exercise by way of amendment or revocation of provision previously made in the exercise of the power.
- (4) “Approval” means an approval under section 59.
- (5) Any expression which is used both in this section and section 59 has the same meaning in this section as in that section.

### **59B Role of FCA in relation to PRA decisions**

- (1) The FCA may arrange with the PRA that in such cases as may be described in the arrangements the PRA may give approval under section 59 without obtaining the consent of the FCA.
  - (2) Arrangements under this section must be in writing, and must specify the date on which they come into force.
  - (3) The regulators must publish any arrangements under this section in such manner as they think fit.
  - (4) Section 59(4)(b) has effect subject to any arrangements in force under this section.”
- (3) In section 63 of FSMA 2000 (withdrawal of approval), for subsection (1) substitute—
- “(1) The FCA may withdraw an approval under section 59 given by the FCA or the PRA in relation to the performance by a person of a function if the FCA considers that the person is not a fit and proper person to perform the function.
  - (1A) The PRA may withdraw an approval under section 59 in relation to the performance by a person (“A”) of a function if—
    - (a) the PRA gave the approval, or the FCA gave the approval and the function is a significant-influence function performed in relation to the carrying on by a PRA-authorized person of a regulated activity, and
    - (b) the PRA considers that A is not a fit and proper person to perform the function.
  - (1B) “Significant-influence function” has the same meaning as in section 59.
  - (1C) Before one regulator withdraws an approval given by the other regulator, it must consult the other regulator.”
- (4) In section 64 of FSMA 2000 (conduct of approved persons: statement and codes), for subsection (1) substitute—
- “(1) The FCA may issue statements of principle with respect to the conduct expected of persons in relation to whom either regulator has given its approval under section 59.
  - (1A) The PRA may issue statements of principle with respect to—



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- (a) the conduct expected of persons in relation to whom it has given its approval under section 59, and
- (b) the conduct expected of persons in relation to whom the FCA has given its approval under section 59 in respect of the performance by them of significant-influence functions in relation to the carrying on by PRA-authorised persons of regulated activities.

(1B) A statement of principle issued by either regulator may relate to conduct expected of persons in relation to—

- (a) the performance by them of controlled functions, or
- (b) the performance by them of any other functions in relation to the carrying on by authorised persons of regulated activities.”

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**Commencement Information**

**I16** S. 14 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

## 15 Further amendments relating to performance of regulated activities

Schedule 5 contains further amendments of Part 5 of FSMA 2000 (performance of regulated activities).

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**Commencement Information**

**I17** S. 15 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2

**I18** S. 15 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

### *Official listing*

## 16 FCA to exercise functions under Part 6 of FSMA 2000

- (1) FSMA 2000 is amended as follows.
- (2) In each of the provisions of Part 6 (official listing etc) mentioned in subsection (3)—
  - (a) for “competent authority” or “competent authority's”, in each place, substitute “ FCA ” or “FCA's”, and
  - (b) for “the authority” or “the Authority”, in each place, substitute “ the FCA ”.
- (3) Those provisions are—
  - (a) sections 73A to 84;
  - (b) section 86;
  - (c) sections 87B to 87D;
  - (d) section 87G;
  - (e) sections 87J to 87O (including the italic heading before section 87J);
  - (f) sections 87Q to 88;
  - (g) sections 89A to 97 (including the italic heading before section 89H and the heading to that section);
  - (h) section 101(2);
  - (i) section 103(1).

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- (4) Before section 73A insert an italic heading “*Rules*”.
- (5) In section 77(3) (discontinuance and suspension of listing), for “sections 96 and 99” substitute “ section 96 and paragraph 23(6) of Schedule 1ZA ”.
- (6) In section 87A (criteria for approval of prospectus)—
  - (a) in subsection (1), for “competent authority” substitute “ “FCA”,
  - (b) in subsection (7)(a), for “competent authority”, in the first place, substitute “ FCA ”, and
  - (c) in the heading, for “competent authority” substitute “ FCA ”.
- (7) In section 87E (transfer by competent authority of application for approval)—
  - (a) in subsection (1), for “competent authority”, in the first place, substitute “ FCA ”,
  - (b) in subsections (2) to (4), for “competent authority” substitute “ FCA ”, and
  - (c) in the heading, for “competent authority” substitute “ FCA ”.
- (8) In section 87F (transfer to competent authority of application for approval)—
  - (a) in subsection (1)—
    - (i) for “Where the competent authority” substitute “ Where the FCA ”,
    - and
    - (ii) in paragraph (b), for “competent authority” substitute “ FCA ”,
  - (b) in subsection (2), for “competent authority” substitute “ FCA ”, and
  - (c) in the heading, for “competent authority” substitute “ FCA ”.
- (9) In section 87H (prospectus approved in another EEA State)—
  - (a) in subsection (1), for “competent authority”, in the second and third places, substitute “ FCA ”, and
  - (b) in subsection (3A), for “competent authority” substitute “ FCA ”.
- (10) In section 87I (provision of information to host member State)—
  - (a) in subsection (1)—
    - (i) for “competent authority”, in the first place, substitute “ FCA ”,
    - (ii) in paragraph (b), for “competent authority” substitute “ FCA ”, and
    - (iii) in paragraph (c), omit “other”,
  - (b) in subsection (1A), for “competent authority”, in the first place, substitute “ FCA ”, and
  - (c) in subsections (3) to (5), for “competent authority” substitute “ FCA ”.
- (11) In section 87P (exercise of powers at request of competent authority of another EEA State)—
  - (a) in subsection (1)(c), for “competent authority”, in the second place, substitute “ FCA ”, and
  - (b) in subsection (2), for “competent authority” substitute “ FCA ”.
- (12) In section 100A (exercise of powers where UK is host member State)—
  - (a) in subsections (1) and (2), for “competent authority” substitute “ FCA ”,
  - (b) in subsection (3), for “the authority”, in both places, substitute “ the FCA ”,
  - (c) in subsection (4), for “The authority” substitute “ The FCA ”, and
  - (d) in subsections (5) and (6), for “the authority” substitute “ the FCA ”.

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- (13) In Schedule 10 (compensation: exemptions), for “competent authority”, in each place, substitute “ FCA ”.
- (14) Omit the following provisions—
- (a) section 72 (Financial Services Authority to exercise functions of the competent authority under Part 6) and the italic heading before it;
  - (b) section 73 (general duty of the competent authority);
  - (c) section 99 (fees);
  - (d) section 100 (penalties);
  - (e) in section 101 (general provisions), subsections (1) and (3) to (8);
  - (f) section 102 (exemption from liability in damages);
  - (g) in section 103 (interpretation), subsections (2) and (3);
  - (h) in section 195 (exercise of power in support of overseas regulator), subsection (4)(b);
  - (i) in section 410 (international obligations), subsection (4)(b);
  - (j) in section 415 (jurisdiction in civil proceedings), subsection (1)(b);
  - (k) Schedule 7 (modification of Act in its application to the Financial Services Authority when acting as competent authority for purposes of Part 6);
  - (l) Schedule 8 (power to transfer functions under Part 6 to other persons).

#### Commencement Information

**I19** S. 16 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

VALID FROM 19/03/2013

#### 17 Discontinuance or suspension at the request of the issuer: procedure

- (1) FSMA 2000 is amended as follows.
- (2) In section 78A (discontinuance or suspension at the request of the issuer: procedure)
- (a) in subsection (1), for paragraphs (a) and (b) substitute—
    - “(a) immediately, if the notification under subsection (2) so provides;
    - (b) in any other case, on such date as may be provided for in that notification.”,
  - (b) in subsection (2), for “give him written notice” substitute “ notify the issuer (whether in writing or otherwise) ”, and
  - (c) for subsection (3) substitute—
    - “(3) The notification must—
      - (a) notify the issuer of the date on which the discontinuance or suspension took effect or will take effect, and
      - (b) notify the issuer of such other matters (if any) as are specified in listing rules.”

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(3) In section 395(13) (definition of “supervisory notice”), after “a notice” insert “ or notification ”.

## 18 Listing rules: disciplinary powers in relation to sponsors

(1) FSMA 2000 is amended as follows.

(2) In section 88 (provision that may be made by listing rules in relation to sponsors)—

- (a) in subsection (3), at the end insert—
  - “(e) provide for limitations or other restrictions to be imposed on the services to which an approval relates (whether or not the approval has already been granted);
  - (f) provide for the approval of a sponsor to be suspended on the application of the sponsor.”
- (b) in subsection (4), in paragraph (a), for “for approval as a sponsor” substitute “ under sponsor rules ”,
- (c) after that paragraph (but before the “or” at the end) insert—
  - “(aa) to impose limitations or other restrictions on the services to which a person's approval relates,”
- (d) in subsection (5), in paragraph (a), for “for approval” substitute “ under sponsor rules ”,
- (e) after that paragraph (but before the “or” at the end) insert—
  - “(aa) not to impose limitations or other restrictions on the services to which a person's approval relates,”
- (f) in subsection (6), in paragraph (a), for “for approval” substitute “ under sponsor rules ”,
- (g) after that paragraph (a) (but before the “or” at the end) insert—
  - “(aa) to impose limitations or other restrictions on the services to which a person's approval relates,” and
- (h) after subsection (7) insert—
  - “(8) In this section any reference to an application under sponsor rules means—
    - (a) an application for approval as a sponsor,
    - (b) an application for the suspension of an approval as a sponsor,
    - (c) an application for the withdrawal of the suspension of an approval as a sponsor, or
    - (d) an application for the withdrawal or variation of a limitation or other restriction on the services to which a sponsor's approval relates.”

(3) The power to make provision under section 88(3)(e) of FSMA 2000 (as inserted by subsection (2)(a) above) includes power to make provision in relation to persons who were approved as sponsors before the coming into force of subsection (2)(a) above.

(4) For section 89 substitute—

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### **“88A Disciplinary powers: contravention of s.88(3)(c) or (e)**

- (1) The FCA may take action against a sponsor under this section if it considers that the sponsor has contravened a requirement or restriction imposed on the sponsor by rules made as a result of section 88(3)(c) or (e).
- (2) If the FCA is entitled to take action under this section against a sponsor, it may do one or more of the following—
  - (a) impose a penalty on the sponsor of such amount as it considers appropriate;
  - (b) suspend, for such period as it considers appropriate, the sponsor's approval;
  - (c) impose, for such period as it considers appropriate, such limitations or other restrictions in relation to the performance of services to which the sponsor's approval relates as it considers appropriate;
  - (d) publish a statement to the effect that the sponsor has contravened a requirement or restriction imposed on the sponsor by rules made as a result of section 88(3)(c) or (e).
- (3) The period for which a suspension or restriction is to have effect may not exceed 12 months.
- (4) A suspension may relate only to the performance in specified circumstances of a service to which the approval relates.
- (5) A restriction may, in particular, be imposed so as to require the sponsor to take, or refrain from taking, specified action.
- (6) The FCA may—
  - (a) withdraw a suspension or restriction; or
  - (b) vary a suspension or restriction so as to reduce the period for which it has effect or otherwise to limit its effect.
- (7) The FCA may not take action against a sponsor under this section after the end of the limitation period unless, before the end of that period, it has given a warning notice to the sponsor under section 88B(1).
- (8) “The limitation period” means the period of 3 years beginning with the first day on which the FCA knew that the sponsor had contravened the requirement or restriction.
- (9) For this purpose the FCA is to be treated as knowing that a sponsor has contravened a requirement or restriction if it has information from which that can reasonably be inferred.

### **88B Action under s.88A: procedure and right to refer to Tribunal**

- (1) If the FCA proposes to take action against a sponsor under section 88A, it must give the sponsor a warning notice.
- (2) A warning notice about a proposal to impose a penalty must state the amount of the penalty.
- (3) A warning notice about a proposal—

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- (a) to suspend an approval, or
- (b) to impose a restriction in relation to the performance of a service,  
must state the period for which the suspension or restriction is to have effect.
- (4) A warning notice about a proposal to publish a statement must set out the terms of the statement.
- (5) If the FCA decides to take action against a sponsor under section 88A, it must give the sponsor a decision notice.
- (6) A decision notice about the imposition of a penalty must state the amount of the penalty.
- (7) A decision notice about—
  - (a) the suspension of an approval, or
  - (b) the imposition of a restriction in relation to the performance of a service,  
must state the period for which the suspension or restriction is to have effect.
- (8) A decision notice about the publication of a statement must set out the terms of the statement.
- (9) If the FCA decides to take action against a sponsor under section 88A, the sponsor may refer the matter to the Tribunal.

#### **88C Action under s.88A: statement of policy**

- (1) The FCA must prepare and issue a statement of its policy with respect to—
  - (a) the imposition of penalties, suspensions or restrictions under section 88A,
  - (b) the amount of penalties under that section, and
  - (c) the period for which suspensions or restrictions under that section 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 contravention in question in relation to the nature of the requirement concerned,
  - (b) the extent to which that contravention was deliberate or reckless, and
  - (c) whether the sponsor concerned is an individual.
- (3) The FCA may at any time alter or replace a statement issued under this section.
- (4) If a statement issued under this section is altered or replaced, the FCA must issue the altered or replacement statement.
- (5) In exercising, or deciding whether to exercise, its power under section 88A in the case of any particular contravention, the FCA must have regard to any statement of policy published under this section and in force at a time when the contravention in question occurred.

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- (6) A statement issued under this section 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) The FCA may charge a reasonable fee for providing a person with a copy of the statement.
- (8) The FCA must, without delay, give the Treasury a copy of any statement which it publishes under this section.

#### **88D Statement of policy under s.88C: procedure**

- (1) Before issuing a statement under section 88C, the FCA must publish a draft of the proposed statement in the way appearing to the FCA to be best calculated to bring it to the attention of the public.
- (2) The draft must be accompanied by notice that representations about the proposal may be made to the FCA within a specified time.
- (3) Before issuing the proposed statement, the FCA must have regard to any representations made to it in accordance with subsection (2).
- (4) If the FCA issues the proposed statement it must publish an account, in general terms, of—
  - (a) the representations made to it in accordance with subsection (2), and
  - (b) its response to them.
- (5) If the statement differs from the draft published under subsection (1) in a way which is, in the opinion of the FCA, significant, the FCA must (in addition to complying with subsection (4)) publish details of the difference.
- (6) The FCA may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1).
- (7) This section also applies to a proposal to alter or replace a statement.

#### **88E Powers exercisable to advance operational objectives**

- (1) The FCA may take action against a sponsor under this section if it considers that it is desirable to do so in order to advance one or more of its operational objectives.
- (2) If the FCA is entitled to take action under this section against a sponsor, it may—
  - (a) suspend, for such period as it considers appropriate, the sponsor's approval, or
  - (b) impose, for such period as it considers appropriate, such limitations or other restrictions in relation to the performance of services to which the sponsor's approval relates as it considers appropriate.
- (3) A suspension may relate only to the performance in specified circumstances of a service to which the approval relates.
- (4) A restriction may, in particular, be imposed so as to require the sponsor to take, or refrain from taking, specified action.

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- (5) The FCA may—
  - (a) withdraw a suspension or restriction, or
  - (b) vary a suspension or restriction so as to reduce the period for which it has effect or otherwise to limit its effect.
- (6) A person against whom the FCA takes action under this section may refer the matter to the Tribunal.

### **88F Action under s.88E: procedure**

- (1) Action against a sponsor under section 88E takes effect—
  - (a) immediately, if the notice given under subsection (3) so provides, or
  - (b) on such later date as may be specified in the notice.
- (2) If the FCA—
  - (a) proposes to take action against a sponsor under that section, or
  - (b) takes action against a sponsor under that section with immediate effect,
 it must give the sponsor written notice.
- (3) The notice must—
  - (a) give details of the action,
  - (b) state the FCA's reasons for taking the action and for its determination as to when the action takes effect,
  - (c) inform the sponsor that the sponsor may make representations to the FCA within such period as may be specified in the notice (whether or not the matter has been referred to the Tribunal),
  - (d) inform the sponsor of when the action takes effect,
  - (e) inform the sponsor of the right to refer the matter to the Tribunal, and
  - (f) give an indication of the procedure on such a reference.
- (4) The FCA may extend the period allowed under the notice for making representations.
- (5) If the FCA decides—
  - (a) to take the action in the way proposed, or
  - (b) if the action has taken effect, not to rescind it,
 the FCA must give the sponsor written notice.
- (6) If the FCA decides—
  - (a) not to take the action in the way proposed,
  - (b) to take action under section 88E that differs from the action originally proposed, or
  - (c) to rescind action which has taken effect,
 the FCA must give the sponsor written notice.
- (7) A notice under subsection (5) must—
  - (a) inform the sponsor of the right to refer the matter to the Tribunal, and
  - (b) give an indication of the procedure on such a reference.
- (8) A notice under subsection (6)(b) must comply with subsection (3).”



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- (5) In section 392 (warning and decisions notices: application of provisions relating to third party rights and access to evidence)—
- (a) for “section 89(2),” substitute “ section 88B(1), ”, and
  - (b) for “section 89(3),” substitute “ section 88B(5), ”.
- (6) In section 395(13) (meaning of “supervisory notice”), after paragraph (bza) insert—  
“(bzb) section 88F(2), (5) or (6)(b);”.

#### Commencement Information

**I20** S. 18 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

## 19 Primary information providers

- (1) In Part 6 of FSMA 2000 (official listing), after section 89O insert—

*“Primary information providers*

### 89P Primary information providers

- (1) Part 6 rules may require issuers of financial instruments to use primary information providers for the purpose of giving information of a specified description to a market of a specified description.
- (2) “Primary information provider” means a person approved by the FCA for the purposes of this section.
- (3) “Specified” means specified in the Part 6 rules.
- (4) Part 6 rules made by virtue of subsection (1) may—
- (a) provide for the FCA to maintain a list of providers;
  - (b) impose requirements on a provider in relation to the giving of information or of information of a specified description;
  - (c) specify the circumstances in which a person is qualified for being approved as a provider;
  - (d) provide for limitations or other restrictions to be imposed on the giving of information to which an approval relates (whether or not the approval has already been granted);
  - (e) provide for the approval of a provider to be suspended on the application of the provider.
- (5) If the FCA proposes—
- (a) to refuse a person's application under information provider rules,
  - (b) to impose limitations or other restrictions on the giving of information to which a person's approval relates, or
  - (c) to cancel a person's approval as a provider otherwise than at the person's request,
- it must give the person a warning notice.
- (6) If the FCA decides—

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- (a) to grant the application under information provider rules,
  - (b) not to impose limitations or other restrictions on the giving of information to which a person's approval relates, or
  - (c) not to cancel the approval,
- it must give the person concerned written notice of its decision.
- (7) If the FCA decides—
- (a) to refuse to grant the application under information provider rules,
  - (b) to impose limitations or other restrictions on the giving of information to which a person's approval relates, or
  - (c) to cancel the approval,
- it must give the person concerned a decision notice.
- (8) A person to whom a decision notice is given under this section may refer the matter to the Tribunal.
- (9) In this section any reference to an application under information provider rules means—
- (a) an application for approval as a provider,
  - (b) an application for the suspension of an approval as a provider,
  - (c) an application for the withdrawal of the suspension of an approval as a provider, or
  - (d) an application for the withdrawal or variation of a limitation or other restriction on the giving of information to which a provider's approval relates.

### **89Q Disciplinary powers: contravention of s.89P(4)(b) or (d)**

- (1) The FCA may take action against a provider under this section if it considers that the provider has contravened a requirement or restriction imposed on the provider by rules made as a result of section 89P(4)(b) or (d).
- (2) If the FCA is entitled to take action under this section against a provider, it may do one or more of the following—
- (a) impose a penalty on the provider of such amount as it considers appropriate;
  - (b) suspend, for such period as it considers appropriate, the provider's approval;
  - (c) impose, for such period as it considers appropriate, such limitations or other restrictions in relation to the giving by the provider of information as it considers appropriate;
  - (d) publish a statement to the effect that the provider has contravened a requirement or restriction imposed on the provider by rules made as a result of section 89P(4)(b) or (d).
- (3) The period for which a suspension or restriction is to have effect may not exceed 12 months.
- (4) A suspension may relate only to the giving of information in specified circumstances.

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- (5) A restriction may, in particular, be imposed so as to require the provider to take, or refrain from taking, specified action.
- (6) The FCA may—
  - (a) withdraw a suspension or restriction, or
  - (b) vary a suspension or restriction so as to reduce the period for which it has effect or otherwise to limit its effect.
- (7) The FCA may not take action against a provider under this section after the end of the limitation period unless, before the end of that period, it has given a warning notice to the provider under section 89R(1).
- (8) “The limitation period” means the period of 3 years beginning with the first day on which the FCA knew that the provider had contravened the requirement or restriction.
- (9) For this purpose the FCA is to be treated as knowing that a provider has contravened a requirement or restriction if it has information from which that can reasonably be inferred.

#### **89R Action under s.89Q: procedure and right to refer to Tribunal**

- (1) If the FCA proposes to take action against a provider under section 89Q, it must give the provider a warning notice.
- (2) A warning notice about a proposal to impose a penalty must state the amount of the penalty.
- (3) A warning notice about a proposal—
  - (a) to suspend an approval, or
  - (b) to impose a restriction in relation to the giving of information,must state the period for which the suspension or restriction is to have effect.
- (4) A warning notice about a proposal to publish a statement must set out the terms of the statement.
- (5) If the FCA decides to take action against a provider under section 89Q, it must give the provider a decision notice.
- (6) A decision notice about the imposition of a penalty must state the amount of the penalty.
- (7) A decision notice about—
  - (a) the suspension of an approval, or
  - (b) the imposition of a restriction in relation to the giving of information,must state the period for which the suspension or restriction is to have effect.
- (8) A decision notice about the publication of a statement must set out the terms of the statement.
- (9) If the FCA decides to take action against a provider under section 89Q, the provider may refer the matter to the Tribunal.

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### **89S Action under s.89Q: statement of policy**

- (1) The FCA must prepare and issue a statement of its policy with respect to—
  - (a) the imposition of penalties, suspensions or restrictions under section 89Q,
  - (b) the amount of penalties under that section,
  - (c) the period for which suspensions or restrictions under that section are to have effect, and
  - (d) the matters in relation to which suspensions or restrictions under that section 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 contravention in question in relation to the nature of the requirement concerned,
  - (b) the extent to which that contravention was deliberate or reckless, and
  - (c) whether the provider concerned is an individual.
- (3) The FCA may at any time alter or replace a statement issued under this section.
- (4) If a statement issued under this section is altered or replaced, the FCA must issue the altered or replacement statement.
- (5) In exercising, or deciding whether to exercise, its power under section 89Q in the case of any particular contravention, the FCA must have regard to any statement of policy published under this section and in force at a time when the contravention in question occurred.
- (6) A statement issued under this section 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) The FCA may charge a reasonable fee for providing a person with a copy of the statement.
- (8) The FCA must, without delay, give the Treasury a copy of any statement which it publishes under this section.

### **89T Statement of policy under s.89S: procedure**

- (1) Before issuing a statement under section 89S, the FCA must publish a draft of the proposed statement in the way appearing to the FCA to be best calculated to bring it to the attention of the public.
- (2) The draft must be accompanied by notice that representations about the proposal may be made to the FCA within a specified time.
- (3) Before issuing the proposed statement, the FCA must have regard to any representations made to it in accordance with subsection (2).
- (4) If the FCA issues the proposed statement it must publish an account, in general terms, of—

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- (a) the representations made to it in accordance with subsection (2); and
  - (b) its response to them.
- (5) If the statement differs from the draft published under subsection (1) in a way which is, in the opinion of the FCA, significant, the FCA must (in addition to complying with subsection (4)) publish details of the difference.
- (6) The FCA may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1).
- (7) This section also applies to a proposal to alter or replace a statement.

### **89U Powers exercisable to advance operational objectives**

- (1) The FCA may take action against a provider under this section if it considers that it is desirable to do so in order to advance one or more of its operational objectives.
- (2) If the FCA is entitled to take action under this section against a provider, it may—
- (a) suspend, for such period as it considers appropriate, the provider's approval, or
  - (b) impose, for such period as it considers appropriate, such limitations or other restrictions in relation to the giving by the provider of information as it considers appropriate.
- (3) A suspension may relate only to the giving of information in specified circumstances.
- (4) A restriction may, in particular, be imposed so as to require the provider to take, or refrain from taking, specified action.
- (5) The FCA may—
- (a) withdraw a suspension or restriction, or
  - (b) vary a suspension or restriction so as to reduce the period for which it has effect or otherwise to limit its effect.
- (6) A person against whom the FCA takes action under this section may refer the matter to the Tribunal.

### **89V Action under s.89U: procedure**

- (1) Action against a provider under section 89U takes effect—
- (a) immediately, if the notice given under subsection (2) so provides, or
  - (b) on such later date as may be specified in the notice.
- (2) If the FCA—
- (a) proposes to take action against a provider under that section, or
  - (b) takes action against a provider under that section with immediate effect,
- it must give the provider written notice.
- (3) The notice must—
- (a) give details of the action,

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- (b) state the FCA's reasons for taking the action and for its determination as to when the action takes effect,
  - (c) inform the provider that the provider may make representations to the FCA within such period as may be specified in the notice (whether or not the matter has been referred to the Tribunal),
  - (d) inform the provider of when the action takes effect,
  - (e) inform the provider of the right to refer the matter to the Tribunal, and
  - (f) give an indication of the procedure on such a reference.
- (4) The FCA may extend the period allowed under the notice for making representations.
- (5) If the FCA decides—
- (a) to take the action in the way proposed, or
  - (b) if the action has taken effect, not to rescind it,
- the FCA must give the provider written notice.
- (6) If the FCA decides—
- (a) not to take the action in the way proposed,
  - (b) to take action under section 89U that differs from the action originally proposed, or
  - (c) to rescind action which has taken effect,
- the FCA must give the provider written notice.
- (7) A notice under subsection (5) must—
- (a) inform the provider of the right to refer the matter to the Tribunal, and
  - (b) give an indication of the procedure on such a reference.
- (8) A notice under subsection (6)(b) must comply with subsection (3).”
- (2) In section 395(13) (meaning of “supervisory notice”), after paragraph (bzb) (as inserted by section 18(6)) insert—
- “(bzc) section 89V(2), (5) or (6)(b);”.

#### Commencement Information

**I21** S. 19 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

VALID FROM 01/04/2013

#### **20 Penalties for breach of Part 6 rules**

In section 91(6) of FSMA 2000 (penalties for breach of Part 6 rules: limitation period), for “two years” substitute “ 3 years ”.

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VALID FROM 01/04/2013

**21 Repeal of competition scrutiny power**

Section 95 of FSMA 2000 (competition scrutiny) is repealed.

VALID FROM 01/04/2013

*Control of business transfers*

**22 Control of business transfers**

- (1) In section 104 of FSMA 2000 (control of business transfers) omit “or banking business transfer scheme”.
- (2) Schedule 6 contains further amendments of Part 7 of FSMA 2000 (control of business transfers).

VALID FROM 01/04/2013

*Hearings and appeals*

**23 Proceedings before Tribunal**

- (1) Part 9 of FSMA 2000 (hearings and appeals) is amended as follows.
- (2) In section 133 (proceedings before Tribunal: general provision)—
  - (a) in subsection (1)(a), for “the Authority” substitute “ the FCA or the PRA ”,
  - (b) for subsections (5) and (6) substitute—
    - “(5) In the case of a disciplinary reference or a reference under section 393(11), the Tribunal—
      - (a) must determine what (if any) is the appropriate action for the decision-maker to take in relation to the matter; and
      - (b) on determining the reference, must remit the matter to the decision-maker with such directions (if any) as the Tribunal considers appropriate for giving effect to its determination.
    - (6) In any other case, the Tribunal must determine the reference or appeal by either—
      - (a) dismissing it; or
      - (b) remitting the matter to the decision-maker with a direction to reconsider and reach a decision in accordance with the findings of the Tribunal.
- (6A) The findings mentioned in subsection (6)(b) are limited to findings as to—

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- (a) issues of fact or law;
  - (b) the matters to be, or not to be, taken into account in making the decision; and
  - (c) the procedural or other steps to be taken in connection with the making of the decision.”, and
- (c) after subsection (7) insert—
- “(7A) A reference is a “disciplinary reference” for the purposes of this section if it is in respect of any of the following decisions—
- (a) a decision to impose a penalty under section 63A;
  - (b) a decision to take action under section 66;
  - (c) a decision to take action under section 87M;
  - (d) a decision to take action under section 88A;
  - (e) a decision to take action under section 89K;
  - (f) a decision to take action under section 89Q;
  - (g) a decision to take action under section 91;
  - (h) a decision to take action under section 123;
  - (i) a decision to take action under section 131G;
  - (j) a decision to take action under section 192K;
  - (k) a decision to publish a statement under section 205, impose a penalty under section 206 or suspend a permission or impose a restriction under section 206A;
  - (l) a decision to take action under section 249;
  - (m) a decision to publish a statement under section 312E or impose a penalty under section 312F;
  - (n) a decision to take action under section 345 or 345A.”
- (3) In section 133A (proceedings before Tribunal: decision and supervisory notices, etc)
- (a) in subsection (1)—
    - (i) after “determining” insert “ in accordance with section 133(5) ”, and
    - (ii) for the words from “given by the Authority” to “the Authority would” substitute “ given by a body, the Tribunal may not direct the body to take action which it would ”,
  - (b) omit subsections (2) and (3),
  - (c) in subsection (4), for the words from the beginning to “a decision notice—” substitute “ The action specified in a decision notice must not be taken—”, and
  - (d) in subsection (5)—
    - (i) for “the Authority” substitute “ the FCA or the PRA ”, and
    - (ii) for “the Authority's” substitute “ its ”.
- (4) In section 133B (offences), in subsection (1)(a), for “the Authority” substitute “ the FCA or the PRA ”.
- (5) In section 136 (funding of the legal assistance scheme), in subsections (1), (2), (6) (a), (7) (in both places) and (8), for “Authority” substitute “ FCA ”.



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## *Rules and guidance*

### **24 Rules and guidance**

(1) For sections 138 to 164 of FSMA 2000 substitute—

#### **“PART 9A**

#### **RULES AND GUIDANCE**

#### **CHAPTER 1**

#### **RULE-MAKING POWERS**

#### *General rule-making powers of the FCA and the PRA*

#### **137A The FCA's general rules**

- (1) The FCA may make such rules applying to authorised persons—
  - (a) with respect to the carrying on by them of regulated activities, or
  - (b) with respect to the carrying on by them of activities which are not regulated activities,as appear to the FCA to be necessary or expedient for the purpose of advancing one or more of its operational objectives.
- (2) Rules made under this section are referred to in this Act as the FCA's general rules.
- (3) The FCA's general rules may make provision applying to authorised persons even though there is no relationship between the authorised persons to whom the rules will apply and the persons whose interests will be protected by the rules.
- (4) The FCA's general rules may contain requirements which take into account, in the case of an authorised person who is a member of a group, any activity of another member of the group.
- (5) The FCA's general rules may not—
  - (a) make provision prohibiting an EEA firm from carrying on, or holding itself out as carrying on, any activity which it has permission conferred by Part 2 of Schedule 3 to carry on in the United Kingdom;
  - (b) make provision, as respects an EEA firm, about any matter for which responsibility is, under any of the single market directives or the emission allowance auctioning regulation, reserved to the firm's home state regulator.

#### **137B FCA general rules: clients' money, right to rescind etc.**

- (1) Rules relating to the handling of money held by an authorised person in specified circumstances (“clients' money”) may—

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- (a) make provision which results in that clients' money being held on trust in accordance with the rules,
  - (b) treat 2 or more accounts as a single account for specified purposes (which may include the distribution of money held in the accounts),
  - (c) authorise the retention by the authorised person of interest accruing on the clients' money, and
  - (d) make provision as to the distribution of such interest which is not to be retained by the authorised person.
- (2) An institution with which an account is kept in pursuance of rules relating to the handling of clients' money does not incur any liability as constructive trustee if the money is wrongfully paid from the account, unless the institution permits the payment—
- (a) with knowledge that it is wrongful, or
  - (b) having deliberately failed to make enquiries in circumstances in which a reasonable and honest person would have done so.
- (3) Rules may—
- (a) confer rights on persons to rescind agreements with, or withdraw offers to, authorised persons within a specified period, and
  - (b) make provision, in respect of authorised persons and persons exercising those rights, for the restitution of property and the making or recovery of payments where those rights are exercised.
- (4) “Rules” means general rules of the FCA.
- (5) “Specified” means specified in the rules.

### **137C FCA general rules: cost of credit and duration of credit agreements**

- (1) The power of the FCA to make general rules includes power to make rules prohibiting authorised persons from—
- (a) entering into a regulated credit agreement that provides for—
    - (i) the payment by the borrower of charges of a specified description, or
    - (ii) the payment by the borrower over the duration of the agreement of charges that, taken with the charges paid under one or more other agreements which are treated by the rules as being connected with it, exceed, or are capable of exceeding, a specified amount;
  - (b) imposing charges of a specified description or exceeding a specified amount on a person who is the borrower under a regulated credit agreement;
  - (c) entering into a regulated credit agreement that—
    - (i) is capable of remaining in force after the end of a specified period,
    - (ii) when taken with one or more other regulated credit agreements which are treated by the rules as being connected with it, would be capable of remaining in force after the end of a specified period, or

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- (iii) is treated by the rules as being connected with a number of previous regulated credit agreements that exceeds a specified maximum;
  - (d) exercising the rights of the lender under a regulated credit agreement (as a person for the time being entitled to exercise them) in a way that enables the agreement to remain in force after the end of a specified period or enables the imposition on the borrower of charges within paragraph (a)(i) or (ii).
- (2) “Charges” means charges payable, by way of interest or otherwise, in connection with the provision of credit under the regulated credit agreement, whether or not the agreement itself makes provision for them and whether or not the person to whom they are payable is a party to the regulated credit agreement or an authorised person.
- (3) “The borrower” includes—
  - (a) any person providing a guarantee or indemnity under the regulated credit agreement, and
  - (b) a person to whom the rights and duties of the borrower under the regulated credit agreement or a person falling within paragraph (a) have passed by assignment or operation of law.
- (4) In relation to an agreement entered into or obligation imposed in contravention of the rules, the rules may—
  - (a) provide for the agreement or obligation to be unenforceable against any person or specified person;
  - (b) provide for the recovery of any money or other property paid or transferred under the agreement or other obligation by any person or specified person;
  - (c) provide for the payment of compensation for any loss sustained by any person or specified person as a result of paying or transferring any money or other property under the agreement or obligation.
- (5) The provision that may be made as a result of subsection (4) includes provision corresponding to that made by section 30 (enforceability of agreements resulting from unlawful communications).
- (6) A credit agreement is a contract of the kind mentioned in paragraph 23 of Schedule 2, other than one under which the obligation of the borrower to repay is secured on land: and a credit agreement is a “regulated credit agreement” if any of the following is a regulated activity—
  - (a) entering into or administering the agreement;
  - (b) exercising or being able to exercise the rights of the lender under the agreement.
- (7) In this section—
  - (a) “specified amount” means an amount specified in or determined in accordance with the rules;
  - (b) “specified period” means a period of a duration specified in or determined in accordance with the rules;
  - (c) “specified person” means a person of a description specified in the rules;
  - (d) subject to that, “specified” means specified in the rules.

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### 137D FCA general rules: product intervention

- (1) The power of the FCA to make general rules includes power to make such rules (“product intervention rules”) prohibiting authorised persons from doing anything mentioned in subsection (2) as appear to it to be necessary or expedient for the purpose of advancing—
  - (a) the consumer protection objective or the competition objective, or
  - (b) if the Treasury by order provide for this paragraph to apply, the integrity objective.
- (2) Those prohibited things are—
  - (a) entering into specified agreements with any person or specified person;
  - (b) entering into specified agreements with any person or specified person unless requirements specified in the rules have been satisfied;
  - (c) doing anything that would or might result in the entering into of specified agreements by persons or specified persons, or the holding by them of a beneficial or other kind of economic interest in specified agreements;
  - (d) doing anything within paragraph (c) unless requirements specified in the rules have been satisfied.
- (3) “Specified agreements” means agreements of a description specified in general rules made by the FCA.
- (4) “Specified persons” means persons of a description specified in general rules made by the FCA.
- (5) It is of no relevance—
  - (a) whether the entering into of a specified agreement itself constitutes the carrying on of a regulated activity, or
  - (b) whether, in a case within subsection (2)(c) or (d), the specified agreements are with the authorised persons concerned or anyone else.
- (6) The requirements that may be specified under subsection (2)(b) or (d) include in particular—
  - (a) requirements as to the terms and conditions that are to be, or are not to be, included in specified or other agreements, and
  - (b) requirements limiting invitations or inducements to enter into specified or other agreements to those made to specified persons.
- (7) In relation to contraventions of product intervention rules, the rules may—
  - (a) provide for a relevant agreement or obligation to be unenforceable against any person or specified person;
  - (b) provide for the recovery of any money or other property paid or transferred under a relevant agreement or obligation by any person or specified person;
  - (c) provide for the payment of compensation for any loss sustained by any person or specified person as a result of paying or transferring any money or other property under a relevant agreement or obligation.
- (8) “A relevant agreement or obligation” means—

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- (a) a specified agreement;
  - (b) an agreement entered into in contravention of any rule made as a result of subsection (2)(c) or (d);
  - (c) an obligation to which a person is subject as a result of exercising a right conferred by an agreement within paragraph (a) or (b) of this subsection.
- (9) The provision that may be made as a result of subsection (7) includes provision corresponding to that made by section 30 (enforceability of agreements resulting from unlawful communications).
- (10) In this section—
- (a) any reference to entering into an agreement includes inviting or inducing persons to enter into an agreement, and
  - (b) any reference to an agreement includes an arrangement.

### **137E Orders under s.137D(1)(b)**

- (1) No order may be made under section 137D(1)(b) unless—
- (a) a draft of the order has been laid before Parliament and approved by a resolution of each House, or
  - (b) subsection (3) applies.
- (2) Subsection (3) applies if an order under section 137D(1)(b) contains a statement that the Treasury are of the opinion that, by reason of urgency, it is necessary to make the order without a draft being so laid and approved.
- (3) Where this subsection applies the order—
- (a) must be laid before Parliament after being made, and
  - (b) ceases to have effect at the end of the relevant period unless before the end of that period the order is approved by a resolution of each House of Parliament (but without that affecting anything done under the order or the power to make a new order).
- (4) The “relevant period” is a period of 28 days beginning with the day on which the order is made.
- (5) In calculating the relevant period no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.

### **137F Rules requiring participation in benchmark**

- (1) The power of the FCA to make general rules includes power to make rules requiring authorised persons to take specified steps in connection with the setting by a specified person of a specified benchmark.
- (2) The rules may in particular—
- (a) require authorised persons to whom the rules apply to provide information of a specified kind, or expressions of opinion as to specified matters, to persons determined in accordance with the rules;
  - (b) make provision about the form in which and the time by which any information or expression of opinion is to be provided;

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- (c) make provision by reference to any code or other document published by the person responsible for the setting of the benchmark or by any other person determined in accordance with the rules, as the code or other document has effect from time to time.
- (3) Rules making provision of the kind mentioned in subsection (2)(c) may provide that the code or other document is to be capable of affecting obligations imposed by the rules only if specified requirements are met in relation to it.
- (4) In this section—
- “benchmark” has the meaning given in section 22(6);
  - “specified” means specified in or determined in accordance with the rules.

### **137G The PRA's general rules**

- (1) The PRA may make such rules applying to PRA-authorised persons—
- (a) with respect to the carrying on by them of regulated activities, or
  - (b) with respect to the carrying on by them of activities which are not regulated activities,
- as appear to the PRA to be necessary or expedient for the purpose of advancing any of its objectives.
- (2) Rules made under this section are referred to in this Act as the PRA's general rules.
- (3) The PRA's general rules may make provision applying to PRA-authorised persons even though there is no relationship between the PRA-authorised persons to whom the rules will apply and the persons whose interests will be protected by the rules.
- (4) The PRA's general rules may contain requirements which take into account, in the case of a PRA-authorised person who is a member of a group, any activity of another member of the group.
- (5) The PRA's general rules may not—
- (a) make provision prohibiting an EEA firm from carrying on, or holding itself out as carrying on, any activity which it has permission conferred by Part 2 of Schedule 3 to carry on in the United Kingdom;
  - (b) make provision, as respects an EEA firm, about any matter for which responsibility is, under any of the single market directives or the emission allowance auctioning regulation, reserved to the firm's home state regulator.

### **137H General rules about remuneration**

- (1) This section applies where either regulator exercises its power to make general rules so as to make rules prohibiting persons, or persons of a specified description, from being remunerated in a specified way.
- (2) The rules may—

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- (a) provide that any provision of an agreement that contravenes such a prohibition is void, and
  - (b) provide for the recovery of any payment made, or other property transferred, in pursuance of a provision that is void by virtue of paragraph (a).
- (3) A provision that, at the time the rules are made, is contained in an agreement made before that time may not be rendered void under subsection (2)(a) unless it is subsequently amended so as to contravene a prohibition referred to in that subsection.

### **137I Remuneration policies: Treasury direction to consider compliance**

- (1) This section applies where either regulator exercises its power to make general rules so as to make rules requiring authorised persons, or authorised persons of a description specified in the rules, to act in accordance with a remuneration policy.
- (2) A “remuneration policy” is a policy about the remuneration by an authorised person of—
  - (a) officers,
  - (b) employees, or
  - (c) other persons,of a description specified in the rules.
- (3) The Treasury may direct the regulator to consider whether the remuneration policies of authorised persons specified in the direction (or of authorised persons of a description so specified) comply with requirements imposed by rules made by that regulator as to the contents of the policies.
- (4) Before giving a direction under subsection (3), the Treasury must consult the regulator concerned.
- (5) If the regulator considers that a remuneration policy of an authorised person fails to make provision which complies with the requirements mentioned in subsection (3), the regulator must take such steps as it considers appropriate to deal with the failure.
- (6) The steps that the regulator may take include requiring the remuneration policy to be revised.
- (7) “Authorised person”, in relation to the PRA, means PRA-authorised person.

### **137J Rules about recovery plans: duty to consult**

- (1) Before either regulator prepares a draft of any general rules that require each relevant person (or each relevant person of a specified description) to prepare a recovery plan, the regulator must consult—
  - (a) the Treasury, and
  - (b) the Bank of England.
- (2) A “relevant person” is an authorised person in relation to whom any power under Part 1 of the Banking Act 2009 (special resolution regime) is exercisable.

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- (3) A “recovery plan” is a document containing information within subsection (4) or (5).
- (4) Information is within this subsection if it relates to action to be taken to secure that, in the event of specified circumstances affecting the carrying on of the business (or any part of the business) of an authorised person—
  - (a) the business of the authorised person, or
  - (b) a specified part of that business,
 is capable of being carried on (whether or not by the authorised person and whether or not in the same way as previously).
- (5) Information is within this subsection if it would facilitate the carrying on of the business (or any part of the business) of an authorised person by any other person.
- (6) In this section—
  - “authorised person”, in relation to the PRA, means PRA-  
authorised person;
  - “specified” means specified in the rules.

### **137K PRA rules about resolution plans: duty to consult**

- (1) Before the PRA prepares a draft of any general rules that require each relevant person (or each relevant person of a specified description) to prepare a resolution plan, the PRA must consult—
  - (a) the Treasury, and
  - (b) the Bank of England.
- (2) A “relevant person” is a PRA-  
authorised person in relation to whom any power under Part 1 of the Banking Act 2009 (special resolution regime) is exercisable.
- (3) A “resolution plan” is a document containing information within subsection (4) or (5).
- (4) Information is within this subsection if it relates to action to be taken in the event of—
  - (a) circumstances arising in which it is likely that the business (or any part of the business) of an authorised person will fail, or
  - (b) the failure of the business (or any part of the business) of an authorised person.
- (5) Information is within this subsection if it would facilitate anything falling to be done by any person in consequence of that failure.
- (6) An example of information within subsection (5) is information that, in the event of that failure, would facilitate—
  - (a) planning by the Treasury in relation to the possible exercise of any of its powers under Part 1 of the Banking Act 2009, or
  - (b) planning by the Bank of England in relation to the possible exercise of any of its powers under Part 1, 2 or 3 of that Act.



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### **137L Interpretation of sections 137J and 137K**

- (1) This section has effect for the interpretation of sections 137J and 137K.
- (2) References to the taking of action include the taking of action by—
  - (a) the authorised person,
  - (b) any other person in the same group as the authorised person, or
  - (c) a partnership of which the authorised person is a member.
- (3) In subsection (2)(b) the definition of “group” in section 421 applies with the omission of subsection (1)(e) and (f) of that section.
- (4) References to the business of an authorised person include the business of—
  - (a) any person in the same group as the authorised person, and
  - (b) a partnership of which the authorised person is a member.
- (5) For the purposes of section 137K the cases in which the business (or any part of the business) of the authorised person (“A”) is to be regarded as having failed include those where—
  - (a) A enters insolvency,
  - (b) any of the stabilisation options in Part 1 of the Banking Act 2009 is achieved in relation to A, or
  - (c) A falls to be taken for the purposes of the compensation scheme to be unable, or likely to be unable, to satisfy claims against A.
- (6) In subsection (5)(a) “insolvency” includes—
  - (a) bankruptcy,
  - (b) liquidation,
  - (c) bank insolvency,
  - (d) administration,
  - (e) bank administration,
  - (f) receivership,
  - (g) a composition between A and A's creditors, and
  - (h) a scheme of arrangement of A's affairs.

### **137M Special provision relating to adequacy of resolution plans**

- (1) This section applies where the PRA has exercised its power to make general rules so as to make rules requiring PRA-authorised persons, or PRA-authorised persons of a specified description, to prepare a resolution plan.
- (2) The PRA must consult the Treasury and the Bank of England (“the Bank”) about the adequacy of resolution plans required to be prepared by those rules, so far as relating to any matter which may be relevant to the exercise by the Treasury or the Bank of any power under Part 1, 2 or 3 of the Banking Act 2009.
- (3) After being consulted under subsection (2)—
  - (a) the Treasury or the Bank may notify the PRA that, in the opinion of the Treasury or the Bank, a resolution plan fails to make satisfactory provision in relation to any such matter, and

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- (b) if the Treasury or the Bank give a notification under paragraph (a), the Treasury or the Bank must give reasons for being of that opinion to the PRA.
- (4) The PRA must have regard to any notification given under subsection (3)(a) before considering whether any resolution plan makes satisfactory provision in relation to any such matter.
- (5) If—
  - (a) a notification is given under subsection (3)(a), but
  - (b) the PRA is nonetheless of the opinion that the resolution plan makes satisfactory provision in relation to any such matter,
 the PRA must give reasons for being of that opinion to the person who gave the notification.
- (6) In this section—
  - “resolution plan” has the same meaning as in section 137K;
  - “specified” means specified in the rules.

### **137N Recovery plans and resolution plans: restriction on duty of confidence**

- (1) A contractual or other requirement imposed on a person (“P”) to keep information in confidence does not apply if—
  - (a) the information is or may be relevant to anything required to be done as a result of a requirement imposed by general rules made by either regulator to prepare a recovery plan or a resolution plan,
  - (b) an authorised person or a skilled person requests or requires P to provide the information for the purpose of securing that those things are done, and
  - (c) the regulator in question has approved the making of the request or the imposition of the requirement before it is made or imposed.
- (2) An authorised person may provide information (whether received under subsection (1) or otherwise) that would otherwise be subject to a contractual or other requirement to keep it in confidence if it is provided for the purposes of anything required to be done as a result of a requirement imposed by general rules to prepare a recovery plan or a resolution plan.
- (3) In this section, references to preparing a recovery plan or a resolution plan include—
  - (a) keeping that plan up to date, and
  - (b) collecting specified information for the purposes of that plan.
- (4) In this section, references to a skilled person are to a person appointed in accordance with section 166A.
- (5) In this section—
  - “authorised person”, in relation to rules of the PRA, means a PRA-authorised person;
  - “specified” means specified in the rules.

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### *Specific rule-making powers*

#### **137O Threshold condition code**

- (1) Either regulator may make rules supplementing any of the conditions for the time being set out in or specified under Schedule 6 that is expressed to be relevant to the discharge of that regulator's functions.
- (2) Rules made under this section by a regulator are referred to as that regulator's "threshold condition code".
- (3) A threshold condition code may in particular—
  - (a) specify requirements which a person must satisfy in order to be regarded as satisfying a particular condition in relation to any regulated activities;
  - (b) specify matters which are, or may be, or are not, relevant in determining whether a person satisfies a particular condition in relation to any regulated activities.
- (4) Except where a regulator's threshold condition code so provides, it is not to be regarded as limiting the matters that are, or may be, relevant in determining whether a person satisfies a particular condition in relation to any regulated activities.
- (5) A threshold condition code cannot impose obligations that are enforceable against authorised persons otherwise than through the threshold conditions.

#### **137P Control of information rules**

- (1) Either regulator may make rules ("control of information rules") about the disclosure and use of information held by an authorised person ("A").
- (2) Control of information rules may—
  - (a) require the withholding of information which A would otherwise be required to disclose to a person ("B") for or with whom A does business in the course of carrying on any regulated or other activity;
  - (b) specify circumstances in which A may withhold information which A would otherwise be required to disclose to B;
  - (c) require A not to use for the benefit of B information—
    - (i) which is held by A, and
    - (ii) which A would otherwise be required to use for the benefit of B;
  - (d) specify circumstances in which A may decide not to use for the benefit of B information within paragraph (c).

#### **137Q Price stabilising rules**

- (1) The FCA may make rules ("price stabilising rules") as to—
  - (a) the circumstances and manner in which,
  - (b) the conditions subject to which, and
  - (c) the time when or the period during which,

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action may be taken for the purpose of stabilising the price of investments of specified kinds.

- (2) Price stabilising rules—
  - (a) are to be made so as to apply only to authorised persons;
  - (b) may make different provision in relation to different kinds of investment.
- (3) The FCA may make rules which, for the purposes of the relevant exemption provisions, treat a person who acts or engages in conduct—
  - (a) for the purpose of stabilising the price of investments, and
  - (b) in conformity with such provisions corresponding to price stabilising rules and made by a body or authority outside the United Kingdom as may be specified in rules made by the FCA,
 as acting, or engaging in that conduct, for that purpose and in conformity with price stabilising rules.
- (4) “The relevant exemption provisions” are the following provisions of the Financial Services Act 2012—
  - (a) section 90(9)(b);
  - (b) section 91(4)(a).

### **137R Financial promotion rules**

- (1) The FCA may make rules applying to authorised persons about the communication by them, or their approval of the communication by others, of invitations or inducements—
  - (a) to engage in investment activity, or
  - (b) to participate in a collective investment scheme.
- (2) Rules under this section may, in particular, make provision about the form and content of communications.
- (3) Subsection (1) applies only to communications which—
  - (a) if made by a person other than an authorised person, without the approval of an authorised person, would contravene section 21(1), and
  - (b) may be made by an authorised person without contravening section 238(1).
- (4) But subsection (3) does not prevent the FCA from making rules under subsection (1) in relation to a communication that would not contravene section 21(1) if made by a person other than an authorised person, without the approval of an authorised person, if the conditions set out in subsection (5) are satisfied.
- (5) Those conditions are—
  - (a) that the communication would not contravene subsection (1) of section 21 because it is a communication to which that subsection does not apply as a result of an order under subsection (5) of that section,
  - (b) that the FCA considers that any of the requirements of—

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- (i) paragraphs 1 to 8 of Article 19 of the markets in financial instruments directive,
  - (ii) any implementing measure made under paragraph 10 of that Article, or
  - (iii) Article 77 of the UCITS directive,
- apply to the communication, and
- (c) that the FCA considers that the rules are necessary to secure that the communication satisfies such of the requirements mentioned in paragraph (b) as the FCA considers apply to the communication.
- (6) “Engage in investment activity” has the same meaning as in section 21.
- (7) The Treasury may by order impose limitations on the power to make rules under this section.

### **137S Financial promotion rules: directions given by FCA**

- (1) The FCA may give a direction under this section if—
- (a) an authorised person has made, or proposes to make, a communication or has approved, or proposes to approve, another person's communication, and
  - (b) the FCA considers that there has been, or is likely to be, a contravention of financial promotion rules in respect of the communication or approval.
- (2) A direction under this section may require the authorised person—
- (a) to withdraw the communication or approval;
  - (b) to refrain from making the communication or giving the approval (whether or not it has previously been made or given);
  - (c) to publish details of the direction;
  - (d) to do anything else specified in the direction in relation to the communication or approval.
- (3) A requirement in a direction under this section to refrain from making or approving a communication includes a requirement to refrain from making or approving another communication where—
- (a) the other communication is in all material respects the same as, or substantially the same as, the communication to which the direction relates, and
  - (b) in all the circumstances a reasonable person would think that another direction would be given under this section in relation to the other communication.
- (4) The requirements contained in a direction under this section have effect as follows—
- (a) a requirement to publish details of the direction has effect at such time (if any) as the FCA gives a notice under subsection (8)(a);
  - (b) any other requirement takes effect immediately.
- (5) If the FCA gives a direction under this section to an authorised person—
- (a) it must give written notice to the authorised person, and

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- (b) if the direction relates to the approval by the authorised person of another person's communication, it must also give written notice to that other person.
- (6) The notice must—
  - (a) give details of the direction,
  - (b) inform the person to whom the notice is given that the direction takes effect immediately,
  - (c) state the FCA's reasons for giving the direction, and
  - (d) inform the person to whom the notice is given that the person may make representations to the FCA within such period as may be specified in the notice (which may be extended by the FCA).
- (7) The FCA may amend the direction if, having considered any representations made by a person to whom notice is given under subsection (5), it considers it appropriate to do so.
- (8) If, having considered any such representations, the FCA decides not to revoke the direction—
  - (a) the FCA must give separate written notice to the persons mentioned in subsection (5)(a) or (b), and
  - (b) any such person may refer the matter to the Tribunal.
- (9) A notice under subsection (8)(a) must—
  - (a) give details of the direction and of any amendment of it,
  - (b) state the FCA's reasons for deciding not to revoke the direction and, if relevant, for amending it,
  - (c) inform the person to whom the notice is given of the person's right to refer the matter to the Tribunal, and
  - (d) give an indication of the procedure on such a reference.
- (10) If, having considered any representations made by a person to whom notice is given under subsection (5), the FCA decides to revoke the direction, it must give separate written notice to those persons.
- (11) After the period for making representations in relation to a direction given under this section has ended, the FCA may publish such information about the direction as it considers appropriate (even if the direction is revoked).
- (12) Nothing in this section requires a notice to be given to a person mentioned in subsection (5)(b) if the FCA considers it impracticable to do so.

### *Supplementary powers*

#### **137T General supplementary powers**

Rules made by either regulator—

- (a) may make different provision for different cases and may, in particular, make different provision in respect of different descriptions of authorised persons, activity or investment,
- (b) may make provision by reference to rules made by the other regulator, as those rules have effect from time to time, and

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- (c) may contain such incidental, supplemental, consequential and transitional provision as the regulator making the rule considers appropriate.

## CHAPTER 2

### RULES: MODIFICATION, WAIVER, CONTRAVENTION AND PROCEDURAL PROVISIONS

#### *Modification or waiver of rules*

#### **138A Modification or waiver of rules**

- (1) Either regulator may, on the application or with the consent of a person who is subject to rules made by that regulator, direct that all or any of those rules—
  - (a) are not to apply to that person, or
  - (b) are to apply to that person with such modifications as may be specified in the direction.
- (2) Subsection (1) does not apply to—
  - (a) rules made by either regulator under section 137O (threshold condition code);
  - (b) rules made by the FCA under section 247 (trust scheme rules) or section 248 (scheme particulars rules).
- (3) An application must be made in such manner as the regulator may direct.
- (4) A regulator may not give a direction unless it is satisfied that—
  - (a) compliance by the person with the rules, or with the rules as unmodified, would be unduly burdensome or would not achieve the purpose for which the rules were made, and
  - (b) the direction would not adversely affect the advancement of any of the regulator's objectives.
- (5) In subsection (4)(b) “objectives”, in relation to the FCA, means operational objectives.
- (6) A direction may be given subject to conditions.
- (7) The regulator may—
  - (a) revoke a direction, or
  - (b) vary it on the application, or with the consent, of the person to whom it relates.
- (8) “Direction” means a direction under this section.

#### **138B Publication of directions under section 138A**

- (1) Subject to subsection (2), a direction must be published by the regulator concerned in the way appearing to the regulator to be best calculated for bringing it to the attention of—
  - (a) persons likely to be affected by it, and

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- (b) persons who are, in the opinion of the regulator, likely to make an application for a similar direction.
- (2) Subsection (1) does not apply if the regulator is satisfied that it is inappropriate or unnecessary to publish the direction.
- (3) In deciding whether it is satisfied as mentioned in subsection (2), the regulator must—
  - (a) consider whether the publication of the direction would be detrimental to the stability of the UK financial system,
  - (b) take into account whether the direction relates to a rule contravention of which is actionable in accordance with section 138D,
  - (c) consider whether publication of the direction would prejudice, to an unreasonable degree, the commercial interests of the person concerned or any other member of the person's immediate group, and
  - (d) consider whether its publication would be contrary to an international obligation of the United Kingdom.
- (4) The FCA must consult the PRA before publishing or deciding not to publish a direction which relates to—
  - (a) a PRA-authorized person, or
  - (b) an authorised person who has as a member of its immediate group a PRA-authorized person.
- (5) For the purposes of paragraphs (c) and (d) of subsection (3), the regulator must consider whether it would be possible to publish the direction without either of the consequences mentioned in those paragraphs by publishing it without disclosing the identity of the person concerned.
- (6) “Direction” means a direction under section 138A.

### *Contravention of rules*

#### **138C Evidential provisions**

- (1) If a particular rule made by either regulator so provides, contravention of the rule does not give rise to any of the consequences provided for by other provisions of this Act.
- (2) A rule made by a regulator which so provides must also provide—
  - (a) that contravention may be relied on as tending to establish contravention of such other rule made by that regulator as may be specified, or
  - (b) that compliance may be relied on as tending to establish compliance with such other rule made by that regulator as may be specified.
- (3) A rule may include the provision mentioned in subsection (1) only if the regulator making the rule considers that it is appropriate for it also to include the provision required by subsection (2).
- (4) In this section “rule” does not include a rule made under—
  - (a) section 137O (threshold condition code);
  - (b) section 192J (provision of information by parent undertakings).



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### **138D Actions for damages**

- (1) A rule made by the PRA may provide that contravention of the rule is actionable at the suit of a private person who suffers loss as a result of the contravention, subject to the defences and other incidents applying to actions for breach of statutory duty.
- (2) A contravention by an authorised person of a rule made by the FCA is actionable at the suit of a private person who suffers loss as a result of the contravention, subject to the defences and other incidents applying to actions for breach of statutory duty.
- (3) If rules made by the FCA so provide, subsection (2) does not apply to a contravention of a specified provision of the rules.
- (4) In prescribed cases, a contravention of a rule which by virtue of subsection (1) or (2) would be actionable at the suit of a private person is actionable at the suit of a person who is not a private person, subject to the defences and other incidents applying to actions for breach of statutory duty.
- (5) In subsections (1), (2) and (3) “rule” does not include—
  - (a) Part 6 rules;
  - (b) rules under section 137O (threshold condition code);
  - (c) rules under section 192J (provision of information by parent undertakings);
  - (d) a rule requiring an authorised person to have or maintain financial resources.
- (6) “Private person” has such meaning as may be prescribed.

### **138E Limits on effect of contravening rules**

- (1) A person is not guilty of an offence by reason of a contravention of a rule made by either regulator.
- (2) No such contravention makes any transaction void or unenforceable.
- (3) Subsection (2) does not apply in relation to—
  - (a) rules made by the FCA under section 137C, or
  - (b) product intervention rules made by the FCA under section 137D.

### *Procedural provisions*

### **138F Notification of rules**

If either regulator makes, alters or revokes any rules, that regulator must without delay give written notice—

- (a) to the Treasury, and
- (b) to the Bank of England.

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### **138G Rule-making instruments**

- (1) Any power conferred on either regulator to make rules is exercisable in writing.
- (2) An instrument by which rules are made by either regulator (“a rule-making instrument”) must specify the provision under which the rules are made.
- (3) To the extent that a rule-making instrument does not comply with subsection (2), it is void.
- (4) A rule-making instrument must be published by the regulator making the rule in the way appearing to that regulator to be best calculated to bring it to the attention of the public.
- (5) The regulator making the rule may charge a reasonable fee for providing a person with a copy of a rule-making instrument.
- (6) A person is not to be taken to have contravened any rule made by a regulator if the person shows that at the time of the alleged contravention the rule-making instrument concerned had not been made available in accordance with this section.

### **138H Verification of rules**

- (1) The production of a printed copy of a rule-making instrument purporting to be made by a regulator—
  - (a) on which is endorsed a certificate signed by a member of staff of that regulator who is authorised by the regulator for that purpose, and
  - (b) which contains the required statements,
 is evidence (or in Scotland sufficient evidence) of the facts stated in the certificate.
- (2) The required statements are—
  - (a) that the instrument was made by the FCA or the PRA (as the case may be),
  - (b) that the copy is a true copy of the instrument, and
  - (c) that on a specified date the instrument was made available to the public in accordance with section 138G(4).
- (3) A certificate purporting to be signed as mentioned in subsection (1) is to be taken to have been properly signed unless the contrary is shown.
- (4) A person who wishes in any legal proceedings to rely on a rule-making instrument may require the regulator that made the rule to endorse a copy of the instrument with a certificate of the kind mentioned in subsection (1).

### **138I Consultation by the FCA**

- (1) Before making any rules, the FCA must—
  - (a) consult the PRA, and

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- (b) after doing so, publish a draft of the proposed rules in the way appearing to the FCA to be best calculated to bring them to the attention of the public.
- (2) The draft must be accompanied by—
- (a) a cost benefit analysis,
  - (b) an explanation of the purpose of the proposed rules,
  - (c) any statement prepared under section 138K(2),
  - (d) an explanation of the FCA's reasons for believing that making the proposed rules is compatible with its duties under section 1B(1) and (5)(a), and
  - (e) notice that representations about the proposals may be made to the FCA within a specified time.
- (3) Before making the proposed rules, the FCA must have regard to any representations made to it in accordance with subsection (2)(e).
- (4) If the FCA makes the proposed rules, it must publish an account, in general terms, of—
- (a) the representations made to it in accordance with subsection (2)(e), and
  - (b) its response to them.
- (5) If the rules differ from the draft published under subsection (1)(b) in a way which is, in the opinion of the FCA, significant the FCA must publish—
- (a) details of the difference (in addition to complying with subsection (4)) together with a cost benefit analysis, and
  - (b) any statement prepared under section 138K(4).
- (6) The requirements to carry out a cost benefit analysis under this section do not apply in relation to rules made under—
- (a) section 136(2);
  - (b) subsection (1) of section 213 as a result of subsection (4) of that section;
  - (c) section 234;
  - (d) paragraph 23 of Schedule 1ZA;
  - (e) paragraph 12 of Schedule 1A.
- (7) “Cost benefit analysis” means—
- (a) an analysis of the costs together with an analysis of the benefits that will arise—
    - (i) if the proposed rules are made, or
    - (ii) if subsection (5) applies, from the rules that have been made, and
  - (b) subject to subsection (8), an estimate of those costs and of those benefits.
- (8) If, in the opinion of the FCA—
- (a) the costs or benefits referred to in subsection (7) cannot reasonably be estimated, or
  - (b) it is not reasonably practicable to produce an estimate,

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the cost benefit analysis need not estimate them, but must include a statement of the FCA's opinion and an explanation of it.

- (9) The FCA may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1)(b).
- (10) Subsection (1)(a) does not apply to rules made by the FCA in relation to recognised investment exchanges under Part 18.
- (11) This section is subject to section 138L.

### **138J Consultation by the PRA**

- (1) Before making any rules, the PRA must—
  - (a) consult the FCA, and
  - (b) after doing so, publish a draft of the proposed rules in the way appearing to the PRA to be best calculated to bring them to the attention of the public.
- (2) The draft must be accompanied by—
  - (a) a cost benefit analysis,
  - (b) an explanation of the purpose of the proposed rules,
  - (c) any statement prepared under section 138K(2),
  - (d) an explanation of the PRA's reasons for believing that making the proposed rules is compatible with its duties under—
    - (i) section 2B(1) or, as the case requires, section 2C(1) or 2D(3), and
    - (ii) section 2H, and
  - (e) notice that representations about the proposals may be made to the PRA within a specified time.
- (3) Before making the proposed rules, the PRA must have regard to any representations made to it in accordance with subsection (2)(e).
- (4) If the PRA makes the proposed rules, it must publish an account, in general terms, of—
  - (a) the representations made to it in accordance with subsection (2)(e), and
  - (b) its response to them.
- (5) If the rules differ from the draft published under subsection (1)(b) in a way which is, in the opinion of the PRA, significant the PRA must publish—
  - (a) details of the difference (in addition to complying with subsection (4)) together with a cost benefit analysis, and
  - (b) any statement prepared under section 138K(4).
- (6) The requirements to carry out a cost benefit analysis under this section do not apply in relation to rules made under—
  - (a) section 136(2);
  - (b) subsection (1) of section 213 as a result of subsection (4) of that section;
  - (c) section 234;

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- (d) paragraph 31 of Schedule 1ZB;
  - (e) paragraph 12 of Schedule 1A.
- (7) “Cost benefit analysis” means—
- (a) an analysis of the costs together with an analysis of the benefits that will arise—
    - (i) if the proposed rules are made, or
    - (ii) if subsection (5) applies, from the rules that have been made, and
  - (b) subject to subsection (8), an estimate of those costs and of those benefits.
- (8) If, in the opinion of the PRA—
- (a) the costs or benefits referred to in subsection (7) cannot reasonably be estimated, or
  - (b) it is not reasonably practicable to produce an estimate,
- the cost benefit analysis need not estimate them, but must include a statement of the PRA's opinion and an explanation of it.
- (9) The PRA may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1)(b).
- (10) This section is subject to section 138L.

### **138K Consultation: mutual societies**

- (1) Subsection (2) applies where a regulator proposes to make a rule (“the proposed rule”) which would apply both to—
- (a) authorised persons which are mutual societies, and
  - (b) other authorised persons.
- (2) The regulator must prepare a statement setting out—
- (a) its opinion whether or not the impact of the proposed rule on persons within subsection (1)(a) will be significantly different from its impact on persons within subsection (1)(b), and
  - (b) if so, details of the difference.
- (3) Subsection (4) applies where a regulator makes a rule which—
- (a) applies both to—
    - (i) authorised persons which are mutual societies, and
    - (ii) other authorised persons, and
  - (b) differs from the draft of the proposed rule published under section 138I(1)(b) or section 138J(1)(b) (as the case may be).
- (4) The regulator must prepare a statement setting out—
- (a) its opinion whether or not the impact of the rule is significantly different from the impact of the proposed rule on—
    - (i) the persons within subsection (3)(a)(i), and
    - (ii) those persons as compared with persons within subsection (3)(a)(ii), and
  - (b) if so, details of the difference.

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- (5) A “mutual society” is—
- (a) a building society within the meaning of the Building Societies Act 1986;
  - (b) a friendly society within the meaning of the Friendly Societies Act 1992;
  - (c) a registered society within the meaning of the Industrial and Provident Societies Act 1965;
  - (d) an EEA mutual society.
- (6) An “EEA mutual society” is—
- (a) a body which is a European Cooperative Society for the purposes of Council Regulation (EC) No 1435/2003 (statute for a European Cooperative Society);
  - (b) a body which is established as a cooperative under the law of an EEA state as mentioned in that Regulation;
  - (c) a body which is a cooperative or mutual undertaking of such description as the Treasury specify by order and which is established or operates in accordance with the laws of an EEA state.

### **138L Consultation: general exemptions**

- (1) Sections 138I(1)(b) and (2) to (5) and 138K do not apply in relation to rules made by the FCA if the FCA considers that the delay involved in complying with them would be prejudicial to the interests of consumers, as defined in section 425A.
- (2) Sections 138J(1)(b) and (2) to (5) and 138K do not apply in relation to rules made by the PRA if the PRA considers that the delay involved in complying with them would—
  - (a) be prejudicial to the safety and soundness of PRA-authorised persons, or
  - (b) in a case where section 2C applies, be prejudicial to securing the appropriate degree of protection for policyholders.
- (3) The provisions listed in subsection (4) do not apply if the regulator concerned considers that, making the appropriate comparison—
  - (a) there will be no increase in costs, or
  - (b) there will be an increase in costs but that increase will be of minimal significance.
- (4) Those provisions are—
  - (a) subsections (2)(a) and (5)(a) of section 138I;
  - (b) subsections (2)(a) and (5)(a) of section 138J.
- (5) The “appropriate comparison” means—
  - (a) in relation to section 138I(2)(a) or 138J(2)(a), a comparison between the overall position if the rules are made and the overall position if the rules are not made;
  - (b) in relation to section 138I(5)(a) or 138J(5)(a), a comparison between the overall position after the making of the rules and the overall position before they were made.

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### **138M Consultation: exemptions for temporary product intervention rules**

- (1) Sections 138I(1)(b) and (2) to (5) and 138K do not apply in relation to product intervention rules made by the FCA if it considers that it is necessary or expedient not to comply with them for the purpose of advancing—
  - (a) the consumer protection objective or the competition objective, or
  - (b) if an order under section 137D(1)(b) is in force, the integrity objective.
- (2) Any rules made as a result of subsection (1) (“temporary product intervention rules”) are to cease to have effect at the end of the period specified in the rules.
- (3) The longest period that may be specified is the period of 12 months beginning with the day on which the rules come into force.
- (4) Nothing in subsection (2) prevents the FCA from revoking temporary product intervention rules before the end of the period mentioned there.
- (5) If the FCA has made temporary product intervention rules (“the initial rules”), it may not make further temporary product intervention rules containing the same, or substantially the same, provision as that contained in the initial rules until the prohibited period has ended.
- (6) “The prohibited period” means the period of 12 months beginning with the day on which the period mentioned in subsection (2) ends (whether or not the initial rules have been revoked before the end of the period mentioned there).

### **138N Temporary product intervention rules: statement of policy**

- (1) The FCA must prepare and issue a statement of its policy with respect to the making of temporary product intervention rules.
- (2) The FCA may at any time alter or replace a statement issued under this section.
- (3) If a statement issued under this section is altered or replaced, the FCA must issue the altered or replacement statement.
- (4) The FCA must, without delay, give the Treasury a copy of any statement which it publishes under this section.
- (5) A statement issued under this section 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.
- (6) The FCA may charge a reasonable fee for providing a person with a copy of the statement.

### **138O Statement of policy under section 138N: procedure**

- (1) Before issuing a statement under section 138N, the FCA must publish a draft of the proposed statement in the way appearing to the FCA to be best calculated to bring it to the attention of the public.

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- (2) The draft must be accompanied by notice that representations about the proposal may be made to the FCA within a specified time.
- (3) Before issuing the proposed statement, the FCA must have regard to any representations made to it in accordance with subsection (2).
- (4) If the FCA issues the proposed statement it must publish an account, in general terms, of—
  - (a) the representations made to it in accordance with subsection (2), and
  - (b) its response to them.
- (5) If the statement differs from the draft published under subsection (1) in a way which is, in the opinion of the FCA, significant, the FCA must (in addition to complying with subsection (4)) publish details of the difference.
- (6) The FCA may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1).
- (7) This section also applies to a proposal to alter or replace a statement.

## CHAPTER 3

### GUIDANCE

#### **139A Power of the FCA to give guidance**

- (1) The FCA may give guidance consisting of such information and advice as it considers appropriate—
  - (a) with respect to the operation of specified parts of this Act and of any rules made by the FCA;
  - (b) with respect to any other matter relating to functions of the FCA;
  - (c) with respect to any other matters about which it appears to the FCA to be desirable to give information or advice.
- (2) The FCA may give financial or other assistance to persons giving information or advice of a kind which the FCA could give under this section.
- (3) Subsection (5) applies where the FCA proposes to give guidance to FCA-regulated persons generally, or to a class of FCA-regulated persons, in relation to rules to which those persons are subject.
- (4) Subsection (5) also applies in relation to guidance which the FCA proposes to give to persons generally, or to a class of person, in relation to its functions under the short selling regulation.
- (5) Where this subsection applies, subsections (1), (2)(e) and (3) of section 138I (consultation) apply to the proposed guidance as they apply to proposed rules, unless the FCA considers that the delay in complying with those provisions would be prejudicial to the interests of consumers.
- (6) The FCA may—
  - (a) publish its guidance,



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- (b) offer copies of its published guidance for sale at a reasonable price, and
  - (c) if it gives guidance in response to a request made by any person, make a reasonable charge for that guidance.
- (7) In this Chapter, references to guidance given by the FCA include references to any recommendations made by the FCA to FCA-regulated persons generally, or to any class of FCA-regulated person.
- (8) “Consumers” has the meaning given in section 1G.
- (9) “FCA-regulated person” means—
- (a) an authorised person, or
  - (b) any person who is otherwise subject to rules made by the FCA.

### **139B Notification of FCA guidance to the Treasury**

- (1) On giving any general guidance, the FCA must give written notice to the Treasury without delay.
- (2) If the FCA alters any of its guidance, it must give written notice to the Treasury without delay.
- (3) The notice under subsection (2) must include details of the alteration.
- (4) If the FCA revokes any of its general guidance, it must give written notice to the Treasury without delay.
- (5) “General guidance” means guidance given by the FCA under section 139A which is—
- (a) given to persons generally, to FCA-regulated persons generally or to a class of FCA-regulated person,
  - (b) intended to have continuing effect, and
  - (c) given in writing or other legible form.
- (6) “FCA-regulated person” has the same meaning as in section 139A.

## **CHAPTER 4**

### COMPETITION SCRUTINY

#### **140A Interpretation**

- (1) In this Chapter—
- “market in the United Kingdom” includes—
    - (a) so far as it operates in the United Kingdom or a part of the United Kingdom, any market which operates there and in another country or territory or in a part of another country or territory, and
    - (b) any market which operates only in a part of the United Kingdom;
- “the OFT” means the Office of Fair Trading;

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“practices”, in relation to each regulator, means practices adopted by that regulator in the exercise of functions under this Act;

“regulating provisions” means—

- (a) in relation to the FCA, any—
    - (i) rules of the FCA;
    - (ii) general guidance (as defined by section 139B(5));
    - (iii) statement issued by the FCA under section 64;
    - (iv) code issued by the FCA under section 64 or 119;
  - (b) in relation to the PRA, any—
    - (i) rules of the PRA;
    - (ii) statement issued by the PRA under section 64;
    - (iii) code issued by the PRA under section 64.
- (2) In this Chapter each of the Competition Commission and the OFT is “a competition authority”.
- (3) For the purposes of this Chapter, any reference to a feature of a market in the United Kingdom for goods or services is to be read as a reference to—
- (a) the structure of the market concerned or any aspect of that structure,
  - (b) any conduct (whether or not in the market concerned) of one or more than one person who supplies or acquires goods or services in the market concerned, or
  - (c) any conduct relating to the market concerned of customers of any person who supplies or acquires goods or services.
- (4) In subsection (3) “conduct” includes any failure to act (whether or not intentional) and any other unintentional conduct.

#### **140B Advice about effect of regulating provision or practice**

- (1) In this Chapter, any reference to the giving of “section 140B advice” to a regulator is to be read in accordance with this section.
- (2) The OFT gives “section 140B advice” to a regulator if—
- (a) it gives advice to the regulator under section 7 of the Enterprise Act 2002 (provision of competition advice to Ministers etc.), and
  - (b) the advice states that in the opinion of the OFT one or more of the things mentioned in subsection (4) may cause, or contribute to, the effect mentioned in subsection (5), or might be expected to do so in the future.
- (3) The Competition Commission gives “section 140B advice” to a regulator if a report published by it under section 136 of the Enterprise Act 2002 (investigations and reports on market investigation reference) contains—
- (a) a decision that one or more of the things mentioned in subsection (4) may cause, or contribute to, the effect mentioned in subsection (5), and
  - (b) a recommendation that any action should be taken by that regulator.
- (4) Those things are—
- (a) a regulating provision or practice of the regulator,

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- (b) two or more regulating provisions or practices (of that regulator or of both regulators) taken together,
  - (c) a particular combination of regulating provision or practices (of that regulator or of both regulators), or
  - (d) a feature, or combination of features, of a market in the United Kingdom that could be dealt with by regulating provision or practices (of that regulator or of both regulators).
- (5) That effect is the prevention, restriction or distortion of competition in connection with the supply or acquisition of any goods or services in the United Kingdom or a part of the United Kingdom.

#### **140C Consultation with regulator**

Before giving section 140B advice, a competition authority must consult the regulator to which the advice is to be given.

#### **140D Investigation powers of OFT**

Where the OFT is deciding whether to exercise its power under section 7 of the Enterprise Act 2002 to give advice which, if given, would be section 140B advice, section 174 of that Act has effect as if—

- (a) in subsection (1), for the words from “make a reference” to the end there were substituted “ give advice which would for the purposes of Chapter 4 of Part 9A of the Financial Services and Markets Act 2000 be section 140B advice ”, and
- (b) in subsection (2), for “make such a reference” there were substituted “ give such advice ”.

#### **140E Publication by OFT of section 140B advice**

The OFT must publish in such manner as it thinks fit any section 140B advice given by it to either regulator.

#### **140F Duty of Competition Commission to send report to regulator**

- (1) Where the publication of a report of the Competition Commission under section 142 of the Enterprise Act 2002 constitutes the giving of section 140B advice to either regulator, the Commission must give a copy of the report to that regulator.
- (2) The day on which the copy is given is the day on which the regulator is to be taken to receive the section 140B advice.

#### **140G Duty of regulator to publish response**

- (1) A regulator must, within 90 days after the day on which it receives section 140B advice, publish a response stating how it proposes to deal with the advice and in particular—
  - (a) whether it has decided to take any action, or to take no action, in response to the advice,

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- (b) if it has decided to take action, what action it proposes to take, and
- (c) its reasons for its proposals.

(2) Publication is to be in such manner as the regulator thinks fit.

#### **140H Role of the Treasury**

- (1) This section applies where—
  - (a) a competition authority has given section 140B advice and the regulator has published a response under section 140G, and
  - (b) the competition authority remains of the opinion that one or more of the things mentioned in section 140B(4) may cause or contribute to, the effect mentioned in section 140B(5).
- (2) The competition authority may refer the section 140B advice to the Treasury by sending the Treasury—
  - (a) a copy of the section 140B advice and of the response, and
  - (b) a request to consider the advice and the response.
- (3) In referring the section 140B advice, the competition authority may give advice to the Treasury as to what action, if any, ought to be taken by the regulator.
- (4) If section 140B advice is referred to them, the Treasury may give a direction to the regulator to which the advice was given requiring the regulator to take such action as may be specified in the direction.
- (5) In considering whether to give a direction and, if so, what action to specify, the Treasury must have regard to—
  - (a) any advice the competition authority has given under subsection (3),
  - (b) any action which the section 140B advice suggests that the regulator should take, and
  - (c) the response of the regulator to the section 140B advice.
- (6) The direction may not require the regulator to do anything that it has no power to do, but the existence of the direction is relevant to the exercise of any discretion conferred on the regulator.
- (7) Before giving a direction under this section, the Treasury must consult the regulator to which it is to be given.
- (8) If the Treasury give a direction under this section they must—
  - (a) publish in such manner as they think fit a statement giving details of the direction and of their reasons for giving it, and
  - (b) lay a copy of the statement before Parliament.

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## CHAPTER 5

### POWER TO MAKE CONSEQUENTIAL AMENDMENTS

#### **141A Power to make consequential amendments of references to rules etc.**

- (1) This section applies if—
    - (a) a provision of primary or subordinate legislation (whenever passed or made) contains a reference (however expressed) to rules of either regulator or to guidance of the FCA,
    - (b) it appears to the Treasury or the Secretary of State that the reference requires amendment in consequence of the exercise by that regulator of its power under this Part to make, alter or revoke its rules or the exercise by the FCA of its power to make, alter or revoke its guidance.
  - (2) The Treasury or the Secretary of State may by order make such amendment of the legislation referred to in subsection (1)(a) as appears to them to be necessary or expedient in consequence of the exercise by the regulator of the power mentioned in subsection (1)(b).
  - (3) The power conferred by subsection (2) includes power—
    - (a) to replace a reference to the rules of one regulator with a reference to the rules of the other regulator or to the rules of both regulators;
    - (b) to replace a reference to the rules of both regulators with a reference to the rules of one regulator.
  - (4) In subsection (1)(a) “subordinate legislation” does not include rules of either regulator.”
- (2) In section 391 of FSMA 2000 (publication), after subsection (5) insert—

“(5A) Subsection (5) does not apply in relation to a notice given in accordance with section 137S(5) or (8)(a) (but see section 137S(11)).”
  - (3) In section 395 of FSMA 2000 (procedures in relation to giving of supervisory notices etc), in subsection (13), after paragraph (bb) insert—

“(bba) section 137S(5) or (8)(a);”.
  - (4) Omit Schedule 14 to FSMA 2000 (role of the Competition Commission).

#### **Commencement Information**

**I22** S. 24 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

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VALID FROM 01/04/2013

### *Short selling*

#### **25 Functions relating to short selling**

- (1) In every provision of Part 8A of FSMA 2000 (short selling) for “Authority” or “Authority's” in each place substitute “ FCA ” or “FCA's”.
- (2) Subsection (1) does not affect references to “the competent authority”.

### *Control over authorised persons*

VALID FROM 01/04/2013

#### **26 Control over authorised persons**

- (1) FSMA 2000 is amended as follows.
- (2) In every provision of Part 12 (control over authorised persons), for “Authority” or “Authority's”, in each place (where not expressly amended by the following provisions), substitute “ appropriate regulator ” or “appropriate regulator's”.
- (3) In section 178 (obligation to notify an acquisition of control), after subsection (2) insert—
  - “(2A) In this Part, “the appropriate regulator” means—
    - (a) where the UK authorised person is a PRA-authorised person, the PRA;
    - (b) in any other case, the FCA.”
- (4) In section 179 (requirements for section 178 notices) in subsection (2), for “The Authority” substitute “ Each regulator ”.
- (5) In section 187 (approval with conditions), for subsection (2) substitute—
  - “(2) The appropriate regulator may only impose conditions where—
    - (a) if it did not impose those conditions, it would propose to object to the acquisition, or
    - (b) it is required to do so by a direction under section 187A(3)(b) or section 187B(3).”
- (6) After section 187 insert—

#### **“187A Assessment: consultation by PRA with FCA**

- (1) The PRA must consult the FCA before acting under section 185.
- (2) The FCA may make representations to the PRA in relation to any of the matters set out in sections 185(2) and 186.

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- (3) If the FCA considers that on the basis of the matters set out in section 186(f) there are reasonable grounds to object to the acquisition, the FCA may—
  - (a) direct the PRA to object to the acquisition, or
  - (b) direct the PRA not to approve the acquisition unless it does so subject to conditions specified in the direction (with or without other conditions).
- (4) Before giving a direction under subsection (3), the FCA must notify the PRA of its proposal to do so.
- (5) In order to comply with the obligation under subsection (1), the PRA must provide the FCA with—
  - (a) copies of—
    - (i) the section 178 notice, and
    - (ii) any document included with that notice,
  - (b) any further information provided pursuant to section 190, and
  - (c) any other information in the possession of the PRA which—
    - (i) in the opinion of the PRA, is relevant to the application, or
    - (ii) is reasonably requested by the FCA.
- (6) If the PRA acts under section 185(1)(b), it must indicate to the section 178 notice-giver any representations or directions received from the FCA.
- (7) Directions given by the FCA under this section are subject to any directions given to the FCA under section 3I or 3J.

#### **187B Assessment: consultation by FCA with PRA**

- (1) The FCA must consult the PRA before acting under section 185 if—
  - (a) the UK authorised person to which the section 178 notice relates has as a member of its immediate group a PRA-authorised person, or
  - (b) the section 178 notice-giver is a PRA-authorised person.
- (2) The PRA may make representations to the FCA in relation to any of the matters set out in sections 185(2) and 186.
- (3) If the PRA considers that on the basis of relevant matters there are reasonable grounds to object to the acquisition, the PRA may direct the FCA not to approve the acquisition unless it does so subject to conditions specified in the direction (with or without other conditions).
- (4) In subsection (3) “relevant matters”—
  - (a) means the matters in paragraphs (d) and (e)(i) of section 186, and
  - (b) in a case falling within subsection (1)(b) of this section, also includes the matter in paragraph (c) of section 186.
- (5) In order to comply with the obligation under subsection (1), the FCA must provide the PRA with—
  - (a) copies of—
    - (i) the section 178 notice, and
    - (ii) any document included with that notice,
  - (b) any further information provided pursuant to section 190, and

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- (c) any other information in the possession of the FCA which—
  - (i) in the opinion of the FCA, is relevant to the application, or
  - (ii) is reasonably requested by the PRA.

- (6) If the FCA acts under section 185(1)(b), it must indicate to the section 178 notice-giver any representations or directions received from the PRA.

### **187C Variation etc of conditions**

- (1) Where the PRA has imposed conditions required by a direction given by the FCA under section 187A(3)—

- (a) the FCA may direct the PRA to exercise its power under section 187(4) to vary or cancel any of those conditions;
- (b) the PRA must consult the FCA before it exercises that power in relation to those conditions otherwise than in accordance with a direction under paragraph (a).

- (2) Where the FCA has imposed conditions required by a direction given by the PRA under section 187B(3)—

- (a) the PRA may direct the FCA to exercise its power under section 187(4) to vary or cancel any of those conditions;
- (b) the FCA must consult the PRA before it exercises that power in relation to those conditions otherwise than in accordance with a direction under paragraph (a).”

- (7) In section 191A (objection to control), after subsection (4) insert—

“(4A) Where the appropriate regulator is the PRA, it must consult the FCA before giving a warning notice under this section.

(4B) Where the appropriate regulator is the FCA, it must consult the PRA before giving a warning notice under this section if—

- (a) the UK authorised person has as a member of its immediate group a PRA-authorised person, or
- (b) the person to whom the warning notice is to be given is a PRA-authorised person.”

- (8) In section 191B (restriction notices), after subsection (2) insert—

“(2A) Where the appropriate regulator is the PRA, it must consult the FCA before giving a restriction notice under this section.

(2B) Where the appropriate regulator is the FCA, it must consult the PRA before giving a restriction notice under this section if—

- (a) the UK authorised person has as a member of its immediate group a PRA-authorised person, or
- (b) the person to whom the restriction notice is to be given is a PRA-authorised person.”

- (9) In section 191C (orders for the sale of shares), after subsection (2) insert—

“(2A) Where the appropriate regulator is the PRA, it must consult the FCA before making an application to the court under this section.



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- (2B) Where the appropriate regulator is the FCA, it must consult the PRA before making an application to the court under this section if—
- (a) the UK authorised person has as a member of its immediate group a PRA-authorised person, or
  - (b) the person holding the shares or voting power is a PRA-authorised person.”
- (10) In section 191D (obligation to notify of disposition of control), after subsection (1) insert—
- “(1A) The PRA must give the FCA a copy of any notice it receives under this section.
- (1B) The FCA must give the PRA a copy of any notice it receives under this section which—
- (a) relates to a UK authorised person who has as a member of its immediate group a PRA-authorised person, or
  - (b) is given by a PRA-authorised person.”
- (11) In section 191E (requirements for notices under section 191D), in subsection (2), for “The Authority” substitute “ Each regulator ”.
- (12) In section 191G (interpretation), in subsection (1), after the definition of “acquisition” insert—
- ““the appropriate regulator” is to be read in accordance with section 178(2A);”.

## 27 Powers of regulators in relation to parent undertakings

After section 192 of FSMA 2000 insert—

### “PART 12A

#### POWERS EXERCISABLE IN RELATION TO PARENT UNDERTAKINGS

##### *Introductory*

### **192A Meaning of “qualifying authorised person”**

- (1) In this Part “qualifying authorised person” means an authorised person satisfying the following conditions.
- (2) Condition A is that the authorised person is a body corporate incorporated in the United Kingdom.
- (3) Condition B is that the authorised person is—
  - (a) a PRA-authorised person, or
  - (b) an investment firm.
- (4) The Treasury may by order—

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- (a) amend subsection (3) so as to add to or restrict the descriptions of authorised person who can be qualifying authorised persons, or
  - (b) provide that while the order is in force subsection (3) is not to have effect.
- (5) Except as provided by subsection (6), an order under subsection (4) is not to be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House.
- (6) An order under subsection (4) may be made without a draft having been laid and approved as mentioned in subsection (5) if the order contains a statement that the Treasury are of the opinion that, by reason of urgency, it is necessary to make the order without a draft being so laid and approved.
- (7) An order under subsection (4) made in accordance with subsection (6)—
- (a) must be laid before Parliament after being made, and
  - (b) ceases to have effect at the end of the relevant period unless before the end of that period the order is approved by a resolution of each House of Parliament (but without affecting anything done under the order or the power to make a new order).
- (8) The “relevant period” is a period of 28 days beginning with the day on which the order is made.
- (9) In calculating the relevant period no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.

### **192B Meaning of “qualifying parent undertaking”**

- (1) The parent undertaking of a qualifying authorised person or recognised UK investment exchange is for the purposes of this Part a “qualifying parent undertaking” if the following conditions are satisfied in relation to it.
- (2) Condition A is that the parent undertaking is a body corporate which—
- (a) is incorporated in the United Kingdom, or
  - (b) has a place of business in the United Kingdom.
- (3) Condition B is that the parent undertaking is not itself an authorised person, a recognised investment exchange or a recognised clearing house.
- (4) Condition C is that the parent undertaking is a financial institution of a kind prescribed by the Treasury by order.
- (5) “Recognised UK investment exchange” means a recognised investment exchange that is not an overseas investment exchange as defined in section 313(1).
- (6) The Treasury may by order—
- (a) amend subsection (4) by omitting the words “a financial institution”, and
  - (b) make any amendment of subsection (2) that they consider desirable in connection with an amendment made under paragraph (a).

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## Power of direction

### 192C Power to direct qualifying parent undertaking

- (1) The appropriate regulator may give a direction under this section to a qualifying parent undertaking if either the general condition or the consolidated supervision condition is satisfied.
- (2) The general condition is that the appropriate regulator considers that it is desirable to give the direction in order to advance—
  - (a) in the case of the FCA, one or more of its operational objectives;
  - (b) in the case of the PRA, any of its objectives.
- (3) The consolidated supervision condition is that—
  - (a) the appropriate regulator is the competent authority for the purpose of consolidated supervision that is required, in relation to some or all of the members of the group of a qualifying authorised person, in pursuance of any of the directives mentioned in section 3M(3), and
  - (b) the appropriate regulator considers that the giving of the direction is desirable for the purpose of the effective consolidated supervision of the group.
- (4) In subsection (3)(a) “consolidated supervision” includes supplemental supervision.
- (5) In deciding whether to give a direction under this section, a regulator must have regard—
  - (a) to the desirability where practicable of exercising its powers in relation to authorised persons or recognised investment exchanges rather than its powers under this section, and
  - (b) to the principle that a burden or restriction which is imposed on a person should be proportionate to the benefits, considered in general terms, which are expected to result from its imposition.
- (6) “The appropriate regulator” means—
  - (a) where a direction relates to a qualifying authorised person or recognised investment exchange who is a PRA-authorised person, the FCA or the PRA;
  - (b) in any other case, the FCA.

### 192D Requirements that may be imposed

- (1) A direction under section 192C may require the parent undertaking—
  - (a) to take specified action, or
  - (b) to refrain from taking specified action.
- (2) A requirement may be imposed by reference to the parent undertaking's relationship with—
  - (a) its group, or
  - (b) other members of its group.

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- (3) A requirement may refer to the past conduct of the parent undertaking (for example, by requiring the parent undertaking to review or take remedial action in respect of past conduct).
- (4) A requirement imposed by the direction may be expressed to expire at the end of a specified period, but the imposition of a requirement that expires at the end of a specified period does not affect the power to give a further direction imposing a new requirement.
- (5) The direction—
  - (a) may be revoked by the regulator which gave it by written notice to the body to which it is given, and
  - (b) ceases to be in force if the body to which it is given ceases to be a qualifying parent undertaking.

### **192E Direction: procedure**

- (1) If a regulator proposes to give a direction under section 192C, or gives such a direction with immediate effect, it must give written notice to—
  - (a) the parent undertaking to which the direction is given (or to be given) (“P”), and
  - (b) any authorised person or recognised investment exchange who will, in the opinion of the regulator, be significantly affected by the direction.
- (2) In the following provisions of this section “notified person” means a person to whom notice under subsection (1) is given.
- (3) A direction under section 192C takes effect—
  - (a) immediately, if the notice under subsection (1) states that that is the case,
  - (b) on such other date as may be specified in the notice, or
  - (c) if no date is specified in the notice, when the matter to which the notice relates is no longer open to review.
- (4) A direction may be expressed to take effect immediately (or on a specified date) only if the regulator reasonably considers that it is necessary for the direction to take effect immediately (or on that date).
- (5) The notice under subsection (1) must—
  - (a) give details of the direction,
  - (b) state the regulator's reasons for the direction and for its determination as to when the direction takes effect,
  - (c) inform the notified person that the person may make representations to the regulator within such period as may be specified in the notice (whether or not the notified person has referred the matter to the Tribunal), and
  - (d) inform the notified person of the person's right to refer the matter to the Tribunal.
- (6) The regulator may extend the period allowed under the notice for making representations.

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- (7) If, having considered any representations made by any notified person, the regulator decides—
  - (a) to give the direction proposed, or
  - (b) if the direction has been given, not to revoke the direction,it must give each of the notified persons written notice.
- (8) If, having considered any representations made by any notified person, the regulator decides—
  - (a) not to give the direction proposed,
  - (b) to give a different direction, or
  - (c) to revoke a direction which has effect,it must give each of the notified persons written notice.
- (9) A notice given under subsection (7) must inform the notified person of the person's right to refer the matter to the Tribunal.
- (10) A notice under subsection (8)(b) must comply with subsection (5).
- (11) If a notice informs the notified person of the person's right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.
- (12) For the purposes of subsection (3)(c), whether a matter is open to review is to be determined in accordance with section 391(8).

#### **192F Consultation between regulators**

- (1) Before the PRA gives a notice under section 192E(1) or (8)(b), it must consult the FCA.
- (2) Before the FCA gives a notice under section 192E(1) or (8)(b) in relation to the parent undertaking of a PRA-authorized person, the FCA must consult the PRA.
- (3) Before either regulator gives a notice under section 192E(1) or (8)(b) in relation to the parent undertaking of a recognised clearing house, the regulator must consult the Bank of England.

#### **192G References to Tribunal**

- (1) A notified person who is aggrieved by the exercise by either regulator of its powers in relation to directions under section 192C may refer the matter to the Tribunal.
- (2) “Notified person” is to be read in accordance with subsection (2) of section 192E, except that it includes a person to whom a notice under subsection (1) of that section ought to have been given.

#### **192H Statement of policy: directions under section 192C**

- (1) Each regulator must prepare and issue a statement of policy with respect to the giving of directions under section 192C.
- (2) A regulator may at any time alter or replace a statement issued under this section.

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- (3) If a statement issued under this section is altered or replaced, the regulator must issue the altered or replacement statement.
- (4) In exercising or deciding whether to exercise its power under section 192C in any particular case, a regulator must have regard to any statement published under this section and for the time being in force.
- (5) A statement under this section must be published by the regulator concerned in the way appearing to the regulator to be best calculated to bring it to the attention of the public.
- (6) A regulator may charge a reasonable fee for providing a person with a copy of a statement published under this section.
- (7) A regulator must, without delay, give the Treasury a copy of any statement which the regulator publishes under this section.

#### **192I Statement of policy relating to directions: procedure**

- (1) Before issuing a statement of policy under section 192H, a regulator (“the issuing regulator”) must—
  - (a) consult the other regulator and the Bank of England, and
  - (b) publish a draft of the proposed statement in the way appearing to the issuing regulator to be best calculated to bring it to the attention of the public.
- (2) The draft must be accompanied by notice that representations about the proposal may be made to the issuing regulator within a specified time.
- (3) Before issuing the proposed statement, the issuing regulator must have regard to any representations made to it in accordance with subsection (2).
- (4) If the issuing regulator issues the proposed statement it must publish an account, in general terms, of—
  - (a) the representations made to it in accordance with subsection (2), and
  - (b) its response to them.
- (5) If the statement differs from the draft published under subsection (2) in a way which is, in the opinion of the issuing regulator, significant, the issuing regulator—
  - (a) must before issuing it consult the other regulator again, and
  - (b) must (in addition to complying with subsection (4)), publish details of the difference.
- (6) The issuing regulator may charge a reasonable fee for providing a person with a draft published under subsection (1)(b).
- (7) This section also applies to a proposal to alter or replace a statement.

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### *Rules requiring provision of information by parent undertakings*

#### **192J Rules requiring provision of information by parent undertakings**

- (1) The appropriate regulator may make rules requiring qualifying parent undertakings—
  - (a) to provide to the regulator information of a specified description;
  - (b) to produce to the regulator documents of a specified description.
- (2) The rules may only specify a description of information or documents that is relevant to the exercise by the regulator of its functions.
- (3) The rules may make provision—
  - (a) as to the time within which information must be provided or documents produced;
  - (b) about the form in which any information is to be provided;
  - (c) about the place where any documents are to be produced;
  - (d) requiring information provided to be verified in a specified manner;
  - (e) requiring documents produced to be authenticated in a specified manner.
- (4) “The appropriate regulator” means—
  - (a) in relation to the parent undertaking of a qualifying authorised person who is a PRA-authorised person, the FCA or the PRA;
  - (b) in any other case, the FCA.

### *Failure to comply with direction or breach of rules*

#### **192K Power to impose penalty or issue censure**

- (1) This section applies if a regulator is satisfied that a person who is or has been a qualifying parent undertaking (“P”) has contravened—
  - (a) a requirement of a direction given to P by that regulator under section 192C, or
  - (b) a provision of rules made by that regulator under section 192J.
- (2) The regulator may impose a penalty of such amount as it considers appropriate on—
  - (a) P, or
  - (b) any person who was knowingly concerned in the contravention.
- (3) The regulator may, instead of imposing a penalty on a person, publish a statement censuring the person.
- (4) The regulator may not take action against a person under this section after the end of the limitation period unless, before the end of that period, it has given a warning notice to the person under section 192L.
- (5) “The limitation period” means the period of 3 years beginning with the first day on which the regulator knew of the contravention.

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- (6) For this purpose a regulator is to be treated as knowing of a contravention if it has information from which the contravention can reasonably be inferred.

### **192L Procedure and right to refer to Tribunal**

- (1) If a regulator proposes to take action against a person under section 192K, it must give the person a warning notice.
- (2) A warning notice about a proposal to impose a penalty must state the amount of the penalty.
- (3) A warning notice about a proposal to publish a statement must set out the terms of the statement.
- (4) If the regulator decides to take action against a person under section 192K, it must give the person a decision notice.
- (5) A decision notice about the imposition of a penalty must state the amount of the penalty.
- (6) A decision notice about the publication of a statement must set out the terms of the statement.
- (7) If the regulator decides to take action against a person under section 192K, the person may refer the matter to the Tribunal.

### **192M Duty on publication of statement**

After a statement under section 192K(3) is published, the regulator must send a copy of the statement to—

- (a) the person in respect of whom it is made, and
- (b) any person to whom a copy of the decision notice was given under section 393(4).

### **192N Imposition of penalties under section 192K: statement of policy**

- (1) Each regulator must prepare and issue a statement of policy with respect to—
  - (a) the imposition of penalties under section 192K, and
  - (b) the amount of penalties under that section.
- (2) A regulator's policy in determining what the amount of a penalty should be must include having regard to—
  - (a) the seriousness of the contravention,
  - (b) the extent to which the contravention was deliberate or reckless, and
  - (c) whether the person on whom the penalty is to be imposed is an individual.
- (3) A regulator may at any time alter or replace a statement issued under this section.
- (4) If a statement issued under this section is altered or replaced, the regulator must issue the altered or replacement statement.



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- (5) In exercising, or deciding whether to exercise, a power under section 192K(2) in the case of any particular contravention, a regulator must have regard to any statement of policy published under this section and in force at a time when the contravention occurred.
- (6) A statement under this section must be published by the regulator concerned in the way appearing to the regulator to be best calculated to bring it to the attention of the public.
- (7) A regulator may charge a reasonable fee for providing a person with a copy of the statement published under this section.
- (8) A regulator must, without delay, give the Treasury a copy of any statement which it publishes under this section.
- (9) Section 192I applies in relation to a statement under this section as it applies in relation to a statement under section 192H.”

#### Commencement Information

**I23** S. 27 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

**I24** S. 27 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2

### *Recognised investment exchanges and clearing houses*

VALID FROM 01/04/2013

#### **28 Exemption for recognised investment exchanges and clearing houses**

- (1) Section 285 of FSMA 2000 (exemption from general prohibition for recognised investment exchanges and recognised clearing houses) is amended as follows.
- (2) In subsection (2), for paragraph (b) substitute—
  - “(b) which is carried on for the purposes of, or in connection with, the provision by the exchange of services designed to facilitate the provision of clearing services by another person.”
- (3) In subsection (3) for the words from “activity which” to the end substitute “activity—
  - (a) which is carried on for the purposes of, or in connection with, the provision of clearing services by the clearing house, or
  - (b) which is carried on for the purposes of, or in connection with, the provision by the clearing house of services designed to facilitate the provision of clearing services by another person.”
- (4) After that subsection insert—
  - “(4) The Treasury may by order amend paragraph (b) of subsection (2) or (3).”

#### **29 Powers in relation to recognised investment exchanges and clearing houses**

- (1) After section 285 of FSMA 2000 insert—

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### **“285A Powers exercisable in relation to recognised investment exchanges and clearing houses**

- (1) For the purposes of this Part, the FCA is “the appropriate regulator” in relation to recognised investment exchanges.
- (2) For the purposes of this Part, the Bank of England is “the appropriate regulator” in relation to recognised clearing houses.
- (3) In Schedule 17A—
  - (a) Part 1 makes provision for a memorandum of understanding between the appropriate regulators and the PRA with respect to the exercise of their functions in relation to recognised investment exchanges and clearing houses;
  - (b) Part 2 applies certain provisions of this Act in relation to the Bank of England in consequence of the conferring of functions on the Bank under this Part of this Act;
  - (c) Part 3 makes provision relating to the winding up, administration or insolvency of UK clearing houses; and
  - (d) Part 4 makes provision about fees.”
- (2) After Schedule 17 of FSMA 2000 insert the Schedule 17A set out in Schedule 7 to this Act.

#### **Commencement Information**

- I25** S. 29 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), **Sch. Pt. 3**  
**I26** S. 29 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(b), **Sch. Pt. 2**

### **30 Recognition requirements: power of FCA and Bank to make rules**

In section 286 of FSMA 2000 (qualification for recognition), after subsection (4E) insert—

“(4F) Regulations under subsection (1) may confer power on the appropriate regulator to make rules for the purposes of the regulations or of any specified provision made by the regulations.”

#### **Commencement Information**

- I27** S. 30 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(b), **Sch. Pt. 2**

VALID FROM 01/04/2013

### **31 Additional power to direct UK clearing houses**

After section 296 of FSMA 2000 insert—

**Status:** Point in time view as at 27/02/2013. This version of this Act contains provisions that are not valid for this point in time.  
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### “296A Additional power to direct UK clearing houses

- (1) The Bank of England may direct a UK clearing house to take, or refrain from taking, specified action if the Bank is satisfied that it is necessary to give the direction, having regard to the public interest in—
  - (a) protecting and enhancing the stability of the UK financial system,
  - (b) maintaining public confidence in the stability of the UK financial system,
  - (c) maintaining the continuity of the central counterparty clearing services provided by the clearing house, and
  - (d) maintaining and enhancing the financial resilience of the clearing house.
- (2) The direction may, in particular—
  - (a) specify the time for compliance with the direction,
  - (b) require the rules of the clearing house to be amended, and
  - (c) override such rules (whether generally or in their application to a particular case).
- (3) The direction may not require the clearing house—
  - (a) to take any steps for the purpose of securing its compliance with—
    - (i) the recognition requirements, or
    - (ii) any obligation of a kind mentioned in section 296(1)(b) or (1A), or
  - (b) to accept a transfer of property, rights or liabilities of another clearing house.
- (4) If the direction is given in reliance on section 298(7) the Bank must, within a reasonable time of giving the direction, give the clearing house a statement of its reasons—
  - (a) for giving the direction, and
  - (b) for relying on section 298(7).
- (5) The direction is enforceable, on the application of the Bank, by an injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.
- (6) The Bank may revoke a direction given under this section.”

VALID FROM 01/04/2013

### 32 Recognised bodies: procedure for giving directions under s.296 etc

- (1) Section 298 of FSMA 2000 (directions under section 296 and revocation orders under section 297(2) or (2A): procedure) is amended as follows.
- (2) In subsection (1), omit paragraphs (b) and (c) (requirements to bring notice to attention of members of the body and other persons).

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(3) In subsection (3), omit paragraphs (b) and (c) (members of the body and other persons may make representations).

(4) For subsection (4) substitute—

“(4) The period for making representations is such period as is specified in the notice (which may, in any particular case, be extended by the appropriate regulator).”

(5) In subsection (6), omit paragraph (b) (notice of decision to members of the body and others) and the “and” before it.

(6) In subsection (7), for “considers it essential” substitute “ reasonably considers it necessary ”.

### **33 Power to take disciplinary measures against recognised bodies**

After section 312D of FSMA 2000 insert—

#### **“CHAPTER 3B**

##### DISCIPLINARY MEASURES

#### **312E Public censure**

- (1) If the appropriate regulator considers that a recognised body has contravened a relevant requirement imposed on the body, it may publish a statement to that effect.
- (2) Where the FCA is the appropriate regulator, a requirement is a “relevant requirement” for the purposes of this Chapter if it is—
  - (a) a requirement that is imposed by or under any provision of this Part that relates to a recognised investment exchange,
  - (b) a requirement that is imposed under any other provision of this Act by the FCA that relates to a recognised investment exchange,
  - (c) a requirement that is imposed by a qualifying EU provision specified, or of a description specified, for the purposes of this subsection by the Treasury by order, or
  - (d) a requirement that is imposed by this Act and whose contravention constitutes an offence that the FCA has power to prosecute under this Act (see section 401).
- (3) Where the Bank of England is the appropriate regulator, a requirement is a “relevant requirement” for the purposes of this Chapter if it is—
  - (a) a requirement that is imposed by or under any provision of this Part that relates to a recognised clearing house,
  - (b) a requirement that is imposed under any other provision of this Act by the Bank,
  - (c) a requirement that is imposed by a qualifying EU provision specified, or of a description specified, for the purposes of this subsection by the Treasury by order, or

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- (d) a requirement that is imposed by this Act and whose contravention constitutes an offence that the Bank has power to prosecute under this Act (see section 401, as applied by paragraph 31 of Schedule 17A).

### **312F Financial penalties**

If the appropriate regulator considers that a recognised body has contravened a relevant requirement imposed on the body, it may impose on the body a penalty, in respect of the contravention, of such amount as it considers appropriate.

### **312G Proposal to take disciplinary measures**

- (1) If the appropriate regulator proposes—
  - (a) to publish a statement in respect of a recognised body under section 312E, or
  - (b) to impose a penalty on a recognised body under section 312F, it must give the body a warning notice.
- (2) A warning notice about a proposal to publish a statement must set out the terms of the statement.
- (3) A warning notice about a proposal to impose a penalty must state the amount of the penalty.

### **312H Decision notice**

- (1) If the appropriate regulator decides—
  - (a) to publish a statement in respect of a recognised body under section 312E (whether or not in the terms proposed), or
  - (b) to impose a penalty on a recognised body under section 312F (whether or not of the amount proposed), it must give the body a decision notice.
- (2) In the case of a statement, the decision notice must set out the terms of the statement.
- (3) In the case of a penalty, the decision notice must state the amount of the penalty.
- (4) If the appropriate regulator decides—
  - (a) to publish a statement in respect of a recognised body under section 312E, or
  - (b) to impose a penalty on a recognised body under section 312F, the body may refer the matter to the Tribunal.

### **312I Publication**

After an appropriate regulator publishes a statement under section 312E, it must send a copy of the statement to—

- (a) the recognised body concerned, and
- (b) any person to whom a copy of the decision notice was given under section 393(4).

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### **312J Statement of policy**

- (1) Each appropriate regulator must prepare and issue a statement of its policy with respect to—
  - (a) the imposition of penalties under section 312F, and
  - (b) the amount of penalties under that section.
- (2) An appropriate regulator's policy in determining what the amount of a penalty should be must include having regard to—
  - (a) the seriousness of the contravention in question in relation to the nature of the requirement concerned, and
  - (b) the extent to which that contravention was deliberate or reckless.
- (3) An appropriate regulator may at any time alter or replace a statement issued by it under this section.
- (4) If a statement issued by an appropriate regulator under this section is altered or replaced, the regulator must issue the altered or replacement statement.
- (5) In exercising, or deciding whether to exercise, its power under section 312F in the case of any particular contravention, an appropriate regulator must have regard to any statement of policy published by it under this section and in force at a time when the contravention in question occurred.
- (6) A statement issued by an appropriate regulator under this section must be published by the regulator in the way appearing to the regulator to be best calculated to bring it to the attention of the public.
- (7) An appropriate regulator may charge a reasonable fee for providing a person with a copy of the statement.
- (8) An appropriate regulator must, without delay, give the Treasury a copy of any statement which it publishes under this section.

### **312K Statement of policy: procedure**

- (1) Before issuing a statement under section 312J, an appropriate regulator must publish a draft of the proposed statement in the way appearing to the regulator to be best calculated to bring it to the attention of the public.
- (2) The draft must be accompanied by notice that representations about the proposal may be made to the regulator within a specified time.
- (3) Before issuing the proposed statement, the regulator must have regard to any representations made to it in accordance with subsection (2).
- (4) If the regulator issues the proposed statement it must publish an account, in general terms, of—
  - (a) the representations made to it in accordance with subsection (2), and
  - (b) its response to them.
- (5) If the statement differs from the draft published under subsection (1) in a way which is, in the opinion of the regulator, significant, the regulator must (in addition to complying with subsection (4)) publish details of the difference.

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(6) An appropriate regulator may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1).

(7) This section also applies to a proposal to alter or replace a statement.”

#### Commencement Information

**I28** S. 33 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2

**I29** S. 33 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

VALID FROM 01/04/2013

#### 34 Repeal of special competition regime

In Part 18 of FSMA 2000 (recognised investment exchanges and clearing houses)

- (a) omit Chapter 2 (competition scrutiny), and
- (b) omit Chapter 3 (exclusion from the Competition Act 1998).

#### 35 Sections 28 to 34: minor and consequential amendments

Schedule 8 contains—

- (a) minor amendments of FSMA 2000 in connection with provision made by sections 28 to 34, and
- (b) other amendments of that Act in consequence of that provision.

#### Commencement Information

**I30** S. 35 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

**I31** S. 35 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2

VALID FROM 01/04/2013

#### *Suspension and removal of financial instruments from trading*

#### 36 Suspension and removal of financial instruments from trading

In every provision of Part 18A of FSMA 2000 (suspension and removal of financial instruments from trading)—

- (a) for “Authority”, in each place, substitute “ FCA ”, and
- (b) for “Authority's”, in each place, substitute “FCA's”.

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### *Discipline and enforcement*

#### **37 Discipline and enforcement**

- (1) Schedule 9 contains miscellaneous amendments of FSMA 2000 relating to discipline and enforcement.
- (2) If the Treasury consider that it is in the public interest to do so, the Treasury may by order—
  - (a) amend section 391 of FSMA 2000 by substituting for subsections (1) to (1ZB) the following—
    - “(1) Neither the regulator giving a warning notice nor a person to whom it is given or copied may publish the notice or any details concerning it.”, and
  - (b) repeal section 395(1)(d) and (2)(b) and (c) of that Act.

#### **Commencement Information**

**I32** [S. 37](#) in force at 24.1.2013 for specified purposes by [S.I. 2013/113](#), [art. 2\(1\)\(c\)](#), [Sch. Pt. 3](#)

**I33** [S. 37](#) in force at 24.1.2013 for specified purposes by [S.I. 2013/113](#), [art. 2\(1\)\(b\)](#), [Sch. Pt. 2](#)

### *Financial Services Compensation Scheme*

#### **38 The Financial Services Compensation Scheme**

- (1) Schedule 10 contains amendments of Part 15 of FSMA 2000 (the Financial Services Compensation Scheme).
- (2) In section 224F(1) of that Act (power to require FSCS manager to act in relation to other schemes: rules about the schemes), for “Authority” substitute “regulators”.

#### **Commencement Information**

**I34** [S. 38](#) in force at 24.1.2013 for specified purposes by [S.I. 2013/113](#), [art. 2\(1\)\(c\)](#), [Sch. Pt. 3](#)

**I35** [S. 38](#) in force at 24.1.2013 for specified purposes by [S.I. 2013/113](#), [art. 2\(1\)\(b\)](#), [Sch. Pt. 2](#)

### *Financial ombudsman service*

#### **39 The financial ombudsman service**

Schedule 11 contains amendments of FSMA 2000 relating to the financial ombudsman service.

#### **Commencement Information**

**I36** [S. 39](#) in force at 24.1.2013 for specified purposes by [S.I. 2013/113](#), [art. 2\(1\)\(c\)](#), [Sch. Pt. 3](#)



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## Lloyd's

### 40 Lloyd's

- (1) Part 19 of FSMA 2000 (Lloyd's) is amended as follows.
- (2) In section 314 (Authority's general duty)—
  - (a) for subsection (1) substitute—
    - “(1) So far as it is appropriate to do so for the purpose of advancing one or more of its operational objectives, the FCA must keep itself informed about—
      - (a) the way in which the Council supervises and regulates the market at Lloyd's, and
      - (b) the way in which regulated activities are being carried on in that market.
    - (1A) So far as it is appropriate to do so for the purpose of advancing its general objective or (if section 2C applies) its insurance objective, the PRA must keep itself informed about—
      - (a) the way in which the Council supervises and regulates the market at Lloyd's, and
      - (b) the way in which any PRA-regulated activities are being carried on in that market.”,
  - (b) in subsection (2)—
    - (i) for “The Authority” substitute “ Each regulator ”, and
    - (ii) in paragraph (b), for “section 315” substitute “ provision made by or under this Act ”, and
  - (c) in the heading, for “Authority's” substitute “Regulators”.
- (3) After that section insert—

#### **“314A The PRA's objectives in relation to Lloyd's etc**

- (1) This section modifies—
  - (a) the effect of sections 2B and 2C (the PRA's general objective and insurance objective), and
  - (b) the effect of section 3I (power of PRA to require FCA to refrain from specified action),in relation to anything done, or proposed to be done, by the PRA under or for the purposes of this Part.
- (2) This section applies only if PRA-authorised persons include—
  - (a) the Society, or
  - (b) other persons who carry on regulated activities in relation to anything done at Lloyd's.
- (3) Section 2B(2) and (3) have effect as if references to PRA-authorised persons (or a PRA-authorised person) were references to the Society, and the members of the Society, taken together (and sections 2G and 2J(3) are to be read accordingly).

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(4) Section 2C(1) has effect as if the reference to the discharge of the PRA's general functions so far as relating to the activity mentioned there were a reference to the discharge of its general functions so far as relating to the carrying on by the Society or other persons of PRA-regulated activities in relation to anything done at Lloyd's.

(5) Section 3I(4)(b) has effect as if the reference to a PRA-authorized person were a reference to the Society, and the members of the Society, taken together.”

(4) For section 315 substitute—

**“315 The Society: regulated activities**

(1) This section applies if an activity carried on by the Society is of a kind specified in an order made under section 22 (regulated activities).

(2) The order may provide that the Society is not to be subject to any requirement of this Act concerning the registered office of a body corporate.”

(5) In section 316 (direction by Authority)—

- (a) in subsection (1), for “the Authority” substitute “ a regulator ”,
- (b) after that subsection insert—

“(1A) A direction under subsection (1)—

- (a) may be given by the FCA only if it considers that giving the direction is necessary or expedient for the purpose of advancing one or more of its operational objectives, and
- (b) may be given by the PRA only if it considers that giving the direction is necessary or expedient for the purpose of advancing its general objective or (if section 2C applies) the insurance objective.

(1B) A direction under subsection (1) which applies the general prohibition to a member of the Society, or to the members of the Society taken together, may be given by a regulator only with the consent of the other regulator.”,

- (c) in subsection (4)—
  - (i) for “the Authority”, in both places, substitute “ the regulator concerned ”, and
  - (ii) in paragraph (c), for “section 315” substitute “ provision made by or under this Act ”,
- (d) in subsection (9)—
  - (i) after “subsection (1)” insert “ given by a regulator ”, and
  - (ii) for “the Authority” substitute “ the regulator ”,
- (e) in subsection (10), for “The Authority” substitute “ A regulator who gives a direction under subsection (1) ”,
- (f) in subsection (11)—
  - (i) for “The Authority” substitute “ A regulator who gives a direction under subsection (1) ”, and
  - (ii) for “any direction which it gives under this section” substitute “ the direction ”, and

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- (g) in the heading, for “Authority” substitute “ a regulator ”.
- (6) In section 317 (the core provisions), in subsection (1), for “X” substitute “ 9A ”.
- (7) In section 318 (exercise of powers through Council)—
  - (a) in subsection (1), for “The Authority” substitute “ A regulator ”,
  - (b) after subsection (3) insert—
    - “(3A) A direction under subsection (1)—
      - (a) may be given by the FCA only if it considers that giving the direction is necessary or expedient for the purpose of advancing one or more of its operational objectives, and
      - (b) may be given by the PRA only if it considers that giving the direction is necessary or expedient for the purpose of advancing its general objective or (if section 2C applies) the insurance objective.”,
  - (c) in subsection (4)(b), for “the Authority” substitute “ the regulator concerned ”,
  - (d) in subsection (6)(a), for “the Authority” substitute “ a regulator ”,
  - (e) in subsection (7)—
    - (i) after “subsection (1)” insert “ given by a regulator ”, and
    - (ii) for “the Authority” substitute “ the regulator ”,
  - (f) in subsection (8), for “The Authority” substitute “ A regulator who gives a direction under subsection (1) ”, and
  - (g) in subsection (9)—
    - (i) for “The Authority” substitute “ A regulator who gives a direction under subsection (1) ”, and
    - (ii) for “any direction which it gives under this section” substitute “ the direction ”.
- (8) In section 319 (consultation)—
  - (a) for subsection (1) substitute—
    - “(1) Before a regulator gives a direction under section 316 or 318, it must—
      - (a) in a case where section 316(1B) requires the regulator to obtain the consent of the other regulator, obtain that consent,
      - (b) in any other case, consult the other regulator, and
      - (c) after complying with paragraph (a) or (b), publish a draft of the proposed direction.”,
    - (b) in subsection (2)(b), for “the Authority” substitute “ the regulator ”,
    - (c) for subsection (3) substitute—
      - “(3) Before a regulator gives the proposed direction—
        - (a) it must have regard to any representations made to it in accordance with subsection (2)(b), and
        - (b) if it was required by subsection (1)(b) to consult the other regulator and proposes to give a direction which differs from the draft published under subsection (1) in a way which is, in the opinion of the regulator, significant, it must again consult the other regulator.”,

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- (d) in subsections (4) and (5) (in both places), for “the Authority” substitute “ the regulator ”,
  - (e) for subsection (6) substitute—
    - “(6) Subsections (1)(c) and (2) to (5) do not apply in relation to—
      - (a) a direction given by the FCA if it considers that the delay involved in complying with them would be prejudicial to the interests of consumers, as defined in section 425A, or
      - (b) a direction given by the PRA if it considers that the delay involved in complying with them would—
        - (i) be prejudicial to the safety and soundness of the Society, and the members of the Society, taken together, or
        - (ii) in a case where section 2C applies, be prejudicial to securing the appropriate degree of protection for policyholders.”,
  - (f) in subsection (7), for “the Authority” substitute “ the regulator concerned ”,
  - (g) in subsection (8)—
    - (i) for “The Authority” substitute “ A regulator who publishes a draft under subsection (1) ”, and
    - (ii) for “a draft published under subsection (1)” substitute “ the draft ”,
  - (h) in subsection (9), for “the Authority” substitute “ a regulator ”, and
  - (i) for subsection (10) substitute—
    - “(10) Cost benefit analysis” means—
      - (a) an analysis of the costs together with an analysis of the benefits that will arise—
        - (i) if the proposed direction is given, or
        - (ii) if subsection (5)(b) applies, from the direction that has been given, and
      - (b) subject to subsection (10A), an estimate of those costs and of those benefits.
    - (10A) If, in the opinion of the regulator concerned—
      - (a) the costs or benefits referred to in subsection (10) cannot reasonably be estimated, or
      - (b) it is not reasonably practicable to produce an estimate,
 the cost benefit analysis need not estimate them, but must include a statement of the opinion of the regulator concerned and an explanation of it.”
- (9) In section 320 (former underwriting members)—
- (a) in subsection (2), for “Part IV permission” substitute “ Part 4A permission ”,
  - (b) in subsection (3), for “The Authority” substitute “ The PRA ”, and
  - (c) at the end insert—
    - “(5) In the event that the activity of effecting or carrying out contracts of insurance as principal is not to any extent a PRA-regulated activity, the function conferred on the PRA by subsection (3) is exercisable instead by the FCA.

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(6) Accordingly, in that case—

- (a) references in section 321 to the PRA are to be read as references to the FCA, and
- (b) the reference in section 321(13) to the FCA is to be read as a reference to the PRA.”

(10) In section 321 (requirements imposed under section 320)—

- (a) in subsection (2), for “the Authority” substitute “ the PRA ”,
- (b) in subsection (3)(b), for “the Authority's” substitute “the PRA's”,
- (c) in subsections (3)(c), (4) to (9) and (11), for “Authority” substitute “ PRA ”, and
- (d) after subsection (12) insert—

“(13) Before giving a notice under any provision of this section, the PRA must consult the FCA.”

(11) In section 322 (rules applicable to former underwriting members)—

- (a) in subsection (1), for “The Authority” substitute “ The PRA ”,
- (b) in subsection (4), for “Part X (except sections 152 to 154)” substitute “ Part 9A (except sections 137T, 138F, 138G and 138H) ”, and
- (c) at the end insert—

“(5) In the event that the activity of effecting or carrying out contracts of insurance as principal is not to any extent a PRA-regulated activity, the function conferred on the PRA by subsection (1) is exercisable instead by the FCA.”

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**Commencement Information**

**I37** S. 40 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

*Information*

**41 Information, investigations, disclosure etc.**

Schedule 12 contains miscellaneous amendments of FSMA 2000, including amendments relating to information gathering, investigations and disclosure.

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**Commencement Information**

**I38** S. 41 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

**I39** S. 41 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2

*Auditors and actuaries*

**42 Auditors and actuaries**

Schedule 13 contains miscellaneous amendments of Part 22 of FSMA 2000 (auditors and actuaries).

**Status:** Point in time view as at 27/02/2013. This version of this Act contains provisions that are not valid for this point in time.

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#### Commencement Information

**I40** S. 42 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

### *Consumer protection and competition*

#### **43 Provisions about consumer protection and competition**

After section 234B of FSMA 2000 insert—

#### **“PART 16A**

#### CONSUMER PROTECTION AND COMPETITION

#### *Super-complaints and references to FCA*

#### **234C Complaints by consumer bodies**

- (1) A designated consumer body may make a complaint to the FCA that a feature, or combination of features, of a market in the United Kingdom for financial services is, or appears to be, significantly damaging the interests of consumers.
- (2) “Designated consumer body” means a body designated by the Treasury by order.
- (3) The Treasury—
  - (a) may designate a body only if it appears to them to represent the interests of consumers of any description, and
  - (b) must publish in such manner as they think fit (and may from time to time vary) criteria to be applied by them in determining whether to make or revoke a designation.
- (4) Sections 425A and 425B (meaning of “consumers”) apply for the purposes of this section, but the references to consumers in this section do not include consumers who are authorised persons.
- (5) In this section—
  - (a) “market in the United Kingdom” has the meaning given in section 140A;
  - (b) the reference to a feature of a market in the United Kingdom for financial services has a meaning corresponding to that which a reference to a feature of a market in the United Kingdom for goods and services has (by virtue of section 140A(3)) for the purposes of Chapter 4 of Part 9A.

#### **234D Reference by scheme operator or regulated person**

- (1) A relevant person may make a reference to the FCA where it appears to that person that either the first set of conditions or the second set of conditions are satisfied.

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- (2) Each of the following is a “relevant person”—
- (a) the scheme operator;
  - (b) a regulated person.
- (3) The first set of conditions is—
- (a) that there may have been—
    - (i) in the case of a reference by the scheme operator, a regular failure by one or more regulated persons to comply with requirements applicable to the carrying on by them of any activity, or
    - (ii) in the case of a reference by a regulated person, a regular failure by that person to comply with requirements applicable to the carrying on by that person of any activity, and
  - (b) that as a result consumers have suffered, or may suffer, loss or damage in respect of which, if they brought legal proceedings, a remedy or relief would be available in the proceedings.
- (4) The reference to the failure by a regulated person (“R”) to comply with a requirement applicable to the carrying on by R of any activity includes anything done, or omitted to be done, by R in carrying on the activity—
- (a) which is a breach of a duty or other obligation, prohibition or restriction, or
  - (b) which otherwise gives rise to the availability of remedy or relief in legal proceedings.
- (5) It does not matter whether—
- (a) the duty or other obligation, prohibition or restriction, or
  - (b) the remedy or relief,
- arises as a result of any provision made by or under this or any other Act, a rule of law or otherwise.
- (6) The second set of conditions is—
- (a) in the case of a reference by the scheme operator, that one or more regulated persons have, on a regular basis, acted or failed to act, in such a way that, if a complaint were made under the ombudsman scheme in relation to that conduct, the ombudsman would be likely to determine the complaint in favour of the complainant,
  - (b) in the case of a reference by a regulated person, that the regulated person has, on a regular basis, acted or failed to act in such a way that, if a complaint were made under the ombudsman scheme in relation to that conduct, the ombudsman would be likely to determine the complaint in favour of the complainant, and
  - (c) in either case, that—
    - (i) if the complaint would fall within the compulsory jurisdiction or the consumer credit jurisdiction, the ombudsman would be likely to make an award under section 229(2)(a) or give a direction under section 229(2)(b), or
    - (ii) if voluntary jurisdiction rules made for the purposes of section 227 provide for the making of an award against a respondent or the giving of a direction that a respondent take certain steps in relation to a complainant, and the complaint

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would fall within the voluntary jurisdiction, the ombudsman would be likely to make such an award or give such a direction.

- (7) “Consumers” has the meaning given in section 1G.
- (8) “Regulated person” means—
  - (a) an authorised person;
  - (b) an electronic money issuer, as defined in section 1H(8);
  - (c) a payment service provider, as defined in section 1H(8).

#### **234E Response by FCA**

- (1) The FCA must within 90 days after the day on which it receives a complaint under section 234C or a reference under section 234D publish a response stating how it proposes to deal with the complaint or reference, and in particular—
  - (a) whether it has decided to take any action, or to take no action, and
  - (b) if it has decided to take action, what action it proposes to take.
- (2) The response must—
  - (a) include a copy of the complaint or reference, and
  - (b) state the FCA's reasons for its proposals.
- (3) The Treasury may by order amend subsection (1) by substituting any period for the period for the time being specified there.

#### **234F Section 234E: exceptions**

- (1) This section applies where the FCA has received a reference under section 234D from a person who is a relevant person as a result of subsection (2) (b) of that section.
- (2) The duty to respond in section 234E does not apply if the FCA considers that the reference is frivolous, vexatious or has been made in bad faith.
- (3) The FCA must within 90 days after the day on which it receives the reference inform the person who made it—
  - (a) that the duty to respond under section 234E does not apply by virtue of this section, and
  - (b) of its reasons for reaching the conclusion in paragraph (a).
- (4) The Treasury may by order amend subsection (3) by substituting any period for the period for the time being specified there.

#### **234G Guidance**

- (1) The guidance given by the FCA under section 139A—
  - (a) must include guidance about the presentation of a reasoned case for a complaint under section 234C or a reference under section 234D, and
  - (b) may include guidance about such other matters as appears to the FCA to be appropriate for the purposes of section 234C or 234D.
- (2) Guidance given under this section is to be taken to be general guidance as defined in section 139B(5).



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## Competition

### 234H Power of FCA to make request to Office of Fair Trading

- (1) The FCA may ask the Office of Fair Trading (“the OFT”) to consider whether a feature, or combination of features, of a market in the United Kingdom for financial services may prevent, restrict or distort competition in connection with the supply or acquisition of any financial services in the United Kingdom or a part of the United Kingdom.
- (2) The OFT must, within 90 days after the day on which it receives the request, publish a response stating how it proposes to deal with the request and in particular—
  - (a) whether it has decided to take any action, or to take no action, in response to the request, and
  - (b) if it has decided to take action, what action it proposes to take.
- (3) The response must state the OFT's reasons for its proposals.
- (4) The Treasury may by order amend subsection (2) by substituting any period for the period for the time being specified there.
- (5) In this section—
  - (a) “market in the United Kingdom” has the meaning given in section 140A(1);
  - (b) the reference to a feature of a market in the United Kingdom for financial services has a meaning corresponding to that which a reference to a feature of a market in the United Kingdom for goods and services has (by virtue of section 140A(3)) for the purposes of Chapter 4 of Part 9A.”

#### Commencement Information

- I41** S. 43 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3  
**I42** S. 43 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2

VALID FROM 01/04/2013

## Insolvency

### 44 Insolvency

Schedule 14 contains amendments of Part 24 of FSMA 2000 (insolvency).

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### *Miscellaneous amendments of FSMA 2000*

#### **45 The consumer financial education body**

Schedule 15 contains amendments of FSMA 2000 relating to the consumer financial education body.

#### **Commencement Information**

**I43** S. 45 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

VALID FROM 01/04/2013

#### **46 Members of the professions**

Schedule 16 contains miscellaneous amendments of FSMA 2000 relating to financial services provided by members of the professions.

VALID FROM 01/04/2013

#### **47 International obligations**

In section 410 of FSMA 2000 (international obligations), in subsection (4), for paragraph (a) substitute—

- “(a) the FCA;
- (aa) the PRA;
- (ab) the Bank of England when exercising functions conferred on it by Part 18;”.

#### **48 Interpretation of FSMA 2000**

(1) In section 417 of FSMA 2000 (definitions), in subsection (1)—

- (a) omit the definition of “the Authority”,
- (b) in the definition of “control of information rules” for “section 147(1)” substitute “section 137P”,
- (c) after that definition insert—
  - ““credit-related regulated activity” has the meaning given in section 23(1B);”,
- (d) after the definition of “exempt person” insert—
  - ““the FCA” means the Financial Conduct Authority;”,
- (e) in the definition of “financial promotion rules” for “section 145” substitute “section 137R”,
- (f) for the definition of “general rules” substitute—
  - ““general rules”—

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- (a) in relation to the FCA, has the meaning given in section 137A(2), and
- (b) in relation to the PRA, has the meaning given in section 137G(2);”,
- (g) omit the definition of “money laundering rules”,
- (h) omit the definition of “notice of control”,
- (i) for the definition of “Part IV permission” substitute—
  - ““Part 4A permission” has the meaning given in section 55A(5);”,
- (j) after the definition of “partnership” insert—
  - ““the PRA” means the Prudential Regulation Authority;
  - “PRA-authorised person” has the meaning given in section 2B(5);
  - “PRA-regulated activity” has the meaning given in section 22A;”,
- (k) in the definition of “price stabilising rules” for “section 144” substitute “section 137Q ”,
- (l) after that definition insert—
  - ““principal” in relation to an appointed representative, is to be read in accordance with section 39;”,
- (m) in the definition of “regulating provisions” for “section “159(1)” substitute “section 140A ”,
- (n) after that definition insert—
  - ““regulator” has the meaning given in section 3A(2);”,
- (o) omit the definitions of “regulatory objectives” and “regulatory provisions”,
- (p) for the definition of “rule” substitute—
  - ““rule” means a rule made by the FCA or the PRA under this Act;”,
- (q) in the definition of “rule-making instrument” for “section 153” substitute “section 138G ”,
- (r) for the definition of “threshold conditions” substitute—
  - ““threshold conditions”, in relation to a regulated activity, has the meaning given in section 55B(1);”,
- (s) in the definition of “UK authorised person” for “section 178(4)” substitute “section 191G(1) ”, and
- (t) in the definition of “the UK financial system” for “section 3” substitute “section 1I ”.

(2 After section 421 of FSMA 2000 insert—

#### “421ZA Immediate group

In this Act “immediate group”, in relation to a person (“A”), means—

- (a) A;
- (b) a parent undertaking of A;
- (c) a subsidiary undertaking of A;
- (d) a subsidiary undertaking of a parent undertaking of A;
- (e) a parent undertaking of a subsidiary undertaking of A.”

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(3 After section 425B of FSMA 2000 insert—

**“425C Qualifying EU provision”**

- (1) In this Act “qualifying EU provision” means a provision of—
- (a) a directly applicable EU regulation, or
  - (b) an EU decision for whose enforcement the United Kingdom is required by an EU obligation to make provision.
- (2) In subsection (1)(b) “EU decision” means a decision under an EU directive or EU regulation.”

**Commencement Information**

**I44** S. 48(1)(d)(j)(n)(2)(3) in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), **Sch. Pt. 1**

**49 Parliamentary control of statutory instruments**

- (1) Section 429 of FSMA 2000 (Parliamentary control of statutory instruments) is amended as follows.
- (2) In subsection (1) (orders subject to the affirmative resolution procedure)—
- (a) in paragraph (a)—
    - (i) after “section” insert “ 1J, 3B(4), 3F(6), 55C, ”,
    - (ii) after “or (e),” insert “ 138K(6)(c), 192B(6), 204A(7), 213(1A), ”, and
    - (iii) after “236(5),” insert “ 285(4), 380(12), 382(15), 384(13), ”, and
  - (b) omit paragraph (b).
- (3) In subsection (8)—
- (a) after “under section” insert “ 3G(1), 137D(1)(b), ”,
  - (b) after “165A(2)(d)” insert “ , 192A(4) ”, and
  - (c) after “which” insert “ section 22B or 23A or ”.

**Commencement Information**

**I45** S. 49 in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), **Sch. Pt. 1**

**PART 3**

MUTUAL SOCIETIES

*Transfer of functions*

**50 Mutual societies: power to transfer functions**

- (1) The Treasury may by order amend the legislation relating to mutual societies for any of the relevant purposes.

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- (2) “The legislation relating to mutual societies” means—
- (a) the Industrial and Provident Societies Act 1965;
  - (b) the Industrial and Provident Societies Act 1967;
  - (c) the Friendly and Industrial and Provident Societies Act 1968;
  - (d) the Industrial and Provident Societies Act (Northern Ireland) 1969;
  - (e) the Friendly Societies Act 1974;
  - (f) the Credit Unions Act 1979;
  - (g) the Credit Unions (Northern Ireland) Order 1985;
  - (h) the Building Societies Act 1986;
  - (i) the Friendly Societies Act 1992.
- (3) The relevant purposes are—
- (a) providing for any function of the FSA to be exercisable by that body corporate as the FCA;
  - (b) providing for any function of the FSA to be transferred to the PRA;
  - (c) providing for any function of the FSA to be exercisable by that body corporate as the FCA and also to be exercisable concurrently by the PRA;
  - (d) providing for any function which is exercisable by the FCA or the PRA (whether by virtue of a previous order under this section or otherwise) to be transferred to, or to be exercisable concurrently by, the other regulator;
  - (e) providing for any function which is exercisable by the FCA and the PRA (whether by virtue of a previous order under this section or otherwise) to be exercisable only by one of them;
  - (f) making provision that appears to the Treasury to be necessary or expedient in consequence of the provisions of this Act.
- (4) In relation to the Industrial and Provident Societies Act (Northern Ireland) 1969 and the Credit Unions (Northern Ireland) Order 1985, the relevant purposes also include—
- (a) providing for any function of a Northern Ireland department or the Registrar of Credit Unions for Northern Ireland to be transferred to the FCA or the PRA, or to both the FCA and PRA to be exercised concurrently;
  - (b) providing for any function of a Northern Ireland department or the Registrar of Credit Unions for Northern Ireland which relates to the determination of disputes to be exercisable instead by a court.

#### Commencement Information

**I46** S. 50 in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), Sch. Pt. 1

## 51 Further provision that may be included in orders under section 50

- (1) In this section a “transfer order” means an order under section 50 making provision for any of the purposes mentioned in subsection (3)(a) to (e) or (4) of that section.
- (2) The additional powers conferred by section 115(2) on a person making an order under this Act include power for the Treasury, when making a transfer order, to include—
- (a) such consequential provision as the Treasury consider appropriate;
  - (b) provision for the transfer of any property, rights or liabilities held, enjoyed or incurred by any person in connection with transferred functions;

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- (c) provision for the application of the Transfer of Undertakings (Protection of Employment) Regulations 2006 in connection with any transfer of staff;
  - (d) provision for the carrying on and completion by or under the authority of the person to whom the functions are transferred of any proceedings, investigations or other matters commenced, before the order takes effect, by or under the authority of the person from whom the functions are transferred;
  - (e) provision amending any enactment relating to transferred functions in connection with their exercise by, or under the authority of, the person to whom they are transferred;
  - (f) provision requiring either regulator to consult the other, notify the other or obtain the consent of the other in connection with the exercise of transferred functions;
  - (g) provision for the substitution of the person to whom functions are transferred for the person from whom they are transferred, in any instrument, contract or legal proceedings made or begun before the order takes effect.
- (3) For the purposes of subsection (2) a transfer order is to be taken to transfer functions to any person by whom any function becomes exercisable by virtue of the order.
- (4) On or after the making of a transfer order (“the original order”) the Treasury may by order make any incidental, supplemental, consequential or transitional provision or provision by virtue of subsection (2) which they had power to include in the original order.
- (5) The provisions of this section do not limit—
- (a) the powers conferred by section 118 or 119(3), or
  - (b) the powers exercisable under Schedule 21 in connection with a transfer order that transfers functions to the PRA or to the FCA and the PRA.

#### **Commencement Information**

**I47** S. 51 in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), Sch. Pt. 1

## **52 Power to apply or disapply provision made by or under FSMA 2000**

- (1) The Treasury may by order provide—
- (a) for any relevant provision that would not otherwise apply in relation to transferred functions to apply in relation to those functions with such modifications as may be specified;
  - (b) for any relevant provision that would otherwise apply in relation to transferred functions not to apply in relation to them or to apply with such modifications as may be specified.
- (2) “Relevant provision” means a provision of, or made under, FSMA 2000.
- (3) “Transferred function” means a function that has been or is being transferred by an order under section 50; and section 51(3) applies for the purpose of this subsection.

#### **Commencement Information**

**I48** S. 52 in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), Sch. Pt. 1

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VALID FROM 01/04/2013

### 53 Evidence

- (1) A certificate issued by the Treasury that property vested in a person immediately before a transfer order takes effect has been transferred as a result of the order is conclusive evidence of the transfer.
- (2) “Transfer order” means—
  - (a) an order under section 50,
  - (b) an order under section 51(4), or
  - (c) an order under Part 21 of FSMA 2000 (mutual societies).

VALID FROM 01/04/2013

### 54 Repeals in Part 21 of FSMA 2000

- (1) The following provisions of Part 21 of FSMA 2000 are repealed—
  - (a) in section 334 (the Friendly Societies Commission), subsections (1) and (2);
  - (b) section 335 (the Registry of Friendly Societies);
  - (c) section 336 (the Building Societies Commission);
  - (d) section 337 (the Building Societies Investor Protection Board);
  - (e) section 338 (industrial and provident societies and credit unions);
  - (f) section 339 (supplemental provisions).
- (2) The repeals in subsection (1) do not have the effect of revoking any order made under any provision of Part 21 of FSMA 2000 before the commencement of this section.

VALID FROM 01/04/2013

#### *Building societies: miscellaneous*

### 55 Building societies: creation of floating charges

- (1) Section 9B of the Building Societies Act 1986 (restriction on creation of floating charges) is amended as follows.
- (2) In subsection (1), at the end insert “ unless it complies with the requirements in subsection (1A) ”.
- (3) After that subsection insert—

“(1A) The requirements are that the floating charge—

  - (a) is created in favour of a participant in a system, and
  - (b) is created for the purpose of securing any rights and obligations that may arise in connection with participation in that system.”

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(4) After subsection (2) insert—

“(3) In this section “participant” and “system” have the meaning given by Article 2 of Directive [98/26/EC](#) of the European Parliament and of the Council of 19th May 1998 on settlement finality in payment and securities settlement systems (as amended by Directives [2009/44/EC](#) and [2010/78/EU](#)).”

## **56 Power to direct transfer of building society's business**

(1) Section 42B of the Building Societies Act 1986 (power to direct transfers of engagements or business) is amended as follows.

(2) In subsection (1)—

(a) before the “or” at the end of paragraph (a) insert—

“(aa) direct the society, within a specified period, to transfer its business under section 97 to an existing or specially formed company that is a subsidiary of another mutual society by a transfer to which provision made by order under section 3 of the 2007 Act (transfers to subsidiaries of other mutuals) applies;”, and

(b) in paragraph (b), for “to an existing company under section 97” substitute “under section 97 to an existing company that is not a subsidiary of another mutual society”.

(3) After subsection (1) insert—

“(1A) In this section—

(a) “the 2007 Act” means the Building Societies (Funding) and Mutual Societies (Transfers) Act 2007;

(b) “mutual society” has the same meaning as in section 3 of that Act.”

(4) In subsection (4)—

(a) in paragraph (a), for “(1)(b)” substitute “(1)(aa) or (b)”, and

(b) in paragraph (b), after “existing company” insert “, or to a specially formed company that is a subsidiary of another mutual society,”.

(5) In Schedule 8A to that Act (directions under section 42B(4)), in paragraph 9(3), for “section 42B(1)(b)” substitute “section 42B(1)(aa) or (b)”.

### *Interpretation*

## **57 Interpretation of Part 3**

(1) In this Part “regulator” means the FCA or the PRA.

(2) In this Part a reference to a person's functions under an enactment includes a reference to the person's functions under any other enactment as applied by that enactment.

### **Commencement Information**

**I49** S. 57 in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), **Sch. Pt. 1**



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## PART 4

### COLLABORATION BETWEEN TREASURY AND BANK OF ENGLAND, FCA OR PRA

VALID FROM 01/04/2013

#### 58 Duty of Bank to notify Treasury of possible need for public funds

- (1) Where it appears to the Bank of England that there is a material risk of circumstances within any of the following cases arising, the Bank must immediately notify the Treasury.
- (2) A notification under subsection (1) or section 59(2) is referred to in this Part as a “public funds notification”.
- (3) The first case is where the Treasury or the Secretary of State might reasonably be expected to regard it as appropriate to provide financial assistance to or in respect of a financial institution.
- (4) The second case is where—
  - (a) the Treasury, the Bank of England, the PRA, the FCA or the Secretary of State might reasonably be expected to regard it as appropriate to exercise any of their respective powers under Parts 1 to 3 of the Banking Act 2009, and
  - (b) the Treasury might reasonably be expected to regard it as appropriate to incur expenditure in connection with the exercise of any of those powers (whether by the Treasury, the Bank, the PRA, the FCA or the Secretary of State).
- (5) The third case is where the scheme manager of the Financial Services Compensation Scheme might reasonably be expected to request—
  - (a) a loan from the National Loans Fund under section 223B of FSMA 2000, or
  - (b) financial assistance from the Treasury,for the purpose of funding expenses incurred or expected to be incurred under the Financial Services Compensation Scheme.
- (6) A public funds notification must give a general indication of the matters giving rise to the notification.
- (7) A public funds notification must be given or confirmed in writing.

VALID FROM 01/04/2013

#### 59 Duty of Bank to notify Treasury of changes

- (1) This section applies where a public funds notification has been given.
- (2) If the Bank of England is of the opinion that the risk to which the notification relates continues but that there is a substantial change in the matters which gave rise to the notification, the Bank must notify the Treasury.
- (3) If the Bank of England is of the opinion that the risk to which the notification relates has ceased, it must notify the Treasury.

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- (4) Before giving a notification under subsection (3), the Bank must consult the Treasury.
- (5) A notification under subsection (3) must be given or confirmed in writing.

VALID FROM 01/04/2013

## **60 Circumstances in which Treasury power of direction exercisable**

- (1) This section makes provision about the circumstances in which the Treasury's power of direction under section 61 is exercisable, subject to the provisions of that section.
- (2) Where a public funds notification has been given, the power of direction is exercisable by reference to the notification unless the notification has been superseded by a notification under section 59(3).
- (3) Where qualifying financial assistance has been provided, the power of direction is exercisable by reference to the provision of the assistance unless it appears to the Treasury that the assistance has been recovered.
- (4) It is immaterial for the purposes of subsection (3)—
  - (a) whether the qualifying financial assistance was provided before or after the commencement of this section, and
  - (b) whether or not a public funds notification had been given in connection with it.
- (5) For the purposes of this Part qualifying financial assistance is provided if, and only if—
  - (a) the Treasury or the Secretary of State provide financial assistance to or in respect of a financial institution,
  - (b) the Treasury incur expenditure in connection with the exercise by the Treasury, the Bank, the PRA, the FCA or the Secretary of State of any of their powers under Parts 1 to 3 of the Banking Act 2009,
  - (c) the Treasury arrange a loan from the National Loans Fund in pursuance of a request by the scheme manager of the Financial Services Compensation Scheme under section 223B of FSMA 2000, or
  - (d) the Treasury provide financial assistance to the scheme manager of that scheme for the purpose of funding expenses incurred or expected to be incurred under it.
- (6) For the purposes of this section the circumstances in which qualifying financial assistance is to be taken to have been recovered include the following—
  - (a) where, in the case of a loan, the principal of the loan has been repaid and all interest due under the terms of the loan has been paid,
  - (b) where, in the case of a guarantee or indemnity, the Treasury or the Secretary of State will not become liable under the guarantee or indemnity,
  - (c) where, in a case involving the issue or transfer of shares to the Treasury in connection with the provision of qualifying financial assistance, the shares are no longer held by the Treasury.

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VALID FROM 01/04/2013

## 61 Treasury power of direction

- (1) Subsection (2) applies where—
  - (a) the power of direction is exercisable by virtue of section 60(2) by reference to a public funds notification and the Treasury are satisfied that Condition A is met, or
  - (b) the power of direction is exercisable by virtue of section 60(3) by reference to the provision of qualifying financial assistance and the Treasury are satisfied that Condition A or Condition B is met.
- (2) The Treasury may give a direction to the Bank of England relating to one or more of the following—
  - (a) the provision by the Bank to one or more financial institutions of financial assistance other than ordinary market assistance offered by the Bank on its usual terms,
  - (b) the exercise by the Bank of any of the stabilisation powers, as defined by section 1(4) of the Banking Act 2009, or
  - (c) the exercise by the Bank of its powers under Part 3 of that Act (bank administration).
- (3) Condition A is that the giving of the direction is necessary to resolve or reduce a serious threat to the stability of the financial system of the United Kingdom which is connected—
  - (a) in case within subsection (1)(a), with the matters to which the public funds notification relates;
  - (b) in a case within subsection (1)(b), with the matters that gave rise to the provision of the qualifying financial assistance.
- (4) Condition B is that—
  - (a) the qualifying financial assistance was provided for the purpose of resolving or reducing a serious threat to the stability of the financial system of the United Kingdom, and
  - (b) the giving of the direction is necessary to protect the public interest in connection with the provision of that assistance.
- (5) References to the provision of qualifying financial assistance are to be read in accordance with section 60(5).
- (6) This section is subject to section 62.
- (7) Nothing in this section limits the powers conferred by section 4(1) of the Bank of England Act 1946 (Treasury directions to the Bank).

VALID FROM 01/04/2013

## 62 Directions under section 61: supplementary provisions

- (1) References in this section to a direction are to a direction under section 61.

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- (2) Before giving a direction, the Treasury must consult the Bank of England.
- (3) On being given a direction, the Bank must give the Treasury one or more reports on how it is complying or intends to comply with the direction, and on such other matters relating to the direction as it considers appropriate.
- (4) The Treasury may at any time by notice to the Bank revoke a direction.
- (5) The revocation of a direction does not affect the validity of anything previously done in accordance with it.
- (6) Where the Treasury's power of direction is exercised by virtue of section 60(2) by reference to a public funds notification, the direction remains in force (unless revoked under subsection (4)) even if the public funds notification is subsequently superseded by a notification under section 59(3).
- (7) Where the Treasury's power of direction is exercised by virtue of section 60(3) by reference to the provision of qualifying financial assistance, the direction remains in force (unless revoked under subsection (4)) even if it appears to the Treasury that the qualifying financial assistance has subsequently been recovered.
- (8) Each of the following must be in writing—
  - (a) a direction,
  - (b) a report under subsection (3), and
  - (c) a notice revoking a direction.

VALID FROM 01/04/2013

### **63 Duty to lay direction etc before Parliament**

- (1) As soon as practicable after giving or revoking a direction under section 61 or receiving a report under section 62(3), the Treasury must lay before Parliament a copy of the direction, notice of revocation or report.
- (2) But subsection (1) does not apply in a case where the Treasury consider that the publication of the direction, notice of revocation or report would be against the public interest.
- (3) Where the Treasury decide that publication of a direction, notice of revocation or report would be against the public interest, they must from time to time review that decision and if they subsequently decide that publication is no longer against the public interest they must comply with subsection (1).

### **64 Duty of Treasury, Bank and PRA to co-ordinate discharge of functions**

- (1) The Treasury (on the one hand) and the Bank of England and the PRA (on the other) must arrange to co-ordinate the discharge of their respective functions so far as they—
  - (a) relate to the stability of the UK financial system, and
  - (b) affect the public interest.

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- (2) In complying with subsection (1), the Treasury, the Bank and the PRA must have regard in particular to the importance of co-ordination in circumstances where the Bank has given, or is considering the giving of, a public funds notification.

**Commencement Information**

**I50** S. 64 in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), Sch. Pt. 1

**65 Memorandum of understanding: crisis management**

- (1) The Treasury (on the one hand) and the Bank of England and the PRA (on the other) must prepare and maintain a memorandum describing in general terms how they intend to comply with section 64 in relation to the circumstances mentioned in subsection (2) of that section.
- (2) The memorandum must, in particular, make provision about—
- (a) what the Treasury and the Bank regard as a material risk for the purposes of section 58(1);
  - (b) steps to be taken when the Bank has given a public funds notification;
  - (c) the respective roles of the Treasury, the Bank and the PRA, in cases where the Bank has given a public funds notification, in relation to the consideration and assessment of, and taking of, steps to resolve or reduce, threats to the stability of the UK financial system;
  - (d) how the Treasury, the Bank and the PRA will co-operate in fulfilling those roles;
  - (e) the use by the Treasury of their power under section 61;
  - (f) matters connected with the Bank's compliance with a direction under that section;
  - (g) the obtaining and sharing of information.
- (3) The memorandum may make provision about such other matters as may be agreed between the Treasury, the Bank and the PRA, which must be matters that—
- (a) relate to the stability of the UK financial system or the regulation of financial services, and
  - (b) affect the public interest.
- (4) The memorandum need not make provision about the relationship between the Bank and the PRA.
- (5) The Treasury, the Bank of England and the PRA may, with the agreement of a body falling within subsection (6), include in the memorandum provisions relating to co-operation between any of them and that body in relation to matters falling within subsection (3)(a) and (b).
- (6) The bodies falling within this subsection are—
- (a) the FCA;
  - (b) the scheme manager of the Financial Services Compensation Scheme;
  - (c) any other body exercising functions that relate to the stability of the UK financial system or the regulation of financial services.
- (7) The Treasury must—

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- (a) lay before Parliament a copy of the memorandum and any revised memorandum, and
- (b) publish the memorandum as currently in force in such manner as they think fit.

#### **Commencement Information**

**I51** S. 65 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

## **66 Memorandum of understanding: international organisations**

- (1) The Treasury, the Bank of England, the FCA and the PRA (“the UK authorities”) must prepare and maintain a memorandum describing how they intend to co-ordinate the exercise of their relevant functions so far as they relate to membership of, or relations with, the European Supervisory Authorities, EU institutions and other international organisations.
- (2) The “European Supervisory Authorities” are the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority.
- (3) “Relevant function”—
  - (a) in relation to the FCA or the PRA, means any of its functions;
  - (b) in relation to the Bank of England, means any of its functions relating to the stability of the UK financial system or the regulation of financial services;
  - (c) in relation to the Treasury, means any of their functions relating to the matters mentioned in paragraph (b).
- (4) The memorandum is to be made with a view to ensuring—
  - (a) that, to the extent that it is appropriate to do so, the UK authorities agree consistent objectives in relation to matters of common interest;
  - (b) that, to the extent that it is appropriate to do so, they exercise their relevant functions in a way that is likely to advance those objectives;
  - (c) that they exercise their relevant functions in a way that is consistent and effective.
- (5) The memorandum must, in particular, make provision—
  - (a) stating, in relation to each of the UK authorities, those international organisations of which it is a member or with which it has relations and which are concerned with matters that are related to its relevant functions;
  - (b) for there to be a committee for the purposes of the co-ordination mentioned in subsection (1);
  - (c) for that committee to include representatives of the UK authorities and to be chaired by a representative of the Treasury;
  - (d) about the procedures to be followed by the UK authorities in agreeing consistent objectives in relation to matters that materially affect 2 or more of them;
  - (e) about how the UK authorities will consult each other about the discharge of their relevant functions relating to international organisations.

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- (6) The memorandum need not make provision about co-ordination between the FCA and the PRA in relation to membership of, or relations with, the European Supervisory Authorities (as to which, see section 3E of FSMA 2000).
- (7) The UK authorities may, with the agreement of a body exercising functions relating to the stability of the UK financial system or the regulation of financial services, include in the memorandum provisions relating to co-operation between any of them and that body in relation to membership of, or relations with, the European Supervisory Authorities, EU institutions and other international organisations.
- (8) The Treasury must—
  - (a) lay before Parliament a copy of the memorandum and any revised memorandum, and
  - (b) publish the memorandum as currently in force in such manner as they think fit.

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**Commencement Information**

**I52** S. 66 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

## 67 Interpretation of Part 4

- (1) This section has effect for the interpretation of this Part.
- (2) “Public funds notification” is to be read in accordance with section 58(2).
- (3) “Financial assistance” includes giving guarantees or indemnities and any other kind of financial assistance (actual or contingent).
- (4) The Treasury may by order provide that a specified activity or transaction, or class of activity or transaction, is to be or not to be treated as financial assistance for the purposes of this Part; and subsection (3) is subject to this subsection.
- (5) “Qualifying financial assistance” is to be read in accordance with section 60(5).

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**Commencement Information**

**I53** S. 67 in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), Sch. Pt. 1

## PART 5

### INQUIRIES AND INVESTIGATIONS

VALID FROM 01/04/2013

#### *Inquiries*

## 68 Cases in which Treasury may arrange independent inquiries

- (1) This section applies in two cases.



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- (2) The first case is where it appears to the Treasury that—
- (a) events have occurred in relation to—
    - (i) a collective investment scheme,
    - (ii) a person who is, or was at the time of the events, carrying on a regulated activity (whether or not as an authorised person), or
    - (iii) listed securities or an issuer of listed securities,
 which posed or could have posed a serious threat to the stability of the UK financial system or caused or risked causing significant damage to the interests of consumers, and
  - (b) those events might not have occurred, or the threat or damage might have been reduced, but for a serious failure in—
    - (i) the system established by FSMA 2000, or by any previous statutory provision, for the regulation of such schemes, or of such persons and their activities, or the listing of securities, or
    - (ii) the operation of that system.
- (3) The second case is where it appears to the Treasury that—
- (a) events have occurred in relation to a recognised clearing house or a recognised inter-bank payment system which—
    - (i) posed or could have posed a serious threat to the stability of or confidence in the UK financial system, or
    - (ii) caused or risked causing significant damage to business or other interests throughout the United Kingdom, and
  - (b) those events might not have occurred, or the threat or damage might have been reduced, but for a serious failure in—
    - (i) the system established by Part 18 of FSMA 2000, or by any previous statutory provision, for the regulation of clearing houses,
    - (ii) the system established by Part 5 of the Banking Act 2009 for the regulation of inter-bank payment systems, or
    - (iii) the operation of either of those systems.
- (4) If the Treasury consider that it is in the public interest that there should be an independent inquiry into the events and the circumstances surrounding them, they may arrange for an inquiry to be held under section 69.
- (5) In this section—
- “event” does not include any event occurring before 1 December 2001 (but no such limitation applies to the reference in subsection (4) to surrounding circumstances);
  - “recognised inter-bank payment system” means an inter-bank payment system, as defined by section 182 of the Banking Act 2009, that is a recognised system for the purposes of Part 5 of that Act.

## **69 Power to appoint person to hold an inquiry**

- (1) If the Treasury decide to arrange for an inquiry to be held under this section, they may appoint such person as they consider appropriate to hold the inquiry.
- (2) The Treasury may, by a direction to the appointed person, control—
  - (a) the scope of the inquiry;



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- (b) the period during which the inquiry is to be held;
  - (c) the conduct of the inquiry;
  - (d) the making of reports.
- (3) A direction may, in particular—
- (a) confine the inquiry to particular matters;
  - (b) extend the inquiry to additional matters;
  - (c) require the appointed person to postpone the start of, or suspend, an inquiry until a specified time or until a further direction;
  - (d) require the appointed person to discontinue the inquiry or to take only such steps as are specified in the direction;
  - (e) require the appointed person to make such interim reports as are so specified.

## **70 Powers of appointed person and procedure**

- (1) The person appointed to hold an inquiry under section 69 (“A”) may—
- (a) obtain such information from such persons and in such manner as A thinks fit,
  - (b) make such inquiries as A thinks fit, and
  - (c) determine the procedure to be followed in connection with the inquiry.
- (2) A may require any person who, in A’s opinion, is able to provide any information, or produce any document, which is relevant to the inquiry to provide any such information or produce any such document.
- (3) For the purposes of an inquiry, A has the same powers as the court in respect of the attendance and examination of witnesses (including the examination of witnesses abroad) and in respect of the production of documents.
- (4) “The court” means—
- (a) the High Court, or
  - (b) in Scotland, the Court of Session.

## **71 Conclusion of inquiry**

- (1) On completion of an inquiry under section 69, the person holding the inquiry must make a written report to the Treasury—
- (a) setting out the result of the inquiry, and
  - (b) making such recommendations (if any) as the person considers appropriate.
- (2) Any expenses reasonably incurred in holding an inquiry under section 69 are to be met by the Treasury out of money provided by Parliament.

## **72 Obstruction and contempt**

- (1) If a person (“P”)—
- (a) fails to comply with a requirement imposed on P by a person holding an inquiry under section 69, or
  - (b) otherwise obstructs such an inquiry,
- the person holding the inquiry may certify the matter to the High Court (or, in Scotland, the Court of Session).

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- (2) The court may enquire into the matter.
- (3) If, after hearing—
- (a) any witnesses who may be produced against or on behalf of P, and
  - (b) any statement made by or on behalf of P,
- the court is satisfied that P would have been in contempt of court if the inquiry had been proceedings before the court, it may deal with P as if P were in contempt.

### Investigations

VALID FROM 01/04/2013

#### 73 Duty of FCA to investigate and report on possible regulatory failure

- (1) Subsection (3) applies where it appears to the FCA that—
- (a) events have occurred in relation to a regulated person or collective investment scheme which—
    - (i) indicated a significant failure to secure an appropriate degree of protection for consumers,
    - (ii) had or could have had a significant adverse effect on the integrity of the UK financial system, as defined by section 1D of FSMA 2000 (the integrity objective), or
    - (iii) had or could have had a significant adverse effect on effective competition in the interests of consumers in the markets for the services described in paragraphs (a) and (b) of section 1E(1) of FSMA 2000 (the competition objective), and
  - (b) those events might not have occurred, or the failure or adverse effect might have been reduced, but for a serious failure in—
    - (i) the system established by FSMA 2000 for the regulation of authorised persons and their activities, for the listing of securities or for the regulation of collective investment schemes, so far as it relates to the functions of the FCA, or
    - (ii) the operation of that system, so far as it relates to those functions.
- (2) Subsection (3) also applies where the Treasury direct the FCA that it appears to the Treasury that the conditions in subsection (1) are met in relation to specified events.
- (3) The FCA must carry out an investigation into the events and the circumstances surrounding them and report to the Treasury on the result of the investigation.
- (4) Subsection (3) does not apply by virtue of subsection (1) if the Treasury direct the FCA that it is not required to carry out an investigation into the events concerned.
- (5) “Regulated person” means—
- (a) an authorised person,
  - (b) a recognised investment exchange,
  - (c) any other person lawfully carrying on a regulated activity,
  - (d) a person carrying on business in contravention of the general prohibition in section 19 of FSMA 2000, or

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- (e) an issuer of listed securities.

VALID FROM 01/04/2013

#### **74 Duty of PRA to investigate and report on possible regulatory failure**

- (1) Subsection (4) applies where it appears to the PRA that—
- (a) relevant public expenditure has been incurred in respect of a PRA-authorised person, and
  - (b) that expenditure might not have been incurred but for a serious failure in—
    - (i) the system established by FSMA 2000 for the regulation of PRA-authorised persons and their activities, so far as it relates to the functions of the PRA, or
    - (ii) the operation of that system, so far as it relates to those functions.
- (2) Subsection (4) also applies where it appears to the PRA that—
- (a) events have occurred which—
    - (i) had or could have had a significant adverse effect on the safety or soundness of one or more PRA-authorised persons, or
    - (ii) if the effecting and carrying out of contracts of insurance is a PRA-regulated activity for the purposes of FSMA 2000, related to a PRA-authorised person carrying on that activity and indicated a significant failure to secure an appropriate degree of protection for policyholders, and
  - (b) those events might not have occurred, or the adverse effect or failure might have been reduced, but for a serious failure in—
    - (i) the system established by FSMA 2000 for the regulation of PRA-authorised persons and their activities, so far as it relates to the functions of the PRA, or
    - (ii) the operation of that system, so far as it relates to those functions.
- (3) Subsection (4) also applies where the Treasury direct the PRA that it appears to the Treasury—
- (a) that the conditions in subsection (1)(a) and (b) are met in relation to a specified person, or
  - (b) that the conditions in subsection (2)(a) and (b) are met in relation to specified events.
- (4) The PRA must—
- (a) carry out an investigation into—
    - (i) the events that gave rise to the incurring of the public expenditure mentioned in subsection (1)(a) and the circumstances surrounding them, or
    - (ii) the events mentioned in subsection (2)(a) and the circumstances surrounding them, and
  - (b) report to the Treasury on the result of the investigation.
- (5) Subsection (4) does not apply by virtue of subsection (1) if the Treasury direct the PRA that it is not required to carry out an investigation into the events concerned.

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VALID FROM 01/04/2013

## 75 Interpretation of section 74

- (1) This section has effect for the interpretation of section 74.
- (2) “Policyholder” has the same meaning as in FSMA 2000.
- (3) Relevant public expenditure has been incurred in respect of a PRA-authorized person (“P”) in each of the following cases (but no others)—
  - (a) where the Treasury or the Secretary of State have provided financial assistance to or in respect of P for the purposes of resolving or reducing a threat to the stability of the UK financial system;
  - (b) where the Treasury have incurred expenditure in connection with the exercise by the Treasury, the Secretary of State or the Bank of England of any power under Parts 1 to 3 of the Banking Act 2009 in relation to P;
  - (c) where the scheme manager of the Financial Services Compensation Scheme has received a loan from the National Loans Fund, or financial assistance from the Treasury, for the purpose of funding expenses incurred or expected to be incurred under the Financial Services Compensation Scheme by reason of events relating to P.
- (4) In subsection (3)(a) and (c) “financial assistance” includes giving guarantees or indemnities and any other kind of financial assistance (actual or contingent), but does not include the giving by the Treasury of an indemnity or guarantee in respect of the provision of financial assistance by the Bank of England.
- (5) The Treasury may by order made by statutory instrument provide that a specified activity or transaction, or class of activity or transaction, is to be or is not to be treated as financial assistance for the purposes of subsection (3)(a), and subsection (4) is subject to this subsection.

VALID FROM 01/04/2013

## 76 Modification of section 74 in relation to Lloyd's

- (1) This section applies only if PRA-authorized persons include—
  - (a) the Society, or
  - (b) other persons who carry on regulated activities in relation to anything done at Lloyd's.
- (2) Section 74 has effect as if—
  - (a) in subsection (1)(a) (and section 75(3)), the reference to a PRA-authorized person included a reference to a member of the Society,
  - (b) in subsection (2)(a)(i), the reference to one or more PRA-authorized persons included a reference to the Society, and the members of the Society, taken together, and
  - (c) in subsection (2)(a)(ii), the reference to a PRA-authorized person carrying on the activity of effecting and carrying out contracts of insurance included a reference to—

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- (i) the Society, or
  - (ii) any other person who carries on PRA-regulated activities in relation to anything done at Lloyd's.
- (3) In this section—
- (a) “PRA-regulated activity” is to be read in accordance with section 22A of FSMA 2000, and
  - (b) terms which are defined in Lloyd's Act 1982 have the same meaning as in that Act.

VALID FROM 01/04/2013

## 77 Power of Treasury to require FCA or PRA to undertake investigation

- (1) This section applies where—
- (a) the Treasury consider that it is in the public interest that either regulator should undertake an investigation into any relevant events, and
  - (b) it does not appear to the Treasury that the regulator has undertaken or is undertaking an investigation (under this Part or otherwise) into those events.
- (2) The Treasury must give the regulator a direction specifying the relevant events and requiring the regulator to undertake an investigation into those events and the circumstances surrounding them and to report to the Treasury on the result of the investigation.
- (3) “Relevant events” means events that have occurred in relation to—
- (a) a collective investment scheme,
  - (b) a person who is, or was at the time of the events, carrying on a regulated activity (whether or not as an authorised person), or
  - (c) listed securities or an issuer of listed securities.
- (4) “Relevant events” do not include any events occurring before 1 December 2001 (but no such limitation applies to the reference in subsection (2) to surrounding circumstances).

VALID FROM 01/04/2013

## 78 Conduct of investigation

- (1) Where a regulator is required by section 73 or 74 or under section 77 to carry out an investigation, it is for the regulator to decide how it is to be carried out, but this is subject to the following provisions.
- (2) In carrying out such an investigation, the regulator must have regard to the desirability of minimising any adverse effect that the carrying out of the investigation may have on the exercise by the regulator of any of its other functions.
- (3) The regulator may postpone the start of, or suspend, an investigation if it considers it necessary to do so to avoid a material adverse effect on the exercise by it of any of its other functions.

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- (4) The regulator must notify the Treasury if it postpones the start of, or suspends, an investigation under subsection (3), and the notification must specify when the investigation will begin or resume.
- (5) The Treasury may, by a direction to the regulator, control—
- (a) the scope of the investigation;
  - (b) the period during which the investigation is to be carried out;
  - (c) the conduct of the investigation;
  - (d) the making of reports.
- (6) A direction may, in particular—
- (a) confine the investigation to particular matters;
  - (b) extend the investigation to additional matters;
  - (c) require the regulator to postpone the start of, or suspend, an investigation until a specified time or until a further direction;
  - (d) where a notification has been received under subsection (3), require the regulator to begin or resume the investigation immediately or at a specified time;
  - (e) require the regulator to discontinue the investigation or to take only such steps as are specified in the direction;
  - (f) require the regulator to make such interim reports as are so specified.
- (7) In exercising the power conferred on them by this section, the Treasury must have regard to the desirability of minimising any adverse effect that the carrying out of the investigation may have on the exercise by the regulator of any of its other functions.

VALID FROM 01/04/2013

## 79 Conclusion of investigation

On completion of an investigation required by section 73 or 74 or under section 77, the regulator must make a written report to the Treasury—

- (a) setting out the result of the investigation,
- (b) setting out the lessons (if any) that the regulator considers that it should learn from the investigation, and
- (c) making such recommendations (if any) as the regulator considers appropriate.

## 80 Statements of policy

- (1) Each regulator must prepare and issue a statement of its policy with respect to the exercise of its functions under sections 73 to 79 (“the relevant sections”) and, in particular—
- (a) the matters it will take into account in determining whether the conditions which give rise to its duty to carry out an investigation under section 73 or 74 (as the case may be) are met, and
  - (b) how it will carry out investigations under the relevant sections.

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- (2) A regulator may at any time alter or replace a statement issued by it under this section.
- (3) If a statement issued under this section is altered or replaced by a regulator, the regulator must issue the altered or replacement statement.
- (4) A regulator must obtain the consent of the Treasury before issuing a statement under this section.
- (5) A statement issued under this section by a regulator must be published by the regulator in the way appearing to the regulator to be best calculated to bring it to the attention of the public.
- (6) A regulator must, without delay, give the Treasury a copy of any statement which it publishes under this section.
- (7) In exercising, or deciding whether to exercise, its functions under the relevant sections a regulator must have regard to any statement published by it under this section and for the time being in force.
- (8) A regulator may charge a reasonable fee for providing a person with a copy of a statement issued by it.

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**Commencement Information**

**I54** S. 80 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

VALID FROM 01/04/2013

**81 Publication of directions**

- (1) This section applies to a direction given by the Treasury under any of the following provisions—
  - (a) section 73(4);
  - (b) section 74(5);
  - (c) section 78(5).
- (2) As soon as practicable after giving the direction, the Treasury must—
  - (a) lay before Parliament a copy of the direction, and
  - (b) publish the direction in such manner as the Treasury think fit.
- (3) Subsection (2) does not apply where the Treasury consider that publication of the direction would be against the public interest.

VALID FROM 01/04/2013

*Publication of reports*

**82 Publication of reports of inquiries and investigations**

- (1) This section applies where a report is made to the Treasury under section 71 or 79.



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- (2) Subject to subsection (3), the Treasury must publish the report in full.
- (3) The Treasury may withhold material in the report from publication to such extent—
  - (a) as is required by any statutory provision, enforceable EU obligation or rule of law, or
  - (b) as the Treasury consider to be necessary in the public interest, having regard in particular to the matters mentioned in subsection (4).
- (4) Those matters are—
  - (a) the extent to which withholding material might inhibit the allaying of public concern;
  - (b) the risk of harm or damage that could be avoided or reduced by withholding any material;
  - (c) any conditions of confidentiality subject to which any person acquired information that was given to the inquiry or used in the investigation.
- (5) In subsection (4)(b) “harm or damage” includes in particular—
  - (a) damage to national security or international relations;
  - (b) damage to the economic interests of the United Kingdom or a part of the United Kingdom;
  - (c) damage caused by disclosure of commercially sensitive information.
- (6) The Treasury must lay before Parliament whatever is published under subsection (2).
- (7) If the Treasury receive a report under section 71 or 79, but withhold all or part of the material in the report from publication, they must publish and lay before Parliament a statement of their reasons for not publishing the report in full.
- (8) Publication under subsection (2) or (7) is to be in such manner as the Treasury think fit.
- (9) References to a report under section 71 or 79 include references to an interim report required under section 69 or 78.

### *Supplementary*

## **83 Interpretation and supplementary provision**

(1) In this Part—

- “authorised person” has the same meaning as in FSMA 2000;
- “collective investment scheme” has the same meaning as in FSMA 2000;
- “consumer” has the meaning given in section 1G of FSMA 2000;
- “listed securities” means anything which has been admitted to the official list under Part 6 of FSMA 2000;
- “PRA-authorised person” has the same meaning as in FSMA 2000;
- “recognised clearing house” has the same meaning as in FSMA 2000;
- “recognised investment exchange” has the same meaning as in FSMA 2000;
- “regulated activity” has the same meaning as in FSMA 2000;
- “regulator” means the FCA or the PRA.



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(2) A direction by the Treasury under this Part must be given in writing.

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**Commencement Information**

**I55** S. 83 in force at 24.1.2013 by [S.I. 2013/113](#), art. 2(1)(a), [Sch. Pt. 1](#)

## PART 6

### INVESTIGATION OF COMPLAINTS AGAINST REGULATORS

#### 84 Arrangements for the investigation of complaints

- (1) The regulators must—
- (a) make arrangements (“the complaints scheme”) for the investigation of complaints arising in connection with the exercise of, or failure to exercise, any of their relevant functions (see section 85), and
  - (b) appoint an independent person (“the investigator”) to be responsible for the conduct of investigations in accordance with the complaints scheme.
- (2) For the purposes of this Part “the regulators” are the FCA, the PRA and the Bank of England, and references to a regulator are to be read accordingly.
- (3) The complaints scheme must be designed so that, as far as reasonably practicable, complaints are investigated quickly.
- (4) The Treasury's approval is required for the appointment or dismissal of the investigator.
- (5) The terms and conditions on which the investigator is appointed must be such as, in the opinion of the regulators, are reasonably designed to secure—
- (a) that the investigator will be free at all times to act independently of the regulators, and
  - (b) that complaints will be investigated under the complaints scheme without favouring the regulators.

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**Commencement Information**

**I56** S. 84 in force at 24.1.2013 for specified purposes by [S.I. 2013/113](#), art. 2(1)(c), [Sch. Pt. 3](#)

#### 85 Relevant functions in relation to complaints scheme

- (1) This section has effect for the interpretation of the reference in section 84(1)(a) to the relevant functions of the regulators.
- (2) The relevant functions of the FCA or the PRA are its functions other than its legislative functions.
- (3) The relevant functions of the Bank of England are its functions under Part 18 of FSMA 2000 (recognised clearing houses) or under Part 5 of the Banking Act 2009 (inter-bank payment systems), other than its legislative functions.

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- (4) For the purposes of subsection (2), the following are the FCA's legislative functions—
- (a) making rules under FSMA 2000;
  - (b) issuing codes under section 64 or 119 of FSMA 2000;
  - (c) issuing statements under—
    - (i) section 63C, 64, 69, 88C, 89S, 93, 124, 131J, 138N, 192H, 192N, 210 or 312J of FSMA 2000,
    - (ii) section 345D of FSMA 2000 (whether as a result of section 345(2) or 345A(3) or section 249(1) of that Act), or
    - (iii) section 80 of the Financial Services Act 2012;
  - (d) giving directions under section 316, 318 or 328 of FSMA 2000;
  - (e) issuing general guidance, as defined in section 139B(5) of FSMA 2000.
- (5) For the purposes of subsection (2), the following are the PRA's legislative functions—
- (a) making rules under FSMA 2000;
  - (b) issuing codes under section 64 of FSMA 2000;
  - (c) issuing statements under—
    - (i) section 63C, 64, 69, 192H, 192N, 210 or 345D of FSMA 2000, or
    - (ii) section 80 of the Financial Services Act 2012;
  - (d) giving directions under section 316 or 318 of FSMA 2000;
  - (e) issuing guidance under section 2I of FSMA 2000.
- (6) For the purposes of subsection (3), the following functions of the Bank of England under Part 18 of FSMA 2000 are legislative functions—
- (a) making rules;
  - (b) issuing statements—
    - (i) under section 312J, or
    - (ii) by virtue of the application by Schedule 17A of a provision mentioned in subsection (5)(c)(i) of this section.
- (7) For the purposes of subsection (3), the following functions of the Bank of England under Part 5 of the Banking Act 2009 are legislative functions—
- (a) publishing principles or codes of practice under sections 188 and 189;
  - (b) preparing statements under section 198(3).

**Modifications etc. (not altering text)**

**C1** S. 85 modified (20.2.2013) by [The Financial Services Act 2012 \(Transitional Provisions\) \(Rules and Miscellaneous Provisions\) Order 2013 \(S.I. 2013/161\)](#), arts. 1(1), **3(8)(c)**

**Commencement Information**

**I57** S. 85 in force at 24.1.2013 for specified purposes by [S.I. 2013/113](#), art. 2(1)(c), **Sch. Pt. 3**

**86 Consultation in relation to, and publication of, complaints scheme**

- (1) Before making the complaints scheme, the regulators must publish a draft of the proposed scheme in the way appearing to them to be best calculated to bring it to the attention of the public.

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- (2) The draft must be accompanied by notice that representations about it may be made to any of the regulators within a specified time.
- (3) Before making the proposed complaints scheme, the regulators must have regard to any representations made to any of them in accordance with subsection (2).
- (4) If the regulators make the proposed complaints scheme, they must publish an account, in general terms, of—
  - (a) the representations made to any of them in accordance with subsection (2), and
  - (b) their response to the representations.
- (5) If the complaints scheme differs from the draft published under subsection (1) in a way which is, in the opinion of the regulators, significant the regulators must (in addition to complying with subsection (4)) publish details of the difference.
- (6) The regulators must publish up-to-date details of the complaints scheme including, in particular, details of—
  - (a) the provision made under section 87(5), and
  - (b) the powers which the investigator has to investigate a complaint.
- (7) Those details must be published in the way appearing to the regulators to be best calculated to bring them to the attention of the public.
- (8) The regulators must notify the Treasury of the publication of details under subsection (6).
- (9) A regulator may charge a reasonable fee for providing a person with a copy of—
  - (a) a draft published under subsection (1), or
  - (b) details published under subsection (6).
- (10) Subsections (1) to (5) and (9)(a) also apply to a proposal to alter or replace the complaints scheme.

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**Commencement Information**

**I58** S. 86 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

## 87 Investigation of complaints

- (1) A regulator is not obliged to investigate in accordance with the complaints scheme a complaint which it reasonably considers would be more appropriately dealt with in another way (for example by referring the matter to the Upper Tribunal or by the institution of other legal proceedings).
- (2) The complaints scheme must provide—
  - (a) for reference to the investigator of any complaint which a regulator is investigating,
  - (b) for the investigator—
    - (i) to have the means to conduct a full investigation of the complaint,
    - (ii) to report to the regulator to which the complaint relates and the complainant on the result of the investigator's investigation, and

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- (iii) to be able to publish the investigator's report (or part of it) if the investigator considers that it (or the part) ought to be brought to the attention of the public, and
  - (c) for the meeting by the regulators of the expenses of the scheme.
- (3) If a regulator has decided not to investigate a complaint, it must notify the investigator.
  - (4) If the investigator considers that a complaint of which the investigator has been notified under subsection (3) ought to be investigated, the investigator may proceed as if the complaint had been referred to the investigator under the complaints scheme.
  - (5) The complaints scheme must confer on the investigator the power to recommend, if the investigator thinks it appropriate, that the regulator to which a complaint relates takes either or both of the following steps—
    - (a) makes a compensatory payment to the complainant, or
    - (b) remedies the matter complained of.
  - (6) The complaints scheme must require the regulator to which a complaint relates, in a case where the investigator—
    - (a) has reported that the complaint is well-founded, or
    - (b) has criticised the regulator in a report,
 to inform the investigator and the complainant of the steps which it proposes to take in response to the report.
  - (7) The investigator may require the regulator to which a complaint relates to publish the whole or a specified part of the response.
  - (8) The investigator may appoint a person to conduct the investigation on the investigator's behalf but subject to the investigator's direction.
  - (9) An officer or employee of any of the regulators may not be appointed under subsection (8).
  - (10) Subsection (2) is not to be taken as preventing a regulator from making arrangements for the initial investigation of a complaint to be conducted by the regulator.

#### **Commencement Information**

**I59** S. 87 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

VALID FROM 01/04/2013

#### **88 Exemption from liability in damages**

- (1) Neither the investigator appointed under section 84 nor a person appointed to conduct an investigation on the investigator's behalf under section 87(8) is to be liable in damages for anything done or omitted in the discharge, or purported discharge, of functions in relation to the investigation of a complaint.
- (2) Subsection (1) does not apply—
  - (a) if the act or omission is shown to have been in bad faith, or

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- (b) so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful as a result of section 6(1) of the Human Rights Act 1998.

## PART 7

### OFFENCES RELATING TO FINANCIAL SERVICES

VALID FROM 01/04/2013

#### 89 Misleading statements

- (1) Subsection (2) applies to a person (“P”) who—
- (a) makes a statement which P knows to be false or misleading in a material respect,
  - (b) makes a statement which is false or misleading in a material respect, being reckless as to whether it is, or
  - (c) dishonestly conceals any material facts whether in connection with a statement made by P or otherwise.
- (2) P commits an offence if P makes the statement or conceals the facts with the intention of inducing, or is reckless as to whether making it or concealing them may induce, another person (whether or not the person to whom the statement is made)—
- (a) to enter into or offer to enter into, or to refrain from entering or offering to enter into, a relevant agreement, or
  - (b) to exercise, or refrain from exercising, any rights conferred by a relevant investment.
- (3) In proceedings for an offence under subsection (2) brought against a person to whom that subsection applies as a result of paragraph (a) of subsection (1), it is a defence for the person charged (“D”) to show that the statement was made in conformity with—
- (a) price stabilising rules,
  - (b) control of information rules, or
  - (c) the relevant provisions of Commission Regulation (EC) No 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments.
- (4) Subsections (1) and (2) do not apply unless—
- (a) the statement is made in or from, or the facts are concealed in or from, the United Kingdom or arrangements are made in or from the United Kingdom for the statement to be made or the facts to be concealed,
  - (b) the person on whom the inducement is intended to or may have effect is in the United Kingdom, or
  - (c) the agreement is or would be entered into or the rights are or would be exercised in the United Kingdom.

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VALID FROM 01/04/2013

## 90 Misleading impressions

- (1) A person (“P”) who does any act or engages in any course of conduct which creates a false or misleading impression as to the market in or the price or value of any relevant investments commits an offence if—
  - (a) P intends to create the impression, and
  - (b) the case falls within subsection (2) or (3) (or both).
- (2) The case falls within this subsection if P intends, by creating the impression, to induce another person to acquire, dispose of, subscribe for or underwrite the investments or to refrain from doing so or to exercise or refrain from exercising any rights conferred by the investments.
- (3) The case falls within this subsection if—
  - (a) P knows that the impression is false or misleading or is reckless as to whether it is, and
  - (b) P intends by creating the impression to produce any of the results in subsection (4) or is aware that creating the impression is likely to produce any of the results in that subsection.
- (4) Those results are—
  - (a) the making of a gain for P or another, or
  - (b) the causing of loss to another person or the exposing of another person to the risk of loss.
- (5) References in subsection (4) to gain or loss are to be read in accordance with subsections (6) to (8).
- (6) “Gain” and “loss”—
  - (a) extend only to gain or loss in money or other property of any kind;
  - (b) include such gain or loss whether temporary or permanent.
- (7) “Gain” includes a gain by keeping what one has, as well as a gain by getting what one does not have.
- (8) “Loss” includes a loss by not getting what one might get, as well as a loss by parting with what one has.
- (9) In proceedings brought against any person (“D”) for an offence under subsection (1) it is a defence for D to show—
  - (a) to the extent that the offence results from subsection (2), that D reasonably believed that D’s conduct would not create an impression that was false or misleading as to the matters mentioned in subsection (1),
  - (b) that D acted or engaged in the conduct—
    - (i) for the purpose of stabilising the price of investments, and
    - (ii) in conformity with price stabilising rules,
  - (c) that D acted or engaged in the conduct in conformity with control of information rules, or
  - (d) that D acted or engaged in the conduct in conformity with the relevant provisions of Commission Regulation [\(EC\) No 2273/2003](#) of 22 December

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2003 implementing Directive [2003/6/EC](#) of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments.

- (10) This section does not apply unless—
- (a) the act is done, or the course of conduct is engaged in, in the United Kingdom, or
  - (b) the false or misleading impression is created there.

VALID FROM 01/04/2013

## 91 Misleading statements etc in relation to benchmarks

- (1) A person (“A”) who makes to another person (“B”) a false or misleading statement commits an offence if—
- (a) A makes the statement in the course of arrangements for the setting of a relevant benchmark,
  - (b) A intends that the statement should be used by B for the purpose of the setting of a relevant benchmark, and
  - (c) A knows that the statement is false or misleading or is reckless as to whether it is.
- (2) A person (“C”) who does any act or engages in any course of conduct which creates a false or misleading impression as to the price or value of any investment or as to the interest rate appropriate to any transaction commits an offence if—
- (a) C intends to create the impression,
  - (b) the impression may affect the setting of a relevant benchmark,
  - (c) C knows that the impression is false or misleading or is reckless as to whether it is, and
  - (d) C knows that the impression may affect the setting of a relevant benchmark.
- (3) In proceedings for an offence under subsection (1), it is a defence for the person charged (“D”) to show that the statement was made in conformity with—
- (a) price stabilising rules,
  - (b) control of information rules, or
  - (c) the relevant provisions of Commission Regulation [\(EC\) No 2273/2003](#) of 22 December 2003 implementing Directive [2003/6/EC](#) of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments.
- (4) In proceedings brought against any person (“D”) for an offence under subsection (2) it is a defence for D to show—
- (a) that D acted or engaged in the conduct—
    - (i) for the purpose of stabilising the price of investments, and
    - (ii) in conformity with price stabilising rules,
  - (b) that D acted or engaged in the conduct in conformity with control of information rules, or
  - (c) that D acted or engaged in the conduct in conformity with the relevant provisions of Commission Regulation [\(EC\) No 2273/2003](#) of 22 December



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2003 implementing Directive [2003/6/EC](#) of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments.

- (5) Subsection (1) does not apply unless the statement is made in or from the United Kingdom or to a person in the United Kingdom.
- (6) Subsection (2) does not apply unless—
  - (a) the act is done, or the course of conduct is engaged in, in the United Kingdom, or
  - (b) the false or misleading impression is created there.

VALID FROM 01/04/2013

## 92 Penalties

- (1) A person guilty of an offence under this Part is liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding the applicable maximum term or a fine not exceeding the statutory maximum, or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 7 years or a fine, or both.
- (2) For the purpose of subsection (1)(a) “the applicable maximum term” is—
  - (a) in England and Wales, 12 months (or 6 months, if the offence was committed before the commencement of section 154(1) of the Criminal Justice Act 2003);
  - (b) in Scotland, 12 months;
  - (c) in Northern Ireland, 6 months.

## 93 Interpretation of Part 7

- (1) This section has effect for the interpretation of this Part.
- (2) “Investment” includes any asset, right or interest.
- (3) “Relevant agreement” means an agreement—
  - (a) the entering into or performance of which by either party constitutes an activity of a kind specified in an order made by the Treasury, and
  - (b) which relates to a relevant investment.
- (4) “Relevant benchmark” means a benchmark of a kind specified in an order made by the Treasury.
- (5) “Relevant investment” means an investment of a kind specified in an order made by the Treasury.
- (6) Schedule 2 to FSMA 2000 (except paragraphs 25 and 26) applies for the purposes of subsections (3) and (5) with references to section 22 of that Act being read as references to each of those subsections.



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- (7) Nothing in Schedule 2 to FSMA 2000, as applied by subsection (6), limits the power conferred by subsection (3) or (5).
- (8) “Price stabilising rules” and “control of information rules” have the same meaning as in FSMA 2000.
- (9) In this section “benchmark” has the meaning given in section 22(6) of FSMA 2000.

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**Commencement Information**

**I60** S. 93 in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), Sch. Pt. 1

**94 Affirmative procedure for certain orders**

- (1) This section applies to the first order made under section 93.
- (2) This section also applies to any subsequent order made under that section which contains a statement by the Treasury that the effect of the proposed order would include one or more of the following—
  - (a) that an activity which is not specified for the purposes of subsection (3)(a) of that section would become one so specified,
  - (b) that an investment which is not a relevant investment would become a relevant investment;
  - (c) that a benchmark which is not a relevant benchmark would become a relevant benchmark.
- (3) A statutory instrument containing (alone or with other provisions) an order to which this section applies may not be made unless a draft of the instrument has been laid before Parliament and approved by a resolution of each House.

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**Commencement Information**

**I61** S. 94 in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), Sch. Pt. 1

VALID FROM 01/04/2013

**95 Consequential repeal**

Section 397 of FSMA 2000 (which relates to misleading statements and practices and is superseded by the provisions of this Part) is repealed.

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VALID FROM 01/04/2013

## PART 8

### AMENDMENTS OF BANKING ACT 2009

#### *Special resolution regime and bank administration*

VALID FROM 01/01/2015

#### **96 Objectives and conditions**

- (1) The Banking Act 2009 is amended as follows.
- (2) In section 3 (interpretation: other expressions), after “this Part—” insert—
 

““client assets” means assets which an institution has undertaken to hold for a client (whether or not on trust, and whether or not the undertaking has been complied with).”
- (3) In section 4 (special resolution objectives), after subsection (8) insert—
 

“(8A) Objective 6, which applies in any case in which client assets may be affected, is to protect those assets.

“(8B) Objective 7 is to minimise adverse effects on institutions (such as investment exchanges and clearing houses) that support the operation of financial markets.”
- (4) In section 8(2) (Condition A: private sector purchaser and bridge bank)—
  - (a) in paragraph (b) for “the banking systems of the United Kingdom, or” substitute “ those systems, ”, and
  - (b) after paragraph (c) insert “, or
  - (d) the protection of any client assets that may be affected.”
- (5) In section 47 (restriction of partial transfers), for subsection (3) substitute—
 

“(3) Provision under subsection (2) may, in particular, refer to—

  - (a) particular classes of deposit;
  - (b) particular classes of client assets.”
- (6) In the Table in section 261 (index of defined terms), after the entry relating to “central counterparty clearing services”, insert—

“Client assets (Part 1)	3”.
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#### **97 Private sector purchasers**

- (1) The Banking Act 2009 is amended as follows.

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(2) After section 26 insert—

**“26A Private sector purchaser: reverse share transfer**

- (1) This section applies where the Bank of England has made a share transfer instrument in accordance with section 11(2) (“the original instrument”) providing for the transfer of securities issued by a bank to a person (“the original transferee”).
- (2) The Bank of England may make one or more private sector reverse share transfer instruments in respect of securities issued by the bank and held by the original transferee.
- (3) A private sector reverse share transfer instrument is a share transfer instrument which—
  - (a) provides for transfer to the transferor under the original instrument;
  - (b) makes other provision for the purposes of, or in connection with, the transfer of securities which are, could be or could have been transferred under paragraph (a).
- (4) The Bank of England must not make a private sector reverse share transfer instrument without the written consent of the original transferee.
- (5) Sections 7, 8 and 50 do not apply to a private sector reverse share transfer instrument (but it is to be treated in the same way as any other share transfer instrument for all other purposes including for the purposes of the application of a power under this Part).
- (6) Before making a private sector reverse share transfer instrument the Bank of England must consult—
  - (a) the PRA,
  - (b) the FCA, and
  - (c) the Treasury.
- (7) Section 26 applies where the Bank of England has made a private sector reverse share transfer instrument.”

(3) In section 29 (reverse share transfer)—

- (a) in subsection (3) for the words from “securities”, in the second place, to the end substitute “ securities issued by the bank and held by a transferee under the onward share transfer order (“the onward transferee”). ”, and
- (b) after subsection (4) insert—

“(4A) The Treasury must not make a reverse share transfer order under subsection (3) unless—

- (a) the onward transferee is—
  - (i) a company wholly owned by the Bank of England,
  - (ii) a company wholly owned by the Treasury, or
  - (iii) a nominee of the Treasury, or
- (b) the reverse share transfer order is made with the written consent of the onward transferee.”

(4) In section 31 (bridge bank: reverse share transfer)—

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- (a) in subsection (1) omit the words from “providing for” to the end,
- (b) in subsection (2) for “person within subsection (1)(a) to (c)” substitute “transferee under the original instrument”,
- (c) after subsection (3) insert—

“(3A) The Bank of England must not make a bridge bank reverse share transfer instrument unless—

- (a) the transferee under the original instrument is—
  - (i) a company wholly owned by the Bank of England,
  - (ii) a company wholly owned by the Treasury, or
  - (iii) a nominee of the Treasury, or
- (b) the bridge bank reverse share transfer instrument is made with the written consent of the transferee under the original instrument.”

- (5) After section 42 insert—

**“42A Private sector purchaser: reverse property transfer**

- (1) This section applies where the Bank of England has made a property transfer instrument in accordance with section 11(2) (“the original instrument”) providing for the transfer of property, rights or liabilities of a bank to a person (“the original transferee”).
- (2) The Bank of England may make one or more private sector reverse property transfer instruments in respect of property, rights or liabilities of the original transferee.
- (3) A private sector reverse property transfer instrument is a property transfer instrument which—
  - (a) provides for transfer to the transferor under the original instrument;
  - (b) makes other provision for the purposes of, or in connection with, the transfer of property, rights or liabilities that are, could be or could have been transferred under paragraph (a) (whether the transfer has been or is to be effected by that instrument or otherwise).
- (4) The Bank of England must not make a private sector reverse property transfer instrument without the written consent of the original transferee.
- (5) Sections 7, 8 and 50 do not apply to a private sector reverse property transfer instrument (but it is to be treated in the same way as any other property transfer instrument for all other purposes including for the purposes of the application of a power under this Part).
- (6) Before making a private sector reverse property transfer instrument the Bank of England must consult—
  - (a) the PRA,
  - (b) the FCA, and
  - (c) the Treasury.
- (7) Section 42 applies where the Bank of England has made a private sector reverse property transfer instrument.”

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- (6) In section 44 (reverse property transfer)—
- (a) in subsection (3) for “of a transferee” to the end substitute “ of a transferee under the onward property transfer instrument (“the onward transferee”). ”,
  - (b) after subsection (4) insert—
    - “(4A) The Bank of England must not make a reverse property transfer instrument unless—
      - (a) the onward transferee is—
        - (i) a company wholly owned by the Bank of England,
        - (ii) a company wholly owned by the Treasury, or
        - (iii) a company wholly owned by a nominee of the Treasury, or
      - (b) the reverse property transfer instrument is made with the written consent of the onward transferee.”
- (7) In section 46 (temporary public ownership: reverse property transfer)—
- (a) in subsection (1) omit from “providing for” to the end, and
  - (b) after subsection (3) insert—
    - “(3A) The Treasury must not make a reverse property transfer order unless—
      - (a) the transferee under the original order is—
        - (i) a company wholly owned by the Bank of England,
        - (ii) a company wholly owned by the Treasury, or
        - (iii) a nominee of the Treasury, or
      - (b) the reverse property transfer order is made with the written consent of the transferee under the original order.”
- (8) In section 48A (creation of liabilities), in subsection (1) after “42(3)(b),” insert “ 42A(3)(b), ”.
- (9) In section 53 (onward and reverse transfers: compensation), in subsection (1)—
- (a) before paragraph (a) insert—
    - “(za) the Bank of England makes a private sector reverse share transfer instrument under section 26A,” and
  - (b) after paragraph (d) insert—
    - “(da) the Bank of England makes a private sector reverse property transfer instrument under section 42A,”.
- (10) In section 83 (supplemental), in subsection (2)(d)—
- (a) at the end of sub-paragraph (iii) insert “ and ”, and
  - (b) for sub-paragraphs (iv) and (v) substitute—
    - “(iv) is not subject to the restriction in section 29(3) that the securities issued by the bank were transferred under the original order (as defined in section 29(1)).”
- (11) In the Table in section 261 (index of defined terms), after the entry relating to “partial property transfer”, insert—

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“Private sector reverse property transfer instrument	42A
Private sector reverse share transfer instrument	26A”

VALID FROM 01/01/2015

## 98 Property transfer instruments: property held on trust

- (1) The Banking Act 2009 is amended as follows.
- (2) In section 34(7) (effect of property transfer instruments: provision in respect of property held on trust), in paragraph (a) omit “(which provision may remove or alter the terms of the trust)”.
- (3) At the end of section 34 insert—
  - “(8) Provision under subsection (7)(a) may remove or alter the terms of the trust on which the property is held only to the extent that the Bank of England thinks it necessary or expedient for the purpose of transferring—
    - (a) the legal or beneficial interest of the transferor in the property;
    - (b) any powers, rights or obligations of the transferor in respect of the property.
  - (9) In subsection (8) references to the transferor are references to the transferor under the property transfer instrument.”
- (4) In section 45 (temporary public ownership: property transfer orders) after subsection (5) insert—
 

“(5A) In the application of section 34(8) by virtue of subsection (5)(b) above, the reference to the Bank of England is to be treated as a reference to the Treasury.”
- (5) In section 46 (temporary public ownership: reverse property transfer orders) after subsection (5) insert—
 

“(5A) In the application of section 34(8) by virtue of subsection (5)(b) above, the reference to the Bank of England is to be treated as a reference to the Treasury.”

VALID FROM 01/01/2015

## 99 Reports following exercise of a stabilisation power

- (1) After section 79 of the Banking Act 2009 insert—

### “79A Private sector purchaser: report

- (1) This section applies where the Bank of England sells all or part of a bank's business to a commercial purchaser.

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- (2) The Bank must report to the Chancellor of the Exchequer about the exercise of the power to make share transfer instruments and property transfer instruments under section 11(2).
- (3) The report must comply with any requirements as to content specified by the Treasury.
- (4) The report must be made as soon as is reasonably practicable after the end of one year beginning with the date of the first transfer instrument made under section 11(2).”

(2) After section 81 of that Act insert—

**“81A Accounting information to be included in reports under sections 80 and 81**

- (1) A report under section 80(1) or 81 must include accounting information in respect of the bank or bridge bank that is the subject of the report.
  - (2) In this section “accounting information” means—
    - (a) a balance sheet that, in the opinion of the person making the report, gives a true and fair view of the state of affairs of the bank or bridge bank as at the reporting date, and
    - (b) a profit and loss account that, in the opinion of the person making the report, gives a true and fair view of the profit or loss of the bank or bridge bank for the reporting period.
  - (3) In this section—
    - (a) “reporting period” means the period to which the report relates, and
    - (b) “reporting date” means the last day of the reporting period.”
- (3) In section 1(6) of that Act (table describing provisions of Part 1), in the entry relating to sections 76 to 81, for “81” substitute “ 81A ”.

VALID FROM 05/06/2014

**100 Groups**

- (1) The Banking Act 2009 is amended as follows.
- (2) In section 1 (overview), for the entry in the Table relating to sections 82 and 83 substitute—

“Sections 81B to 83 Groups”.

- (3) In section 20 (directors), after subsection (1) insert—

“(1A) Subsection (1) also applies to a director of any undertaking which is a banking group company in respect of a specified bank.”
- (4) After section 36 insert—



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### **“36A Directors**

- (1) A property transfer instrument may enable the Bank of England—
  - (a) to remove a director of a specified bank;
  - (b) to vary the service contract of a director of a specified bank;
  - (c) to terminate the service contract of a director of a specified bank;
  - (d) to appoint a director of a specified bank.
- (2) Subsection (1) also applies to a director of any undertaking which is a banking group company in respect of a specified bank.
- (3) Appointments under subsection (1)(d) are to be on terms and conditions agreed with the Bank of England.”
- (5) For the italic heading before section 82 substitute “ *Groups* ”, and after that heading insert—

### **“81B Sale to commercial purchaser and transfer to bridge bank**

- (1) The Bank of England may exercise a stabilisation power in respect of a banking group company in accordance with section 11(2) or 12(2) if the following conditions are met.
- (2) Condition 1 is that the PRA is satisfied that the general conditions for the exercise of a stabilisation power set out in section 7 are met in respect of a bank in the same group.
- (3) Condition 2 (which does not apply in a financial assistance case) is that the Bank of England is satisfied that the exercise of the power in respect of the banking group company is necessary, having regard to the public interest in—
  - (a) the stability of the financial systems of the United Kingdom,
  - (b) the maintenance of public confidence in the stability of those systems,
  - (c) the protection of depositors, or
  - (d) the protection of any client assets that may be affected.
- (4) Condition 3 (which applies only in a financial assistance case) is that—
  - (a) the Treasury have recommended the Bank of England to exercise a stabilisation power on the grounds that it is necessary to protect the public interest, and
  - (b) in the Bank's opinion, exercise of the power in respect of the banking group company is an appropriate way to provide that protection.
- (5) Condition 4 is that the banking group company is an undertaking incorporated in, or formed under the law of any part of, the United Kingdom.
- (6) Before determining whether Condition 2 or 3 (as appropriate) is met, the Bank of England must consult—
  - (a) the Treasury,



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- (b) the PRA, and
- (c) the FCA.

(7) In exercising a stabilisation power in reliance on this section the Bank of England must have regard to the need to minimise the effect of the exercise of the power on other undertakings in the same group.

(8) In this section “financial assistance case” means a case in which the Treasury notify the Bank of England that they have provided financial assistance in respect of a bank in the same group for the purpose of resolving or reducing a serious threat to the stability of the financial systems of the United Kingdom.

### 81C Section 81B: supplemental

- (1) In the following provisions references to banks include references to banking group companies—
  - (a) section 10(1), and
  - (b) section 75(5)(a).
- (2) Where the Bank of England exercises a stabilisation power in respect of a banking group company in reliance on section 81B, the provisions relating to the stabilisation powers and the bank administration procedure contained in this Act (except sections 7 and 8) and any other enactment apply (with any necessary modifications) as if the banking group company were a bank.
- (3) For the purposes of the application of section 143 (grounds for applying for bank administration order), the reference in subsection (2) to the Bank of England exercising a stabilisation power includes a case where the Bank of England intends to exercise such a power.

### 81D Interpretation: “banking group company” &c.

- (1) In this Part “banking group company” means an undertaking—
  - (a) which is (or, but for the exercise of a stabilisation power, would be) in the same group as a bank, and
  - (b) in respect of which any conditions specified in an order made by the Treasury are met.
- (2) An order may require the Bank of England to consult specified persons before determining whether the conditions are met.
- (3) An order—
  - (a) is to be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (4) If an order contains a statement that the Treasury are of the opinion that, by reason of urgency, it is necessary to make the order without complying with subsection (3)(b)—
  - (a) the order may be made, and
  - (b) the order lapses unless approved by resolution of each House of Parliament during the period of 28 days (ignoring periods of

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	<p>dissolution, prorogation or adjournment of either House for more than 4 days) beginning with the day on which the order is made.</p> <p>(5) The lapse of an order under subsection (4)(b)—</p> <p style="padding-left: 2em;">(a) does not invalidate anything done under or in reliance on the order before the lapse and at a time when neither House has declined to approve the order, and</p> <p style="padding-left: 2em;">(b) does not prevent the making of a new order (in new terms).</p> <p>(6) Undertakings are in the same group for the purposes of sections 81B, 81C and this section if they are group undertakings in respect of each other.</p> <p>(7) Expressions defined in the Companies Act 2006 have the same meaning in section 81B and this section as in that Act.”</p> <p>(6) In the Table in section 259 (statutory instruments), in Part 1 after the entry relating to section 78 insert—</p>
“81D	<p>Meaning of “banking group company”</p> <p style="text-align: right;">Draft affirmative resolution (except for urgent cases)”</p>
	<p>(7) In the Table in section 261 (index of defined terms), after the entry relating to “bank insolvency order” insert—</p>
“Banking group company	81D”.
VALID FROM 05/06/2014	
<b>101</b>	<b>Application to investment firms</b>
	<p>(1) The Banking Act 2009 is amended as follows.</p> <p>(2) In section 1 (overview), after the entry in the Table relating to sections 84 to 89 insert—</p>
“Section 89A	Investment firms”.
	<p>(3) In section 2 (interpretation: “bank”), at the end insert—</p> <p style="padding-left: 2em;">“(8) Section 89A applies this Part to investment firms with modifications.”</p> <p>(4) In section 75(5) (power to change law: application to other institutions), omit the “or” following paragraph (c) and after that paragraph insert—</p> <p style="padding-left: 2em;">“(ca) to investment firms.”</p> <p>(5) After section 89 (and in Part 1) insert—</p>

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### *“Investment firms*

#### **89A Application to investment firms**

- (1) This Part applies to investment firms as it applies to banks, subject to the modifications in subsection (2).
- (2) Ignore sections 1(2)(b), 4(2)(b) and (6), 5(1)(b), 7(7), 8(2)(c) and 14(5).”
- (6) After section 159 insert—

#### **“159A Application to investment firms**

This Part applies to investment firms as it applies to banks.”

- (7) After section 258 insert—

#### **“258A Investment firm”**

- (1) In this Act “investment firm” means a UK institution which is (or, but for the exercise of a stabilisation power, would be) an investment firm for the purposes of Directive [2006/49/EC](#) on the capital adequacy of investment firms and credit institutions.
- (2) But “investment firm” does not include—
  - (a) an institution which is also—
    - (i) a bank (within the meaning of Part 1),
    - (ii) a building society (within the meaning of section 119 of the Building Societies Act 1986), or
    - (iii) a credit union (within the meaning of section 31 of the Credit Unions Act 1979 or Article 2(2) of the Credit Unions (Northern Ireland) Order 1985), or
  - (b) an institution which is of a class or description specified in an order made by the Treasury.
- (3) An order—
  - (a) is to be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (4) If an order contains a statement that the Treasury are of the opinion that, by reason of urgency, it is necessary to make the order without complying with subsection (3)(b)—
  - (a) the order may be made, and
  - (b) the order lapses unless approved by resolution of each House of Parliament during the period of 28 days (ignoring periods of dissolution, prorogation or adjournment of either House for more than 4 days) beginning with the day on which the order is made.
- (5) The lapse of an order under subsection (4)(b)—

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	<p>(a) does not invalidate anything done under or in reliance on the order before the lapse and at a time when neither House has declined to approve the order, and</p> <p>(b) does not prevent the making of a new order (in new terms).</p> <p>(6) In subsection (1) “UK institution” means an institution which is incorporated in, or formed under the law of any part of, the United Kingdom.”</p> <p>(8) In the Table in section 259 (statutory instruments), in Part 7 after the entry relating to section 257 insert—</p>
“258A	<p>Meaning of “investment firm”</p> <p>Draft affirmative resolution (except for urgent cases)”</p>
	<p>(9) In the Table in section 261 (index of defined terms), after the entry relating to “inter-bank payment system”, insert—</p>
“Investment firm	<p>258A”.</p>
	<p>(10) In section 214B(1)(a) of FSMA 2000 (contribution to costs of special resolution regime) for “or credit union” substitute “, credit union or investment firm ”.</p>
VALID FROM 05/06/2014	
<b>102</b>	<b>Application to UK clearing houses</b>
	<p>(1) The Banking Act 2009 is amended as follows.</p> <p>(2) In section 1 (overview), after the entry in the Table relating to section 89A, insert—</p>
“Sections 89B to 89G	<p>UK clearing houses”.</p>
	<p>(3) In section 2 (interpretation: “bank”), after subsection (8) insert—</p> <p>“(9) Section 89B applies this Part to UK clearing houses with modifications.”</p> <p>(4) After section 39 insert—</p> <p><b>“39A Banks which are clearing houses</b></p> <p>Sections 89C to 89E (clearing house rules, membership and recognition) apply in relation to a bank which would be a UK clearing house but for section 89G(2) (exclusion of banks etc from definition of UK clearing house) as they apply in relation to a UK clearing house.”</p> <p>(5) In section 75(5) (power to change law: application to other institutions), after paragraph (ca) insert—</p> <p>“(cb) to UK clearing houses, or”.</p> <p>(6) After section 89A (and in Part 1) insert—</p>

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*“UK clearing houses*

**89B Application to UK clearing houses**

- (1) This Part applies to UK clearing houses as it applies to banks, subject to—
  - (a) the modifications specified in subsections (2) to (5), and in the Table in subsection (6), and
  - (b) any other necessary modifications.
- (2) For section 13 substitute—

**“13 Transfer of ownership**

- (1) The third stabilisation option is to transfer ownership of the UK clearing house to any person.
- (2) For that purpose the Bank of England may make one or more share transfer instruments.”
- (3) For sections 28 and 29 substitute—

**“28 Onward transfer**

- (1) This section applies where the Bank of England has made a share transfer instrument, in respect of securities issued by a UK clearing house, in accordance with section 13(2) (“the original instrument”).
- (2) The Bank of England may make one or more onward share transfer instruments.
- (3) An onward share transfer instrument is a share transfer instrument which—
  - (a) provides for the transfer of—
    - (i) securities which were issued by the UK clearing house before the original instrument and have been transferred by the original instrument or a supplemental share transfer instrument, or
    - (ii) securities which were issued by the UK clearing house after the original instrument;
  - (b) makes other provision for the purposes of, or in connection with, the transfer of securities issued by the UK clearing house (whether the transfer has been or is to be effected by that instrument, by another share transfer instrument or otherwise).
- (4) An onward share transfer instrument may not transfer securities to the transferor under the original instrument.
- (5) The Bank of England may not make an onward share transfer instrument unless the transferee under the original instrument is—
  - (a) the Bank of England,

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- (b) a nominee of the Treasury, or
- (c) a company wholly owned by the Bank of England or the Treasury.

(6) Sections 7 and 8 do not apply to an onward share transfer instrument (but it is to be treated in the same way as any other share transfer instrument for all other purposes, including for the purposes of the application of a power under this Part).

(7) Before making an onward share transfer instrument the Bank of England must consult—

- (a) if the UK clearing house is a PRA-authorized person, the PRA, and
- (b) the FCA.

(8) Section 26 applies where the Bank of England has made an onward share transfer instrument.

### **29 Reverse share transfer**

(1) This section applies where the Bank of England has made a share transfer instrument in accordance with section 13(2) (“the original instrument”) providing for the transfer of securities issued by a UK clearing house to a person (“the original transferee”).

(2) The Bank of England may make one or more reverse share transfer instruments in respect of securities issued by the UK clearing house and held by the original transferee (whether or not they were transferred by the original instrument).

(3) If the Bank of England makes an onward share transfer instrument in respect of securities transferred by the original instrument, the Bank may make one or more reverse share transfer instruments in respect of securities issued by the UK clearing house and held by a transferee under the onward share transfer instrument (“the onward transferee”).

(4) A reverse share transfer instrument is a share transfer instrument which—

- (a) provides for transfer to the transferor under the original instrument (where subsection (2) applies);
- (b) provides for transfer to the original transferee (where subsection (3) applies);
- (c) makes other provision for the purposes of, or in connection with, the transfer of securities which are, could be or could have been transferred under paragraph (a) or (b).

(5) The Bank of England may not make a reverse share transfer instrument under subsection (2) unless—

- (a) the original transferee is—
  - (i) the Bank of England,
  - (ii) a company wholly owned by the Bank of England or the Treasury, or

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- (iii) a nominee of the Treasury, or
  - (b) the reverse share transfer instrument is made with the written consent of the original transferee.
- (6) The Bank of England may not make a reverse share transfer instrument under subsection (3) unless—
  - (a) the onward transferee is—
    - (i) the Bank of England,
    - (ii) a company wholly owned by the Bank of England or the Treasury, or
    - (iii) a nominee of the Treasury, or
  - (b) the reverse share transfer instrument is made with the written consent of the onward transferee.
- (7) Sections 7 and 8 do not apply to a reverse share transfer instrument (but it is to be treated in the same way as any other share transfer instrument for all other purposes including for the purposes of the application of a power under this Part).
- (8) Before making a reverse share transfer instrument the Bank of England must consult—
  - (a) if the UK clearing house is a PRA-authorized person, the PRA, and
  - (b) the FCA.
- (9) Section 26 applies where the Bank of England has made a reverse share transfer instrument.”
- (4) For sections 45 and 46 substitute—

**“45 Transfer of ownership: property transfer**

- (1) This section applies where the Bank of England has made a share transfer instrument, in respect of securities issued by a UK clearing house, in accordance with section 13(2) (“the original instrument”).
- (2) The Bank of England may make one or more property transfer instruments.
- (3) A property transfer instrument is an instrument which—
  - (a) provides for property, rights or liabilities of the UK clearing house to be transferred (whether accruing or arising before or after the original instrument);
  - (b) makes other provision for the purposes of, or in connection with, the transfer of property, rights or liabilities of the UK clearing house (whether the transfer has been or is to be effected by the instrument or otherwise).
- (4) The Bank of England may not make a property transfer instrument in accordance with this section unless the original instrument transferred securities to—
  - (a) the Bank of England,



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(b) a company wholly owned by the Bank of England or the Treasury, or

(c) a nominee of the Treasury.

(5) Sections 7 and 8 do not apply to a property transfer instrument made in accordance with this section.

(6) Section 42 applies where the Bank of England has made a property transfer instrument in accordance with this section.

(7) Before making a property transfer instrument in accordance with this section, the Bank of England must consult—

(a) if the UK clearing house is a PRA-authorized person, the PRA, and

(b) the FCA.

#### **46 Transfer of ownership: reverse property transfer**

(1) This section applies where the Bank of England has made a property transfer instrument in accordance with section 45(2) (“the original instrument”).

(2) The Bank of England may make one or more reverse property transfer instruments in respect of property, rights or liabilities of the transferee under the original instrument.

(3) A reverse property transfer instrument is a property transfer instrument which—

(a) provides for transfer to the transferor under the original instrument;

(b) makes other provision for the purposes of, or in connection with, the transfer of property, rights or liabilities which are, could be or could have been transferred.

(4) The Bank of England must not make a reverse property transfer instrument unless—

(a) the transferee under the original instrument is—

(i) the Bank of England,

(ii) a company wholly owned by the Bank of England or the Treasury, or

(iii) a nominee of the Treasury, or

(b) the reverse property transfer instrument is made with the written consent of the transferee under the original instrument.

(5) Sections 7 and 8 do not apply to a reverse property transfer instrument made in accordance with this section.

(6) Before making a reverse property transfer instrument in accordance with this section, the Bank of England must consult—

(a) if the UK clearing house is a PRA-authorized person, the PRA, and

(b) the FCA.



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(7) Section 42 applies where the Bank of England has made a reverse property transfer instrument in accordance with this section.”

(5) For section 81 substitute—

**“81 Transfer of ownership: report**

(1) This section applies where the Bank of England makes one or more share transfer instruments in respect of a UK clearing house under section 13(2).

(2) The Bank must report to the Chancellor of the Exchequer about the exercise of the power to make share transfer instruments under that section.

(3) The report must comply with any requirements as to content specified by the Treasury.

(4) The report must be made as soon as is reasonably practicable after the end of one year beginning with the date of the first transfer instrument made under section 13(2).”

(6) The table mentioned in subsection (1)(a) is as follows—

TABLE OF MODIFICATIONS

<i>Provision</i>	<i>Modification</i>
Section 1	Ignore subsection (2)(b) and (c).  In subsection (3)(c), for “to temporary public ownership” substitute “ of ownership ”.  In subsection (4)(a), for “15, 16, 26 to 31 and 85” substitute “ 15, 26 and 28 to 31 ”.
Section 4	Ignore subsection (2)(b) and (c).  Ignore subsection (3)(a), (b) and (ba).  In subsection (5), for “banking” substitute “ financial ”.  In subsection (6), for “protect depositors” substitute “ maintain the continuity of central counterparty clearing services ”.  Ignore subsections (8A), (8B) and (9).
Section 5	Ignore subsection (1)(b) and (c).  In subsection (3)— (a) for “Sections 12 and 13 require” substitute “ Section 12 requires ”, and (b) ignore the words “and temporary public ownership”.
Section 6	In subsection (4)— (a) after “Before” insert “ issuing or ”, and (b) ignore paragraph (d).  In subsection (5) after “after” insert “ issuing or ”.

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Section 7	<p>In subsection (1), for “PRA” substitute “ Bank of England ”.</p> <p>In subsection (2), for the words following “satisfy the” substitute “ recognition requirements ”.</p> <p>The Bank of England may treat Condition 1 as met if satisfied that it would be met but for the withdrawal or possible withdrawal of critical clearing services by the UK clearing house.</p> <p>In subsection (3), for “satisfy the threshold conditions” substitute “ maintain the continuity of any critical clearing services it provides while also satisfying the recognition requirements ”.</p> <p>In subsection (4), for “PRA” substitute “ Bank of England ”.</p> <p>Ignore subsection (4A).</p> <p>In subsection (5)—</p> <ul style="list-style-type: none"> <li>(a) for “PRA” substitute “ Bank of England ”, and</li> <li>(b) ignore paragraph (a) unless the UK clearing house is a PRA-authorized person, in which case for “Bank of England” substitute “ PRA ”.</li> </ul> <p>Ignore subsections (7) and (8).</p> <p>For the purposes of section 7—</p> <ul style="list-style-type: none"> <li>(a) “critical clearing services” means central counterparty clearing services the withdrawal of which may, in the Bank of England's opinion, threaten the stability of the financial systems of the United Kingdom, and</li> <li>(b) “recognition requirements” means the requirements resulting from section 286 of the Financial Services and Markets Act 2000.</li> </ul>
Section 8	<p>In subsection (1), omit “in accordance with section 11(2) or 12(2)”.</p> <p>Ignore subsection (2)(c) and (d).</p> <p>In subsection (3), ignore paragraph (a) unless the UK clearing house is a PRA-authorized person.</p> <p>In subsection (4), ignore the words “in accordance with section 11(2) or 12(2)”.</p>
Section 9	Ignore section 9.
Section 11	Ignore subsection (2)(a).
Section 13	See above.
Section 14	Ignore subsection (5).
Section 16	Ignore section 16.
Section 20	Ignore subsections (2) and (4).
Section 24	In subsection (1), ignore paragraph (c) unless the UK clearing house is a PRA-authorized person.
Section 25	Ignore section 25.

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Section 26	In subsection (1), for “11(2)” substitute “ 13(2) ”.  In subsection (5), ignore paragraph (a) unless the UK clearing house is a PRA-authorized person.  In subsection (6), for “11(2)” substitute “ 13(2) ”.
Sections 26A and 27	Ignore sections 26A and 27.
Sections 28 and 29	See above.
Section 30	In subsection (5), ignore paragraph (a) unless the UK clearing house is a PRA-authorized person.
Section 31	In subsection (4), for “7, 8 and 51” substitute “ 7 and 8 ”.  In subsection (5), ignore paragraph (a) unless the UK clearing house is a PRA-authorized person.
Section 41	In subsection (1), ignore paragraph (c) unless the UK clearing house is a PRA-authorized person.
Section 42	In subsection (5), ignore paragraph (a) unless the UK clearing house is a PRA-authorized person.
Section 42A	In subsection (5), for “7, 8 and 50” substitute “ 7 and 8 ”.  In subsection (6), ignore paragraph (a) unless the UK clearing house is a PRA-authorized person.
Section 43	In subsection (6), for “7, 8 and 52” substitute “ 7 and 8 ”.  In subsection (7), ignore paragraph (a) unless the UK clearing house is a PRA-authorized person.
Section 44	In subsection (5), for “7, 8 and 52” substitute “ 7 and 8 ”.  In subsection (6), ignore paragraph (a) unless the UK clearing house is a PRA-authorized person.
Sections 45 and 46	See above.
Sections 49 to 53	Ignore sections 49 to 53.
Section 54	In subsection (1), for “A compensation scheme order” substitute “ An order under section 89F ”.  In subsection (4)(b), for “compensation scheme order” substitute “ the order under section 89F ”.
Section 55	In subsection (10), for “to which section 62 applies” substitute “ under section 89F ”.
Section 56	In subsection (6), for “to which section 62 applies” substitute “ under section 89F ”.
Section 57	In subsection (1), for “A compensation scheme order” substitute “ An order under section 89F ”.  In subsection (4)(a), for “has had a permission under Part 4A of the Financial Services and Markets Act 2000 (regulated

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	activities) varied or cancelled” substitute “ no longer qualifies as a recognised body under Part 18 of the Financial Services and Markets Act 2000 (recognised investment exchanges and clearing houses) or is subject to a requirement imposed under that Part ”.
Section 58	<p>In subsection (1), for “A resolution fund order” substitute “ An order under section 89F that provides for transferors to become entitled to the proceeds of the disposal of things transferred ”.</p> <p>Ignore subsection (3).</p> <p>In subsection (4), for “A resolution fund order” substitute “ An order under section 89F that provides for transferors to become entitled to the proceeds of the disposal of things transferred ”.</p> <p>In subsection (5), for “A resolution fund order” substitute “ An order under section 89F that provides for transferors to become entitled to the proceeds of the disposal of things transferred ”.</p> <p>Ignore subsections (6) to (8).</p>
Section 59	Ignore section 59.
Section 60	<p>In subsection (3)(c), ignore the references to bank insolvency and bank administration.</p> <p>In subsection (4)—</p> <ul style="list-style-type: none"> <li>(a) ignore paragraphs (a) and (b), and</li> <li>(b) in paragraph (c), for “a third party compensation order” substitute “ an order under section 89F ”.</li> </ul> <p>In subsection (5)—</p> <ul style="list-style-type: none"> <li>(a) ignore paragraph (a), and</li> <li>(b) in paragraph (c), for “a compensation scheme order or resolution fund order” substitute “ an order under section 89F ”.</li> </ul>
Section 61	<p>In subsection (1)—</p> <ul style="list-style-type: none"> <li>(a) ignore paragraphs (a) to (c), and</li> <li>(b) treat the subsection as including a reference to orders under section 89F.</li> </ul> <p>Ignore subsection (2)(b).</p>
Section 62	Ignore section 62.
Section 65	<p>In subsection (1)(a)(ii), for “order” substitute “ instrument ”.</p> <p>In subsection (3)—</p> <ul style="list-style-type: none"> <li>(a) in paragraph (a), ignore the words “where subsection (1)(a)(i) applies”, and</li> <li>(b) ignore paragraph (b).</li> </ul>
Section 66	<p>In subsection (1)—</p> <ul style="list-style-type: none"> <li>(a) in paragraph (a), ignore the reference to section 11(2)(a),</li> <li>(b) in paragraph (d)(i), ignore the words following “England”, and</li> <li>(c) ignore paragraph (d)(ii).</li> </ul>
Section 68	In subsection (1)(a), for “order” substitute “ instrument ”.

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Section 69	In subsection (4)— (a) in paragraph (a), ignore the words “in relation to sections 63 and 64”, and (b) ignore paragraph (b).
Section 70	In subsection (3)— (a) in paragraph (a), ignore the words “in relation to section 63”, and (b) ignore paragraph (b).
Section 71	Ignore subsection (1)(a).
Section 72	Ignore subsection (1)(a).
Section 73	Ignore subsection (1)(a).
Section 79A	In subsection (2), ignore the words “share transfer instruments and”.
Section 81	See above.
Section 81B	In subsection (1), for “or 12(2)” substitute “, 12(2) or 13(2) ”. Ignore subsection (3)(c) and (d). In subsection (6), ignore paragraph (b) unless the clearing house is a PRA-authorised person.
Section 81C	In subsection (2), ignore the words “and the bank administration procedure”. Ignore subsection (3).
Sections 82 and 83	Ignore sections 82 and 83.

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### **89C Clearing house rules**

- (1) A property transfer instrument made in respect of a UK clearing house may make provision about the consequences of a transfer for the rules of the clearing house.
- (2) In particular, an instrument may—
  - (a) modify or amend the rules of a UK clearing house;
  - (b) in a case where some, but not all, of the business of a UK clearing house is transferred, make provision as to the application of the rules in relation to the parts of the business that are, and are not, transferred.
- (3) Provision by virtue of this section may (but need not) be limited so as to have effect—
  - (a) for a specified period, or
  - (b) until a specified event occurs or does not occur.

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### **89D Clearing house membership**

- (1) A property transfer instrument made in respect of a UK clearing house may make provision about the consequences of a transfer for membership of the clearing house.
- (2) In particular, an instrument may—
  - (a) make provision modifying the terms on which a person is a member of a UK clearing house;
  - (b) in a case where some, but not all, of the business of a UK clearing house is transferred, provide for a person who was a member of the transferor to remain a member of the transferor while also becoming a member of the transferee.

### **89E Recognition of transferee company**

- (1) The Bank of England may provide for a company to which the business of a UK clearing house is transferred in accordance with section 12(2) to be treated as a recognised clearing house for the purposes of the Financial Services and Markets Act 2000—
  - (a) for a specified period, or
  - (b) until a specified event occurs.
- (2) The provision may have effect—
  - (a) for a period specified in the instrument, or
  - (b) until the occurrence of an event specified or described in the instrument.
- (3) The power under this section—
  - (a) may be exercised only with the consent of the Treasury, and
  - (b) must be exercised by way of provision in a property transfer instrument (or supplemental instrument).

### **89F Clearing house compensation orders**

- (1) The Treasury may by order make provision for protecting the financial interests of transferors and others in connection with any transfer under this Part as it applies by virtue of section 89B.
- (2) The order may make provision establishing a scheme—
  - (a) for determining whether transferors should be paid compensation, or providing for transferors to be paid compensation, and establishing a scheme for paying any compensation,
  - (b) under which transferors become entitled to the proceeds of the disposal of things transferred in specified circumstances, and to a specified extent, and
  - (c) for compensation to be paid to persons other than transferors.
- (3) An order—
  - (a) is to be made by statutory instrument, and

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- (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

**89G Interpretation: “UK clearing house” &c.**

- (1) In this Part “UK clearing house” means a clearing house—
- (a) which is incorporated in, or formed under the law of any part of, the United Kingdom,
  - (b) which provides central counterparty clearing services, and
  - (c) in relation to which a recognition order is in force under Part 18 of the Financial Services and Markets Act 2000.
- (2) But “UK clearing house” does not include a clearing house which is also—
- (a) a bank,
  - (b) a building society (within the meaning of section 119 of the Building Societies Act 1986),
  - (c) a credit union (within the meaning of section 31 of the Credit Unions Act 1979 or Article 2(2) of the Credit Unions (Northern Ireland) Order 1985), or
  - (d) an investment firm.
- (3) Where a stabilisation power is exercised in respect of a UK clearing house, it does not cease to be a UK clearing house for the purposes of this Part if the recognition order referred to in subsection (1)(c) is later revoked.
- (4) In this Part—
- “central counterparty clearing services” has the same meaning as in section 155 of the Companies Act 1989 (see subsection (3A) of that section), and
  - “PRA-authorised person” has the meaning given by section 2B(5) of the Financial Services and Markets Act 2000.”
- (7) In the Table in section 259 (statutory instruments), in Part 1 after the entry relating to section 89 insert—

“89F Clearing house compensation orders Draft affirmative resolution”

- (8) In the Table in section 261 (index of defined terms)—
- (a) after the entry relating to “bridge bank share transfer instrument” insert—

“central counterparty clearing services	89G”,
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  - (b) after the entry relating to “partial property transfer” insert—

“PRA-authorised person	89G”
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  - (c) at the end insert—

“UK clearing house	89G”.
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### 103 State aid

After section 145 of the Banking Act 2009 insert—

#### “145A Power to direct bank administrator

- (1) This section applies where—
  - (a) a bank administration order has been made, and
  - (b) the Treasury are of the opinion that anything done, or proposed to be done, in connection with the exercise of one or more of the stabilisation powers may constitute the granting of aid to which any of the provisions of Article 107 or 108 of TFEU applies (“State aid”).
- (2) The Treasury may, in writing, direct the bank administrator to take specified action to enable the United Kingdom to fulfil any of the purposes specified in subsection (3).
- (3) The purposes are—
  - (a) to inform the European Commission that State aid has been, may have been, or may be, given;
  - (b) to obtain a decision from the Commission whether State aid—
    - (i) has been given, or
    - (ii) would be given, if the action proposed was taken;
  - (c) to apply for approval that such aid is, or would be, compatible with the internal market, within the meaning of Article 107 of TFEU;
  - (d) to comply with any requirements to enable an investigation under Article 108 of TFEU to be carried out;
  - (e) to comply with any undertaking given to the European Commission in connection with the application for approval referred to in paragraph (c);
  - (f) to comply with any requests from the Commission relating to the application for approval, including the provision of information;
  - (g) to comply with any undertakings given to the Commission, or conditions imposed by the Commission, where approval has been given.
- (4) Before giving a direction under this section the Treasury must consult the bank administrator.
- (5) The bank administrator must comply with the direction within the period of time specified in the direction, or if no period of time is specified, as soon as reasonably practicable.
- (6) A direction under this section is enforceable on an application made by the Treasury, by injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.
- (7) A direction may specify circumstances in which the bank administrator is immune from liability in damages.
- (8) Immunity by virtue of subsection (7) does not extend to action—
  - (a) in bad faith, or



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(b) in contravention of section 6(1) of the Human Rights Act 1998.

(9) If the United Kingdom has made, or proposes to make, an application to the Council of the European Union under Article 108 of TFEU, references in subsection (3) to the Commission are to be read as including references to the Council.

(10) In this section “TFEU” means the Treaty on the Functioning of the European Union.”

#### *Inter-bank payment systems*

### **104 Inter-bank payment systems**

(1) Part 5 of the Banking Act 2009 (inter-bank payment systems) is amended as follows.

(2) After section 186 insert—

#### **“186A Amendment of recognition order**

(1) The Treasury may amend a recognition order.

(2) Before amending a recognition order the Treasury must—

- (a) consult the Bank of England,
- (b) notify the operator of the recognised inter-bank payment system, and
- (c) consider any representations made.

(3) In addition, the Treasury—

- (a) must consult the FCA before amending a recognition order in respect of a payment system the operator of which—
  - (i) is, or has applied to become, a recognised investment exchange, or
  - (ii) has, or has applied for, a Part 4A permission, and
- (b) if the operator has, or has applied for, a Part 4A permission for the carrying on of a PRA-regulated activity, must also consult the PRA.

(4) The Treasury must consider any request by the operator of a recognised inter-bank payment system for the amendment of its recognition order.”

(3) For section 191 substitute—

#### **“191 Directions**

(1) The Bank of England may give directions in writing to the operator of a recognised inter-bank system.

(2) A direction may—

- (a) require or prohibit the taking of specified action in the operation of the system;
- (b) set standards to be met in the operation of the system.

(3) If a direction is given for the purpose of resolving or reducing a threat to the stability of the UK financial system, the operator (including its officers and

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staff) has immunity from liability in damages in respect of action or inaction in accordance with the direction.

- (4) A direction given for the purpose mentioned in subsection (3) must—
- (a) include a statement that it is given for that purpose, and
  - (b) inform the operator of the effect of that subsection.
- (5) The Treasury may by order confer immunity on any person from liability in damages in respect of action or inaction in accordance with a direction (including a direction given for the purpose mentioned in subsection (3)).
- (6) An order—
- (a) is to be made by statutory instrument, and
  - (b) is subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) An immunity conferred by or under this section does not extend to action or inaction—
- (a) in bad faith, or
  - (b) in contravention of section 6(1) of the Human Rights Act 1998.”
- (4) In section 186 (procedure)—
- (a) for subsection (2) substitute—
    - “(2) In addition, the Treasury—
    - (a) must consult the FCA before making a recognition order in respect of a payment system the operator of which—
      - (i) is, or has applied to become, a recognised investment exchange, or
      - (ii) has, or has applied for, a Part 4A permission, and
    - (b) if the operator has, or has applied for, a Part 4A permission for the carrying on of a PRA-regulated activity, must also consult the PRA.”, and
  - (b) in subsection (3), for “or the FSA” substitute “, the FCA or the PRA ”.
- (5) In section 187 (de-recognition), for subsection (4) substitute—
- “(4) In addition, the Treasury—
  - (a) must consult the FCA before revoking a recognition order in respect of a payment system the operator of which—
    - (i) is, or has applied to become, a recognised investment exchange, or
    - (ii) has, or has applied for, a Part 4A permission, and
  - (b) if the operator has, or has applied for, a Part 4A permission for the carrying on of a PRA-regulated activity, must also consult the PRA.”
- (6) In section 192 (role of FSA)—
- (a) in subsection (1), for “the FSA” substitute “ the FCA or the PRA ”,
  - (b) for subsection (2) substitute—
    - “(2) The Bank of England—

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- (a) must consult the FCA before taking action under this Part in respect of a recognised inter-bank payment system the operator of which satisfies section 186(2)(a), and
  - (b) must consult the PRA before taking action under this Part in respect of a recognised inter-bank payment system the operator of which satisfies section 186(2)(b).”,
  - (c) in subsection (3)—
    - (i) for “the FSA”, in the first place, substitute “ the FCA or the PRA ”,
    - (ii) for “the FSA”, in the second place, substitute “ it ”,
    - (iii) for “section 186(2)” substitute “ section 186(2)(a) or (b) ”, and
    - (iv) in paragraph (a), for “the FSA” substitute “ the FCA or (as the case may be) the PRA ”, and
  - (d) in the heading, for “FSA” substitute “ FCA and PRA ”.
- (7) After section 202 insert—

#### **“202A Injunctions**

- (1) If, on the application of the Bank of England, the court is satisfied—
  - (a) that there is a reasonable likelihood that there will be a compliance failure, or
  - (b) that there has been a compliance failure and there is a reasonable likelihood that it will continue or be repeated,the court may make an order restraining the conduct constituting the failure.
- (2) If, on the application of the Bank of England, the court is satisfied—
  - (a) that there has been a compliance failure by the operator of a recognised inter-bank payment system, and
  - (b) that there are steps which could be taken for remedying the failure,the court may make an order requiring the operator, and anyone else who appears to have been knowingly concerned in the failure, to take such steps as the court may direct to remedy it.
- (3) If, on the application of the Bank of England, the court is satisfied—
  - (a) that there may have been a compliance failure by the operator of a recognised inter-bank payment system, or
  - (b) that a person may have been knowingly concerned in a compliance failure,the court may make an order restraining the operator or person from dealing with any assets which it is satisfied the operator or person is reasonably likely to deal with.
- (4) The jurisdiction conferred by this section is exercisable—
  - (a) in England and Wales and Northern Ireland, by the High Court, and
  - (b) in Scotland, by the Court of Session.
- (5) In this section—
  - (a) references to an order restraining anything are, in Scotland, to be read as references to an interdict prohibiting that thing,
  - (b) references to remedying a failure include mitigating its effect, and

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(c) references to dealing with assets include disposing of them.”

(8) After section 203 insert—

**“203A Records**

- (1) The Bank of England must maintain satisfactory arrangements for—
  - (a) recording decisions made in the exercise of its functions under this Part, and
  - (b) the safe-keeping of those records which it considers ought to be preserved.
- (2) The duty in subsection (1) does not apply to a decision to issue a notice under section 204(1).

**203B Annual report**

- (1) At least once a year the Bank of England must make a report to the Treasury on—
  - (a) the discharge of its functions under this Part,
  - (b) the extent to which, in its opinion, in discharging those functions its financial stability objective has been met, and
  - (c) such other matters as the Treasury may from time to time direct.
- (2) Subsection (1) does not require the inclusion in the report of any information whose publication would in the opinion of the Bank of England be against the public interest.
- (3) The Treasury must lay before Parliament a copy of each report received by them under this section.”

(9) In section 204 (information)—

- (a) after subsection (1), insert—
 

“(1A) The Bank of England may by notice in writing require the operator of a recognised inter-bank payment system to provide information which the Bank requires in connection with the exercise of its functions (whether under this Part or otherwise) in pursuance of its financial stability objective.”,
- (b) in subsections (2) and (3), after “notice” insert “ under subsection (1) or (1A) ”,
- (c) in subsection (4), for paragraph (b) substitute—
 

“(b) the FCA;  
(ba) the PRA;”, and
- (d) in paragraph (c) of that subsection, for “or the FSA” substitute “ , the FCA or the PRA ”.

(10) In section 206A (services forming part of recognised inter-bank payment systems)—

- (a) in subsection (4)(a), for “and the FSA” substitute “ , the FCA and the PRA ”, and
- (b) in subsection (6), for paragraph (b) (and the “and” at the end of it) substitute—

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“(b) the FCA,  
(ba) the PRA, and”.

## **105 International obligations**

In Part 5 of the Banking Act 2009, after section 206A insert—

### **“206B International obligations**

- (1) If it appears to the Treasury that any action proposed to be taken by the Bank of England in exercising its powers under this Part would be incompatible with EU obligations or any other international obligations of the United Kingdom, the Treasury may direct the Bank not to take that action.
- (2) If it appears to the Treasury that any action which the Bank of England has power under this Part to take is required for the purpose of implementing any such obligation, the Treasury may direct the Bank to take that action.
- (3) A direction under this section—
  - (a) may include such supplemental or incidental requirements as the Treasury consider necessary or expedient, and
  - (b) is enforceable on an application by the Treasury, by injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.”

*Further amendments*

## **106 Amendments relating to new regulators**

Schedule 17 contains amendments of the Banking Act 2009 related to the provisions of Part 2 of this Act.

## **PART 9**

### **MISCELLANEOUS**

#### *Consumer credit*

VALID FROM 01/04/2013

## **107 Power to make further provision about regulation of consumer credit**

- (1) Subsection (2) applies on or at any time after the making, after the passing of this Act, of an order under section 22 of FSMA 2000 which has the effect that an activity (a “transferred activity”)—
  - (a) ceases to be an activity in respect of which a licence under section 21 of CCA 1974 is required or would be required but for the exemption conferred

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- by subsection (2), (3) or (4) of that section or paragraph 15(3) of Schedule 3 to FSMA 2000, and
- (b) becomes a regulated activity for the purposes of FSMA 2000.
- (2) The Treasury may by order do any one or more of the following—
- (a) transfer to the FCA functions of the OFT under any provision of CCA 1974 that remains in force;
- (b) provide that any specified provision of FSMA 2000 which relates to the powers or duties of the FCA in connection with the failure of any person to comply with a requirement imposed by or under FSMA 2000 is to apply, subject to any specified modifications, in connection with the failure of any person to comply with a requirement imposed by or under a specified provision of CCA 1974;
- (c) require the FCA to issue a statement of policy in relation to the exercise of powers conferred on it by virtue of paragraph (b);
- (d) in connection with provision made by virtue of paragraph (b), provide that failure to comply with a specified provision of CCA 1974 no longer constitutes an offence or that a person may not be convicted of an offence under a specified provision of CCA 1974 in respect of an act or omission in a case where the FCA has exercised specified powers in relation to that person in respect of that act or omission;
- (e) provide for the transfer to the Treasury of any functions under CCA 1974 previously exercisable by the Secretary of State;
- (f) provide that functions of the Secretary of State under CCA 1974 are exercisable concurrently with the Treasury;
- (g) provide for any provision of sections 162 to 165 and 174A of CCA 1974 which relates to—
- (i) the powers of a local weights and measures authority in Great Britain or the Department of Enterprise, Trade and Investment in Northern Ireland in relation to compliance with any provision made by or under CCA 1974,
- (ii) the powers of such an authority or that Department in relation to the commission or suspected commission of offences under any provision made by or under CCA 1974,
- (iii) the powers that may be conferred by warrant on an officer of such an authority or that Department, or
- (iv) things done in the exercise of any of those powers,
- to apply in relation to compliance with FSMA 2000 so far as relating to relevant regulated activities, in relation to the commission or suspected commission of a relevant offence or in relation to things done in the exercise of any of those powers as applied by the order;
- (h) enable local weights and measures authorities to institute proceedings in England and Wales for a relevant offence;
- (i) enable the Department of Enterprise, Trade and Investment in Northern Ireland to institute proceedings in Northern Ireland for a relevant offence;
- (j) provide that references in a specified enactment to the FCA's functions under FSMA 2000 include references to its functions resulting from any order under this section.
- (3) If an order under this section makes provision by virtue of subsection (2)(b) enabling the FCA to exercise any of its powers under sections 205 to 206A of FSMA 2000



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- (disciplinary measures) by reference to an act or omission that constitutes an offence under CCA 1974, the order must also make provision by virtue of subsection (2)(d) ensuring that a person in respect of whom the power has been exercised cannot subsequently be convicted of the offence by reference to the same act or omission.
- (4) In subsection (2)(g) to (i)—
- (a) “relevant regulated activity” means an activity that is a regulated activity for the purposes of FSMA 2000 by virtue of—
    - (i) an order made under section 22(1) of that Act in relation to an investment of a kind falling within paragraph 23 or 23B of Schedule 2 to that Act, or
    - (ii) an order made under section 22(1A)(a) of that Act;
  - (b) “relevant offence” means an offence under FSMA 2000 committed in relation to such an activity.
- (5) The Treasury may make provision by virtue of subsection (2)(i) only with the consent of the Department of Enterprise, Trade and Investment in Northern Ireland.
- (6) On or at any time after the making of an order under section 22 of FSMA 2000 of the kind mentioned in subsection (1), the Treasury may by order—
- (a) exclude the application of any provision of CCA 1974 in relation to a transferred activity, or
  - (b) repeal any provision of CCA 1974 which relates to a transferred activity.
- (7) In exercising their powers under this section, the Treasury must have regard to—
- (a) the importance of securing an appropriate degree of protection for consumers, and
  - (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.
- (8) The additional powers conferred by section 115(2) on a person making an order under this Act include power for the Treasury, when making an order under this section—
- (a) to make such consequential provision as the Treasury consider appropriate;
  - (b) to amend any enactment, including any provision of, or made under, this Act.
- (9) The provisions of this section do not limit—
- (a) the powers conferred by section 118 or by section 22 of FSMA 2000, or
  - (b) the powers exercisable under Schedule 21 in connection with the transfer of functions from the OFT.
- (10) In this section—
- “CCA 1974” means the Consumer Credit Act 1974;
  - “consumers” has the meaning given in section 1G of FSMA 2000;
  - “the OFT” means the Office of Fair Trading.

## 108 Suspension of licences under Part 3 of Consumer Credit Act 1974

- (1) The Consumer Credit Act 1974 is amended as follows.
- (2) In section 32 (suspension or revocation)—

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- (a) in subsection (1), omit “or suspended”,
  - (b) in subsection (2)—
    - (i) in paragraph (a), omit “, as the case may be,” and “, or suspend it until a specified date or indefinitely,”, and
    - (ii) in paragraph (b), omit “or suspension” and “or suspend”,
  - (c) in subsection (3)—
    - (i) in paragraph (a), omit “, as the case may be,” and “, or suspend it until a specified date or indefinitely,”, and
    - (ii) in paragraph (b), omit “or suspension”,
  - (d) in subsection (4)—
    - (i) in paragraph (a), omit “, as the case may be,” and “, or suspend it until a specified date or indefinitely,”, and
    - (ii) in paragraph (b), omit “or suspension”,
  - (e) in subsections (6) and (7), omit “or suspension”,
  - (f) omit subsection (8),
  - (g) in subsection (9), omit “or to suspend”, and
  - (h) in the heading, omit “Suspension and”.
- (3) After section 32 insert—

**“32A Power to suspend licence**

- (1) If during the currency of a licence it appears to the OFT to be urgently necessary for the protection of consumers that the licence should cease to have effect immediately or on a specified date, the OFT is to proceed as follows.
- (2) In the case of a standard licence the OFT must, by notice—
  - (a) inform the licensee that the OFT is suspending the licence from the date of the notice or from a later date specified in the notice,
  - (b) state the OFT's reasons for the suspension,
  - (c) state either—
    - (i) that the suspension is to end on a specified date, which must be no later than the last day of the 12 months beginning with the day on which the suspension takes effect, or
    - (ii) that the duration of the suspension is to be as provided by section 32B,
  - (d) specify any provision to be made under section 34A, and
  - (e) invite the licensee to submit to the OFT in accordance with section 34ZA representations—
    - (i) as to the suspension, and
    - (ii) about the provision (if any) that is or should be made under section 34A.
- (3) In the case of a group licence the OFT must—
  - (a) give general notice that the OFT is suspending the licence from the date of the notice or from a later date specified in the notice,
  - (b) state in the notice the OFT's reasons for the suspension,
  - (c) state in the notice either—



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- (i) that the suspension is to end on a specified date, which must be no later than the last day of the 12 months beginning with the day on which the suspension takes effect, or
    - (ii) that the duration of the suspension is to be as provided by section 32B,
  - (d) specify in the notice any provision to be made under section 34A, and
  - (e) in the notice invite any licensee to submit to the OFT in accordance with section 34ZA representations as to the suspension.
- (4) In the case of a group licence issued on application the OFT must also—
- (a) inform the original applicant of the matters specified under subsection (3)(a) to (d) in the general notice, and
  - (b) invite the original applicant to submit to the OFT in accordance with section 34ZA representations as to the suspension.
- (5) Except for the purposes of sections 29 to 32 and section 33A, a licensee under a suspended licence is to be treated, in respect of the period of suspension, as if the licence had not been issued.
- (6) The suspension may, if the OFT thinks fit, be ended by notice given by it to the licensee or, in the case of a group licence, by general notice.
- (7) In this section “consumers”, in relation to a licence, means individuals who have been or may be affected by the carrying on of the business to which the licence relates, other than individuals who are themselves licensees.

### **32B Duration of suspension**

- (1) This section applies where a notice under section 32A provides for the duration of a suspension under that section to be as provided by this section.
  - (2) The suspension ends at the end of the period of 12 months beginning with the day on which it takes effect, but this is subject to—
    - (a) subsections (3) and (4) (where those subsections give a later time), and
    - (b) the powers of the OFT under section 32A(6) and section 33.
  - (3) Subsection (4) applies where—
    - (a) the OFT gives notice under section 32 that it is minded to revoke the licence, and
    - (b) it gives that notice—
      - (i) on or before giving the notice under section 32A, or
      - (ii) after giving that notice but before the end of the period of 12 months mentioned in subsection (2).
  - (4) The period of suspension is to continue until—
    - (a) the time of any determination by the OFT not to revoke the licence in pursuance of the notice under section 32, or
    - (b) where the OFT determines to revoke the licence in pursuance of the notice, the end of the appeal period.”
- (4) In section 33 (application to end suspension), for subsection (1) substitute—

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“(1) On an application made by a licensee the OFT may, if it thinks fit, by notice to the licensee end the suspension of a licence under section 32A, whether the suspension was for a fixed period or for a period determined in accordance with section 32B.”

(5) In section 33A (power of OFT to impose requirements on licensees) after subsection (6) insert—

“(6A) A requirement imposed under this section during a period of suspension cannot take effect before the end of the suspension.”

(6) After section 34 insert—

**“34ZA Representations to OFT: suspension under section 32A**

(1) Where this section applies to an invitation by the OFT to any person (“P”) to submit representations, the OFT must invite P, within 21 days after the notice containing the invitation is given to P or published, or such longer period as the OFT may allow—

- (a) to submit P's representations in writing to the OFT, and
- (b) to give notice to the OFT, if P thinks fit, that P wishes to make representations orally,

and where notice is given under paragraph (b) the OFT must arrange for the oral representations to be heard.

(2) The OFT must reconsider its determination under section 32A and determine whether to confirm it (with or without variation) or revoke it and in doing so must take into account any representations submitted or made under this section.

(3) The OFT must give notice of its determination under this section to the persons who were required to be invited to submit representations about the original determination under section 32A or, where the invitation to submit representations was required to be given by general notice, must give general notice of the confirmation or revocation.”

(7) In section 34A (winding-up of standard licensee's business), in subsection (2)—

- (a) in paragraph (c), omit “suspend or”, and
- (b) after paragraph (c) insert—

“(d) a determination to suspend such a licence under section 32A (including a determination made under section 34ZA on reconsidering a previous determination under section 32A);”.

(8) In section 41 (appeals) after subsection (1) insert—

“(1ZA) References in the table to a determination as to the suspension of a standard licence or group licence are to be read as references to a determination under section 34ZA to confirm a determination to suspend a standard licence or group licence.”

(9) Nothing in this section affects the powers conferred by section 22 of FSMA 2000 or section 107 of this Act.

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*Penalties received by Financial Services Authority or Bank of England*

**109 Payment to Treasury of penalties received by Financial Services Authority**

- (1) The Financial Services Authority (“the FSA”) must in respect of its financial year beginning with 1 April 2012 and each subsequent financial year pay to the Treasury its penalty receipts after deducting its enforcement costs.
- (2) The FSA's “penalty receipts” in respect of a financial year are any amounts received by it during the year by way of penalties imposed under FSMA 2000.
- (3) The FSA's “enforcement costs” in respect of a financial year are the expenses incurred by it during the year in connection with—
  - (a) the exercise, or consideration of the possible exercise, of any of its enforcement powers in particular cases, or
  - (b) the recovery of penalties imposed under FSMA 2000.
- (4) For this purpose the FSA's enforcement powers are—
  - (a) its powers under any of the provisions mentioned in subsection (5),
  - (b) its powers under any other enactment specified by the Treasury by order,
  - (c) its powers in relation to the investigation of relevant offences, and
  - (d) its powers in England and Wales or Northern Ireland in relation to the prosecution of relevant offences.
- (5) The provisions referred to in subsection (4)(a) are the following provisions of FSMA 2000—
  - (a) section 56 (prohibition orders),
  - (b) section 63A (penalties relating to performance of controlled functions without approval),
  - (c) section 66 (disciplinary powers in relation to approved persons),
  - (d) section 87M (public censure of issuer),
  - (e) section 89 (public censure of sponsor),
  - (f) section 89K (public censure of issuer),
  - (g) section 91 (penalties for breach of Part 6 rules),
  - (h) section 123 (penalties in case of market abuse),
  - (i) section 131G (short selling etc: power to impose penalty or issue censure),
  - (j) sections 205, 206 and 206A (disciplinary measures),
  - (k) section 249 (disqualification of auditor for breach of trust scheme rules),
  - (l) section 345 (disqualification of auditor or actuary), and
  - (m) Part 25 (injunctions and restitution).
- (6) “Relevant offences” are—
  - (a) offences under FSMA 2000,
  - (b) offences under subordinate legislation made under that Act,
  - (c) offences falling within section 402(1) of that Act, and
  - (d) any other offences specified by the Treasury by order.
- (7) The Treasury may give directions to the FSA as to how the FSA is to comply with its duty under subsection (1).
- (8) The directions may in particular—

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- (a) specify descriptions of expenditure that are, or are not, to be regarded as incurred in connection with either of the matters mentioned in subsection (3),
  - (b) relate to the calculation and timing of the deduction in respect of the FSA's enforcement costs, and
  - (c) specify the time when any payment is required to be made to the Treasury.
- (9) The directions may also require the FSA to provide the Treasury at specified times with information relating to—
- (a) penalties that the FSA has imposed under FSMA 2000, or
  - (b) the FSA's enforcement costs.
- (10) The Treasury must pay into the Consolidated Fund any sums received by them under this section.
- (11) The scheme operated by the FSA under paragraph 16 of Schedule 1 to FSMA 2000 is, in the case of penalties received by the FSA on or after 1 April 2012, to apply only in relation to sums retained by the FSA as a result of the deduction for which subsection (1) provides.
- (12) When section 6(2) is fully in force, the Treasury may by order repeal this section.

#### **110 Payment to Treasury of penalties received by Bank of England**

- (1) The Bank of England (“the Bank”) must in respect of each of its financial years pay to the Treasury its penalty receipts after deducting its enforcement costs.
- (2) The Bank's “penalty receipts” in respect of a financial year are any amounts received by the Bank during the year by way of penalties imposed under any of the following provisions—
- (a) sections 192K and 312F of FSMA 2000, and
  - (b) section 198 of the Banking Act 2009.
- (3) The Bank's “enforcement costs” in respect of a financial year are the expenses incurred by it during the year in connection with—
- (a) the exercise, or consideration of the possible exercise, of any of its enforcement powers in particular cases, or
  - (b) the recovery of penalties imposed under any of the provisions mentioned in subsection (2).
- (4) For this purpose the Bank's enforcement powers are—
- (a) its powers under any of the provisions mentioned in subsection (5),
  - (b) its powers under any other enactment specified by the Treasury by order,
  - (c) its powers in relation to the investigation of offences under FSMA 2000 or of any other offences specified by the Treasury by order, and
  - (d) its powers in England and Wales or Northern Ireland in relation to the prosecution of offences under FSMA 2000 or of any other offences specified by the Treasury by order.
- (5) The provisions referred to in subsection (4)(a) are as follows—
- (a) sections 192K to 192N of FSMA 2000 (parent undertakings), as applied to the Bank by Schedule 17A to that Act,
  - (b) sections 312E and 312F of that Act (disciplinary measures in relation to clearing houses),

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- (c) sections 380, 382 and 384 of that Act (injunctions and restitution), as applied to the Bank by Schedule 17A to that Act, and
  - (d) sections 197 to 200 and 202A of the Banking Act 2009 (inter-bank payment systems).
- (6) The Treasury may give directions to the Bank as to how the Bank is to comply with its duty under subsection (1).
- (7) The directions may in particular—
- (a) specify descriptions of expenditure that are, or are not, to be regarded as incurred in connection with either of the matters mentioned in subsection (3),
  - (b) relate to the calculation and timing of the deduction in respect of the Bank's enforcement costs, and
  - (c) specify the time when any payment is required to be made to the Treasury.
- (8) The directions may also require the Bank to provide the Treasury at specified times with specified information relating to—
- (a) penalties that the Bank has imposed under the provisions mentioned in subsection (2), or
  - (b) the Bank's enforcement costs.
- (9) The Treasury must pay into the Consolidated Fund any sums received by them under this section.

#### Commencement Information

**I62** S. 110 in force at 24.1.2013 for specified purposes by [S.I. 2013/113](#), art. 2(1)(b), [Sch. Pt. 2](#)

VALID FROM 01/04/2013

### *Amendments of Companies Act 1989*

#### **111 Amendments of Companies Act 1989**

- (1) Section 166 of the Companies Act 1989 (power of Secretary of State to give directions to recognised investment exchange or recognised clearing house) is amended as follows.
- (2) In subsection (2)(a)—
- (a) for “Authority”, in the first place, substitute “ appropriate regulator ”, and
  - (b) for “Authority”, in the second place, substitute “ regulator ”.
- (3) In subsection (2)(b)—
- (a) for “Authority”, in the first place, substitute “ appropriate regulator ”, and
  - (b) for “Authority”, in the second place, substitute “ regulator ”.
- (4) In subsection (3)—
- (a) for “Authority” substitute “ appropriate regulator ”,
  - (b) omit the “or” following paragraph (a), and
  - (c) at the end insert—

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- “(c) in either case, that the direction is necessary having regard to the public interest in the stability of the financial system of the United Kingdom, or
- (d) in either case, that the direction is necessary—
- (i) to facilitate a proposed or possible use of a power under Part 1 of the Banking Act 2009 (special resolution regime), or
- (ii) in connection with a particular exercise of a power under that Part.”
- (5) In subsection (7)—
- (a) for “Authority”, in the first place, substitute “ appropriate regulator ”, and,
- (b) omit the words from “The Authority shall not” to the end.
- (6) After that subsection insert—
- “(7A) Where the exchange or clearing house is acting in accordance with a direction under subsection (2)(a) that was given only by virtue of paragraph (a) of subsection (3), the appropriate regulator shall not give a direction under subsection (7) unless it is satisfied that the direction under that subsection will not impede or frustrate the proper and efficient conduct of the default proceedings.
- (7B) Where the exchange or clearing house has taken action under its default rules without being directed to do so, the appropriate regulator shall not give a direction under subsection (7) unless—
- (a) it is satisfied that the direction under that subsection will not impede or frustrate the proper and efficient conduct of the default proceedings, or
- (b) it is satisfied that the direction is necessary—
- (i) having regard to the public interest in the stability of the financial system of the United Kingdom,
- (ii) to facilitate a proposed or possible use of a power under Part 1 of the Banking Act 2009 (special resolution regime), or
- (iii) in connection with a particular exercise of a power under that Part.”
- (7) In subsection (8), for “Authority” substitute “ regulator which gave the direction ”.
- (8) At the end insert—
- “(9) The appropriate regulator”—
- (a) in relation to a recognised UK investment exchange, means the FCA, and
- (b) in relation to a recognised UK clearing house, means the Bank of England.”
- (9) In the heading, omit “of Secretary of State”.

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### *Settlement systems*

#### **112 Evidencing and transfer of title to securities without written instrument**

In section 785 of the Companies Act 2006 (provision enabling procedures for evidencing and transferring title), at the end insert—

- “(7) The regulations may confer functions on any person, including—
- (a) the function of giving guidance or issuing a code of practice in relation to any provision made by the regulations, and
  - (b) the function of making rules for the purposes of any provision made by the regulations.
- (8) The regulations may, in prescribed cases, confer immunity from liability in damages.”

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#### **Commencement Information**

**I63** S. 112 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2

### *Director of Savings*

#### **113 Provision of services by Director of Savings**

- (1) The Director of Savings (“the Director”) may enter into arrangements with a public body for the provision by the Director, or persons authorised by the Director, of services to the body.
- (2) Arrangements are to be on such terms, including terms as to payment, as may be agreed.
- (3) “Public body” means a person or body whose functions are of a public nature.

## **PART 10**

### **GENERAL**

### *Further amendments and repeals*

#### **114 Further minor and consequential amendments and repeals**

- (1) Schedule 18 contains further amendments of FSMA 2000 and other enactments.
- (2) Schedule 19 contains further consequential repeals.

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#### **Commencement Information**

**I64** S. 114 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

**I65** S. 114(1) in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2

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## *Orders*

### **115 Orders: general**

- (1) Any power of the Treasury or the Secretary of State to make an order under this Act is exercisable by statutory instrument.
- (2) Any order made by the Treasury or the Secretary of State under this Act may—
  - (a) contain such incidental or transitional provision as the Treasury consider appropriate, and
  - (b) make different provision for different cases.

### **116 Orders: Parliamentary control**

- (1) A statutory instrument containing (alone or with other provision) an order to which subsection (2) applies may not be made unless a draft of the instrument has been laid before Parliament and approved by a resolution of each House.
- (2) This subsection applies to—
  - (a) an order under section 37(2) (power to amend sections 391 and 395 of FSMA 2000);
  - (b) an order under Part 3 (mutual societies);
  - (c) an order under section 107 (power to make further provision about regulation of consumer credit);
  - (d) an order under section 118 (power to make further consequential amendments) that amends or repeals primary legislation.
- (3) A statutory instrument containing an order under this Act, other than an instrument to which section 94 or subsection (1) applies or an instrument containing only provision made under section 122 (commencement), is subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) In this section “primary legislation” means—
  - (a) an Act of Parliament,
  - (b) an Act of the Scottish Parliament,
  - (c) a Measure or Act of the National Assembly for Wales, or
  - (d) Northern Ireland legislation.

## *Interpretation*

### **117 Interpretation**

- (1) In this Act “FSMA 2000” means the Financial Services and Markets Act 2000.
- (2) In this Act—
  - “the FCA” means the Financial Conduct Authority;
  - “the PRA” means the Prudential Regulation Authority;
  - “the UK financial system” means the financial system of the United Kingdom.
- (3) In this Act “enactment” includes—



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- (a) an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978;
- (b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament;
- (c) an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales;
- (d) an enactment contained in, or in an instrument made under, Northern Ireland legislation.

### *Consequential and transitional provisions*

#### **118 Power to make further consequential amendments etc**

- (1) The Treasury or the Secretary of State may by order make such provision amending, repealing, revoking or applying with modifications any enactment to which this section applies as they consider necessary or expedient in consequence of any provision made by or under this Act.
- (2) This section applies to—
  - (a) any enactment passed or made before the passing of this Act, and
  - (b) any enactment passed or made on or before the last day of the Session in which this Act is passed.
- (3) Amendments and repeals made under this section are additional to those made by or under any other provision of this Act.

#### **119 Transitional provisions and savings**

- (1) Schedule 20 contains transitional provisions.
- (2) Schedule 21 contains provision about the transfer of property, rights and liabilities.
- (3) The Treasury may by order make such provision as they consider necessary or expedient for transitory, transitional or saving purposes in connection with the commencement of any provision made by or under this Act.
- (4) An order under subsection (3) may, in particular—
  - (a) make provision enabling any person by whom any powers will become exercisable, on a date set by or under this Act, by virtue of any provision made by or under this Act to take before that date any steps which are necessary as a preliminary to the exercise of those powers;
  - (b) make provision treating any relevant instrument which was made, issued or given by the Financial Services Authority under any enactment before section 6 is fully in force and is designated by the FCA, the PRA or the Bank of England (or any two or more of them) in accordance with the order—
    - (i) as having been made, issued or given by the designating body or bodies;
    - (ii) as having been made, issued or given (or also made, issued or given) under a corresponding provision of this Act or of an enactment as amended by or under this Act;
  - (c) make provision enabling a body which makes a designation by virtue of paragraph (b) to modify the instrument being designated;

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- (d) make provision treating anything done before section 6 is fully in force by persons appointed by the Financial Services Authority with the approval of the Treasury as having been done by the FCA;
  - (e) make provision treating anything done before section 6 is fully in force by persons appointed by the Prudential Regulation Authority Limited with the approval of the Treasury and the Bank of England as having been done by the PRA;
  - (f) make provision treating any permission given or other thing done by the Financial Services Authority before commencement under an enactment amended by this Act—
    - (i) as having been made, given or done under a corresponding provision of the enactment as so amended;
    - (ii) as having been made, given or done (or also made, given or done) by the PRA or the Bank of England;
  - (g) make provision for the continuation of proceedings begun before commencement, including provision about the decisions available to bodies before which such proceedings take place and the effect of their decisions;
  - (h) make provision for making savings, or additional savings, from the effect of any repeal or revocation made by or under this Act.
- (5) An order under subsection (3) may—
- (a) confer functions on the Treasury, the FCA or the PRA, or on the Bank of England or its Financial Policy Committee;
  - (b) modify, exclude or apply (with or without modifications) any enactment (including any provision of, or made under, this Act).
- (6) In subsection (4)—
- (a) “commencement” means the commencement of such provisions of this Act as may be specified by the order;
  - (b) “relevant instrument” means rules, guidance, requirements or a code, scheme, statement or direction.

#### **Commencement Information**

**I66** S.119 partly in force; s. 119(3)-(6) in force at Royal Assent, see s. 122(1).

**I67** S. 119(1)(2) in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), **Sch. Pt. 1**

### *Final provisions*

#### **120 Financial provision**

- (1) There is to be paid out of money provided by Parliament—
- (a) any expenditure incurred under or by virtue of this Act by a Minister of the Crown or government department (apart from any expenditure to be met from the National Loans Fund), and
  - (b) any increase attributable to this Act in the sums payable under any other Act out of money so provided.
- (2) There is to be paid out of the National Loans Fund any increase attributable to this Act in the sums payable under any other Act out of that Fund.

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## **121 Extent**

This Act extends to England and Wales, Scotland and Northern Ireland.

## **122 Commencement**

- (1) The following provisions come into force on the day on which this Act is passed—
  - section 109;
  - sections 115 to 118;
  - section 119(3) to (6);
  - sections 120 and 121;
  - this section;
  - section 123.
- (2) Sections 108 and 113 come into force at the end of the period of 2 months beginning with day on which this Act is passed.
- (3) The remaining provisions of this Act come into force on such day as the Treasury may by order appoint.
- (4) Different days may be appointed for different purposes.

## **123 Short title**

This Act may be cited as the Financial Services Act 2012.

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## SCHEDULES

### SCHEDULE 1

Section 4

#### BANK OF ENGLAND FINANCIAL POLICY COMMITTEE

### PART 1

#### SCHEDULE TO BE INSERTED AS SCHEDULE 2A TO BANK OF ENGLAND ACT 1998

#### Commencement Information

**I68** Sch. 1 Pt. 1 in force at 19.2.2013 for specified purposes by S.I. 2013/113, art. 2(2), Sch. Pt. 4

PROSPECTIVE

This is the Schedule to be inserted in the Bank of England Act 1998 after Schedule 2—

#### “SCHEDULE 2A

Section 9B

#### FINANCIAL POLICY COMMITTEE

#### *Terms of office of appointed members*

- 1 (1) Appointment under section 9B(1)(d) or (e) as a member of the Financial Policy Committee is to be for a period of 3 years, but this is subject to sub-paragraph (2) and to paragraph 3.
- (2) Initially some appointments may be for shorter and different periods so as to secure that appointments expire at different times.
- 2 (1) A person may not be appointed as a member of the Committee under section 9B(1)(e) more than twice.
- (2) For this purpose an appointment which by virtue of paragraph 1(2) is for a period of less than 3 years is to be disregarded.
- 3 (1) If it appears to the Chancellor of the Exchequer that in the circumstances it is desirable to do so, the Chancellor may, before the end of the term for which a person is appointed as a member of the Committee under section 9B(1)(e), extend the person's term of office on one occasion for a specified period of not more than 6 months.
- (2) The term being extended may be the person's first or second term or, in a case where paragraph 2(2) allows a third term, the person's third term.
- (3) If a person whose first term of office is extended is subsequently re-appointed under section 9B(1)(e)—

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- (a) the length of the second term is to be reduced by a period equal to the extension of the first term, but
  - (b) the second term may itself subsequently be extended under sub-paragraph (1).
- (4) In a case where a person's second term of office is extended and paragraph 2(2) allows a third term, sub-paragraph (3) is to be read as if the references to first and second terms were references to second and third terms respectively.
- 4 (1) A person appointed under section 9B(1)(d) or (e) may resign the office by written notice to the Bank.
- (2) Where the notice relates to a person appointed under section 9B(1)(e), the Bank must give a copy of the notice to the Treasury.
- 5 The terms and conditions on which a person holds office as a member of the Committee appointed under section 9B(1)(e) are to be such as the Oversight Committee may determine.

#### *Qualification for appointment*

- 6 (1) The following persons are disqualified for appointment under section 9B(1)(d) or (e)
- (a) a Minister of the Crown;
  - (b) a person serving in a government department in employment in respect of which remuneration is paid out of money provided by Parliament.
- (2) A member of the Monetary Policy Committee of the Bank appointed under section 13(2)(c) is disqualified for appointment under section 9B(1)(e).

#### *Removal of appointed members*

- 7 A person appointed under section 9B(1)(d) or (e) vacates office on becoming a person to whom paragraph 6(1)(a) or (b) applies.
- 8 A person appointed under section 9B(1)(d) vacates office on ceasing to have executive responsibility within the Bank for the analysis of threats to financial stability.
- 9 (1) The Oversight Committee may, with the consent of the Chancellor of the Exchequer, remove a member appointed under section 9B(1)(d) or (e) (“M”) if it is satisfied—
- (a) that M has been absent from 3 or more meetings of the Financial Policy Committee without the Committee's consent,
  - (b) that M has become bankrupt, that a debt relief order (under Part 7A of the Insolvency Act 1986) has been made in respect of M, that M's estate has been sequestrated or that M has made an arrangement with or granted a trust deed for M's creditors, or
  - (c) that M is unable or unfit to discharge M's functions as a member.
- (2) The Oversight Committee may, with the consent of the Chancellor of the Exchequer, also remove a member appointed under section 9B(1)(e) (“M”) if it is satisfied that in all the circumstances M's financial or other interests are such as substantially to affect the functions as member which it would be proper for M to discharge.

#### *Meetings*

- 10 (1) The Committee shall meet at least 4 times in each calendar year.

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- (2) The Governor of the Bank (or in the Governor's absence the Bank's Deputy Governor for financial stability) may summon a meeting at any time on giving such notice as the person giving the notice thinks the circumstances require.

#### *Proceedings*

- 11 (1) At a meeting of the Committee, the proceedings are to be regulated as follows.
- (2) The quorum is to be 6 (excluding the Treasury's representative) and of the 6—
- (a) one must be the Governor of the Bank or the Bank's Deputy Governor for financial stability,
  - (b) unless both those mentioned in paragraph (a) are present, one must be either of the other Deputy Governors of the Bank, and
  - (c) one must be a member appointed under section 9B(1)(e).
- (3) The chair is to be taken by the Governor of the Bank or, if the Governor is not present, by the Bank's Deputy Governor for financial stability.
- (4) The person chairing the meeting must seek to secure that decisions of the Committee are reached by consensus wherever possible.
- (5) Where that person forms the opinion that consensus cannot be reached, a decision is to be taken by a vote of all those members present at the meeting.
- (6) In the event of a tie, the person chairing the meeting is to have a second casting vote.
- (7) At a meeting of the Committee—
- (a) the Treasury's representative may not vote, and
  - (b) any view expressed by the Treasury's representative is to be disregarded in determining under sub-paragraph (4) or (5) whether there is a consensus.
- (8) Subject to sub-paragraphs (2) to (7) and paragraph 14, the Committee is to determine its own procedure.
- 12 The Committee may, in relation to sub-paragraph (2), (3), (4) or (5) of paragraph 11, determine circumstances in which a member who is not present at, but is in communication with, a meeting is to be treated for the purposes of that sub-paragraph as present at it.
- 13 The Committee may invite other persons to attend, or to attend and speak at, any meeting of the Committee.
- 14 If a member of the Committee (“M”) has any direct or indirect interest (including any reasonably likely future interest) in any dealing or business which falls to be considered by the Committee—
- (a) M must disclose that interest to the Committee when it considers the dealing or business, and
  - (b) the Committee must decide whether M is to be permitted to participate in any proceedings of the Committee relating to any question arising from its consideration of the dealing or business, and if so to what extent and subject to what conditions (if any).”

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VALID FROM 01/04/2013

## PART 2

### OTHER AMENDMENTS RELATING TO FINANCIAL POLICY COMMITTEE

#### *Bank of England Act 1998 (c. 11)*

1 In section 4 of the Bank of England Act 1998 (annual report by Bank), in subsection (2), for the “and” at the end of paragraph (a) substitute—

“(aa) a report by the court of directors on the activities of the Financial Policy Committee of the Bank, and”.

2 In section 15 of the Bank of England Act 1998 (publication of minutes of meetings of Monetary Policy Committee) after subsection (4) insert—

“(4A) The Bank shall exclude from minutes published under this section information which relates to proceedings of the Financial Policy Committee if the Bank considers that publication of that information would be against the public interest.”

3 In section 40 of the Bank of England Act 1998 (orders), after subsection (4) insert—

“(4A) Section 9N contains its own provisions about parliamentary procedure in relation to an order under section 9L.”

#### *House of Commons Disqualification Act 1975 (c. 24)*

4 In Part 3 of Schedule 1 to the House of Commons Disqualification Act 1975 (other disqualifying offices), at the appropriate place insert— “ Member of the Financial Policy Committee of the Bank of England appointed under section 9B(1)(d) or (e) of the Bank of England Act 1998. ”

#### *Northern Ireland Assembly Disqualification Act 1975 (c. 25)*

5 In Part 3 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (other disqualifying offices), at the appropriate place insert— “ Member of the Financial Policy Committee of the Bank of England appointed under section 9B(1)(d) or (e) of the Bank of England Act 1998. ”

## SCHEDULE 2

Section 5

### FURTHER AMENDMENTS RELATING TO BANK OF ENGLAND

#### *Court of directors*

1 (1) Schedule 1 to the Bank of England Act 1998 (which makes further provision about the court of directors) is amended as follows.

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(2) For paragraph 1 substitute—

- “1 (1) Appointment as Governor of the Bank shall be for a period of 8 years.
- (2) Appointment as Deputy Governor of the Bank shall be for a period of 5 years.
- (3) A person may not be appointed—
- (a) as Governor, more than once, or
  - (b) as Deputy Governor, more than twice.
- (4) A person appointed as Governor or Deputy Governor of the Bank shall work exclusively for the Bank; and for this purpose work in an office that an enactment requires to be held by the Governor or a Deputy Governor is to be taken to be work for the Bank.”

(3) In paragraph 2—

- (a) for “director” substitute “ non-executive director ”, and
- (b) for the words from “3 years” to the end substitute “ 4 years, or such shorter period as may be specified in the appointment ”.

(4) Omit paragraph 3.

(5) In paragraph 4, for “director” substitute “ non-executive director ”.

(6) In paragraph 5—

- (a) in sub-paragraph (1), for “director” substitute “ non-executive director ”, and
- (b) for sub-paragraph (2) substitute—

“(2) An officer or employee of the Bank, other than a person holding office under section 9B(1)(e), is disqualified for appointment as non-executive director of the Bank.”

(7) For paragraph 6 substitute—

- “6 (1) The fact that a person has held office as Governor of the Bank does not disqualify that person from appointment as Deputy Governor or non-executive director of the Bank.
- (2) The fact that a person has held office as Deputy Governor or non-executive director of the Bank does not disqualify that person from re-appointment to that office or for appointment to the other office or as Governor of the Bank, but this is subject to paragraph 1(3)(b).”

(8) In paragraph 7(2), for “director” substitute “ non-executive director ”.

(9) In paragraph 8—

- (a) the existing provision becomes sub-paragraph (1),
- (b) in that provision, for “director” substitute “ non-executive director ”, and
- (c) after that provision insert—

“(2) In relation to the Deputy Governor for prudential regulation, the reference in sub-paragraph (1)(c) to inability or unfitness to discharge functions as member of the court of directors is to be read as including a reference to inability or unfitness to discharge functions as Chief Executive of the Prudential Regulation Authority.”



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(10) In paragraph 11—

- (a) the existing provision becomes sub-paragraph (1),
- (b) in sub-paragraph (1)(b), for “servant” substitute “ employee ”,
- (c) in sub-paragraph (1)(c)(ii), for “servants” substitute “ employees ”, and
- (d) after sub-paragraph (1) insert—

“(2) The duties and powers that may be delegated under this paragraph do not include duties and powers that are by any enactment expressly imposed or conferred on the court of directors.”

(11) After paragraph 12 insert—

*“Publication of record of meetings*

12A(1) The Bank must publish a record of each meeting of the court—

- (a) before the end of the period of 6 weeks beginning with the day of the meeting, or
  - (b) if no meeting of the court is subsequently held during that period, before the end of the period of 2 weeks beginning with the day of the next meeting.
- (2) The record must specify any decisions taken at the meeting (including decisions to take no action) and must set out, in relation to each decision, a summary of the court's deliberations.
- (3) Sub-paragraphs (1) and (2) do not require the publication of information whose publication within the time required by sub-paragraph (1) would in the opinion of the court be against the public interest.
- (4) Publication under this section is to be in such manner as the Bank thinks fit.”

(12) In paragraph 13, after sub-paragraph (3), insert—

“(3A) But a member of the court who is the Governor or a Deputy Governor of the Bank may not be designated under paragraph (a) or (b) of sub-paragraph (3).”

(13) In paragraph 14(1), for “it” substitute “ the Oversight Committee ”.

(14) In paragraph 15, for “director” substitute “ non-executive director ”.

(15) Nothing in sub-paragraphs (2) to (7) affects the term of any appointment made before the commencement of that provision.

**Commencement Information**

**I69** Sch. 2 para. 1 in force at 19.2.2013 for specified purposes by S.I. 2013/113, art. 2(2), Sch. Pt. 4

*Monetary Policy Committee*

- 2 (1) Schedule 3 to the Bank of England Act 1998 (Monetary Policy Committee) is amended as follows.
- (2) In paragraph 1, for the words from “except that” to the end substitute “ but this is subject to paragraph 2B ”.

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- (3) Omit paragraph 2.
- (4) After paragraph 2A insert—
- “2B (1) If it appears to the Chancellor of the Exchequer that in the circumstances it is desirable to do so, the Chancellor may, before the end of the 3 years for which a person is appointed as a member of the Committee under section 13(2)(c), extend the persons's term of office on one occasion for a specified period of not more than 6 months.
- (2) The term being extended may be the person's first or second term.
- (3) If a person whose first term of office is extended is subsequently re-appointed under section 13(2)(c)—
- (a) the length of the second term is to be reduced by a period equal to the extension of the first term, but
- (b) the second term may itself subsequently be extended under sub-paragraph (1).”
- (5) In paragraph 3—
- (a) the existing provision becomes sub-paragraph (1), and
- (b) after that provision insert—
- “(2) Where the notice relates to a person appointed under section 13(2)(c), the Bank must give a copy of the notice to the Treasury.”
- (6) In paragraph 4—
- (a) omit sub-paragraph (1),
- (b) for sub-paragraph (2) substitute—
- “(2) The terms and conditions on which a person holds office as a member of the Committee appointed under section 13(2)(c) are to be such as the Oversight Committee may determine.”, and
- (c) omit sub-paragraph (3).
- (7) After paragraph 5 insert—
- “5A A member of the Financial Policy Committee of the Bank appointed under section 9B(1)(e) is disqualified for appointment under section 13(2)(c).”
- (8) In paragraph 9—
- (a) in sub-paragraph (1)—
- (i) for “Bank” substitute “Oversight Committee”, and
- (ii) in paragraph (a), for “the Committee's meetings” and “the Committee's consent” substitute “meetings of the Monetary Policy Committee” and “that Committee's consent”, and
- (b) omit sub-paragraph (2).
- (9) In paragraphs 10(2) and 11(3), leave out “with executive responsibility”.
- (10) After paragraph 13 insert—
- “13A The Committee may invite other persons to attend, or to attend and speak at, any meeting of the Committee.”

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- (11) Sub-paragraph (3) does not affect the term of any appointment made before the commencement of that sub-paragraph, and sub-paragraph (6) does not affect the status of a person appointed before the commencement of that sub-paragraph during the remainder of the term for which the person had been appointed.

**Commencement Information**

**I70** Sch. 2 para. 2 in force at 19.2.2013 for specified purposes by S.I. 2013/113, art. 2(2), Sch. Pt. 4

*Immunity*

- 3 (1) Section 244 of the Banking Act 2009 (immunity) is amended as follows.
- (2) In subsection (2)—
- (a) in paragraph (a), for “servant” substitute “ employee ”, and
  - (b) in paragraph (c), for “functions exercised” substitute “ the exercise or purported exercise of the Bank's functions under the Financial Services and Markets Act 2000, of its other regulatory functions or of functions undertaken ”.
- (3) After subsection (2) insert—
- “(2A) The Bank's functions under the Financial Services and Markets Act 2000 are to be taken to include any functions that it may exercise as a result of an appointment under any of sections 97, 166 to 169 and 284 of that Act.”

**Commencement Information**

**I71** Sch. 2 para. 3 in force at 19.2.2013 for specified purposes by S.I. 2013/113, art. 2(2), Sch. Pt. 4

*Changes in terminology*

- 4 In section 4 of the Bank of England Act 1998 (Bank's annual report), in subsection (4)(a), for “directors” substitute “ non-executive directors ”.

**Commencement Information**

**I72** Sch. 2 para. 4 in force at 19.2.2013 for specified purposes by S.I. 2013/113, art. 2(2), Sch. Pt. 4

- 5 In Schedule 7 to the Bank of England Act 1998 (restriction on disclosure of information), in paragraph 1(3)(a), for “servant” substitute “ employee ”.

**Commencement Information**

**I73** Sch. 2 para. 5 in force at 19.2.2013 for specified purposes by S.I. 2013/113, art. 2(2), Sch. Pt. 4

- 6 In Part 3 of Schedule 1 to the House of Commons Disqualification Act 1975 (other disqualifying offices), in the entry relating to the Bank of England, for “Director” substitute “ non-executive director ”.

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#### Commencement Information

**I74** Sch. 2 para. 6 in force at 19.2.2013 for specified purposes by S.I. 2013/113, art. 2(2), Sch. Pt. 4

7 In Part 3 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (other disqualifying offices), in the entry relating to the Bank of England, for “Director” substitute “ non-executive director ”.

#### Commencement Information

**I75** Sch. 2 para. 7 in force at 19.2.2013 for specified purposes by S.I. 2013/113, art. 2(2), Sch. Pt. 4

## SCHEDULE 3

Section 6

### FINANCIAL CONDUCT AUTHORITY AND PRUDENTIAL REGULATION AUTHORITY: SCHEDULES TO BE SUBSTITUTED AS SCHEDULES 1ZA AND 1ZB TO FSMA 2000

#### Modifications etc. (not altering text)

**C2** Sch. 3 modified (20.2.2013) by The Financial Services Act 2012 (Transitional Provisions) (Rules and Miscellaneous Provisions) Order 2013 (S.I. 2013/161), arts. 1(1), 7(4)

#### Commencement Information

**I76** Sch. 3 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3  
**I77** Sch. 3 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2  
**I78** Sch. 3 in force at 19.2.2013 for specified purposes by S.I. 2013/113, art. 2(2), Sch. Pt. 4

These are the Schedules 1ZA and 1ZB to be substituted for Schedule 1 to FSMA 2000—

## “SCHEDULE 1ZA

Section 1A

### THE FINANCIAL CONDUCT AUTHORITY

#### PART 1

#### GENERAL

#### *Interpretation*

1 In this Schedule—

“the Bank” means the Bank of England;

“functions”, in relation to the FCA, means functions conferred on the FCA by or under any provision of this Act (see section 1A(6) which affects the meaning of references to such functions).

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### *Constitution*

- 2 (1) The constitution of the FCA must provide for the FCA to have a governing body.
- (2) The governing body must consist of—
  - (a) a chair appointed by the Treasury,
  - (b) a chief executive appointed by the Treasury,
  - (c) the Bank's Deputy Governor for prudential regulation,
  - (d) 2 members appointed jointly by the Secretary of State and the Treasury, and
  - (e) at least one other member appointed by the Treasury.
- (3) The members referred to in sub-paragraph (2)(a), (c) and (d) are to be non-executive members.
- (4) In exercising its powers under sub-paragraph (2)(e) to appoint executive or non-executive members, the Treasury must secure that the majority of members of the governing body are non-executive members.
- (5) An employee of the FCA may not be appointed as a non-executive member.
- (6) In the following provisions of this Schedule an “appointed member” means a member of the governing body appointed under sub-paragraph (2)(a), (b), (d) or (e).
- 3 (1) The terms of service of the appointed members are to be determined by the Treasury.
- (2) In the case of a member appointed under paragraph 2(2)(d), the Treasury must consult the Secretary of State about the terms of service.
- (3) Before appointing a person as an appointed member, the Treasury (or as the case requires the Treasury and the Secretary of State) must consider whether the person has any financial or other interests that could have a material effect on the extent of the functions as member that it would be proper for the person to discharge.
- (4) The terms of service of an appointed member (“M”) must be such as—
  - (a) to secure that M is not subject to direction by the Treasury or the Secretary of State,
  - (b) to require M not to act in accordance with the directions of any other person, and
  - (c) to prohibit M from acquiring any financial or other interests that have a material effect on the extent of the functions as member that it would be proper for M to discharge.
- (5) If an appointed member is an employee of the FCA, the member's interest as employee is to be disregarded for the purposes of sub-paragraphs (3) and (4)(c) and paragraph 4(1)(b).
- (6) A person who is an employee of the PRA is disqualified for appointment as an appointed member.
- (7) The FCA may pay expenses to the Bank's Deputy Governor for prudential regulation in respect of that person's service as a member.
- 4 (1) The Treasury may remove an appointed member from office—
  - (a) on the grounds of incapacity or serious misconduct, or
  - (b) on the grounds that in all the circumstances the member's financial or other interests are such as to have a material effect on the extent of the functions as member that it would be proper for the person to discharge.

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- (2) Before removing from office a member appointed under paragraph 2(2)(d), the Treasury must consult the Secretary of State.
- 5 The validity of any act of the FCA is not affected—
- (a) by any vacancy in any of the offices mentioned in paragraph 2(2)(a), (b) or (c), or
  - (b) by a defect in the appointment of a person—
    - (i) to any of those offices, or
    - (ii) as an appointed member.
- 6 The Bank's Deputy Governor for prudential regulation must not take part in any discussion by or decision of the FCA which relates to—
- (a) the exercise of the FCA's functions in relation to a particular person, or
  - (b) a decision not to exercise those functions.

#### *Remuneration*

- 7 The FCA must pay to the appointed members such remuneration as may be determined—
- (a) in the case of the non-executive members, by the Treasury;
  - (b) in the case of the executive members, by the FCA.

#### *Arrangements for discharging functions*

- 8 (1) The FCA may make arrangements for any of its functions to be discharged by a committee, sub-committee, officer or member of staff of the FCA, but subject to the following provisions.
- (2) In exercising its legislative functions, the FCA must act through its governing body.
- (3) For that purpose, the following are the FCA's legislative functions—
- (a) making rules;
  - (b) issuing codes under section 64 or 119;
  - (c) issuing statements under—
    - (i) section 63C, 64, 69, 88C, 89S, 93, 124, 131J, 138N, 192H, 192N, 210 or 312J,
    - (ii) section 345D (whether as a result of section 345(2) or section 249(1)), or
    - (iii) section 80 of the Financial Services Act 2012;
  - (d) giving directions under section 316, 318 or 328.
- (4) The function of issuing general guidance (as defined in section 139B(5)) may not be discharged by an officer or member of staff of the FCA.

#### *Records*

- 9 The FCA must maintain satisfactory arrangements for—
- (a) recording decisions made in the exercise of its functions, and
  - (b) the safe-keeping of those records which it considers ought to be preserved.

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### *Publication of record of meetings of governing body*

- 10 (1) The FCA must publish a record of each meeting of its governing body—
- (a) before the end of the period of 6 weeks beginning with the day of the meeting, or
  - (b) if no meeting of the governing body is subsequently held during that period, before the end of the period of 2 weeks beginning with the day of the next meeting.
- (2) The record must specify any decision taken at the meeting (including decisions to take no action) and must set out, in relation to each decision, a summary of the deliberations of the governing body.
- (3) Sub-paragraphs (1) and (2) do not require the publication of information whose publication within the time required by sub-paragraph (1) would in the opinion of the governing body be against the public interest.
- (4) Publication under this section is to be in such manner as the FCA thinks fit.

### *Annual report*

- 11 (1) At least once a year the FCA must make a report to the Treasury on—
- (a) the discharge of its functions,
  - (b) the extent to which, in its opinion, its operational objectives have been advanced,
  - (c) the extent to which, in its opinion, it has acted compatibly with its strategic objective,
  - (d) how, in its opinion, it has complied with the duty in section 1B(4),
  - (e) its consideration of the matter mentioned in section 1B(5)(b),
  - (f) its consideration of the principles in section 3B,
  - (g) how it has complied with section 3D,
  - (h) any direction received under section 3I or 3J during the period to which the report relates,
  - (i) how it has complied with section 354A(1) so far as relating to co-operation with persons outside the United Kingdom, and
  - (j) such other matters as the Treasury may from time to time direct.
- (2) Sub-paragraph (1) does not require the inclusion in the report of any information whose publication would in the opinion of the FCA be against the public interest.
- (3) The report must be accompanied by—
- (a) a statement of the remuneration of the appointed members of the governing body of the FCA during the period to which the report relates, and
  - (b) such other reports or information, prepared by such persons, as the Treasury may from time to time direct.
- (4) The Treasury must lay before Parliament a copy of each report received by them under this paragraph.

### *Annual public meeting*

- 12 (1) Not later than 3 months after making a report under paragraph 11, the FCA must hold a public meeting (“the annual meeting”) for the purposes of enabling that report to be considered.

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- (2) The FCA must organise the annual meeting so as to allow—
- (a) a general discussion of the contents of the report which is being considered, and
  - (b) a reasonable opportunity for those attending the meeting to put questions to the FCA about the way in which it discharged, or failed to discharge, its functions during the period to which the report relates.
- (3) But otherwise the annual meeting is to be organised and conducted in such a way as the FCA considers appropriate.
- (4) The FCA must give reasonable notice of its annual meeting.
- (5) That notice must—
- (a) give details of the time and place at which the meeting is to be held,
  - (b) set out the proposed agenda for the meeting,
  - (c) indicate the proposed duration of the meeting,
  - (d) give details of the FCA's arrangements for enabling persons to attend, and
  - (e) be published by the FCA in the way appearing to it to be best calculated to bring the notice to the attention of the public.
- (6) If the FCA proposes to alter any of the arrangements which have been included in the notice given under sub-paragraph (5), it must—
- (a) give reasonable notice of the alteration, and
  - (b) publish that notice in the way appearing to the FCA to be best calculated to bring it to the attention of the public.

#### *Report of annual meeting*

- 13 Not later than one month after its annual meeting, the FCA must publish a report of the proceedings of the meeting.

#### *Accounts and audit*

- 14 (1) The Treasury may—
- (a) require the FCA to comply with any provisions of the Companies Act 2006 about accounts and their audit which would not otherwise apply to it, or
  - (b) direct that any provision of that Act about accounts and their audit is to apply to the FCA with such modifications as are specified in the direction, whether or not the provision would otherwise apply to the FCA.
- (2) Compliance with any requirement under sub-paragraph (1)(a) or (b) is enforceable by injunction or, in Scotland, an order for specific performance under section 45 of the Court of Session Act 1988.
- (3) Proceedings under sub-paragraph (2) may be brought only by the Treasury.
- 15 (1) The FCA must send a copy of its annual accounts to the Comptroller and Auditor General as soon as is reasonably practicable.
- (2) The Comptroller and Auditor General must—
- (a) examine, certify and report on accounts received under this paragraph, and
  - (b) send a copy of the certified accounts and the report to the Treasury.



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- (3) The Treasury must lay the copy of the certified accounts and the report before Parliament.
- (4) Except as provided by paragraph 14(1), the FCA is exempt from the requirements of Part 16 of the Companies Act 2006 (audit), and its balance sheet must contain a statement to that effect.
- (5) In this paragraph “annual accounts” has the meaning given in section 471 of the Companies Act 2006.

## PART 2

### STATUS

#### *Status*

- 16 In relation to any of its functions—
  - (a) the FCA is not to be regarded as acting on behalf of the Crown, and
  - (b) its members, officers and staff are not to be regarded as Crown servants.

#### *Exemption from requirement for use of “limited” in name of FCA*

- 17 The FCA is to continue to be exempt from the requirements of the Companies Act 2006 relating to the use of “limited” as part of its name.
- 18 If the Secretary of State is satisfied that any action taken by the FCA makes it inappropriate for the exemption given by paragraph 17 to continue, the Secretary of State may, after consulting the Treasury, give a direction removing it.

## PART 3

### PENALTIES AND FEES

#### *Penalties*

- 19 In determining its policy with respect to the amounts of penalties to be imposed by it under this Act, the FCA must take no account of the expenses which it incurs, or expects to incur, in discharging its functions.
- 20 (1) The FCA must in respect of each of its financial years pay to the Treasury its penalty receipts after deducting its enforcement costs.
  - (2) The FCA's “penalty receipts” in respect of a financial year are any amounts received by it during the year by way of penalties imposed under this Act.
  - (3) The FCA's “enforcement costs” in respect of a financial year are the expenses incurred by it during the year in connection with—
    - (a) the exercise, or consideration of the possible exercise, of any of its enforcement powers in particular cases, or
    - (b) the recovery of penalties imposed under this Act.
  - (4) For this purpose the FCA's enforcement powers are—

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- (a) its powers under any of the provisions mentioned in section 133(7A),
  - (b) its powers under section 56 (prohibition orders),
  - (c) its powers under Part 25 of this Act (injunctions and restitution),
  - (d) its powers under any other enactment specified by the Treasury by order,
  - (e) its powers in relation to the investigation of relevant offences, and
  - (f) its powers in England and Wales or Northern Ireland in relation to the prosecution of relevant offences.
- (5) “Relevant offences” are—
- (a) offences under FSMA 2000,
  - (b) offences under subordinate legislation made under that Act,
  - (c) offences falling within section 402(1) of that Act,
  - (d) offences under Part 7 of the Financial Services Act 2012, and
  - (e) any other offences specified by the Treasury by order.
- (6) The Treasury may give directions to the FCA as to how the FCA is to comply with its duty under sub-paragraph (1).
- (7) The directions may in particular—
- (a) specify descriptions of expenditure that are, or are not, to be regarded as incurred in connection with either of the matters mentioned in sub-paragraph (3),
  - (b) relate to the calculation and timing of the deduction in respect of the FCA's enforcement costs, and
  - (c) specify the time when any payment is required to be made to the Treasury.
- (8) The directions may also require the FCA to provide the Treasury at specified times with specified information relating to—
- (a) penalties that the FCA has imposed under this Act, or
  - (b) the FCA's enforcement costs.
- (9) The Treasury must pay into the Consolidated Fund any sums received by them under this paragraph.
- 21 (1) The FCA must prepare and operate a scheme (“the financial penalty scheme”) for ensuring that the amounts that, as a result of the deduction for which paragraph 20(1) provides, are retained by the FCA in respect of amounts paid to it by way of penalties imposed under this Act are applied for the benefit of regulated persons.
- (2) “Regulated persons” means—
- (a) authorised persons,
  - (b) recognised investment exchanges,
  - (c) issuers of securities admitted to the official list, and
  - (d) issuers who have requested or approved the admission of financial instruments to trading on a regulated market.
- (3) The financial penalty scheme may, in particular, make different provision with respect to different classes of regulated person.
- (4) The financial penalty scheme must ensure that those who have become liable to pay a penalty to the FCA in any financial year of the FCA do not receive any benefit under the scheme in the following financial year.

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- (5) Up-to-date details of the financial penalty scheme must be set out in a document (“the scheme details”).
- 22 (1) The scheme details must be published by the FCA in the way appearing to it to be best calculated to bring them to the attention of the public.
- (2) Before making the financial penalty scheme, the FCA must publish a draft of the proposed scheme in the way appearing to the FCA to be best calculated to bring it to the attention of the public.
- (3) The draft must be accompanied by notice that representations about the proposals may be made to the FCA within a specified time.
- (4) Before making the scheme, the FCA must have regard to any representations made to it in accordance with sub-paragraph (3).
- (5) If the FCA makes the proposed scheme, it must publish an account, in general terms, of—
- (a) the representations made to it in accordance with sub-paragraph (3), and
  - (b) its response to them.
- (6) If the scheme differs from the draft published under sub-paragraph (2) in a way which is, in the opinion of the FCA, significant, the FCA must (in addition to complying with sub-paragraph (5)) publish details of the difference.
- (7) The FCA must, without delay, give the Treasury a copy of any scheme details published by it.
- (8) The FCA may charge a reasonable fee for providing a person with a copy of—
- (a) a draft published under sub-paragraph (2);
  - (b) scheme details.
- (9) Sub-paragraphs (2) to (6) and (8)(a) also apply to a proposal to alter or replace the financial penalty scheme.

#### *Fees*

- 23 (1) The FCA may make rules providing for the payment to it of such fees, in connection with the discharge of any of its qualifying functions, as it considers will (taking account of its expected income from fees and charges provided for by any other provision of this Act) enable it—
- (a) to meet expenses incurred in carrying out its functions or for any incidental purpose,
  - (b) to repay the principal of, and pay any interest on, any relevant borrowing and to meet relevant commencement expenses, and
  - (c) to maintain adequate reserves.
- (2) The “qualifying functions” of the FCA are—
- (a) its functions under or as a result of this Act or any of the other Acts mentioned in section 1A(6), and
  - (b) its functions under or as a result of a qualifying EU provision that is specified, or of a description specified, for the purposes of this sub-paragraph by the Treasury by order.

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- (3) In sub-paragraph (1)(b)—
- “relevant borrowing” means any money borrowed by the FCA which has been used for the purpose of meeting expenses incurred in relation to its assumption of functions under this Act, and
- “relevant commencement expenses” means expenses incurred by the FCA—
- (a) in preparation for the exercise of functions by the FCA under this Act, or
- (b) for the purpose of facilitating the exercise by the FCA of those functions or otherwise in connection with their exercise by it.
- (4) Neither section 1A(6)(d) nor the definition of “functions” in paragraph 1 applies for the purposes of sub-paragraph (2).
- (5) For the purposes of sub-paragraph (3) it is irrelevant when the borrowing of the money, the incurring of the expenses or the assumption of functions took place (and, in particular, it is irrelevant if any of those things were done at a time when the FCA was known as the Financial Services Authority).
- (6) In the case of rules made under Part 6 of this Act, the rules may, in particular, require the payment of fees in respect of—
- (a) the continued inclusion of securities or persons in any list or register required to be kept by the FCA as a result of any provision made by or under that Part,
- (b) access to any list or register within paragraph (a), and
- (c) the continued admission of financial instruments to trading on a regulated market.
- (7) In fixing the amount of any fee which is to be payable to the FCA, no account is to be taken of any sums which the FCA receives, or expects to receive, by way of penalties imposed by it under this Act.
- (8) Any fee which is owed to the FCA under any provision made by or under this Act may be recovered as a debt due to the FCA.

*Services for which fees may not be charged*

- 24 The power conferred by paragraph 23 may not be used to require—
- (a) a fee to be paid in respect of the discharge of any of the FCA's functions under paragraph 13, 14, 19 or 20 of Schedule 3, or
- (b) a fee to be paid by any person whose application for approval under section 59 has been granted.

## PART 4

### MISCELLANEOUS

*Exemption from liability in damages*

- 25 (1) None of the following is to be liable in damages for anything done or omitted in the discharge, or purported discharge, of the FCA's functions—
- (a) the FCA;
- (b) any person (“P”) who is, or is acting as, a member, officer or member of staff of the FCA;

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- (c) any person who could be held vicariously liable for things done or omitted by P, but only in so far as the liability relates to P's conduct.
- (2) Anything done or omitted by a person mentioned in sub-paragraph (1)(a) or (b) while acting, or purporting to act, as a result of an appointment under any of sections 166 to 169 is to be taken for the purposes of sub-paragraph (1) to have been done or omitted in the discharge, or as the case may be purported discharge, of the FCA's functions.
- (3) Sub-paragraph (1) does not apply—
  - (a) if the act or omission is shown to have been in bad faith, or
  - (b) so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful as a result of section 6(1) of the Human Rights Act 1998.

*Accredited financial investigators*

- 26 For the purposes of this Act anything done by an accredited financial investigator within the meaning of the Proceeds of Crime Act 2002 who—
- (a) is, or is acting as, an officer of, or member of the staff of, the FCA, or
  - (b) is appointed by the FCA under section 97, 167 or 168 to conduct an investigation,
- is to be treated as done in the exercise or discharge of a function of the FCA.

*Amounts required by rules to be paid to the FCA*

- 27 Any amount (other than a fee) which is required by rules to be paid to the FCA may be recovered as a debt due to the FCA.

SCHEDULE 1ZB

Section 2A

THE PRUDENTIAL REGULATION AUTHORITY

**PART 1**

GENERAL

*Interpretation*

- 1 In this Schedule—
- “the Bank” means the Bank of England;
  - “functions”, in relation to the PRA, means functions conferred on the PRA by or under any provision of this Act (see section 2A(6) which affects the meaning of references to such functions).

*Constitution*

- 2 The constitution of the PRA must provide—
- (a) for the Governor of the Bank to be the chair of the PRA,

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- (b) for the Bank's Deputy Governor for prudential regulation to be the chief executive of the PRA, and
  - (c) for the PRA to have a governing body.
- 3 The governing body must consist of—
- (a) the chair,
  - (b) the chief executive,
  - (c) the Bank's Deputy Governor for financial stability,
  - (d) the chief executive of the FCA, and
  - (e) other members (in this Schedule referred to as “appointed members”).
- 4 The validity of any act of the PRA is not affected—
- (a) by any vacancy resulting from a vacancy in the office of Governor of the Bank, Deputy Governor of the Bank for prudential regulation, Deputy Governor of the Bank for financial stability, or chief executive of the FCA, or
  - (b) by a defect in the appointment of a person—
    - (i) to any of those offices, or
    - (ii) as an appointed member.
- 5 The chief executive of the FCA must not take part in any discussion by or decision of the PRA which relates to—
- (a) the exercise of the PRA's functions in relation to a particular person, or
  - (b) a decision not to exercise those functions.

*Appointed members of governing body*

- 6 The appointed members must be appointed by the court of directors of the Bank with the approval of the Treasury.
- 7 Paragraphs 8 to 12 apply to the exercise by the court of directors of the Bank of its power to appoint appointed members.
- 8 The court of directors must secure that the majority of the members of the governing body of the PRA are non-executive members.
- 9 For the purposes of paragraph 8, and for the purposes of the PRA's duty in section 3C (duty to follow principles of good governance) none of the following is a non-executive member—
- (a) the members referred to in paragraph 3(a), (b) and c), and
  - (b) a member who is an employee of the PRA or of the Bank.
- 10 The court of directors must have regard to generally accepted principles of good practice relating to the making of public appointments.
- 11 (1) Before appointing a person as an appointed member, the court of directors must consider whether the person has any financial or other interests that could have a material effect on the extent of the functions as member that it would be proper for the person to discharge.
- (2) The terms on which an appointed member (“M”) is appointed must be such as—
- (a) to secure that M is not subject to direction by the Bank,
  - (b) to require M not to act in accordance with the directions of any other person, and

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- (c) to prohibit M from acquiring any financial or other interests that have a material effect on the extent of the functions as member that it would be proper for M to discharge.
- (3) If M is an employee of the PRA, M's interest as employee is to be disregarded for the purposes of sub-paragraphs (1) and (2)(c) and paragraph 14.
- 12 An employee of the FCA is disqualified for appointment as an appointed member.
- 13 The PRA must pay to the Bank the amount of any expenses incurred by the Bank in connection with the appointment of appointed members.
- 14 The court of directors of the Bank may, with the approval of the Treasury, remove an appointed member from office—
- (a) on the grounds of incapacity or serious misconduct, or
  - (b) on the grounds that in all the circumstances the member's financial or other interests are such as to have a material effect on the extent of the functions as member that it would be proper for the person to discharge.

#### *Terms of service*

- 15 (1) The terms of service of the members of the governing body are to be determined by the Oversight Committee of the Bank.
- (2) The PRA must pay to the members of its governing body such remuneration as may be determined by that Committee.

#### *Arrangements for discharging functions*

- 16 (1) The PRA may make arrangements for any of its functions to be discharged by a committee, sub-committee, officer or member of staff of the PRA, but subject to the following provision.
- (2) In exercising its legislative functions or its functions under section 2E (strategy), the PRA must act through its governing body.
- (3) For that purpose, the following are the PRA's legislative functions—
- (a) making rules;
  - (b) issuing codes under section 64;
  - (c) issuing statements under—
    - (i) section 63C, 64, 69, 192H, 192N, 210 or 345D, or
    - (ii) section 80 of the Financial Services Act 2012;
  - (d) giving directions under section 316 or 318;
  - (e) issuing guidance under section 2I.

#### *Records*

- 17 The PRA must maintain satisfactory arrangements for—
- (a) recording decisions made in the exercise of its functions, and
  - (b) the safe-keeping of those records which it considers ought to be preserved.

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### *Budget*

- 18 (1) The PRA must, for each of its financial years, adopt an annual budget which has been approved by the Bank.
- (2) The budget must be adopted before the start of the financial year to which it relates, except that the first budget must be adopted as soon as reasonably practicable after the coming into force of this paragraph.
- (3) The PRA may, with the approval of the Bank, vary the budget for a financial year at any time after its adoption.
- (4) The PRA must publish each budget, and each variation of a budget, in such manner as the PRA thinks fit.

### *Annual report*

- 19 (1) At least once a year the PRA must make a report to the Treasury on—
- (a) the discharge of its functions,
  - (b) the extent to which, in its opinion, its objectives have been advanced,
  - (c) its consideration of the principles in section 3B and of the matter mentioned in section 2H(1)(b),
  - (d) how it has complied with section 3D,
  - (e) any direction given under section 3I or 3J during the period to which the report relates,
  - (f) how it has complied with section 354B(1) so far as relating to co-operation with persons outside the United Kingdom, and
  - (g) such other matters as the Treasury may from time to time direct.
- (2) Sub-paragraph (1) does not require the inclusion in the report of any information whose publication would in the opinion of the PRA be against the public interest.
- (3) The report must be accompanied by—
- (a) a statement of the remuneration of the members of the governing body of the PRA during the period to which the report relates, and
  - (b) such other reports or information, prepared by such persons, as the Treasury may from time to time direct.
- (4) The Treasury must lay before Parliament a copy of each report received by them under this paragraph.

### *Consultation about annual report*

- 20 (1) In relation to each report made under paragraph 19, the PRA must publish at the same time as the report an invitation to members of the public to make representations to the PRA, within the 3 months beginning with the date of publication—
- (a) about the report,
  - (b) about the way in which the PRA has discharged, or failed to discharge, its functions during the period to which the report relates, and
  - (c) about the extent to which, in their opinion, the PRA's objectives have been advanced and the PRA has considered the regulatory principles in section 3B and the matter mentioned in section 2H(1)(b).



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- (2) The invitation must be published in the way appearing to it to be best calculated to bring the invitation to the attention of the public.

#### *Report on consultation*

- 21 (1) The PRA must publish a report about its consultation in accordance with paragraph 20.
- (2) The report must contain an account, in general terms, of any representations received in pursuance of the invitation published under that paragraph.
- (3) The report must be published not later than 4 months after the date on which the report under paragraph 19 was published.

#### *Accounts and audit*

- 22 (1) The Treasury may—
- (a) require the PRA to comply with any provisions of the Companies Act 2006 about accounts and their audit which would not otherwise apply to it, or
  - (b) direct that any provision of that Act about accounts and their audit is to apply to the PRA with such modifications as are specified in the direction, whether or not the provision would otherwise apply to the PRA.
- (2) Compliance with any requirement under sub-paragraph (1)(a) or (b) is enforceable by injunction or, in Scotland, an order for specific performance under section 45 of the Court of Session Act 1988.
- (3) Proceedings under sub-paragraph (2) may be brought only by the Treasury.
- 23 (1) The PRA must send a copy of its annual accounts to the Comptroller and Auditor General as soon as is reasonably practicable.
- (2) The Comptroller and Auditor General must—
- (a) examine, certify and report on accounts received under this paragraph, and
  - (b) send a copy of the certified accounts and the report to the Treasury.
- (3) The Treasury must lay the copy of the certified accounts and the report before Parliament.
- (4) The PRA must send a copy of the certified accounts and the report to the Bank.
- (5) Except as provided by paragraph 22(1), the PRA is exempt from the requirements of Part 16 of the Companies Act 2006 (audit), and its balance sheet must contain a statement to that effect.
- (6) In this paragraph “annual accounts” has the meaning given in section 471 of the Companies Act 2006.

## **PART 2**

### **STATUS**

#### *Status*

- 24 In relation to any of its functions—

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- (a) the PRA is not to be regarded as acting on behalf of the Crown, and
- (b) its members, officers and staff are not to be regarded as Crown servants.

*Exemption from requirement for use of “limited” in name of PRA*

- 25 The PRA is to be exempt from the requirements of the Companies Act 2006 relating to the use of “limited” as part of its name.
- 26 If the Secretary of State is satisfied that any action taken by the PRA makes it inappropriate for the exemption given by paragraph 25 to continue, the Secretary of State may, after consulting the Treasury, give a direction removing it.

### PART 3

#### PENALTIES AND FEES

##### *Penalties*

- 27 In determining its policy with respect to the amounts of penalties to be imposed by it under this Act, the PRA must take no account of the expenses which it incurs, or expects to incur, in discharging its functions.
- 28 (1) The PRA must in respect of each of its financial years pay to the Treasury its penalty receipts after deducting its enforcement costs.
  - (2) The PRA's “penalty receipts” in respect of a financial year are any amounts received by it during the year by way of penalties imposed under this Act.
  - (3) The PRA's “enforcement costs” in respect of a financial year are the expenses incurred by it during the year in connection with—
    - (a) the exercise, or consideration of the possible exercise, of any of its enforcement powers in particular cases, or
    - (b) the recovery of penalties imposed under this Act.
  - (4) For this purpose the PRA's enforcement powers are—
    - (a) its powers under any of the provisions mentioned in section 133(7A),
    - (b) its powers under section 56 (prohibition orders),
    - (c) its powers under Part 25 of this Act (injunctions and restitution),
    - (d) its powers under any other enactment specified by the Treasury by order,
    - (e) its powers in relation to the investigation of relevant offences, and
    - (f) its powers in England and Wales or Northern Ireland in relation to the prosecution of relevant offences.
  - (5) “Relevant offences” are—
    - (a) offences under FSMA 2000,
    - (b) offences under subordinate legislation made under that Act, and
    - (c) any other offences specified by the Treasury by order.
  - (6) The Treasury may give directions to the PRA as to how the PRA is to comply with its duty under sub-paragraph (1).
  - (7) The directions may in particular—

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- (a) specify descriptions of expenditure that are, or are not, to be regarded as incurred in connection with either of the matters mentioned in sub-paragraph (3),
    - (b) relate to the calculation and timing of the deduction in respect of the PRA's enforcement costs, and
    - (c) specify the time when any payment is required to be made to the Treasury.
  - (8) The directions may also require the PRA to provide the Treasury at specified times with information relating to—
    - (a) penalties that the PRA has imposed under FSMA 2000, or
    - (b) the PRA's enforcement costs.
  - (9) The Treasury must pay into the Consolidated Fund any sums received by them under this paragraph.
- 29 (1) The PRA must prepare and operate a scheme (“the financial penalty scheme”) for ensuring that the amounts that, as a result of the deduction for which paragraph 28(1) provides, are retained by the PRA in respect of amounts paid to it by way of penalties imposed under this Act are applied for the benefit of PRA-authorised persons.
- (2) The financial penalty scheme may, in particular, make different provision with respect to different classes of PRA-authorised person.
  - (3) The financial penalty scheme must ensure that those who have become liable to pay a penalty to the PRA in any financial year of the PRA do not receive any benefit under the scheme in the following financial year.
  - (4) Up-to-date details of the financial penalty scheme must be set out in a document (“the scheme details”).
- 30 (1) The scheme details must be published by the PRA in the way appearing to it to be best calculated to bring them to the attention of the public.
- (2) Before making the financial penalty scheme, the PRA must publish a draft of the proposed scheme in the way appearing to the PRA to be best calculated to bring it to the attention of the public.
  - (3) The draft must be accompanied by notice that representations about the proposals may be made to the PRA within a specified time.
  - (4) Before making the scheme, the PRA must have regard to any representations made to it in accordance with sub-paragraph (3).
  - (5) If the PRA makes the proposed scheme, it must publish an account, in general terms, of—
    - (a) the representations made to it in accordance with sub-paragraph (3), and
    - (b) its response to them.
  - (6) If the scheme differs from the draft published under sub-paragraph (2) in a way which is, in the opinion of the PRA, significant, the PRA must (in addition to complying with sub-paragraph (5)) publish details of the difference.
  - (7) The PRA must, without delay, give the Treasury a copy of any scheme details published by it.
  - (8) The PRA may charge a reasonable fee for providing a person with a copy of—

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- (a) a draft published under sub-paragraph (2);
  - (b) scheme details.
- (9) Sub-paragraphs (2) to (6) and (8)(a) also apply to a proposal to alter or replace the financial penalty scheme.

### *Fees*

- 31 (1) The PRA may make rules providing for the payment to it of such fees, in connection with the discharge of any of its qualifying functions, as it considers will (taking account of its expected income from fees and charges provided for by any other provision of this Act) enable it—
- (a) to meet expenses incurred in carrying out its functions or for any incidental purpose,
  - (b) to repay the principal of, and pay any interest on, any relevant borrowing and to meet relevant commencement expenses, and
  - (c) to maintain adequate reserves.
- (2) The “qualifying functions” of the PRA are—
- (a) its functions under or as a result of this Act or any of the other Acts mentioned in section 2A(6), and
  - (b) its functions under or as a result of a qualifying EU provision that is specified, or of a description specified, for the purposes of this sub-paragraph by the Treasury by order.
- (3) In sub-paragraph (1)(b)—
- “relevant borrowing” means any money borrowed by the PRA which has been used for the purpose of meeting expenses incurred in relation to its assumption of functions under this Act, and
- “relevant commencement expenses” means expenses incurred by the PRA, the FCA or the Bank—
- (a) in preparation for the exercise of functions by the PRA under this Act, or
  - (b) for the purpose of facilitating the exercise by the PRA of those functions or otherwise in connection with their exercise by it.
- (4) Neither section 2A(6)(d) nor the definition of “functions” in paragraph 1 applies for the purposes of sub-paragraph (2).
- (5) For the purposes of sub-paragraph (3) it is irrelevant when the borrowing of the money, the incurring of the expenses or the assumption of functions took place (and, in particular, it is irrelevant if expenses were incurred by the FCA at a time when it was known as the Financial Services Authority).
- (6) In fixing the amount of any fee which is to be payable to the PRA, no account is to be taken of any sums which the PRA receives, or expects to receive, by way of penalties imposed by it under this Act.
- (7) Any fee which is owed to the PRA under any provision made by or under this Act may be recovered as a debt due to the PRA.

### *Services for which fees may not be charged*

- 32 The power conferred by paragraph 31 may not be used to require—

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- (a) a fee to be paid in respect of the discharge of any of the PRA's functions under paragraph 13, 14, 19 or 20 of Schedule 3, or
- (b) a fee to be paid by any person whose application for approval under section 59 has been granted.

## PART 4

### MISCELLANEOUS

#### *Exemption from liability in damages*

- 33 (1) None of the following is to be liable in damages for anything done or omitted in the discharge, or purported discharge, of the PRA's functions—
- (a) the PRA;
  - (b) any person (“P”) who is, or is acting as, a member, officer or member of staff of the PRA;
  - (c) any person who could be held vicariously liable for things done or omitted by P, but only in so far as the liability relates to P's conduct.
- (2) Anything done or omitted by a person mentioned in sub-paragraph (1)(a) or (b) while acting, or purporting to act, as a result of an appointment under any of sections 97, 166 to 169 and 284 is to be taken for the purposes of sub-paragraph (1) to have been done or omitted in the discharge, or as the case may be purported discharge, of the PRA's functions.
- (3) Sub-paragraph (1) does not apply—
- (a) if the act or omission is shown to have been in bad faith, or
  - (b) so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful as a result of section 6(1) of the Human Rights Act 1998.

#### *Accredited financial investigators*

- 34 For the purposes of this Act anything done by an accredited financial investigator within the meaning of the Proceeds of Crime Act 2002 who—
- (a) is, or is acting as, an officer of, or member of the staff of, the PRA, or
  - (b) is appointed by the PRA under section 167 or 168 to conduct an investigation,
- is to be treated as done in the exercise or discharge of a function of the PRA.

#### *Amounts required by rules to be paid to the PRA*

- 35 Any amount (other than a fee) which is required by rules to be paid to the PRA may be recovered as a debt due to the PRA.”

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## SCHEDULE 4

Section 12

## EEA PASSPORT RIGHTS AND TREATY RIGHTS

## PART 1

## AMENDMENTS OF SCHEDULE 3 TO FSMA 2000: EEA PASSPORT RIGHTS

*Introductory*

1 Schedule 3 to FSMA 2000 (EEA passport rights) is amended as follows.

**Commencement Information**

**I79** Sch. 4 para. 1 in force at 27.2.2013 for specified purposes by S.I. 2013/423, art. 2

*Exercise of passport rights by EEA firms*

- 2 (1) Paragraph 13 (establishment) is amended as follows.
- (2) In sub-paragraphs (1) and (1A), for “Authority”, in each place, substitute “appropriate UK regulator”.
- (3) After sub-paragraph (1A) insert—
- “(1B) Where the PRA receives a consent notice, it must give a copy to the FCA without delay.
- (1C) Where the FCA receives a consent notice it must in prescribed cases give a copy to the PRA without delay.
- (1D) In a case where the FCA is the appropriate UK regulator, the consent of the PRA is required for any notice by the FCA for the purposes of sub-paragraph (1)(ba) which relates to—
- (a) a PRA-regulated activity,
- (b) a PRA-authorised person, or
- (c) a person whose immediate group includes a PRA-authorised person.
- (1E) If the FCA—
- (a) receives a consent notice, or
- (b) receives under sub-paragraph (1B) a copy of a consent notice,
- it must prepare for the firm's supervision.
- (1F) If the PRA—
- (a) receives a consent notice, or
- (b) receives under sub-paragraph (1C) a copy of a consent notice which identifies PRA-regulated activities or relates to a PRA-authorised person,
- it must prepare for the firm's supervision.”
- (4) In sub-paragraph (2)—
- (a) for “Authority” substitute “appropriate UK regulator”, and

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(b) omit paragraph (a).

(5) In sub-paragraph (3), for “Authority” substitute “ appropriate UK regulator ”.

(6) In sub-paragraph (4), after the definition of “applicable provisions” insert—

““the appropriate UK regulator” means whichever of the FCA and the PRA is the competent authority for the purposes of the relevant single market directive;”.

#### Commencement Information

**I80** Sch. 4 para. 2 in force at 27.2.2013 for specified purposes by S.I. 2013/423, art. 2

3 (1) Paragraph 14 (services) is amended as follows.

(2) In sub-paragraph (1), for “Authority”, in each place, substitute “ appropriate UK regulator ”.

(3) After sub-paragraph (1) insert—

“(1A) Relevant notice” means—

- (a) a regulator's notice, or
- (b) where none is required by sub-paragraph (1), a notice informing the appropriate UK regulator of the firm's intention to provide services in the United Kingdom.

(1B) Where the PRA receives a relevant notice, it must give a copy to the FCA without delay.

(1C) Where the FCA receives a relevant notice, it must in prescribed cases give a copy to the PRA without delay.

(1D) If the FCA—

- (a) receives a relevant notice, or
  - (b) receives under sub-paragraph (1B) a copy of a relevant notice,
- it must prepare for the firm's supervision.

(1E) If the PRA—

- (a) receives a relevant notice, or
- (b) receives under sub-paragraph (1C) a copy of a relevant notice which identifies PRA-regulated activities or relates to a PRA-authorized person,

it must, unless the firm falls within paragraph 5(e), prepare for the firm's supervision.”

(4) For sub-paragraph (2) substitute—

“(2) If the appropriate UK regulator has received a relevant notice, it must, unless the firm falls within paragraph 5(a) or (e), notify the firm of the applicable provisions (if any).”

(5) Omit sub-paragraph (2A).

(6) In sub-paragraph (3)—

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- (a) for “(2)(b)” substitute “ (2) ”, and
- (b) for the words from “Authority” to the end substitute “ appropriate UK regulator received the relevant notice ”.

(7) In sub-paragraph (4), after the definition of “applicable provisions” insert—

““the appropriate UK regulator” means whichever of the FCA and the PRA is the competent authority for the purposes of the relevant single market directive;”.

#### Commencement Information

**I81** Sch. 4 para. 3 in force at 27.2.2013 for specified purposes by [S.I. 2013/423](#), [art. 2](#)

- 4 (1) Paragraph 15A (application for approval to manage UCITS) is amended as follows.
- (2) For “Authority” or “Authority's”, in each place, substitute “ appropriate UK regulator ” or “appropriate UK regulator's”.
- (3) After sub-paragraph (6) insert—
- “(6A) If—
- (a) the FCA is the appropriate UK regulator, and
  - (b) the firm is, or the firm's immediate group includes, a PRA-  
authorised person,
- the FCA must give the PRA a copy of the notice under sub-paragraph (4).”
- (4) In sub-paragraph (7), before the definition of “specified” insert—
- ““the appropriate UK regulator” means whichever of the FCA and the PRA is the competent authority for the purposes of the UCITS directive;”.

#### Commencement Information

**I82** Sch. 4 para. 4 in force at 27.2.2013 for specified purposes by [S.I. 2013/423](#), [art. 2](#)

- 5 (1) Paragraph 15B (representations and references to the Tribunal) is amended as follows.
- (2) For “Authority”, in both places, substitute “ appropriate UK regulator ”.
- (3) After sub-paragraph (3) insert—
- “(4) In this paragraph “the appropriate UK regulator” has the same meaning as in paragraph 15A.”

#### Commencement Information

**I83** Sch. 4 para. 5 in force at 27.2.2013 for specified purposes by [S.I. 2013/423](#), [art. 2](#)

- 6 In paragraph 15C (information to home state regulator), in sub-paragraph (1), for “Authority” substitute “ appropriate UK regulator, as defined in paragraph 15A(7), ”.



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#### Commencement Information

**I84** Sch. 4 para. 6 in force at 27.2.2013 for specified purposes by S.I. 2013/423, art. 2

- 7 In paragraph 17 (continuing regulation of EEA firms)—
- (a) before paragraph (a) insert—
- “(za) require the FCA and the PRA to notify each other about EEA firms qualifying for authorisation;”,
- and
- (b) in paragraph (c), for “the Authority” substitute “ the FCA or the PRA ”.

#### Commencement Information

**I85** Sch. 4 para. 7 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2

- 8 In paragraph 18 (giving up right to authorisation), in paragraph (b), for “Part IV permission” substitute “ Part 4A permission ”.

#### Commencement Information

**I86** Sch. 4 para. 8 in force at 27.2.2013 for specified purposes by S.I. 2013/423, art. 2

#### *Exercise of passport rights by UK firms*

- 9 In Part 3 (exercise of passport rights by UK firms), before the italic heading before paragraph 19 insert—

#### *“Meaning of “the appropriate UK regulator”*

- 18A In this Part of this Schedule “the appropriate UK regulator” means—
- (a) where the UK firm is a PRA-authorized person, the PRA;
- (b) in any other case, the FCA.”

#### Commencement Information

**I87** Sch. 4 para. 9 in force at 27.2.2013 for specified purposes by S.I. 2013/423, art. 2

- 10 (1) Paragraph 19 (establishment) is amended as follows.
- (2) For “Authority”, in each place, substitute “ appropriate UK regulator ”.
- (3) After sub-paragraph (7B) insert—
- “(7C) Where the PRA is the appropriate UK regulator, it must consult the FCA before deciding whether to give a consent notice, except where sub-paragraph (7A) applies.
- (7D) Where the FCA is the appropriate UK regulator, it must consult the PRA before deciding whether to give a consent notice in relation to a UK firm whose immediate group includes a PRA-authorized person.”

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#### Commencement Information

**I88** Sch. 4 para. 10 in force at 27.2.2013 for specified purposes by S.I. 2013/423, art. 2

- 11 (1) Paragraph 20 (services) is amended as follows.
- (2) For “Authority”, in each place, substitute “ appropriate UK regulator ”.
- (3) After sub-paragraph (3A) insert—
- “(3AA) Where the PRA is the appropriate UK regulator, it must consult the FCA before deciding whether to give a consent notice.
- (3AB) Where the FCA is the appropriate UK regulator, it must consult the PRA before deciding whether to give a consent notice in relation to a UK firm whose immediate group includes a PRA-authorised person.”

#### Commencement Information

**I89** Sch. 4 para. 11 in force at 27.2.2013 for specified purposes by S.I. 2013/423, art. 2

- 12 In paragraph 20ZA (information for host state regulator), for “Authority”, in each place, substitute “ appropriate UK regulator ”.

#### Commencement Information

**I90** Sch. 4 para. 12 in force at 27.2.2013 for specified purposes by S.I. 2013/423, art. 2

- 13 In paragraph 20B (notice of intention to market), for “Authority”, in each place, substitute “ appropriate UK regulator ”.

#### Commencement Information

**I91** Sch. 4 para. 13 in force at 27.2.2013 for specified purposes by S.I. 2013/423, art. 2

- 14 In paragraph 22 (continuing regulation of UK firms), in sub-paragraph (3)—
- (a) for “the Authority's consent” substitute “ the consent of the FCA or the PRA ”, and
- (b) in paragraph (b), for “the Authority” substitute “ the FCA or the PRA ”.

#### Commencement Information

**I92** Sch. 4 para. 14 in force at 27.2.2013 for specified purposes by S.I. 2013/423, art. 2

- 15 (1) Paragraph 23 (power to impose requirements) is amended as follows.
- (2) For “the Authority”, in each place, substitute “ the FCA ”.
- (3) In sub-paragraph (1)(a), for “Part IV permission” substitute “ Part 4A permission ”.
- (4) In sub-paragraphs (2) and (2A), for “section 45” substitute “ section 55L or 55M ”.
- (5) After sub-paragraph (2A) insert—

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“(2B) This paragraph does not affect any duty of the FCA to consult the PRA before exercising its power under section 55L or 55M.”

**Commencement Information**

**I93** Sch. 4 para. 15 in force at 27.2.2013 for specified purposes by S.I. 2013/423, art. 2

- 16 (1) Paragraph 24 (which relates to UK firms exercising rights under the banking consolidation directive) is amended as follows.
- (2) In sub-paragraph (1)(a), for “Part IV permission” substitute “ Part 4A permission ”.
- (3) In sub-paragraph (2)—
- (a) for “the Authority”, in the first place, substitute “ either regulator ”,
  - (b) in paragraph (a), for “Part IV permission” substitute “ Part 4A permission ”, and
  - (c) in paragraph (b), for “the Authority” substitute “ that regulator ”.

**Commencement Information**

**I94** Sch. 4 para. 16 in force at 27.2.2013 for specified purposes by S.I. 2013/423, art. 2

- 17 After paragraph 24 insert—

*“Arrangements between FCA and PRA*

- 24A(1) The regulators may make arrangements about—
- (a) how they will consult each other when required to do so by paragraph 19(7C) or (7D) or 20(3AA) or (3AB) or by regulations under paragraph 22;
  - (b) how each of them will act in response to any advice or representations received from the other.
- (2) The arrangements may require one regulator to obtain the consent of the other in specified circumstances before—
- (a) giving a consent notice under paragraph 19 or 20, or
  - (b) exercising specified functions under regulations under paragraph 22.
- (3) The arrangements must be in writing, and must specify—
- (a) the EEA rights to which they relate, and
  - (b) the date on which they come into force.
- (4) Where arrangements are in force under this paragraph, the regulators must exercise functions in accordance with the arrangements.
- (5) The regulators must publish any arrangements under this paragraph in such manner as they think fit.”

**Commencement Information**

**I95** Sch. 4 para. 17 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

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**I96** Sch. 4 para. 17 in force at 27.2.2013 for specified purposes by S.I. 2013/423, art. 2

18 In paragraph 25 (information to be included in the public record) for “Authority” substitute “ FCA ”.

#### Commencement Information

**I97** Sch. 4 para. 18 in force at 27.2.2013 for specified purposes by S.I. 2013/423, art. 2

19 In paragraph 26 (UK management companies: delegation of functions), for “Authority”, in each place, substitute “ appropriate UK regulator ”.

#### Commencement Information

**I98** Sch. 4 para. 19 in force at 27.2.2013 for specified purposes by S.I. 2013/423, art. 2

20 In paragraph 27 (UK management companies: withdrawal of authorisation), for “Authority”, in each place, substitute “ appropriate UK regulator ”.

#### Commencement Information

**I99** Sch. 4 para. 20 in force at 27.2.2013 for specified purposes by S.I. 2013/423, art. 2

21 In paragraph 28 (management companies: request for information), for “Authority”, in each place, substitute “ appropriate UK regulator ”.

#### Commencement Information

**I100** Sch. 4 para. 21 in force at 27.2.2013 for specified purposes by S.I. 2013/423, art. 2

## PART 2

### AMENDMENTS OF SCHEDULE 4 TO FSMA 2000: TREATY RIGHTS

22 Schedule 4 to FSMA 2000 (Treaty rights) is amended as follows.

#### Commencement Information

**I101** Sch. 4 para. 22 in force at 27.2.2013 for specified purposes by S.I. 2013/423, art. 2

23 (1) Paragraph 3 (exercise of Treaty rights) is amended as follows.

(2) In sub-paragraph (2), for “Authority” substitute “ appropriate UK regulator ”.

(3) After that sub-paragraph insert—

“(2A) In sub-paragraph (2) “the appropriate UK regulator” means—

- (a) where any of the activities to which the notification under that sub-paragraph relates is a PRA-regulated activity, the PRA;
- (b) in any other case, the FCA.

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(2B) Where the PRA receives a notification under sub-paragraph (2), it must give a copy to the FCA without delay.

(2C) Where the FCA receives a notification under sub-paragraph (2), it must in prescribed cases give a copy to the PRA without delay.”

**Commencement Information**

**I102** Sch. 4 para. 23 in force at 27.2.2013 for specified purposes by S.I. 2013/423, art. 2

24 After paragraph 3 insert—

*“Notification between UK regulators*

3A Regulations may require the PRA and the FCA to notify each other about Treaty firms qualifying for authorisation.”

**Commencement Information**

**I103** Sch. 4 para. 24 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2

25 (1) Paragraph 4 (permission) is amended as follows.

(2) In sub-paragraph (3)—

- (a) for “a Part IV permission” substitute “ a Part 4A permission ”, and
- (b) for “Authority” substitute “ appropriate UK regulator ”.

(3) In sub-paragraph (4), for “Authority” substitute “ appropriate UK regulator ”.

(4) After that sub-paragraph insert—

“(5) The appropriate UK regulator” means—

- (a) where the Treaty firm is a PRA-authorized person, the FCA or the PRA;
- (b) in any other case, the FCA.”

**Commencement Information**

**I104** Sch. 4 para. 25 in force at 27.2.2013 for specified purposes by S.I. 2013/423, art. 2

26 (1) Paragraph 5 (notice to Authority) is amended as follows.

(2) In sub-paragraph (2), for “the Authority” substitute “ the appropriate UK regulator ”.

(3) After sub-paragraph (2) insert—

“(2A) The appropriate UK regulator” means—

- (a) where any of the activities to which the notice relates is a PRA-regulated activity, the PRA;
- (b) in any other case, the FCA.

(2B) Where the PRA receives a notice under sub-paragraph (2), it must give a copy to the FCA without delay.

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- (2C) Where the FCA receives a notice under sub-paragraph (2) from—
- (a) a PRA-authorised person, or
  - (b) a person whose immediate group includes a PRA-authorised person,
- it must give a copy to the PRA without delay.”

(4 For sub-paragraph (4) substitute—

“(4) Subsections (1), (4) and (8) of section 55U apply to a notice under sub-paragraph (2) as they apply to an application for a Part 4A permission.”

(5) In the italic heading immediately before paragraph 5, for “Authority” substitute “UK regulator”.

#### Commencement Information

**I105** Sch. 4 para. 26 in force at 27.2.2013 for specified purposes by S.I. 2013/423, art. 2

**I106** Sch. 4 para. 26(4) in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

### PART 3

#### AMENDMENTS OF SECTIONS 34 AND 35 OF FSMA 2000: EEA FIRMS AND TREATY FIRMS

- 27 (1) Section 34 of FSMA 2000 (EEA firms) is amended as follows.
- (2) In subsection (2), for “the Authority” substitute “ the appropriate regulator ”.
- (3) After that subsection insert—
- “(2A) In subsection (2) “the appropriate regulator” means—
- (a) in the case of a PRA-authorised person, the PRA, and
  - (b) in any other case, the FCA.”
- (4) In subsection (3), for “Part IV permission” substitute “ Part 4A permission ”.

#### Commencement Information

**I107** Sch. 4 para. 27 in force at 27.2.2013 for specified purposes by S.I. 2013/423, art. 2

- 28 (1) Section 35 of FSMA 2000 (Treaty firms) is amended as follows.
- (2) In subsection (2), for “the Authority” substitute “ the appropriate regulator ”.
- (3) After that subsection insert—
- “(2A) In subsection (2) “the appropriate regulator” means—
- (a) in the case of a PRA-authorised person, the PRA, and
  - (b) in any other case, the FCA.”
- (4) In subsection (3), for “Part IV permission” substitute “ Part 4A permission ”.

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**Commencement Information**

**I108** Sch. 4 para. 28 in force at 27.2.2013 for specified purposes by S.I. 2013/423, art. 2

**PART 4**

AMENDMENTS OF PART 13 OF FSMA 2000: POWERS OF INTERVENTION

29 Part 13 of FSMA 2000 (incoming firms: intervention by Authority) is amended as follows.

**Commencement Information**

**I109** Sch. 4 para. 29 in force at 27.2.2013 for specified purposes by S.I. 2013/423, art. 2

30 In the heading to Part 13, for “Authority” substitute “ FCA or PRA ”.

**Commencement Information**

**I110** Sch. 4 para. 30 in force at 27.2.2013 for specified purposes by S.I. 2013/423, art. 2

31 In section 193 (interpretation of Part 13), in subsection (1), in the definition of “power of intervention”, for “the Authority” substitute “ the FCA or the PRA ”.

**Commencement Information**

**I111** Sch. 4 para. 31 in force at 27.2.2013 for specified purposes by S.I. 2013/423, art. 2

32 (1) Section 194 (general grounds on which power of intervention is exercisable) is amended as follows.

(2) In subsection (1)—

- (a) for “Authority”, in each place, substitute “ appropriate regulator ”,
- (b) in paragraph (c), for the words from “meet” to the end substitute “advance—
  - (i) in the case of the FCA, one or more of its operational objectives, and
  - (ii) in the case of the PRA, any of its objectives.”

(3) After subsection (1A) insert—

“(1B) The appropriate regulator” means—

- (a) where the incoming firm is a PRA-authorized person, the FCA or the PRA;
- (b) in any other case, the FCA.”

(4) In subsection (3), for “Authority”, in each place, substitute “ FCA ”.

**Commencement Information**

**I112** Sch. 4 para. 32 in force at 27.2.2013 for specified purposes by S.I. 2013/423, art. 2

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- 33 (1) Section 194A (contravention by relevant EEA firm with UK branch of requirement under markets in financial instruments directive) is amended as follows.
- (2) For “the Authority” or “the Authority's”, in each place, substitute “ the appropriate regulator ” or “the appropriate regulator's”.
- (3) After subsection (8) insert—
- “(9) Subsection (4) is not to be regarded as requiring the PRA to take action in relation to the contravention of a requirement falling within subsection (3) in a case where it is satisfied that the FCA is required to act, and is acting or has acted, under subsection (4)—
- (a) in relation to that requirement, or
- (b) where that requirement is imposed by rules made by the PRA, in relation to an identical requirement imposed by rules made by the FCA.
- (10) “The appropriate regulator” means—
- (a) where the relevant EEA firm is a PRA-authorized person, the FCA or, subject to subsection (9), the PRA;
- (b) in any other case, the FCA.”
- (4) In the heading, for “Authority” substitute “ appropriate regulator ”.

#### Commencement Information

I113 Sch. 4 para. 33 in force at 27.2.2013 for specified purposes by S.I. 2013/423, art. 2

- 34 (1) Section 195 (exercise of power in support of overseas regulator) is amended as follows.
- (2) In subsection (1), for “Authority” substitute “ appropriate regulator ”.
- (3) In subsection (2), for “Authority's” substitute “appropriate regulator's”.
- (4) After subsection (2) insert—
- “(2A) The appropriate regulator” means—
- (a) where the incoming firm is a PRA-authorized person, the FCA or the PRA;
- (b) in any other case, the FCA.”
- (5) In subsection (4)—
- (a) in paragraph (a), for “the Authority” substitute “ either regulator ”, and
- (b) omit paragraph (b).
- (6) In subsections (5) to (8), for “Authority”, in each place, substitute “ appropriate regulator ”.

#### Commencement Information

I114 Sch. 4 para. 34 in force at 27.2.2013 for specified purposes by S.I. 2013/423, art. 2



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- 35 (1) Section 195A (contravention by relevant EEA firm or EEA UCITS of directive requirement: home state regulator primarily responsible for securing compliance) is amended as follows.
- (2) For “the Authority” or “the Authority's”, in each place, substitute “ the appropriate regulator ” or “the appropriate regulator's”.
- (3) After subsection (11A) insert—
- “(11B) Subsection (4) is not to be regarded as requiring the PRA to notify the home state regulator in relation to the contravention of a requirement falling within subsection (2) or (3) in a case where the PRA is satisfied that the FCA is required to act, and is acting or has acted, under subsection (4) in relation to that requirement.”
- (4) In subsection (12), before the definition of “home state” insert—
- ““the appropriate regulator” means—
- (a) where the relevant EEA firm is a PRA-authorized person, the FCA or, subject to subsection (11B), the PRA;
- (b) in any other case, the FCA;”.

#### Commencement Information

**I115** Sch. 4 para. 35 in force at 27.2.2013 for specified purposes by S.I. 2013/423, art. 2

- 36 For section 196 substitute—

#### “196 The power of intervention

- (1) If a regulator is entitled to exercise its power of intervention in respect of an incoming firm under this Part, it may impose any requirement in relation to the firm which that regulator could impose if—
- (a) the firm's permission was a Part 4A permission; and
- (b) the regulator was entitled to exercise its power under section 55L(3) or 55M(3).
- (2) The FCA must consult the PRA before exercising its powers by virtue of this section in relation to—
- (a) a PRA-authorized person, or
- (b) a member of a group which includes a PRA-authorized person.
- (3) The PRA must consult the FCA before exercising its powers by virtue of this section.”

#### Commencement Information

**I116** Sch. 4 para. 36 in force at 27.2.2013 for specified purposes by S.I. 2013/423, art. 2

- 37 (1) Section 197 (procedure on exercise of power of intervention) is amended as follows.
- (2) In subsection (2), for “Authority” substitute “ regulator ”.
- (3) In subsection (3), for “the Authority” substitute “ a regulator ”.

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- (4) In subsection (4)—
- (a) in paragraph (c), for “Authority's” substitute “regulator's”, and
  - (b) in paragraph (d), for “Authority” substitute “ regulator ”.
- (5) In subsections (5) to (7), for “Authority”, in each place, substitute “ regulator ”.

#### Commencement Information

**I117** Sch. 4 para. 37 in force at 27.2.2013 for specified purposes by S.I. 2013/423, art. 2

- 38 (1) Section 198 (power to apply to court for injunction in respect of certain overseas insurance companies) is amended as follows.
- (2) In subsections (1) to (3), for “Authority”, in each place, substitute “ appropriate regulator ”.
- (3) After subsection (3) insert—
- “(3A) The appropriate regulator” means whichever regulator is, at the time when the request is received, the competent authority for the purposes of the provision referred to in subsection (1)(a), (b) or (c).”

#### Commencement Information

**I118** Sch. 4 para. 38 in force at 27.2.2013 for specified purposes by S.I. 2013/423, art. 2

- 39 (1) Section 199 (additional procedure for EEA firms in certain cases) is amended as follows.
- (2) In subsection (1), for “the Authority” substitute “ a regulator ”.
- (3) In subsection (2)(a)(i), for “the Authority” substitute “ that regulator ”.
- (4) In subsections (3) to (11), for “the Authority” substitute “ the regulator ”.
- (5) After subsection (11) insert—
- “(12) Subsection (3) is not to be regarded as requiring the PRA to take action in relation to the contravention of a relevant requirement in a case where it is satisfied that the FCA is required to act, and is acting or has acted, under subsection (3)—
- (a) in relation to that requirement, or
  - (b) where that requirement is imposed by rules made by the PRA, in relation to an identical requirement imposed by rules made by the FCA.”

#### Commencement Information

**I119** Sch. 4 para. 39 in force at 27.2.2013 for specified purposes by S.I. 2013/423, art. 2

- 40 (1) Section 199A (management companies: loss of authorisation) is amended as follows.
- (2) In subsection (2), for “Authority”, in both places, substitute “ appropriate regulator ”.

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(3) For subsection (4) substitute—

“(4) In this section—

“the appropriate regulator” means whichever of the FCA and the PRA is the competent authority for the purposes of the UCITS directive;

“collective investment scheme” has the same meaning as in Part 17.”

#### Commencement Information

I120 Sch. 4 para. 40 in force at 27.2.2013 for specified purposes by S.I. 2013/423, art. 2

41 (1) Section 200 (rescission and variation of requirements) is amended as follows.

(2) In subsection (1), for “The Authority” substitute “ Either regulator ”.

(3) In subsection (2)—

(a) for “the Authority”, in the first place, substitute “ either regulator ”, and

(b) for “the Authority”, in the second place, substitute “ the regulator ”.

(4) In subsections (3) and (4), for “Authority” substitute “ regulator ”.

(5) In subsection (5)—

(a) for “the Authority”, in the first place, substitute “ either regulator ”, and

(b) in paragraph (a), for “the Authority” substitute “ the regulator ”.

#### Commencement Information

I121 Sch. 4 para. 41 in force at 27.2.2013 for specified purposes by S.I. 2013/423, art. 2

42 For section 201 substitute—

#### “201 Effect of certain requirements on other persons

If either regulator, in exercising its power of intervention, imposes on an incoming firm a requirement of the kind mentioned in subsection (4) of section 55P, the requirement has the same effect in relation to the firm as it would have in relation to an authorised person if it had been imposed on the authorised person by the regulator acting under section 55L or 55M.”

#### Commencement Information

I122 Sch. 4 para. 42 in force at 27.2.2013 for specified purposes by S.I. 2013/423, art. 2

43 In section 202 (contravention of requirement imposed under Part 13), in subsection (1), for “the Authority” substitute “ a regulator ”.

#### Commencement Information

I123 Sch. 4 para. 43 in force at 27.2.2013 for specified purposes by S.I. 2013/423, art. 2

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## SCHEDULE 5

Section 15

## PERFORMANCE OF REGULATED ACTIVITIES

VALID FROM 01/04/2013

1 Part 5 of FSMA 2000 is amended as follows.

VALID FROM 01/04/2013

- 2 (1) Section 58 (applications relating to prohibition orders: procedure and right to refer to Tribunal) is amended as follows.
- (2) In subsections (2) to (5), for “Authority” substitute “ appropriate regulator ”.
- (3) After subsection (5) insert—
- “(6) The appropriate regulator” means the regulator to which the application is made.”

VALID FROM 01/04/2013

3 In section 59 (approval for particular arrangements), omit subsection (9).

- 4 (1) Section 60 (applications for approval), for “Authority” or “Authority's”, in each place, substitute “ appropriate regulator ” or “appropriate regulator's”.
- (2) For subsection (3) substitute—
- “(3) At any time after the application is received and before it is determined, the appropriate regulator may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application or, as the case requires, to decide whether to give consent.”
- (3) In subsection (6), for “Part IV” substitute “ Part 4A ”.
- (4) After subsection (6) insert—
- “(7) The PRA must consult the FCA before—
- (a) giving a direction under subsection (2)(a) in relation to a class of applicants, or
- (b) imposing a requirement under subsection (2)(b) on a class of applicants.
- (8) The PRA must as soon as practicable notify the FCA of the receipt or withdrawal of an application to the PRA, unless the case is one in which by virtue of arrangements under section 59B the consent of the FCA is not required.
- (9) “The appropriate regulator”—
- (a) in relation to a controlled function which is of a description specified in rules made by the FCA, means the FCA;

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- (b) in relation to a controlled function which is of a description specified in rules made by the PRA, means the PRA, and for the purposes of subsection (3) also includes the FCA in cases where the consent of the FCA is required.”

#### Commencement Information

**I124** Sch. 5 para. 4 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

VALID FROM 01/04/2013

- 5 (1) Section 61 (determination of applications) is amended as follows.
- (2) In subsection (1), for “The Authority may grant an application made under section 60” substitute “ The regulator to which an application is made under section 60 may grant the application ”.
- (3) In subsection (2)—
- (a) for “the Authority” substitute “ the regulator ”, and
- (b) after “general rules” insert “ made by that regulator ”.
- (4) After subsection (2) insert—
- “(2A) Subsections (1) and (2) apply in relation to the giving by the FCA of any required consent as they apply in relation to the grant of the application.”
- (5) In subsection (3), for the words from the beginning to “determine” substitute “ The regulator to which an application is made under section 60 must, before the end of the period for consideration, determine ”.
- (6) After subsection (3) insert—
- “(3A) The period for consideration”—
- (a) in any case where the application under section 60 is made by a person applying for permission under Part 4A (see section 60(6)), means whichever ends last of—
- (i) the period within which the application for that permission must be determined under section 55V(1) or (2), and
- (ii) the period of 3 months beginning with the date on which the regulator receives the application under section 60, and
- (b) in any other case, means the period of 3 months beginning with the date on which the regulator receives the application under section 60.”
- (7) In subsection (4), for “the Authority”, in each place, substitute “ a regulator ”.
- (8) In subsection (5)—
- (a) for “Authority”, in the first place, substitute “ regulator to which the application was made ”, and
- (b) for “Authority”, in the second place, substitute “ regulator ”.

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VALID FROM 01/04/2013

- 6 (1) Section 62 (applications for approval: procedure and right to refer to Tribunal) is amended as follows.
- (2) In subsection (1), for the words from “If” to “, it” substitute “ If the regulator to which an application is made under section 60 (“an application”) decides to grant the application, it ”.
- (3) In subsections (2) to (4)—
- (a) for “the Authority” substitute “ the regulator to which an application is made ”, and
  - (b) for “an application” substitute “ the application ”.

VALID FROM 01/04/2013

- 7 (1) Section 63 (withdrawal of approval) is amended as follows.
- (2) In subsection (2)—
- (a) for “its approval, the Authority may take into account any matter which it could take into account if it were” substitute “ an approval, the FCA or the PRA may take into account any matter which could be taken into account in ”, and
  - (b) at the end insert “ (on the assumption, if it is not the case, that the application was one falling to be considered by it) ”.
- (3) In subsections (3) to (5)—
- (a) for “the Authority” substitute “ a regulator ”, and
  - (b) for “its approval” substitute “ an approval ”.

VALID FROM 01/04/2013

- 8 In section 63A (performance of controlled functions without approval: power to impose penalties)—
- (a) for “Authority”, in each place, substitute “ appropriate regulator ”,
  - (b) after subsection (5) insert—
    - “(5A) The appropriate regulator”—
    - (a) in relation to a controlled function which is of a description specified in rules made by the FCA, means the FCA, and
    - (b) in relation to a controlled function which is of a description specified in rules made by the PRA, means the PRA.”, and
    - (c) in subsection (6), after “Any” insert “ other ”.

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VALID FROM 01/04/2013

9 In section 63B (procedure and right to refer to Tribunal), for “the Authority”, in each place, substitute “ a regulator ”.

- 10 (1) Section 63C (statement of policy) is amended as follows.
- (2) In subsection (1), for “The Authority” substitute “ Each regulator ”.
- (3) In subsections (2) and (3), for “The Authority's” substitute “Each regulator's”.
- (4) In subsection (4), for “the Authority” substitute “ the regulator that has issued the statement ”.
- (5) In subsection (5)—
- (a) for “The Authority” substitute “ A regulator ”, and
- (b) after “issued” insert “ by it ”.
- (6) In subsection (6), for “replaced, the Authority” substitute “ replaced by a regulator, the regulator ”.
- (7) In subsection (7), for “The Authority” substitute “ A regulator ”.
- (8) In subsection (8)—
- (a) after “section” insert “ by a regulator ”, and
- (b) for “Authority”, in both places, substitute “ regulator ”.
- (9) In subsection (9), for “Authority” substitute “ regulator ”.
- (10) In subsection (10)—
- (a) for “the Authority” substitute “ a regulator ”, and
- (b) after “published” insert “ by it ”.

#### Commencement Information

**I125** Sch. 5 para. 10 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 11 (1) Section 63D (statement of policy: procedure) is amended as follows.
- (2) In subsection (1)—
- (a) for “issuing” substitute “ a regulator issues ”, and
- (b) for “Authority”, in both places, substitute “ regulator ”.
- (3) In subsections (2), (3), (4) and (5) (in both places), for “Authority” substitute “ regulator ”.
- (4) In subsection (6)—
- (a) for “The Authority” substitute “ A regulator ”, and
- (b) after “published” insert “ by it ”.

#### Commencement Information

**I126** Sch. 5 para. 11 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

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- 12 (1) Section 64 (conduct of approved persons: statement and codes) is amended as follows.
- (2) In subsection (2)—
- (a) for “the Authority” substitute “ a regulator ”, and
- (b) after “subsection (1)” insert “ or (1A) ”.
- (3) In subsection (3)(a) to (c), for “Authority” substitute “ regulator issuing the code ”.
- (4) In subsection (4)—
- (a) for “The Authority” substitute “ A regulator ”, and
- (b) after “issued” insert “ by it ”.
- (5) In subsection (5)—
- (a) after “replaced” insert “ by a regulator ”, and
- (b) for “Authority” substitute “ regulator ”.
- (6) In subsection (6)—
- (a) for “the Authority”, in the first place, substitute “ the regulator that issued it ”, and
- (b) for “the Authority”, in the second place, substitute “ that regulator ”.
- (7) In subsection (10), for “The Authority” substitute “ A regulator ”.
- (8) In subsection (11), for paragraph (b) substitute—
- “(b) is to be treated for the purposes of section 1B(6)(a) as part of the FCA's rule-making functions (where the power is exercisable by the FCA) and is to be treated for the purposes of section 2J(1)(a) as part of the PRA's rule-making functions (where the power is exercisable by the PRA).”
- (9) In subsection (12)—
- (a) for “The Authority” substitute “ A regulator ”, and
- (b) after “published” insert “ by it ”.
- (10) For subsection (13) substitute—
- “(13) Any expression which is used both in this section and section 59 has the same meaning in this section as in that section.”

#### Commencement Information

**I127** Sch. 5 para. 12 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 13 (1) Section 65 (statements and codes: procedure) is amended as follows.
- (2) For subsection (1) substitute—
- “(1) Before a regulator issues a statement or code under section 64, it must—
- (a) consult the other regulator; and
- (b) after doing so, publish a draft of the statement or code in the way appearing to it to be best calculated to bring the statement or code to the attention of the public.



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- (1A) The duty of the FCA to consult the PRA under subsection (1)(a) applies only in so far as the statement or code applies to persons in relation to whom approval is given under section 59 in respect of the performance by them of significant-influence functions (within the meaning of that section) in relation to the carrying on by PRA-authorized persons of regulated activities.”
- (3) In subsection (2)(b), for “the Authority” substitute “ the regulator publishing the draft ”.
- (4) In subsection (3)—
- (a) for “issuing” substitute “ a regulator issues ”, and
  - (b) for “the Authority” substitute “ it ”.
- (5) In subsection (4), for “the Authority” substitute “ a regulator ”.
- (6) In subsection (5)—
- (a) for “the Authority”, in the first place, substitute “ the regulator issuing the statement or code ”, and
  - (b) for “the Authority”, in the second place, substitute “ the regulator ”.
- (7) In subsection (6), for “the Authority” substitute “ the regulator concerned ”.
- (8) For subsection (7) substitute—
- “(7) Subsections (1)(b) and (2) to (6) do not apply in relation to—
- (a) a statement or code issued by the FCA if it considers that the delay involved in complying with them would be prejudicial to the interests of consumers, as defined in section 425A; or
  - (b) a statement or code issued by the PRA if it considers that the delay involved in complying with them would—
    - (i) be prejudicial to the safety and soundness of PRA-authorized persons, or
    - (ii) in a case where section 2C applies, be prejudicial to securing the appropriate degree of protection for policyholders.”
- (9) In subsection (9)—
- (a) for “The Authority” substitute “ A regulator ”, and
  - (b) after “published” insert “ by it ”.
- (10) For subsection (11) substitute—
- “(11) Cost benefit analysis” means—
- (a) an analysis of the costs together with an analysis of the benefits that will arise—
    - (i) if the proposed statement or code is issued, or
    - (ii) if subsection (5)(b) applies, from the statement or code that has been issued, and
  - (b) subject to subsection (11A), an estimate of those costs and of those benefits.
- (11A) If, in the opinion of the regulator concerned—

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- (a) the costs or benefits referred to in subsection (11) cannot reasonably be estimated, or
  - (b) it is not reasonably practicable to produce an estimate,
- the cost benefit analysis need not estimate them, but must include a statement of the opinion of the regulator concerned and an explanation of it.”

#### Commencement Information

**I128** Sch. 5 para. 13 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 14 (1) Section 66 (disciplinary powers) is amended as follows.
- (2) In subsection (1)—
- (a) in the opening words—
    - (i) for “The Authority” substitute “ A regulator ”, and
    - (ii) after “this section” insert “ (whether or not it has given its approval in relation to the person) ”, and
  - (b) in paragraphs (a) and (b), for “ Authority” substitute “ regulator ”.
- (3) For subsection (2) substitute—
- “(2) For the purposes of action by the FCA, a person is guilty of misconduct if, while an approved person—
- (a) the person has failed to comply with a statement of principle issued by the FCA under section 64, or
  - (b) the person has been knowingly concerned in a contravention by the relevant authorised person of a requirement imposed on that authorised person—
    - (i) by or under this Act, or
    - (ii) by any qualifying EU provision specified, or of a description specified, for the purposes of this subsection by the Treasury by order.
- (2A) For the purposes of action by the PRA, a person is guilty of misconduct if, while an approved person in respect of the performance of a significant-influence function in relation to the carrying on by a PRA-authorised person of a regulated activity—
- (a) the person has failed to comply with a statement of principle issued by the PRA under section 64, or
  - (b) the person has been knowingly concerned in a contravention by the relevant authorised person of a requirement imposed on that authorised person—
    - (i) by or under this Act, or
    - (ii) by any qualifying EU provision specified, or of a description specified, for the purposes of this subsection by the Treasury by order.”
- (4) In subsection (3), for “Authority” substitute “ regulator ”.
- (5) In subsection (3D), for “The Authority” substitute “ The regulator taking action under this section ”.

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- (6) In subsection (4)—
- (a) for “The Authority”, in the first place, substitute “ A regulator ”, and
  - (b) for “the Authority”, in the second place, substitute “ the regulator ”.
- (7) In subsection (5)(a), for “the Authority” substitute “ a regulator ”.
- (8) For subsection (6) substitute—
- “(6) Approved person” means a person in relation to whom an approval is given under that section.”

#### Commencement Information

**1129** Sch. 5 para. 14 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2

VALID FROM 01/04/2013

- 15 (1) Section 67 (disciplinary measures: procedure and right to refer to Tribunal) is amended as follows.
- (2) In subsections (1) and (4), for “the Authority” substitute “ a regulator ”.
- (3) In subsection (7)—
- (a) for “the Authority”, in the first place, substitute “ a regulator ”, and
  - (b) for “the Authority”, in the second place, substitute “ the regulator ”.
- (4) In subsection (9)—
- (a) for “an approved person (“A”),” substitute “ a person (“A”) in relation to whom approval has been given, ”, and
  - (b) omit the second sentence.

VALID FROM 01/04/2013

- 16 In section 68 (publication), for “the Authority” substitute “ the regulator publishing it ”.

- 17 (1) Section 69 (statement of policy) is amended as follows.
- (2) In subsection (1), for “The Authority must” substitute “ Each regulator must ”.
- (3) In subsection (2), for “The Authority's” substitute “A regulator's”.
- (4) In subsection (3)—
- (a) for “The Authority” substitute “ A regulator ”, and
  - (b) after “issued” insert “ by it ”.
- (5) In subsection (4), for “replaced, the Authority” substitute “ replaced by a regulator, the regulator ”.
- (6) In subsection (5), for “The Authority” substitute “ A regulator ”.
- (7) In subsection (6)—

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- (a) after “section” insert “ by a regulator ”, and
  - (b) for “the Authority”, in both places, substitute “ the regulator ”.
- (8) In subsection (7), for “Authority” substitute “ regulator ”.
- (9) In subsection (8)—
- (a) for “the Authority” substitute “ a regulator ”, and
  - (b) after “published” insert “ by it ”.

#### Commencement Information

**I130** Sch. 5 para. 17 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 18 (1) Section 70 (statements of policy: procedure) is amended as follows.
- (2) In subsection (1)—
- (a) for “issuing” substitute “ a regulator issues ”, and
  - (b) for “Authority”, in both places, substitute “ regulator ”.
- (3) In subsections (2), (3), (4) and (5) (in both places), for “Authority” substitute “ regulator ”.
- (4) In subsection (6)—
- (a) for “The Authority” substitute “ A regulator ”, and
  - (b) after “published” insert “ by it ”.

#### Commencement Information

**I131** Sch. 5 para. 18 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

VALID FROM 01/04/2013

## SCHEDULE 6

Section 22

### CONTROL OF BUSINESS TRANSFERS

- 1 Part 7 of FSMA 2000 is amended as follows.
- 2 Before section 104 insert—

#### Meaning of “the appropriate regulator”

“103A) In this Part “the appropriate regulator” means—

- (a) in relation to a scheme in respect of which the authorised person concerned is a PRA-authorised person, the PRA;
- (b) in any other case, the FCA.

(2) In this Part, “the authorised person concerned”—

- (a) in the case of an insurance business transfer scheme, is to be read in accordance with section 105(2);

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- (b) in the case of a banking business transfer scheme, is to be read in accordance with section 106(2);
    - (c) in the case of a reclaim fund business transfer scheme, means the reclaim fund to whose business the scheme relates.”
- 3 (1) Section 109 (scheme reports) is amended as follows.
  - (2) For “Authority”, in each place, substitute “ appropriate regulator ”.
  - (3) After subsection (3) insert—
    - “(4) Where the appropriate regulator is the PRA, it must consult the FCA before—
      - (a) nominating or approving a person under subsection (2)(b), or
      - (b) approving a form under subsection (3).
    - (5) Subsection (6) applies where the appropriate regulator is the FCA and either—
      - (a) the transferee is a PRA-authorised person, or
      - (b) the authorised person concerned or the transferee has as a member of its immediate group a PRA-authorised person.
    - (6) The FCA must consult the PRA before—
      - (a) nominating or approving a person under subsection (2)(b), or
      - (b) approving a form under subsection (3).”
- 4 (1) Section 110 (right to participate in proceedings) is amended as follows.
  - (2) The existing provision becomes subsection (1).
  - (3) For paragraph (a) of that subsection substitute—
    - “(a) the FCA,
    - (aa) in the case of a scheme falling within subsection (2), the PRA, and”.
  - (4) After that subsection insert—
    - “(2) A scheme falls within this subsection if—
      - (a) the authorised person concerned or the transferee is a PRA-authorised person, or
      - (b) the authorised person concerned or the transferee has as a member of its immediate group a PRA-authorised person.”
- 5 In section 112 (effect of order sanctioning business transfer scheme), in subsections (10) and (11), for “Authority” substitute “ appropriate regulator ”.
- 6 After section 112 insert—
  - “112ZA Duty of regulator to provide copy of order**
  - (1) Where the PRA receives under section 112(10) a copy of an order it must, without delay, give a copy of it to the FCA.
  - (2) Where the FCA receives under section 112(10) a copy of an order it must, without delay, give a copy of it to the PRA if the order relates to a scheme in respect of which—

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	(a) the transferee is a PRA-authorized person, or
	(b) the authorised person concerned or the transferee has as a member of its immediate group a PRA-authorized person.”
7	(1) Section 113 (appointment of actuary) is amended as follows.
	(2) In subsection (2)—
	(a) for “the Authority”, in the first place, substitute “ either regulator ”, and
	(b) for “Authority”, in the second place, substitute “ regulator which made the application ”.
	(3) After that subsection insert—
	“(3) An application under subsection (2) may be made by the PRA only if—
	(a) the authorised person concerned or the transferee is a PRA-authorized person, or
	(b) the authorised person concerned or the transferee has as a member of its immediate group a PRA-authorized person.”
8	In section 115 (certificates for purposes of insurance business transfers overseas), for “Authority” substitute “ appropriate regulator ”.
9	Schedule 12 to FSMA (transfer schemes: certificates) is amended as follows.
10	In paragraph 1, for “the Authority”, in each place, substitute “ the appropriate regulator ”.
11	(1) Paragraph 2 is amended as follows.
	(2) In the following places, for “Authority” substitute “ appropriate regulator ”
	(a) sub-paragraph (1)(b);
	(b) in the first place in sub-paragraph (3).
	(3) In sub-paragraph (3), after “transferred” insert “ certification ”.
	(4) In sub-paragraph (6)(c), for “, the Authority” substitute “—
	(i) the PRA, if the transferee is a PRA-authorized person with a Part 4A permission or with permission under Schedule 4;
	(ii) the FCA, if the transferee is a person with a Part 4A permission or with permission under Schedule 4 but is not a PRA-authorized person.”
12	In paragraph 3, for “Authority” substitute “ appropriate regulator ”.
13	In paragraph 4, for “Authority”, in the first place, substitute “ appropriate regulator ”.
14	In paragraph 5, for “Authority”, in the first place, substitute “ appropriate regulator ”.
15	In paragraph 5A, for “the Authority” substitute “ the appropriate regulator ”.
16	In paragraph 8(2)—
	(a) for paragraph (a) substitute—
	“(a) if the transferee is a PRA-authorized person with a Part 4A permission or with permission under Schedule 4, the PRA;

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- (aa) if the transferee is a person with Part 4A permission or with permission under Schedule 4 but is not a PRA-  
authorised person, the FCA;”, and
- (b) in paragraph (c), after “(a)” insert “, (aa) ”.
- 17 In paragraph 9, for “Authority” substitute “ appropriate regulator ”.
- 18 (1) Paragraph 9A is amended as follows.
- (2) The existing provision becomes sub-paragraph (1).
- (3) In that sub-paragraph, for “Authority” substitute “ relevant regulator ”.
- (4) After that sub-paragraph insert—
- “ (2) In this paragraph the “relevant regulator” means—
- (a) if the transferee is a PRA-  
authorised person, the PRA;
- (b) in any other case, the FCA.”
- 19 (1) Paragraph 10 is amended as follows.
- (2) In sub-paragraph (2), for “Authority” substitute “ FCA or the PRA ”.
- (3) In sub-paragraph (5), for “Authority” substitute “ regulator which supervises the transferee's margin of solvency ”.
- (4) In sub-paragraph (6), for “Authority” substitute “ FCA or the PRA ”.

## SCHEDULE 7

Section 29

### APPLICATION OF PROVISIONS OF FSMA 2000 TO BANK OF ENGLAND ETC

#### Commencement Information

**I132** Sch. 7 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

**I133** Sch. 7 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2

This is the Schedule 17A to be inserted in FSMA 2000 after Schedule 17—

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## “SCHEDULE 17A

Section 285A

### FURTHER PROVISION IN RELATION TO EXERCISE OF PART 18 FUNCTIONS BY BANK OF ENGLAND

#### PART 1

##### CO-OPERATION BETWEEN APPROPRIATE REGULATORS

###### *Memorandum of understanding between appropriate regulators and PRA*

- 1 (1) The appropriate regulators must prepare and maintain a memorandum describing how they intend to work together in exercising their functions in relation to persons who are recognised bodies.
- (2) The memorandum must in particular make provision about—
  - (a) the need for each party when exercising a function in relation to any person (“A”) who is a recognised body, or any member of A's group, to have regard to the exercise (or possible exercise) of any function by the other party in relation to A or any member of A's group;
  - (b) the role of each party in cases where they are both exercising functions in relation to the same persons;
  - (c) the obtaining and disclosure of information;
  - (d) the co-ordination by the parties of the exercise of their powers to appoint competent persons under Part 11 (information gathering and investigations) to conduct investigations on their behalf.
- (3) In this paragraph any reference to a function is to any function whether conferred by or under any provision of this Part of this Act or any other provision of this Act or otherwise.
- 2 (1) The appropriate regulators and the PRA must prepare and maintain a memorandum describing how they intend to work together in exercising their functions in relation to persons who are recognised bodies and who—
  - (a) are PRA-authorised persons; or
  - (b) are members of a group of which a member is a PRA-authorised person.
- (2) The memorandum must in particular make provision about—
  - (a) the need for each party when exercising a function in relation to any person (“A”) who is a recognised body, or any member of A's group, to have regard to the exercise (or possible exercise) of any function by the other party in relation to A or any member of A's group;
  - (b) the role of each party in cases where they are both exercising functions in relation to the same persons;
  - (c) the obtaining and disclosure of information;
  - (d) the co-ordination by the parties of the exercise of their powers to appoint competent persons under Part 11 (information gathering and investigations) to conduct investigations on their behalf.
- (3) In this paragraph any reference to a function is to any function whether conferred by or under any provision of this Part of this Act or any other provision of this Act or otherwise.



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- 3 The parties to a memorandum under paragraph 1 or 2 must review the memorandum at least once in each calendar year.
- 4 The parties to a memorandum under paragraph 1 or 2 must give the Treasury a copy of the memorandum and any revised memorandum.
- 5 The Treasury must lay before Parliament a copy of any document received by them under paragraph 4.
- 6 The parties to a memorandum under paragraph 1 or 2 must ensure that the memorandum as currently in force is published in the way appearing to them to be best calculated to bring it to the attention of the public.

*Notification by FCA of action in relation to recognised clearing houses*

- 7 The FCA must notify the Bank of England of any direction given by it under section 128 to a recognised clearing house (market abuse: suspension of investigations).
- 8 The FCA must notify the Bank of England of any requirement imposed by it under section 313A on a recognised clearing house (power to require suspension or removal of financial instruments from trading).

## PART 2

### APPLICATION OF PROVISIONS OF THIS ACT IN RELATION TO BANK OF ENGLAND

#### *Introduction*

- 9 (1) The provisions of this Act mentioned in this Part of this Schedule are to apply in relation to the Bank of England in accordance with the provision made by this Part of this Schedule.
- (2) In any case where sub-paragraph (1) applies—
  - (a) any reference in this Act to the FCA or the PRA which is contained in, or relates to, any of those provisions (however expressed) is to be read as a reference to the Bank; and
  - (b) this Act has effect with any other necessary modifications.

#### *Rules*

- 10 (1) The following provisions of Part 9A of this Act are to apply in relation to rules made by the Bank under any provision made by or under this Act—
  - (a) section 137T (general supplementary powers);
  - (b) sections 138A and 138B (modification or waiver of rules), but with the omission of subsection (4)(b) of section 138A and subsection (4) of section 138B;
  - (c) section 138C (evidential provisions);
  - (d) section 138D (actions for damages), but with the omission of subsection (2);
  - (e) section 138E (limits on effect of contravening rules);
  - (f) section 138F (notification of rules);
  - (g) section 138G (rule-making instruments);
  - (h) section 138H (verification of rules);

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- (i) section 138J (consultation), but with the omission of subsections (1)(a), (2)(c) and (5)(b); and
  - (j) section 138L (consultation: general exemptions), but with the omission of subsections (1) and (3).
- (2) Any reference in any of those provisions to an authorised person is to be read as a reference to a recognised clearing house.
- (3) Section 138J(2)(d) has effect in relation to rules proposed to be made by the Bank as if the reference to the compatibility of the proposed rules with the provisions mentioned in section 138J(2)(d) were a reference to their compatibility with the Bank's financial stability objective.
- (4) Section 138L(2) has effect as if for paragraphs (a) and (b) there were substituted “ be prejudicial to financial stability ”.

*Information gathering and investigations*

- 11 (1) The powers conferred by section 165(1) and (3) (power to require information) are exercisable by the Bank or (as the case may be) its officers to impose requirements on—
- (a) a recognised clearing house;
  - (b) a person who for the purposes of section 165 is connected with a recognised clearing house.
- (2) The information or documents that the Bank may require to be provided or produced are limited to—
- (a) information or documents reasonably required in connection with the exercise by the Bank of functions conferred on it by or under this Part of this Act;
  - (b) information or documents reasonably required in connection with the exercise by the Bank of any of its other functions in pursuance of its financial stability objective; and
  - (c) information or documents which the Bank reasonably considers may enable or assist the FCA in discharging functions conferred on the FCA by or under this Act.
- (3) In consequence of the provision made by sub-paragraph (2), section 165(4) is not to apply in relation to section 165(1) and (3) as applied by this paragraph.
- 12 The power conferred by section 166 (reports by skilled person) is exercisable by the Bank as if references in that section to an authorised person were to a recognised clearing house.
- 13 (1) The powers conferred by section 167 (appointment of persons to carry out general investigations) are exercisable by the Bank as if references in that section to an authorised person were to any recognised clearing house other than an overseas clearing house.
- (2) In addition to the powers conferred by section 171, a person conducting an investigation under section 167 as a result of this paragraph is to have the powers conferred by sections 172 and 173 (and for this purpose the references in those sections to an investigator are to be read accordingly).
- 14 (1) The power conferred by section 168(5) (appointment of persons to carry out investigations in particular cases) is exercisable by the Bank.

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- (2) That power is exercisable if it appears to the Bank that there are circumstances suggesting that—
- (a) a clearing house may be guilty of an offence under section 398(1) or an offence under prescribed regulations relating to money laundering;
  - (b) a clearing house may have contravened a rule made by the Bank under this Part of this Act;
  - (c) a clearing house may have contravened the recognition requirements;
  - (d) a clearing house may have contravened any qualifying EU provision that is specified, or of a description specified, for the purposes of this sub-paragraph by the Treasury by order;
  - (e) a clearing house may have breached the general prohibition.
- (3) In addition to the powers conferred by section 171, a person conducting an investigation under section 168(5) as a result of this paragraph is to have the powers conferred by sections 172 and 173 (and for this purpose the references in those sections to an investigator are to be read accordingly).
- 15 An overseas regulator may, in accordance with section 169, request the Bank to exercise the power conferred by section 165 (as applied by paragraph 11 of this Schedule).
- 16 The power to give information under section 176(1) (entry of premises under warrant) is exercisable by the Bank, or an investigator appointed by the Bank, as if the reference to the second set of conditions were omitted.

#### *Powers in relation to parent undertakings*

- 17 (1) The following provisions of Part 12A of this Act are to apply in relation to the Bank—
- (a) section 192C (power to direct qualifying parent undertaking);
  - (b) section 192D (requirements that may be imposed);
  - (c) section 192E (direction: procedure);
  - (d) section 192G (references to Tribunal);
  - (e) section 192H (statement of policy);
  - (f) section 192I (statement of policy: procedure);
  - (g) section 192J (rules requiring provision of information);
  - (h) sections 192K to 192N (enforcement).
- (2) For the purposes of those provisions section 192B (meaning of “qualifying parent undertaking”) is to apply as if the reference in subsection (1) to a qualifying authorised person or recognised UK investment exchange were a reference to a recognised clearing house other than an overseas clearing house.
- (3) Section 192C has effect as if—
- (a) the general condition in subsection (2) were that the Bank considers that it is desirable to give the direction for the purpose of the effective regulation of one or more recognised clearing houses in the group of the qualifying parent undertaking,
  - (b) subsections (3) and (4) were omitted, and
  - (c) the reference in subsection (5)(a) to authorised persons or recognised investment exchanges were a reference to recognised clearing houses.
- (4) Section 192E has effect as if the reference in subsection (1) to an authorised person or recognised investment exchange were a reference to a recognised clearing house.

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- (5) Section 192I has effect as if the reference in subsection (1)(a) to the other regulator and the Bank were a reference to the FCA and the PRA.
- (6) Before the Bank gives a notice under section 192E(1) or (8)(b)—
  - (a) if the notice relates to the parent undertaking of an authorised person or recognised investment exchange, the Bank must consult the FCA, and
  - (b) if the notice relates to the parent undertaking of a PRA-authorised person, the Bank must also consult the PRA.

#### *Auditors*

- 18 (1) Section 342 (information given by auditor to a regulator) applies in relation to a relevant auditor as if—
  - (a) the references in that section to a recognised investment exchange were to a recognised clearing house,
  - (b) in the case of an auditor of a recognised clearing house which is also an authorised person or recognised investment exchange, the references to a regulator included the Bank, and
  - (c) in the case of an auditor of a recognised clearing house not falling within paragraph (b), the references to a regulator were to the Bank.
- (2) A “relevant auditor” is a person who is, or has been, an auditor of a recognised clearing house appointed under or as a result of a statutory provision.
- 19 (1) Section 343 (information given by auditor: person with close links) applies in relation to a relevant auditor as if—
  - (a) the references in that section to a recognised investment exchange were to a recognised clearing house,
  - (b) in the case of an auditor of a recognised clearing house which is an authorised person or which is a recognised investment exchange, the references to a regulator included the Bank, and
  - (c) in the case of an auditor of a recognised clearing house not falling within paragraph (b), the references to a regulator were to the Bank.
- (2) A “relevant auditor” is a person who—
  - (a) is, or has been, an auditor of a recognised clearing house appointed under or as a result of a statutory provision, and
  - (b) is, or has been, an auditor of a person who has close links with the recognised clearing house.
- 20 Section 344 (duty of auditor resigning to give notice) applies to an auditor to whom section 342 applies (whether by virtue of paragraph 18 or otherwise) as if—
  - (a) the references in that section to a recognised investment exchange were to a recognised clearing house,
  - (b) in the case of an auditor of a recognised clearing house which is neither an authorised person nor a recognised investment exchange, the reference in the definition of “the appropriate regulator” to the FCA were a reference to the Bank,
  - (c) in the case of an auditor of a recognised clearing house which is a PRA-authorised person, the reference in the definition of “the appropriate regulator” to the PRA were a reference to the PRA and the Bank, and

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- (d) in the case, not falling within paragraph (c), of an auditor of a recognised clearing house which is an authorised person or which is a recognised investment exchange, the reference in the definition of “the appropriate regulator” to the FCA were a reference to the FCA and the Bank.
- 21 Sections 345A to 345E apply to auditors to whom section 342 applies only by virtue of paragraph 18 as if—
- (a) the references in those sections to an auditor or actuary to whom section 342 applies were to an auditor to whom section 342 applies by virtue of paragraph 18,
  - (b) the references in those sections to a PRA-authorized person were to a recognised clearing house,
  - (c) in a case where the Bank disqualifies a person from being an auditor of a recognised clearing house that is also a recognised investment exchange, section 345A(5)(a) required the Bank to notify the FCA, and
  - (d) the references in sections 345D and 345E to a regulator included the Bank.

#### *Public record and disclosure of information*

- 22 Section 347 (record of authorised persons, recognised investment exchanges, etc), so far as it relates to recognised investment exchanges, applies in relation to the Bank as if references in that section to a recognised investment exchange were to a recognised clearing house.
- 23 Sections 348 to 350 and 353 (disclosure of information) apply in relation to information received by the Bank for the purposes of, or in the discharge of, any of its functions relating to recognised clearing houses.

#### *Insolvency*

- 24 (1) The following provisions of Part 24 of this Act are to apply in relation to the Bank—
- (a) section 356 (powers to participate in proceedings: company voluntary arrangements);
  - (b) section 358 (powers to participate in proceedings: trust deeds for creditors in Scotland);
  - (c) section 359 (administration order);
  - (d) section 362 (powers to participate in administration proceedings);
  - (e) section 362A (consent to appointment of administrator);
  - (f) section 363 (powers to participate in proceedings: receivership);
  - (g) section 365 (powers to participate in proceedings: voluntary winding-up);
  - (h) section 367 (winding-up petitions);
  - (i) section 371 (powers to participate in proceedings: winding-up).
- (2) Those provisions are to apply as if any reference to an authorised person or recognised investment exchange were a reference to a recognised clearing house.
- 25 In the case of any regulated activity which is carried on for the purposes of, or in connection with, the provision of clearing services, the reference to the FCA in section 375(1) is to be read as including a reference to the Bank.

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### *Injunctions and restitution*

- 26 (1) The power to make an application under section 380(1), (2) or (3) (injunctions) is exercisable by the Bank.
- (2) For the purposes of the application, any reference in that section to a relevant requirement is to—
- (a) a requirement that is imposed by or under any provision of this Part of this Act that relates to a recognised clearing house;
  - (b) a requirement that is imposed under any other provision of this Act by the Bank;
  - (c) a requirement that is imposed by any qualifying EU provision that is specified, or of a description specified, for the purposes of this sub-paragraph by the Treasury by order; or
  - (d) a requirement that is imposed by this Act and whose contravention constitutes an offence that the Bank has power to prosecute under this Act (see section 401, as applied by paragraph 31).
- 27 (1) The power to make an application under section 382(1) (restitution order) is exercisable by the Bank.
- (2) For the purposes of the application, any reference in that section to a relevant requirement is to be read in accordance with paragraph 26(2) of this Schedule.
- 28 (1) The power conferred by section 384(5) (power of FCA to require restitution order) is exercisable by the Bank.
- (2) That power is exercisable if the Bank is satisfied that a recognised clearing house has contravened a relevant requirement, or been knowingly concerned in the contravention of a relevant requirement, and—
- (a) that profits have accrued to the recognised clearing house as a result of the contravention; or
  - (b) that one or more persons have suffered loss or been otherwise adversely affected as a result of the contravention.
- (3) For the purposes of that power, “relevant requirement” is to be read in accordance with paragraph 26(2) of this Schedule.
- (4) Where this paragraph applies, section 384(5) and (6) are to have effect as if—
- (a) any reference to the person concerned were a reference to the recognised clearing house; and
  - (b) any reference to subsection (1) were a reference to sub-paragraph (2) of this paragraph.

### *Notices*

- 29 The provisions of Part 26 of this Act (notices) apply in relation to a warning or decision notice given by the Bank under section 192L, 312G or 312H as they apply in relation to such a notice given by the FCA under that section.

### *Offences*

- 30 Section 398 (misleading the FCA: residual cases) applies to information given to the Bank in purported compliance with—

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- (a) a requirement that is imposed by or under any provision of Part 18 of this Act that relates to a recognised clearing house;
  - (b) a requirement that is imposed under any other provision of this Act by the Bank; or
  - (c) a requirement that is imposed by any qualifying EU provision specified, or of a description specified, for the purposes of this paragraph by the Treasury by order.
- 31 (1) Section 401 (proceedings for an offence) applies to the Bank as if for the purposes of subsections (2)(a) and (3)(a) of that section the Bank were an appropriate regulator in respect of each of the following offences—
- (a) an offence under section 177(3) where the investigation is being, or is likely to be, conducted on behalf of the Bank;
  - (b) an offence under section 177(4) where the requirement is imposed by the Bank;
  - (c) an offence under section 177(6) where the warrant is issued as a result of information on oath given by the Bank or a person appointed by it to conduct an investigation on its behalf;
  - (d) an offence under section 398(1) where the information was given to the Bank.
- (2) Section 401(3B) has effect subject to the provision made by this paragraph (so that the FCA is not the appropriate regulator for the purposes of subsections (2)(a) and (3)(a) in respect of the above offences).

#### *Records*

- 32 Paragraph 17 of Schedule 1ZB (records) applies in relation to the recording of decisions made by the Bank in the exercise of its functions relating to recognised clearing houses.

#### *Annual report*

- 33 Paragraph 19 of Schedule 1ZB (annual report by PRA) applies in relation to the Bank, but—
- (a) as if for paragraphs (a) to (f) of sub-paragraph (1) there were substituted—
    - “(a) the discharge of its functions relating to recognised clearing houses,
    - (b) the extent to which, in its opinion, in discharging those functions its financial stability objective has been met,” and
  - (b) as if sub-paragraph (3) were omitted.

### **PART 3**

#### WINDING UP, ADMINISTRATION OR INSOLVENCY OF UK CLEARING HOUSES

##### *Notice to Bank of England of preliminary steps*

- 34 (1) An application for an administration order in respect of a UK clearing house may not be determined unless the conditions below are satisfied.
- (2) A petition for a winding up order in respect of a UK clearing house may not be determined unless the conditions below are satisfied.

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- (3) A resolution for voluntary winding up of a UK clearing house may not be made unless the conditions below are satisfied.
- (4) An administrator of a UK clearing house may not be appointed unless the conditions below are satisfied.
- (5) Condition 1 is that the Bank of England has been notified—
  - (a) by the applicant for an administration order, that the application has been made,
  - (b) by the petitioner for a winding up order, that the petition has been presented,
  - (c) by the UK clearing house, that a resolution for voluntary winding up may be made, or
  - (d) by the person proposing to appoint an administrator, of the proposed appointment.
- (6) Condition 2 is that a copy of the notice complying with Condition 1 has been filed (in Scotland, lodged) with the court (and made available for public inspection by the court).
- (7) Condition 3 is that—
  - (a) the period of 2 weeks, beginning with the day on which the notice is received, has ended, or
  - (b) the Bank of England has informed the person who gave the notice that—
    - (i) it has no objection to the order, resolution or appointment being made, and
    - (ii) it does not intend to exercise a stabilisation power under Part 1 of the Banking Act 2009.
- (8) Arranging for the giving of notice in order to satisfy Condition 1 can be a step with a view to minimising the potential loss to a UK clearing house's creditors for the purpose of section 214 of the Insolvency Act 1986 (wrongful trading).
- (9) In this paragraph “the court” means—
  - (a) in England and Wales, the High Court,
  - (b) in Scotland, the Court of Session, and
  - (c) in Northern Ireland, the High Court.

*Power to give directions to insolvency practitioner*

- 35 (1) This paragraph applies where a person has been appointed to act as an insolvency practitioner (within the meaning of section 388 of the Insolvency Act 1986 or Article 3 of the Insolvency (Northern Ireland) Order 1989) in relation to a company which is, or has been, a UK clearing house.
- (2) The Bank of England may give directions to the person if satisfied that it is desirable to give the directions, having regard to the public interest in—
  - (a) protecting and enhancing the stability of the UK financial system,
  - (b) protecting and enhancing public confidence in the stability of the UK financial system, and
  - (c) maintaining the continuity of central counterparty clearing services.
- (3) Before giving directions the Bank of England must consult—
  - (a) the Treasury,
  - (b) (if the clearing house is a PRA-authorized person) the PRA, and



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- (c) the FCA.
- (4) Directions are enforceable, on an application by the Bank of England, by an injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.
- (5) A person is not liable for damages in respect of action or inaction in accordance with directions.
- (6) The immunity does not extend to action or inaction—
  - (a) in bad faith, or
  - (b) in contravention of section 6(1) of the Human Rights Act 1998.

## PART 4

### FEES

- 36 (1) The Bank of England may, in connection with the discharge of any of its qualifying functions, require recognised clearing houses to pay fees to the Bank.
- (2) The “qualifying functions” of the Bank are—
  - (a) its functions under or as a result of this Part of this Act, and
  - (b) its functions under or as a result of a qualifying EU provision that is specified, or of a description specified, for the purposes of this sub-paragraph by the Treasury by order.
- (3) The power of the Bank to set fees includes power to set fees for the purpose of meeting expenses incurred by it or the FCA—
  - (a) in preparation for the exercise of functions by the Bank under this Part of this Act, or
  - (b) for the purpose of facilitating the exercise by the Bank of those functions or otherwise in connection with their exercise by it.
- (4) It is irrelevant when the expenses were incurred (and, in particular, it is irrelevant if expenses were incurred by the FCA at a time when it was known as the Financial Services Authority).
- 37 Any fee which is owed to the Bank under paragraph 36 may be recovered as a debt due to the Bank.”

## SCHEDULE 8

Section 35

### SECTIONS 28 TO 34: MINOR AND CONSEQUENTIAL AMENDMENTS

- 1 FSMA 2000 is amended as follows.

#### Commencement Information

**I134** Sch. 8 para. 1 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 2 (1) Section 286 (qualification for recognition) is amended as follows.

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(2) In subsection (1)(a), for “the Authority” substitute “ the appropriate regulator ”.

(3) In subsections (4A), (4C) and (6), for “the Authority” substitute “ the FCA ”.

#### Commencement Information

**I135** Sch. 8 para. 2 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 3 (1) Section 287 (application by an investment exchange) is amended as follows.
- (2) In subsections (1) and (2) for “the Authority”, in each place, substitute “ the FCA ”.
- (3) In subsection (3)—
- (a) in paragraph (a), after “provision” insert “ by another person ”,
  - (b) in paragraph (b), for “clearing services” substitute “ services falling within section 285(2)(b) ”, and
  - (c) in paragraphs (d) and (e), for “the Authority” substitute “ the FCA ”.

#### Commencement Information

**I136** Sch. 8 para. 3 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 4 (1) Section 288 (application by a clearing house) is amended as follows.
- (2) In subsection (1), for “the Authority” substitute “ the Bank of England ”.
- (3) In subsection (2)—
- (a) in the opening words, for “the Authority” substitute “ the Bank of England ”, and
  - (b) in paragraph (d), for “the Authority” substitute “ the Bank ”.
- (4) In subsection (3)(b), after “clearing services” insert “ or services falling within section 285(3)(b) ”.

#### Commencement Information

**I137** Sch. 8 para. 4 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 5 In section 289 (applications: supplementary), in subsections (1), (2) (in both places) and (3), for “the Authority” substitute “ the appropriate regulator ”.

#### Commencement Information

**I138** Sch. 8 para. 5 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 6 (1) Section 290 (recognition orders) is amended as follows.
- (2) In subsection (1)—
- (a) for “the Authority”, in the first place, substitute “ the appropriate regulator ”, and
  - (b) for “the Authority”, in the second place, substitute “ the regulator concerned ”.

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- (3) In subsection (1B), for “the Authority” substitute “ the FCA ”.
- (4) Omit subsection (2).
- (5) In subsection (3), for “the Authority” substitute “ the appropriate regulator ”.
- (6) Omit subsection (6).

**Commencement Information**

**I139** Sch. 8 para. 6 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 7 (1) Section 290A (refusal of recognition on ground of excessive regulatory provision) is amended as follows.
- (2) In subsection (1)—
- (a) for “The Authority must” substitute “ The appropriate regulator must ”,
  - (b) for “the Authority that” substitute “ it that ”,
  - (c) omit the “or” following paragraph (a), and
  - (d) at the end of paragraph (b) insert “or
    - (c) the provision by the applicant of services falling within section 285(2)(b) or (3)(b),”.
- (3) In subsection (3), for “Authority” substitute “ appropriate regulator ”.

**Commencement Information**

**I140** Sch. 8 para. 7 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 8 In section 292 (overseas investment exchanges and overseas clearing house), in subsections (2), (3)(c) and (d), (4) and (5)(c), for “the Authority” substitute “ the appropriate regulator ”.

**Commencement Information**

**I141** Sch. 8 para. 8 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 9 In section 292A (publication of information by recognised investment exchange), in subsections (1), (3), (5) and (6), for “Authority” substitute “ FCA ”.

**Commencement Information**

**I142** Sch. 8 para. 9 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 10 (1) Section 293 (notification requirements) is amended as follows.
- (2) In subsections (1) to (3) and (5), for “Authority” substitute “ appropriate regulator ”.
- (3) In subsection (6)—
- (a) in paragraph (a), after “provision” insert “ by another person ”,
  - (b) in paragraph (b), for “clearing services” substitute “ services falling within section 285(2)(b) ”, and

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- (c) for “the Authority” substitute “ the FCA and the Bank of England ”.
- (4) In subsection (7)—
  - (a) in paragraph (a), after “clearing services” insert “ or services falling within section 285(3)(b) ”,
  - (b) in paragraph (b), after “clearing services” insert “ or services falling within section 285(3)(b) ”, and
  - (c) for “the Authority” substitute “ the Bank of England and the FCA ”.
- (5) In subsection (9), for “the Authority's” substitute “the appropriate regulator's”.

**Commencement Information**

**I143** Sch. 8 para. 10 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 11 For section 293A substitute—

**“293A Information: compliance with EU requirements**

The appropriate regulator may require a recognised body to give the appropriate regulator such information as the appropriate regulator reasonably requires in order to satisfy itself that the body is complying with any qualifying EU provision that is specified, or of a description specified, for the purposes of this section by the Treasury by order.”

**Commencement Information**

**I144** Sch. 8 para. 11 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2

**I145** Sch. 8 para. 11 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 12 In section 294 (modification or waiver of rules), in subsections (1), (2), (4) and (6), for “Authority” substitute “ appropriate regulator ”.

**Commencement Information**

**I146** Sch. 8 para. 12 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 13 (1) Section 295 (notification: overseas investment exchanges and overseas clearing houses) is amended as follows.
- (2) In subsection (1), for “the Authority” substitute “ the appropriate regulator ”.
  - (3) In subsection (2), for the words from “likely” to the end substitute “ likely to affect the appropriate regulator's assessment of whether it is satisfied as to the requirements set out in section 292(3) ”.
  - (4) In subsection (3), for “the Authority” substitute “ the appropriate regulator ”.
  - (5) Omit subsection (4).

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#### Commencement Information

**I147** Sch. 8 para. 13 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 14 (1) Section 296 (power to give directions) is amended as follows.
- (2) In subsection (1), for “the Authority” substitute “ the appropriate regulator ”.
- (3) In subsection (1A)—
- (a) for the words from “in the case of a recognised body which is a recognised investment” to “the body” substitute “ if it appears to the appropriate regulator that a recognised body ”, and
- (b) for the words from “directly applicable” to the end substitute “ directly applicable EU regulation specified (or of a description specified) in an order made by the Treasury ”.
- (4) In subsection (2), for “The Authority” substitute “ The regulator concerned ”.
- (5) In subsection (2A)—
- (a) in the opening words, for “a recognised investment exchange other than an overseas investment exchange” substitute “ a recognised body other than an overseas investment exchange or overseas clearing house ”,
- (b) in paragraph (a)—
- (i) for “the Authority”, in both places, substitute “ the regulator concerned ”, and
- (ii) for “the exchange” substitute “ the body ”, and
- (c) in paragraph (b), for “the exchange” substitute “ the body ”.
- (6) In subsection (3), for “the Authority” substitute “ the regulator concerned ”.
- (7) In subsection (4), for “the Authority” substitute “ an appropriate regulator ”.
- (8) In the heading, for “Authority's” substitute “Appropriate regulator's”.

#### Commencement Information

**I148** Sch. 8 para. 14 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

**I149** Sch. 8 para. 14 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2

- 15 (1) Section 297 (revoking recognition) is amended as follows.
- (2) In subsections (1) and (2), for “the Authority” substitute “ the appropriate regulator ”.
- (3) In subsection (2A)—
- (a) in the opening words—
- (i) for “the Authority” substitute “ the appropriate regulator ”, and
- (ii) omit “which is a recognised investment exchange”,
- (b) in paragraphs (a) and (b), after “exchange” insert “ or (as the case may be) of a clearing house ”, and
- (c) in paragraph (c), for the words from “directly applicable” to the end substitute “ directly applicable EU regulation specified (or of a description specified) in an order made by the Treasury ”.

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(4) In subsection (2C), at the end insert “ or overseas clearing house ”.

(5) In subsections (5) and (6), for “the Authority” substitute “ the appropriate regulator ”.

**Commencement Information**

**I150** Sch. 8 para. 15 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

**I151** Sch. 8 para. 15 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2

16 In section 298 (directions and revocation: procedure)—

(a) in subsections (1), (6) and (7), after “section 296” insert “ or 296A ”, and

(b) in subsections (1), (2)(a), (3), (5), (6), (7) (in both places) and (8), for “the Authority” substitute “ the appropriate regulator ”.

**Commencement Information**

**I152** Sch. 8 para. 16 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

17 In section 299 (complaints about recognised bodies), in subsections (1) and (2), for “Authority” substitute “ appropriate regulator ”.

**Commencement Information**

**I153** Sch. 8 para. 17 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

18 In section 300A (power to disallow excessive regulatory provision)—

(a) in subsection (1), for the words from “with” to the end substitute “with—

(a) its business as an investment exchange,

(b) the provision by it of clearing services, or

(c) the provision by it of services falling within section 285(2)(b) or (3)(b).”, and

(b) in subsections (2) (in both places) and (4), and in the heading, for “Authority” substitute “ appropriate regulator ”.

**Commencement Information**

**I154** Sch. 8 para. 18 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

19 In section 300B (duty to notify proposal to make regulatory provision) for “Authority” (in each place) substitute “ appropriate regulator ”.

**Commencement Information**

**I155** Sch. 8 para. 19 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

20 In section 300C (restriction on making provision before Authority decides whether to act), in subsections (1), (2)(a), (3) (in both places), (4)(a) and (b), and in the heading, for “Authority” substitute “ appropriate regulator ”.

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#### Commencement Information

**I156** Sch. 8 para. 20 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 21 (1) Section 300D (consideration by Authority whether to disallow proposed provision) is amended as follows.
- (2) In subsections (1) to (4) and (5)(a) and (b), for “Authority” substitute “ appropriate regulator ”.
- (3) In subsection (6)—
- (a) in the opening words, for “the Authority” substitute “ the appropriate regulator ”,
  - (b) in paragraph (b)—
    - (i) for “the Authority's” substitute “the appropriate regulator's”, and
    - (ii) for “the Authority” substitute “ the regulator concerned ”, and
  - (c) in paragraph (c)(i) and (ii), for “the Authority” substitute “ the appropriate regulator ”.
- (4) In the heading, for “Authority” substitute “ appropriate regulator ”.

#### Commencement Information

**I157** Sch. 8 para. 21 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 22 (1) Section 301 (supervision of certain contracts) is amended as follows.
- (2) In subsection (2), for “the Authority” substitute “ the Bank of England ”.
- (3) In subsection (3)—
- (a) for “the Authority”, in the first place, substitute “ the FCA or the Bank of England ”, and
  - (b) for “the Authority”, in the second place, substitute “ the Bank ”.
- (4) In subsections (4)(a), (6)(a), (7) and (9), for “Authority” substitute “ Bank of England ”.

#### Commencement Information

**I158** Sch. 8 para. 22 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 23 In section 301A (obligation to notify the Authority: acquisitions of control), in subsections (1) and (2), and in the heading, for “the Authority” substitute “ the FCA ”.

#### Commencement Information

**I159** Sch. 8 para. 23 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 24 In section 301B (requirements for s.301A notices), in subsections (1) to (3), for “Authority” substitute “ FCA ”.



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#### Commencement Information

**I160** Sch. 8 para. 24 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 25 In section 301C (acknowledgement of receipt), in subsections (1) and (2), for “Authority” substitute “ FCA ”.

#### Commencement Information

**I161** Sch. 8 para. 25 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 26 In section 301F (assessment: general), in subsections (1) to (3), for “Authority” substitute “ FCA ”.

#### Commencement Information

**I162** Sch. 8 para. 26 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 27 (1) Section 301G (assessment: procedure) is amended as follows.  
(2) In subsections (1) (in both places) and (2) to (5), for “Authority” substitute “ FCA ”.  
(3) In subsection (6), for “the Authority’s” substitute “the FCA’s”.

#### Commencement Information

**I163** Sch. 8 para. 27 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 28 In section 301H (duration of approval), in subsections (1), (2) and (3) (in both places), for “the Authority” substitute “ the FCA ”.

#### Commencement Information

**I164** Sch. 8 para. 28 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 29 In section 301I (objections by the Authority), in subsections (1) to (5), and in the heading, for “Authority” substitute “ FCA ”.

#### Commencement Information

**I165** Sch. 8 para. 29 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 30 In section 301J (restriction notices), in subsections (1), (2)(b), (3) and (7), for “Authority” substitute “ FCA ”.

#### Commencement Information

**I166** Sch. 8 para. 30 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 31 In section 301K (order for sale of shares), in subsection (1), for “the Authority” substitute “ the FCA ”.



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#### Commencement Information

**I167** Sch. 8 para. 31 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 32 (1) Section 301L (offences under Chapter) is amended as follows.
- (2) In subsections (1) and (2) (in both places), for “the Authority” substitute “ the FCA ”.
- (3) In subsection (4), for “the Authority’s” substitute “the FCA’s”.
- (4) In subsections (5) and (9), for “the Authority” substitute “ the FCA ”.

#### Commencement Information

**I168** Sch. 8 para. 32 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 33 In section 312A (exercise of passport rights by EEA market operator), in subsection (1)(b), for “the Authority” substitute “ the FCA ”.

#### Commencement Information

**I169** Sch. 8 para. 33 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 34 In section 312B (removal of passport rights from EEA market operator), in subsections (1) (in each place), (3), (4)(b), (5), (6), (7)(a) and (b), (8)(b), (9) to (11), (12) (in both places) and (13) (in the first place), for “Authority” substitute “ FCA ”.

#### Commencement Information

**I170** Sch. 8 para. 34 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 35 In section 312C (exercise of passport rights by recognised investment exchange), in subsections (2) to (6), for “Authority” substitute “ FCA ”.

#### Commencement Information

**I171** Sch. 8 para. 35 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 36 (1) Section 313 (interpretation) is amended as follows.
- (2) In subsection (1)—
- (a) after the definition of “applicant” insert—
- ““central counterparty clearing services” has the same meaning as in section 155 of the Companies Act 1989 (see subsection (3A) of that section);” and
- (b) at the end insert—
- ““UK clearing house” means a clearing house—
- (a) which has its head office or its registered office (or both) in the United Kingdom,
- (b) which provides central counterparty clearing services, and

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(c) in relation to which a recognition order is in force.”

(3) In subsection (4), after “clearing services” insert “ or services falling within section 285(3)(b) ”.

#### Commencement Information

**I172** Sch. 8 para. 36 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 37 In section 392 (warning and decisions notices: application of provisions relating to third party rights and access to evidence)—
- (a) in paragraph (a), after “section 280(1),” insert “ section 312G(1), ”, and
  - (b) in paragraph (b), after “section 280(2),” insert “ section 312H(1), ”.

#### Commencement Information

**I173** Sch. 8 para. 37 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 38 In section 412A (approval and monitoring of trade-matching and reporting systems), in subsections (1), (2), (4), (5) (in both places), (6) (in both places) and (7), for “Authority” substitute “ FCA ”.

#### Commencement Information

**I174** Sch. 8 para. 38 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 39 In section 412B (procedure for approval and suspension or withdrawal of approval), in subsections (1) to (6), (7) (in both places), (8) and (9), for “Authority” substitute “ FCA ”.

#### Commencement Information

**I175** Sch. 8 para. 39 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

## SCHEDULE 9

Section 37

### DISCIPLINE AND ENFORCEMENT

VALID FROM 01/04/2013

#### PART 1

##### INTRODUCTORY

- 1 FSMA 2000 is amended as follows.

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VALID FROM 01/04/2013

## PART 2

### AUTHORISED PERSONS ACTING WITHOUT PERMISSION

- 2 (1) Section 20 (authorised persons acting without permission) is amended as follows.
- (2) In subsection (1)—
- (a) in the opening words, after “an authorised person” insert “ other than a PRA-authorised person ”,
  - (b) for paragraph (a) substitute—  
“ (a) given to that person under Part 4A, or”, and
  - (c) in the words after paragraph (b), for “Authority” substitute “ FCA ”.
- (3) After that subsection insert—
- “(1A) If a PRA-authorised person carries on a regulated activity in the United Kingdom, or purports to do so, otherwise than in accordance with permission given to the person under Part 4A or resulting from any other provision of this Act, the person is to be taken to have contravened—
- (a) a requirement imposed by the FCA, and
  - (b) a requirement imposed by the PRA.”
- (4) For subsection (2) substitute—
- “(2) A contravention within subsection (1) or (1A)—
- (a) does not, except as provided by section 23(1A), make a person guilty of an offence,
  - (b) does not, except as provided by section 26A, make any transaction void or unenforceable, and
  - (c) does not, except as provided by subsection (3), give rise to any right of action for breach of statutory duty.”
- (5) In subsection (3), for “the contravention”, in the first place, substitute “ a contravention within subsection (1) or (1A) ”.
- (6) After subsection (3) insert—
- “(4) Subsections (1) and (1A) are subject to section 39(1D).
- (5) References in this Act to an authorised person acting in contravention of this section are references to the person acting in a way that results in a contravention within subsection (1) or (1A).”
- 3 (1) Section 23 (contravention of the general prohibition) is amended as follows.
- (2) After subsection (1) insert—
- “(1A) An authorised person (“A”) is guilty of an offence if A carries on a credit-related regulated activity in the United Kingdom, or purports to do so, otherwise than in accordance with permission—
- (a) given to that person under Part 4A, or
  - (b) resulting from any other provision of this Act.

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(1B) In this Act “credit-related regulated activity” means a regulated activity of a kind designated by the Treasury by order.

(1C) The Treasury may designate a regulated activity under subsection (1B) only if the activity involves a person—

- (a) entering into or administering an agreement under which the person provides another person with credit,
- (b) exercising or being able to exercise the rights of the lender under an agreement under which another person provides a third party with credit, or
- (c) taking steps to procure payment of debts due under an agreement under which another person is provided with credit.

(1D) But a regulated activity may not be designated under subsection (1B) if the agreement in question is one under which the obligation of the borrower is secured on land.

(1E) “Credit” includes any cash loan or other financial accommodation.

(1F) A person guilty of an offence under subsection (1A) is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding the applicable maximum term or a fine not exceeding the statutory maximum, or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine, or both.

(1G) The “applicable maximum term” is—

- (a) in England and Wales, 12 months (or 6 months, if the offence was committed before the commencement of section 154(1) of the Criminal Justice Act 2003);
- (b) in Scotland, 12 months;
- (c) in Northern Ireland, 6 months.”

(3) After subsection (3) insert—

“(4) Subsection (1A) is subject to section 39(1D).

(5) No proceedings may be brought against a person in respect of an offence under subsection (1A) in a case where either regulator has taken action under section 205, 206 or 206A in relation to the alleged contravention within section 20(1) or (1A).”

(4) In the heading to the section, at the end insert “ or section 20(1) or (1A) ”.

4

After section 23 insert—

**“23A Parliamentary control in relation to certain orders under section 23**

- (1) This section applies to the first order made under section 23(1B).
- (2) This section also applies to any subsequent order made under section 23(1B) which contains a statement by the Treasury that, in their opinion, the effect (or one of the effects) of the proposed order would be that an activity would become a credit-related regulated activity.

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- (3) An order to which this section applies may not be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House.”

5 After section 26 insert—

**“26A Agreements relating to credit**

- (1) An agreement that is made by an authorised person in contravention of section 20 is unenforceable against the other party if the agreement is entered into in the course of carrying on a credit-related regulated activity involving matters falling within section 23(1C)(a).
- (2) The other party is entitled to recover—
- (a) any money or other property paid or transferred by that party under the agreement, and
  - (b) compensation for any loss sustained by that party as a result of having parted with it.
- (3) In subsections (1) and (2) “agreement” means an agreement—
- (a) which is made after this section comes into force, and
  - (b) the making or performance of which constitutes, or is part of, the credit-related regulated activity.
- (4) If the administration of an agreement involves the carrying on of a credit-related regulated activity, the agreement may not be enforced by a person for the time being exercising the rights of the lender under the agreement unless that person has permission, given under Part 4A or resulting from any other provision of this Act, in relation to that activity.
- (5) If the taking of steps to procure payment of debts due under an agreement involves the carrying on of a credit-related regulated activity, the agreement may not be enforced by a person for the time being exercising the rights of the lender under the agreement unless the agreement is enforced in accordance with permission—
- (a) given under Part 4A to the person enforcing the agreement, or
  - (b) resulting from any other provision of this Act.”

6 In section 27 (agreements made through unauthorised persons) for subsection (1) substitute—

- “(1) This section applies to an agreement that—
- (a) is made by an authorised person (“the provider”) in the course of carrying on a regulated activity,
  - (b) is not made in contravention of the general prohibition,
  - (c) if it relates to a credit-related regulated activity, is not made in contravention of section 20, and
  - (d) is made in consequence of something said or done by another person (“the third party”) in the course of—
    - (i) a regulated activity carried on by the third party in contravention of the general prohibition, or
    - (ii) a credit-related regulated activity carried on by the third party in contravention of section 20.

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(1A) The agreement is unenforceable against the other party.”

7 In section 28 (agreements made unenforceable by section 26 or 27)—

- (a) at the end of subsection (1) insert “, other than an agreement entered into in the course of carrying on a credit-related regulated activity”, and
- (b) in the heading to the section, at the end insert “ : general cases ”.

8 After section 28 insert—

**“28A Credit-related agreements made unenforceable by section 26, 26A or 27**

- (1) This section applies to an agreement that—
  - (a) is entered into in the course of carrying on a credit-related regulated activity, and
  - (b) is unenforceable because of section 26, 26A or 27.
- (2) The amount of compensation recoverable as a result of that section is—
  - (a) the amount agreed by the parties, or
  - (b) on the application of either party, the amount specified in a written notice given by the FCA to the applicant.
- (3) If on application by the relevant firm the FCA is satisfied that it is just and equitable in the circumstances of the case, it may by written notice to the applicant allow—
  - (a) the agreement to be enforced, or
  - (b) money paid or property transferred under the agreement to be retained.
- (4) In considering whether to allow the agreement to be enforced or (as the case may be) the money or property paid or transferred under the agreement to be retained the FCA must—
  - (a) if the case arises as a result of section 26 or 26A, have regard to the issue mentioned in subsection (5), or
  - (b) if the case arises as a result of section 27, have regard to the issue mentioned in subsection (6).
- (5) The issue is whether the relevant firm reasonably believed that by making the agreement the relevant firm was neither contravening the general prohibition nor contravening section 20.
- (6) The issue is whether the provider knew that the third party was (in carrying on the credit-related regulated activity) either contravening the general prohibition or contravening section 20.
- (7) An application to the FCA under this section by the relevant firm may relate to specified agreements or to agreements of a specified description or made at a specified time.
- (8) “The relevant firm” means—
  - (a) in a case falling within section 26, the person in breach of the general prohibition;

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(b) in a case falling within section 26A or 27, the authorised person concerned.

(9) If the FCA thinks fit, it may when acting under subsection (2)(b) or (3)—

- (a) limit the determination in its notice to specified agreements, or agreements of a specified description or made at a specified time;
- (b) make the determination in its notice conditional on the doing of specified acts by the applicant.

### **28B Decisions under section 28A: procedure**

(1) A notice under section 28A(2)(b) or (3) must—

- (a) give the FCA's reasons for its determination, and
- (b) give an indication of—
  - (i) the right to have the matter referred to the Tribunal that is conferred by subsection (3), and
  - (ii) the procedure on such a reference.

(2) The FCA must, so far as it is reasonably practicable to do so, give a copy of the notice to any other person who appears to it to be affected by the determination to which the notice relates.

(3) A person who is aggrieved by the determination of an application under section 28A(2)(b) or (3) may refer the matter to the Tribunal.”

VALID FROM 01/04/2013

## **PART 3**

### **MARKET ABUSE**

9 (1) In the provisions of Part 8 (market abuse) mentioned in sub-paragraph (2), for “Authority” or “Authority's”, in each place, substitute “ FCA ” or “FCA's”.

(2) The provisions are: sections 119, 120 (including the heading), 121 to 130A and 131A.

(3) In section 121 (codes: procedure), for subsection (10) substitute—

“(10) Cost benefit analysis” means—

- (a) an analysis of the costs together with an analysis of the benefits that will arise—
  - (i) if the proposed code is issued, or
  - (ii) if subsection (5)(b) applies, from the code that has been issued, and
- (b) subject to subsection (10A), an estimate of those costs and of those benefits.

(10A) If, in the opinion of the FCA—

- (a) the costs or benefits referred to in subsection (10) cannot reasonably be estimated, or



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(b) it is not reasonably practicable to produce an estimate, the cost benefit analysis need not estimate them, but must include a statement of the FCA's opinion and an explanation of it.”

(4) In section 130 (guidance), in subsection (1)(b), for “section 397 of this Act” substitute “ Part 7 of the Financial Services Act 2012 ”.

## PART 4

### DISCIPLINARY MEASURES

10 In Part 14 (disciplinary measures), before section 205 insert—

#### Meaning of “relevant requirement” and “appropriate regulator”

“204A) The following definitions apply for the purposes of this Part.

- (2) “Relevant requirement” means a requirement imposed—
- (a) by or under this Act, or
  - (b) by a qualifying EU provision specified, or of a description specified, for the purposes of this subsection by the Treasury by order.
- (3) The PRA is “the appropriate regulator” in the case of a contravention of—
- (a) a requirement that is imposed under any provision of this Act by the PRA;
  - (b) a requirement under section 56(6) where the authorised person concerned is a PRA-authorised person and the prohibition order concerned is made by the PRA;
  - (c) a requirement under section 59(1) or (2) where the authorised person concerned is a PRA-authorised person and the approval concerned falls to be given by the PRA.
- (4) In the case of a contravention of a requirement that is imposed by a qualifying EU provision, “the appropriate regulator” for the purpose of any provision of this Part is whichever of the PRA or the FCA (or both) is specified by the Treasury by order in relation to the qualifying EU provision for the purposes of that provision of this Part.
- (5) In the case of a contravention of a requirement where the contravention constitutes an offence, the “appropriate regulator” is whichever of the PRA or the FCA has power to prosecute the offence (see section 401).
- (6) The FCA is “the appropriate regulator” in the case of a contravention of any other requirement imposed by or under this Act.
- (7) The Treasury may by order amend the provisions defining “the appropriate regulator”.

#### Commencement Information

I176 Sch. 9 para. 10 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2



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VALID FROM 01/04/2013

- 11 In section 205 (public censure)—
- (a) for “Authority”, in the first place, substitute “ appropriate regulator ”, and
  - (b) for the words from “a requirement” to “may” substitute “ a relevant requirement imposed on the person, it may ”.

VALID FROM 01/04/2013

- 12 (1) Section 206 (financial penalties) is amended as follows.
- (2) In subsection (1)—
- (a) for “Authority” substitute “ appropriate regulator ”, and
  - (b) for the words from “a requirement” to “auctioning regulation” substitute “ a relevant requirement imposed on the person, ”.
- (3) In subsection (3), for “Authority” substitute “ regulator that imposed the penalty ”.

VALID FROM 01/04/2013

- 13 (1) Section 206A (suspending permission to carry on regulated activities etc.) is amended as follows.
- (2) In subsection (1), for “Authority” substitute “ appropriate regulator ”.
- (3) After that subsection insert—
- “(1A) The power conferred by subsection (1) is also exercisable by the FCA if it considers that an authorised person has contravened a requirement imposed on the person by—
- (a) the Payment Services Regulations 2009, or
  - (b) the Electronic Money Regulations 2011.”
- (4) In subsection (2)—
- (a) in the definition of “permission”, for “the Authority” substitute “ the FCA or the PRA ”, and
  - (b) omit the definition of “relevant requirement”.
- (5) In subsection (6), for “Authority” substitute “ appropriate regulator ”.

VALID FROM 01/04/2013

- 14 In section 207(1) (proposal to take disciplinary measures), for “the Authority” substitute “ a regulator ”.

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VALID FROM 01/04/2013

- 15 In section 208(1) and (4) (decision notice), for “the Authority”, in each place, substitute “ a regulator ”.

VALID FROM 01/04/2013

- 16 In section 209 (publication), for “the Authority” substitute “ the regulator concerned ”.

- 17 (1) Section 210 (statements of policy) is amended as follows.
- (2) In subsection (1), for “The Authority” substitute “ Each regulator ”.
- (3) After subsection (1) insert—
- “(1A) Each regulator's policy with respect to the imposition of penalties, suspensions or restrictions under this Part must include policy with respect to their imposition in relation to conduct which constitutes or may constitute an offence by virtue of section 23(1A) (authorised persons carrying on credit-related regulated activities otherwise than in accordance with permission).”
- (4) In subsection (2), for “The Authority's” substitute “A regulator's”.
- (5) In subsection (3)—
- (a) for “The Authority” substitute “ A regulator ”, and
- (b) after “issued” insert “ by it ”.
- (6) In subsection (4), for “replaced, the Authority” substitute “ replaced by a regulator, the regulator ”.
- (7) In subsection (5), for “The Authority” substitute “ A regulator ”.
- (8) In subsection (6)—
- (a) after “section” insert “ by a regulator ”, and
- (b) for “Authority”, in both places, substitute “ regulator ”.
- (9) In subsection (7)—
- (a) for “the Authority” substitute “ a regulator ”, and
- (b) after “published” insert “ by it ”.
- (10) In subsection (8), for “Authority” substitute “ regulator ”.

#### Commencement Information

**I177** Sch. 9 para. 17 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 18 (1) Section 211 (statements of policy: procedure) is amended as follows.
- (2) In subsection (1)—
- (a) for “issuing” substitute “ a regulator issues ”, and
- (b) for “Authority”, in both places, substitute “ regulator ”.

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(3) In subsections (2) to (4) and (5) (in both places), for “Authority” substitute “regulator”.

(4) In subsection (6), for “The Authority” substitute “A regulator”.

#### Commencement Information

**I178** Sch. 9 para. 18 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

## PART 5

### INJUNCTIONS AND RESTITUTION

- 19 (1) Section 380 (injunctions) is amended as follows.
- (2) In subsections (1) to (3), for “Authority” substitute “appropriate regulator”.
- (3) In subsection (6)(a)—
- (a) in the opening words, for “Authority” substitute “appropriate regulator”,
  - (b) for sub-paragraph (i) (but not the “or” following it) substitute—
    - “(i) which is imposed by or under this Act or by a qualifying EU provision specified, or of a description specified, for the purposes of this subsection by the Treasury by order”, and
  - (c) in sub-paragraph (ii), for the words from “which the Authority” to the end substitute “mentioned in section 402(1)”.
- (4) In subsection (7), omit paragraph (a) (and the “and” at the end of it).
- (5) After subsection (7) insert—
- “(8) The PRA is the “appropriate regulator” in the case of a contravention of—
    - (a) a requirement that is imposed by the PRA under any provision of this Act,
    - (b) a requirement under section 56(6) where the authorised person concerned is a PRA-authorised person and the prohibition order concerned is made by the PRA, or
    - (c) a requirement under section 59(1) or (2) where the authorised person concerned is a PRA-authorised person and the approval concerned falls to be given by the PRA.
  - (9) In the case of a contravention of a requirement that is imposed by a qualifying EU provision, “the appropriate regulator” is whichever of the PRA or the FCA (or both) is specified by the Treasury by order in relation to the qualifying EU provision for the purposes of this section.
  - (10) In the case of a contravention of a requirement where the contravention constitutes an offence under this Act, the “appropriate regulator” is whichever of the PRA or the FCA has power to prosecute the offence (see section 401).
  - (11) The FCA is the “appropriate regulator” in the case of a contravention of any other requirement.

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(12) The Treasury may by order amend the definition of “appropriate regulator”.

#### Commencement Information

**I179** Sch. 9 para. 19 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2

VALID FROM 01/04/2013

- 20 (1) Section 381 (injunctions in case of market abuse) is amended as follows.
- (2) In subsections (1) to (3), for “Authority” substitute “ FCA ”.
- (3) In subsection (4), after “The court” insert “ may ”.
- 21 (1) Section 382 (restitution orders) is amended as follows.
- (2) In subsection (1), for “Authority” substitute “ appropriate regulator ”.
- (3) In subsections (2) and (3), for “Authority” substitute “ regulator concerned ”.
- (4) In subsection (7), for “Authority” substitute “ appropriate regulator ”.
- (5) In subsection (9)(a)—
- (a) in the opening words, for “Authority” substitute “ appropriate regulator ”,
- (b) for sub-paragraph (i) (but not the “or” following it) substitute—
- “(i) which is imposed by or under this Act or by a qualifying EU provision specified, or of a description specified, for the purposes of this subsection by the Treasury by order”, and
- (c) in sub-paragraph (ii), for the words from “which the Authority” to the end substitute “ mentioned in section 402(1) ”.
- (6) In subsection (10), omit paragraph (a) (and the “and” at the end of it).
- (7) After subsection (10) insert—
- “(11) The PRA is the “appropriate regulator” in the case of a contravention of—
- (a) a requirement that is imposed by the PRA under any provision of this Act,
- (b) a requirement under section 56(6) where the authorised person concerned is a PRA-authorised person and the prohibition order concerned is made by the PRA, or
- (c) a requirement under section 59(1) or (2) where the authorised person concerned is a PRA-authorised person and the approval concerned falls to be given by the PRA.
- (12) In the case of a contravention of a requirement that is imposed by a qualifying EU provision, “the appropriate regulator” is whichever of the PRA or the FCA (or both) is specified by the Treasury by order in relation to the qualifying EU provision for the purposes of this section.

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- (13) In the case of a contravention of a requirement where the contravention constitutes an offence under this Act, the “appropriate regulator” is the regulator which has power to prosecute the offence (see section 401).
- (14) The FCA is the “appropriate regulator” in the case of a contravention of any other requirement.
- (15) The Treasury may by order amend the definition of “appropriate regulator”.

#### Commencement Information

**I180** Sch. 9 para. 21 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2

VALID FROM 01/04/2013

22 In section 383(1), (4), (5) and (9) (restitution orders in case of market abuse), for “ Authority” substitute “ FCA ”.

- 23 (1) Section 384 (power of Authority to require restitution) is amended as follows.
- (2) In subsection (1)—
    - (a) for “The Authority” substitute “ The appropriate regulator ”, and
    - (b) after “authorised person” insert “ or recognised investment exchange ”.
  - (3) In subsections (2) and (4), for “Authority” substitute “ FCA ”.
  - (4) In subsection (5)—
    - (a) for “Authority”, in the first place, substitute “ regulator exercising the power (“the regulator concerned”) ”, and
    - (b) for “Authority”, in each of the other places, substitute “ regulator concerned ”.
  - (5) In subsection (6), for “Authority” substitute “ regulator concerned ”.
  - (6) In subsection (7)—
    - (a) in paragraph (a), for the words from “any directly applicable” to “auctioning regulation” substitute “ a qualifying EU provision specified, or of a description specified, for the purposes of this subsection by the Treasury by order ”, and
    - (b) in paragraph (b), for the words from “in relation to which” to the end substitute “ mentioned in section 402(1) ”.
  - (7) Omit subsection (8).
  - (8) After subsection (8) insert—
    - (9) The PRA is the “appropriate regulator” in the case of a contravention of—
      - (a) a requirement that is imposed by the PRA under any provision of this Act,
      - (b) a requirement under section 56(6) where the authorised person concerned is a PRA-authorised person and the prohibition order concerned is made by the PRA, or

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- (c) a requirement under section 59(1) or (2) where the authorised person concerned is a PRA-authorised person and the approval concerned falls to be given by the PRA.
- (10) In the case of a contravention of a requirement that is imposed by a qualifying EU provision, “the appropriate regulator” is whichever of the PRA or the FCA (or both) is specified by the Treasury by order in relation to the qualifying EU provision for the purposes of this section.
- (11) In the case of a contravention of a requirement where the contravention constitutes an offence under this Act, the “appropriate regulator” is the regulator which has power to prosecute the offence (see section 401).
- (12) The FCA is the “appropriate regulator” in the case of a contravention of any other requirement.
- (13) The Treasury may by order amend the definition of “appropriate regulator”.
- (9) In the heading, for “Authority” substitute “ FCA or PRA ”.
- (10) In the italic heading before section 384, for “Authority” substitute “ FCA or PRA ”.

#### Commencement Information

**I181** Sch. 9 para. 23 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2

VALID FROM 01/04/2013

- 24 (1) Section 385 (warning notices) is amended as follows.
- (2) In subsection (1), for “the Authority” substitute “ a regulator ”.
- (3) In subsection (2), for “the Authority” substitute “ the regulator ”.

VALID FROM 01/04/2013

- 25 In section 386(1) and (3) (decision notices), for “Authority” substitute “ regulator ”.

## PART 6

### NOTICE PROCEDURES

VALID FROM 01/04/2013

- 26 (1) Section 387 (warning notices) is amended as follows.
- (2) In subsection (1)(a), for “Authority” substitute “ regulator giving the notice (“the regulator concerned”) ”.
- (3) After subsection (1) insert—

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“(1A) Where the PRA is the regulator concerned and the FCA proposes to refuse consent for the purposes of section 55F, 55I or 59 or to give conditional consent as mentioned in section 55F(5) or 55I(8), the warning notice given by the PRA must—

- (a) state that fact, and
- (b) give the reasons for the FCA's proposal.”

(4) In subsection (2)—

- (a) for “The warning” substitute “ A warning ”,
- (b) for “28 days” substitute “ 14 days ”, and
- (c) for “Authority” substitute “ regulator concerned ”.

(5) In subsection (3), for “The Authority” substitute “ The regulator concerned ”.

(6) After subsection (3) insert—

“(3A) Where the PRA receives any representations in response to a warning notice given by it under section 55X(1) or (2) or 62(2) in a case falling within subsection (1A) it must—

- (a) if the representations are in writing, give a copy to the FCA, or
- (b) if they are not in writing and have not been given directly to the FCA by the person making them, provide the FCA with a record of them.”

(7) In subsection (4), for “The Authority” substitute “ The regulator concerned ”.

VALID FROM 01/04/2013

27 (1) Section 388 (decision notices) is amended as follows.

(2) In subsection (1)(b), for “the Authority's reasons” substitute “ the reasons of the regulator giving the notice (“the regulator concerned”) ”.

(3) After subsection (1) insert—

“(1A) Where the PRA is the regulator concerned and the FCA has decided to refuse consent for the purposes of section 55F, 55I or 59 or to give conditional consent as mentioned in section 55F(5) or 55I(8), the decision notice given by the PRA must—

- (a) state that fact, and
- (b) give the reasons for the FCA's decision.”

(4) In subsections (3) and (4), for “The Authority” substitute “ The regulator concerned ”.

VALID FROM 01/04/2013

28 In section 389(1) (notices of discontinuance)—

- (a) for “the Authority” substitute “ a regulator ”, and
- (b) in paragraphs (a) and (b), after “notice” insert “ given by it ”.

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VALID FROM 01/04/2013

- 29 (1) Section 390 (final notices) is amended as follows.
- (2) In subsection (1)—
- (a) for “the Authority”, in the first place, substitute “ a regulator ”, and
  - (b) for “the Authority”, in the second place, substitute “ the regulator ”.
- (3) In subsection (2)—
- (a) for “the Authority”, in the first place, substitute “ a regulator ”,
  - (b) for “the Authority”, in the second place, substitute “ the regulator ”, and
  - (c) for “a final notice” substitute “ the notice required by subsection (2A) ”.
- (4) After that subsection insert—
- “(2A) The notice required by this subsection is—
- (a) in a case where the regulator is acting in accordance with a direction given by the Tribunal under section 133(6)(b), or by the court on an appeal from a decision by the Tribunal under section 133(6), a further decision notice, and
  - (b) in any other case, a final notice.”.
- (5) In subsections (9) and (10), for “the Authority” substitute “ the regulator giving the notice ”.

VALID FROM 01/04/2013

- 30 (1) Section 391 (publication) is amended as follows.
- (2) For subsection (1) substitute—
- “(1) In the case of a warning notice falling within subsection (1ZB)—
- (a) neither the regulator giving the notice nor a person to whom it is given or copied may publish the notice,
  - (b) a person to whom the notice is given or copied may not publish any details concerning the notice unless the regulator giving the notice has published those details, and
  - (c) after consulting the persons to whom the notice is given or copied, the regulator giving the notice may publish such information about the matter to which the notice relates as it considers appropriate.
- (1ZA) In the case of a warning notice not falling within subsection (1ZB), neither the regulator giving the notice nor a person to whom it is given or copied may publish the notice or any details concerning it.
- (1ZB) A warning notice falls within this subsection if it is given under—
- (a) section 63B;
  - (b) section 67;
  - (c) section 87M;
  - (d) section 88B;
  - (e) section 89K;



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- (f) section 89R;
- (g) section 92;
- (h) section 126;
- (i) section 131H;
- (j) section 192L;
- (k) section 207;
- (l) section 312G;
- (m) section 345B (whether as a result of section 345(2) or 345A(3) or section 249(1)).”

(3) In subsections (1A), (2) and (3), for “Authority” substitute “ regulator giving the notice ”.

(4) In subsection (4)—

- (a) for “The Authority” substitute “ The regulator giving a decision or final notice ”, and
- (b) for “a decision notice or final notice” substitute “ the notice ”.

(5) In subsection (5), for “Authority” substitute “ regulator giving the notice ”.

(6) For subsection (6) substitute—

“(6) The FCA may not publish information under this section if, in its opinion, publication of the information would be—

- (a) unfair to the person with respect to whom the action was taken (or was proposed to be taken),
- (b) prejudicial to the interests of consumers, or
- (c) detrimental to the stability of the UK financial system.

(6A) The PRA may not publish information under this section if, in its opinion, publication of the information would be—

- (a) unfair to the person with respect to whom the action was taken (or was proposed to be taken),
- (b) prejudicial to the safety and soundness of PRA-authorized persons, or
- (c) in a case where section 2C applies, prejudicial to securing the appropriate degree of protection for policyholders.”

(7) In subsection (7), for “Authority” substitute “ regulator ”.

(8) In subsection (7A), for “the Authority” substitute “ a regulator ”.

VALID FROM 01/04/2013

31 (1) Section 392 (application of sections 393 and 394) is amended as follows.

(2) In paragraph (a)—

- (a) for “54(1)” substitute “ 55Z(1) ”, and
- (b) after “131H(1),” insert “ 192L(1), ”.

(3) In paragraph (b)—

- (a) for “54(2)” substitute “ 55Z(2) ”, and

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(b) after “131H(4),” insert “ 192L(4), ”.

VALID FROM 01/04/2013

- 32 (1) Section 393 (third party rights) is amended as follows.
- (2) In subsections (1)(b) and (2), for “Authority” substitute “ regulator giving the notice ”.
- (3) In subsection (3)—
- (a) for “28 days” substitute “ 14 days ”, and
- (b) for “the Authority” substitute “ the regulator giving the notice ”.
- (4) In subsections (4)(b), (6), (7), (9)(b) and (11)(b), for “the Authority” substitute “ the regulator giving the notice ”.
- (5) In subsection (12), for “which the Authority must disclose” substitute “ to which access must be given ”.

VALID FROM 01/04/2013

- 33 (1) Section 394 (access to Authority material) is amended as follows.
- (2) In subsection (1)—
- (a) in the opening words, for “the Authority” substitute “ a regulator ”, and
- (b) in paragraph (b), for “, in the opinion of the Authority,” substitute “ , in the regulator's opinion, ”.
- (3) In subsection (2), for “the Authority”, in both places, substitute “ the regulator giving the notice ”.
- (4) In subsection (3), for “The Authority” substitute “ The regulator giving the notice ”.
- (5) In subsection (4)—
- (a) for “the Authority” substitute “ the regulator giving the notice ”, and
- (b) for “the Authority's” substitute “the regulator's”.
- (6) In subsection (5), for “the Authority” substitute “ the regulator giving the notice ”.
- (7) In subsection (6)—
- (a) in paragraph (a), for “the Authority” substitute “ the regulator giving the notice ”, and
- (b) in paragraph (b), for “the Authority in connection with the matter to which the notice to which this section applies” substitute “ the regulator giving the notice in connection with the matter to which that notice ”.
- (8) In the heading, for “Authority” substitute “ FCA or PRA ”.

- 34 (1) Section 395 (the Authority's procedures) is amended as follows.
- (2) For subsection (1) substitute—

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- “(1) Each regulator must determine the procedure that it proposes to follow in relation to the following—
- (a) a decision which gives rise to an obligation to give a supervisory notice,
  - (b) in the case of the FCA, a decision which—
    - (i) gives rise to an obligation for it to give a warning notice or decision notice, or
    - (ii) gives rise to an obligation for the PRA to include a statement under section 387(1A) in a warning notice or a statement under section 388(1A) in a decision notice,
  - (c) in the case of the PRA, a decision which gives rise to an obligation for it to give a warning notice or decision notice, other than a decision which depends entirely on a decision of the FCA of the kind mentioned in paragraph (b)(ii), and
  - (d) a decision under section 391(1)(c) to publish information about the matter to which a warning notice relates.”
- (3) In subsection (2), omit the words from “, that the decision” to the end and insert “that—
- (a) a decision falling within any of paragraphs (a) to (c) of subsection (1) is taken—
    - (i) by a person not directly involved in establishing the evidence on which the decision is based, or
    - (ii) by 2 or more persons who include a person not directly involved in establishing that evidence,
  - (b) a decision falling within paragraph (d) of subsection (1) is taken—
    - (i) by a person other than the person by whom the decision was first proposed, or
    - (ii) by 2 or more persons not including the person by whom the decision was first proposed, and
  - (c) a decision falling within paragraph (d) of subsection (1) is taken in accordance with a procedure which is, as far as possible, the same as that applicable to a decision which gives rise to an obligation to give a warning notice and which falls within paragraph (b) or (c) of subsection (1).”
- (4) In subsection (3), for the words from “taken” to the end substitute “taken otherwise than as mentioned in subsection (2) if the person taking the decision is of a level of seniority laid down by the procedure and—
- (a) in the case of procedure proposed by the FCA, the FCA considers that, in the particular case, it is necessary in order to advance one or more of its operational objectives, or
  - (b) in the case of procedure proposed by the PRA, the PRA considers that, in the particular case, it is necessary in order to advance any of its objectives.”
- (5) In subsection (5)—
- (a) for “The Authority” substitute “ Each regulator ”, and
  - (b) for “the procedure” substitute “ its procedure ”.
- (6) In subsection (6)—

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- (a) for “the Authority” substitute “ the regulator issuing it ”, and
  - (b) for “it” substitute “ the statement ”.
- (7) In subsection (7), for “The Authority” substitute “ The regulator issuing the statement ”.
- (8) In subsection (8)—
- (a) for “The Authority” substitute “ The regulator issuing a statement under this section ”, and
  - (b) for “any statement which it issues under this section” substitute “ the statement ”.
- (9) In subsection (9)—
- (a) for “giving” substitute “ a regulator gives ”,
  - (b) after “decision notice,” insert “ other than a warning notice or decision notice relating to a decision of the PRA that is required by a a decision of the FCA of the kind mentioned in subsection (1)(b)(ii) ”, and
  - (c) for “the Authority” substitute “ the regulator ”.
- (10) After subsection (9) insert—
- “(9A) When the FCA takes a decision falling within subsection (1)(b)(ii), it must follow its stated procedure.”
- (11) In subsection (10)—
- (a) for “the Authority” substitute “ a regulator ”, and
  - (b) for “the procedure” substitute “ its procedure ”.
- (12) In subsection (11), for “The Authority's” substitute “A regulator's”.
- (13) In subsection (13), for paragraph (a) substitute—
- “(a) 55Y(4), (7) or (8)(b);”.
- (14) In the heading, for “Authority's” substitute “FCA's and PRA's”.
- (15) In the italic heading before that section, for “Authority's” substitute “FCA's and PRA's”.

#### **Commencement Information**

**I182** Sch. 9 para. 34 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 35 (1) Section 396 (statements under s.395: consultation) is amended as follows.
- (2) In subsection (1)—
- (a) after “a statement of” insert “ its ”,
  - (b) for “the Authority”, in the first place, substitute “ the regulator ”,
  - (c) for “the Authority”, in the second place, substitute “ it ”, and
  - (d) for “it” substitute “ the draft ”.
- (3) In subsection (2), for “Authority” substitute “ regulator publishing the draft ”.

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- (4) In subsection (3), for “Before issuing the proposed statement of procedure, the Authority” substitute “ Before a regulator issues the proposed statement of its procedure, it ”.
- (5) In subsection (4), for “Authority issues the proposed statement of procedure” substitute “ regulator issues the proposed statement of its procedure, ”.
- (6) In subsection (5)—
- (a) for “statement of procedure differs from the draft published” substitute “ statement of the regulator's procedure differs from the draft published by it ”,
  - (b) for “, in the opinion of the Authority,” substitute “ , in its opinion, ”, and
  - (c) for “the Authority must” substitute “ it must ”.
- (7) In subsection (6)—
- (a) for “The Authority” substitute “ The regulator publishing a draft under subsection (1) ”, and
  - (b) for “a draft published under subsection (1)” substitute “ the draft ”.

#### Commencement Information

**I183** Sch. 9 para. 35 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

VALID FROM 01/04/2013

## PART 7

### OFFENCES

- 36 (1) Section 398 (misleading the Authority: residual cases) is amended as follows.
- (2) In subsection (1), for “the Authority” substitute “ a regulator ”.
- (3) In the heading, for “the Authority” substitute “ FCA or PRA ”.
- 37 In section 400 (offences by a body corporate etc) after subsection (6) insert—
- “(6A) References in this section to an offence under this Act include a reference to an offence under Part 7 of the Financial Services Act 2012 (offences relating to financial services).”
- 38 (1) Section 401 (proceedings for offences) is amended as follows.
- (2) For subsection (1) substitute—
- “(1) In this section “offence” means—
- (a) an offence under this Act,
  - (b) an offence under subordinate legislation made under this Act, or
  - (c) an offence under Part 7 of the Financial Services Act 2012 (offences relating to financial services).”
- (3) In subsections (2)(a) and (3)(a), for “Authority” substitute “ appropriate regulator ”.
- (4) After subsection (3) insert—

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“(3A) For the purposes of subsections (2)(a) and (3)(a), the PRA is the “appropriate regulator” in respect of each of the following offences—

- (a) an offence under section 55P(10) where the contravention is of a requirement imposed by the PRA;
- (b) an offence under section 56(4) where the prohibition order is made by the PRA;
- (c) an offence under section 177(3) where the investigation is being, or is likely to be, conducted on behalf of the PRA;
- (d) an offence under section 177(4) where the requirement is imposed by the PRA;
- (e) an offence under section 177(6) where the warrant is issued as a result of information on oath given by the PRA or a person appointed by the PRA to conduct an investigation on its behalf;
- (f) an offence under section 191F(1) where the notice should have been given to the PRA;
- (g) an offence under any of section 191F(2) to (7) where the notice, approval or information was given to or by the PRA;
- (h) an offence under section 366(3), unless the activity of effecting or carrying out long-term contracts of insurance is not to any extent a PRA-regulated activity;
- (i) an offence under section 398(1) where the information was given to the PRA.

(3B) For the purposes of subsections (2)(a) and (3)(a), the FCA is the “appropriate regulator” in respect of any other offence.”

(5) In subsection (5), for “Authority” substitute “ appropriate regulator ”.

39 (1) Section 402 (power of the Authority to institute proceedings for certain other offences) is amended as follows.

(2) In subsections (1) and (2), for “Authority” substitute “ FCA ”.

(3) In the heading, for “the Authority” substitute “ FCA ”.

40 In section 403 (jurisdiction and procedure in respect of offences), in subsection (7), at the end insert “ or an offence under Part 7 of the Financial Services Act 2012 (offences relating to financial services) ”.

VALID FROM 01/04/2013

## PART 8

### CO-OPERATION

41 After section 415A insert—

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### *“Consultation*

#### **415B Consultation in relation to taking certain enforcement action**

- (1) The FCA must consult the PRA before taking a qualifying step in relation to a person who—
  - (a) is a PRA-authorised person, or
  - (b) has a qualifying relationship with a PRA-authorised person.
- (2) The PRA must consult the FCA before taking a qualifying step.
- (3) In this section any reference to the taking of a qualifying step is a reference to—
  - (a) the giving of a warning notice or decision notice under section 63B (performance of controlled functions without approval),
  - (b) the giving of a warning notice or decision notice under section 67 (disciplinary powers in relation to approved person),
  - (c) the giving of a warning notice under section 126 or a decision notice under section 127 (market abuse),
  - (d) the giving of a warning notice or decision notice under section 131H (short selling),
  - (e) the giving of a warning notice under section 207 or a decision notice under section 208 (breaches of requirements imposed by or under Act etc.),
  - (f) the giving of a warning notice under section 312G or a decision notice under section 312H (recognised bodies),
  - (g) the making of an application to the court under section 380, 381, 382 or 383 (injunctions or restitution), or
  - (h) the giving of a warning notice under section 385 or a decision notice under section 386 (power of FCA or PRA to require restitution).
- (4) A person has a qualifying relationship with a PRA-authorised person (“A”) for the purposes of this section if—
  - (a) the person is a member of A's immediate group, or
  - (b) in the case of a qualifying step within subsection (3)(a) or (b), the person performs a significant-influence function under an arrangement entered into by A, or by a contractor of A, in relation to the carrying on by A of a regulated activity.

“Significant-influence function” and “arrangement” have the same meanings as in section 59.”

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## SCHEDULE 10

Section 38

## THE FINANCIAL SERVICES COMPENSATION SCHEME

- 1 Part 15 of FSMA 2000 (the Financial Services Compensation Scheme) is amended as follows.

**Commencement Information**

**I184** Sch. 10 para. 1 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 2 (1) Section 212 (the scheme manager) is amended as follows.
- (2) For subsections (1) and (2) substitute—
- “(1) The scheme manager” means the body corporate established by the Financial Services Authority under this section as originally enacted.
- (2) The regulators must take such steps as are necessary to ensure that the scheme manager is, at all times, capable of exercising the functions conferred on it by or under this Part or Part 15A.”
- (3) In subsections (4) and (5) for “Authority” substitute “ regulators ”.
- (4) In subsection (7), omit “board members.”.

**Commencement Information**

**I185** Sch. 10 para. 2 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 3 (1) Section 213 (the compensation scheme) is amended as follows.
- (2) In each place, for “Authority” substitute “ regulators ”.
- (3) In subsection (1)—
- (a) after “rules” insert “ made in accordance with an order under subsection (1A) ”, and
- (b) for the words from “cases where” to the end substitute “cases where—
- (a) relevant persons are unable, or likely to be unable, to satisfy claims against them, or
- (b) persons who have assumed responsibility for liabilities arising from acts or omissions of relevant persons (“successors”) are unable, or likely to be unable, to satisfy claims against the successors that are based on those acts or omissions.”
- (4) After subsection (1) insert—
- “(1A) The Treasury must by order specify—
- (a) the cases in which the FCA may, or may not, make rules under subsection (1), and
- (b) the cases in which the PRA may, or may not, make rules under that subsection.”
- (5) In subsection (2), after “rules” insert “ (taken together) ”.



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- (6) In subsection (9)(a), after “against him” insert “, or against a successor falling within subsection (1)(b),”.

**Commencement Information**

**I186** Sch. 10 para. 3 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

**I187** Sch. 10 para. 3 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2

- 4 In section 214 (general provisions of the scheme), in subsection (1), after paragraph (a) insert—
- “(aa) as to the circumstances in which a successor falling within section 213(1)(b) is to be taken (for the purposes of the scheme) to be unable, or likely to be unable, to satisfy claims against the successor that are based on the acts or omissions of a relevant person;”.

**Commencement Information**

**I188** Sch. 10 para. 4 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 5 In section 215 (rights of the scheme in insolvency), for “Authority”, in each place, substitute “ regulators ”.

**Commencement Information**

**I189** Sch. 10 para. 5 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 6 In section 217 (insurers in financial difficulties), in subsection (5), for “Authority” substitute “ either regulator or both regulators ”.

**Commencement Information**

**I190** Sch. 10 para. 6 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 7 After section 217 insert—

*“Relationship with the regulators*

**217A Co-operation**

- (1) Each regulator and the scheme manager must take such steps as they consider appropriate to co-operate with each other in the exercise of their functions under this Part and Part 15A.
- (2) Each regulator and the scheme manager must prepare and maintain a memorandum describing how that regulator and the scheme manager intend to comply with subsection (1).
- (3) The scheme manager must ensure that the memoranda as currently in force are published in the way appearing to it to be best calculated to bring them to the attention of the public.”

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**Commencement Information**

**I191** Sch. 10 para. 7 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

8 For the italic heading before section 218 substitute “ *Annual plan and report* ”.

**Commencement Information**

**I192** Sch. 10 para. 8 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

9 Before section 218 insert—

**Annual plan**

“217~~B~~) The scheme manager must in respect of each of its financial years prepare an annual plan.

- (2) The plan must be prepared before the start of the financial year.
- (3) An annual plan in respect of a financial year must make provision about the use of the resources of the scheme manager.
- (4) The plan may include material relating to periods longer than the financial year in question.
- (5) Before preparing an annual plan, the scheme manager must consult such persons (if any) as the scheme manager considers appropriate.
- (6) The scheme manager must publish each annual plan in the way it considers appropriate.”

**Commencement Information**

**I193** Sch. 10 para. 9 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

10 (1) Section 218 (annual report) is amended as follows.

(2) In subsections (1) and (2)(b), for “Authority” substitute “ regulators ”.

(3) At the end insert—

“(4) The Treasury may—

- (a) require the scheme manager to comply with any provisions of the Companies Act 2006 about accounts and their audit which would not otherwise apply to it, or
- (b) direct that any such provision of that Act is to apply to the scheme manager with such modifications as are specified in the direction.

(5) Compliance with any requirement under subsection (4)(a) or (b) is enforceable by injunction or, in Scotland, an order for specific performance under section 45 of the Court of Session Act 1988.

(6) Proceedings under subsection (5) may be brought only by the Treasury.”

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#### Commencement Information

**I194** Sch. 10 para. 10 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

11 After section 218 insert—

#### “218ZA Audit of accounts

- (1) The scheme manager must send a copy of its annual accounts to the Comptroller and Auditor General and the Treasury as soon as is reasonably practicable.
- (2) The Comptroller and Auditor General must—
  - (a) examine, certify and report on accounts received under this section, and
  - (b) send a copy of the certified accounts and the report to the Treasury.
- (3) The Treasury must lay the copy of the certified accounts and the report before Parliament.
- (4) The scheme manager must send a copy of the certified accounts and the report to the regulators.
- (5) Except as provided by section 218(4), the scheme manager is exempt from the requirements of Part 16 of the Companies Act 2006 (audit), and its balance sheet must contain a statement to that effect.
- (6) In this section “annual accounts” has the meaning given by section 471 of the Companies Act 2006.”

#### Commencement Information

**I195** Sch. 10 para. 11 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

12 (1) Section 218A (power to require information) is amended as follows.

- (2) In subsection (1)—
  - (a) for “The Authority”, in the first place, substitute “ Each regulator ”, and
  - (b) for “the Authority”, in the second and third place, substitute “ that regulator ”.
- (3) In subsections (2) and (4), for “Authority” substitute “ regulator ”.
- (4) In subsection (5), for “Authority's” substitute “regulator's”.
- (5) In the heading, for “Authority's” substitute “Regulators”.

#### Commencement Information

**I196** Sch. 10 para. 12 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

13 In section 221 (powers of court), in subsection (2), after “director or” insert “ other ”.

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**Commencement Information**

**I197** Sch. 10 para. 13 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

14 In section 222 (statutory immunity), in subsection (1), omit “board member,”.

**Commencement Information**

**I198** Sch. 10 para. 14 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

15 In section 224 (scheme manager's power to inspect documents), in subsection (1), after “relevant person,” insert “ or a successor falling within section 213(1)(b), ”.

**Commencement Information**

**I199** Sch. 10 para. 15 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

SCHEDULE 11

Section 39

THE FINANCIAL OMBUDSMAN SERVICE

1 In section 226 (compulsory jurisdiction), in subsection (3)(a), for “Authority” substitute “ FCA ”.

**Commencement Information**

**I200** Sch. 11 para. 1 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

2 In section 226A (consumer credit jurisdiction), in subsection (7), for “Authority” substitute “ FCA ”.

**Commencement Information**

**I201** Sch. 11 para. 2 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

3 In section 227 (voluntary jurisdiction), in subsection (6), for “Authority's” substitute “FCA's”.

**Commencement Information**

**I202** Sch. 11 para. 3 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

4 (1) Section 228 (determination under the compulsory and consumer credit jurisdiction) is amended as follows.

(2) In subsection (4), in paragraph (c), omit “in writing”.

(3) After subsection (6) insert—

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“(6A) But the complainant is not to be treated as having rejected the determination by virtue of subsection (6) if—

- (a) the complainant notifies the ombudsman after the specified date of the complainant's acceptance of the determination,
- (b) the complainant has not previously notified the ombudsman of the complainant's rejection of the determination, and
- (c) the ombudsman is satisfied that such conditions as may be prescribed by rules made by the scheme operator for the purposes of this section are satisfied.”

(4) After subsection (7) insert—

“(7A) Where a determination is rejected by virtue of subsection (6), the notification under subsection (7) must contain a general description of the effect of subsection (6A).”

**Commencement Information**

**I203** Sch. 11 para. 4 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

5 In section 229 (awards), in subsection (4), for “Authority” substitute “ FCA ”.

**Commencement Information**

**I204** Sch. 11 para. 5 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

6 In section 230 (costs), in subsection (2), for “Authority” substitute “ FCA ”.

**Commencement Information**

**I205** Sch. 11 para. 6 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

7 After section 230 insert—

**“230A Reports of determinations**

- (1) The scheme operator must publish a report of any determination made under this Part.
- (2) But if the ombudsman who makes the determination informs the scheme operator that, in the ombudsman's opinion, it is inappropriate to publish a report of that determination (or any part of it) the scheme operator must not publish a report of that determination (or that part).
- (3) Unless the complainant agrees, a report of a determination published by the scheme operator may not include the name of the complainant, or particulars which, in the opinion of the scheme operator, are likely to identify the complainant.
- (4) The scheme operator may charge a reasonable fee for providing a person with a copy of a report.”

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#### Commencement Information

**I206** Sch. 11 para. 7 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 8 In section 232 (powers of court), in subsection (2), after “director or” insert “ other ”.

#### Commencement Information

**I207** Sch. 11 para. 8 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 9 After section 232 insert—

#### “232A Scheme operator's duty to provide information to FCA

If the scheme operator considers that it has information that, in its opinion, would or might be of assistance to the FCA in advancing one or more of the FCA's operational objectives, it must disclose that information to the FCA.”

#### Commencement Information

**I208** Sch. 11 para. 9 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 10 In section 234 (industry funding), in subsection (1), for “Authority” substitute “ FCA ”.

#### Commencement Information

**I209** Sch. 11 para. 10 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 11 In section 234A (funding by consumer credit licensees), in subsection (1), for “Authority” substitute “ FCA ”.

#### Commencement Information

**I210** Sch. 11 para. 11 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 12 After section 234A insert—

*“Successors to businesses*

#### 234B Transfers of liability

- (1) This section applies where a person (the “successor”) has assumed a liability (including a contingent one) of a person (the “predecessor”) who was, or (apart from this section) would have been, the respondent in respect of a complaint falling to be dealt with under the ombudsman scheme.
- (2) The complaint may (but need not) be dealt with under this Part as if the successor were the respondent.”

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**Commencement Information**

I211 Sch. 11 para. 12 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

13 Schedule 17 (the ombudsman scheme) is amended as follows.

**Commencement Information**

I212 Sch. 11 para. 13 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

14 For paragraph 2 (and the italic heading before it) substitute—

*“Duty of FCA*

- 2 The FCA must take such steps as are necessary to ensure that the body corporate established by the Financial Services Authority under this Schedule as originally enacted is, at all times, capable of exercising the functions conferred on the scheme operator by or under this Act.”

**Commencement Information**

I213 Sch. 11 para. 14 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 15 In paragraph 3 (constitution)—
- (a) for “Authority”, in each place, substitute “ FCA ”, and
  - (b) in sub-paragraph (4), after “9” insert “ , 9A ”.

**Commencement Information**

I214 Sch. 11 para. 15 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

16 After paragraph 3 insert—

*“Relationship with FCA*

- 3A (1) The scheme operator and the FCA must each take such steps as it considers appropriate to co-operate with the other in the exercise of their functions under this Part of this Act.
- (2) The scheme operator and the FCA must prepare and maintain a memorandum describing how they intend to comply with sub-paragraph (1).
- (3) The scheme operator must ensure that the memorandum as currently in force is published in the way appearing to the scheme operator to be best calculated to bring it to the attention of the public.”

**Commencement Information**

I215 Sch. 11 para. 16 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

17 In paragraph 6 (status), in sub-paragraph (2), omit “board members,”.

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### Commencement Information

**I216** Sch. 11 para. 17 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 18 In paragraph 7 (annual reports)—
- (a) for “Authority”, in each place, substitute “ FCA ”, and
  - (b) at the end insert—
    - “(5) The Treasury may—
      - (a) require the scheme operator to comply with any provisions of the Companies Act 2006 about accounts and their audit which would not otherwise apply to it, or
      - (b) direct that any provision of that Act about accounts and their audit is to apply to the scheme operator with such modifications as are specified in the direction, whether or not the provision would otherwise apply to the scheme manager.
    - (6) Compliance with any requirement under sub-paragraph (5)(a) or (b) is enforceable by injunction or, in Scotland, an order for specific performance under section 45 of the Court of Session Act 1988.
    - (7) Proceedings under sub-paragraph (6) may be brought only by the Treasury.”

### Commencement Information

**I217** Sch. 11 para. 18 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 19 After paragraph 7 insert—
- “Audit of accounts*
- 7A (1) The scheme operator must send a copy of its annual accounts to the Comptroller and Auditor General as soon as is reasonably practicable.
- (2) The Comptroller and Auditor General must—
    - (a) examine, certify and report on accounts received under this paragraph, and
    - (b) send a copy of the certified accounts and the report to the Treasury.
  - (3) The Treasury must lay the copy of the certified accounts and the report before Parliament.
  - (4) The scheme operator must send a copy of the certified accounts and the report to the FCA.
  - (5) Except as provided by paragraph 7(5), the scheme operator is exempt from the requirements of Part 16 of the Companies Act 2006 (audit), and its balance sheet must contain a statement to that effect.
  - (6) In this paragraph “annual accounts” has the meaning given by section 471 of the Companies Act 2006.”



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**Commencement Information**

**I218** Sch. 11 para. 19 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 20 For the italic heading before paragraph 8 substitute “ *Information, advice and guidance* ”.

**Commencement Information**

**I219** Sch. 11 para. 20 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 21 In paragraph 8 (guidance), for “guidance consisting of such information and advice” substitute “ such information, guidance or advice ”.

**Commencement Information**

**I220** Sch. 11 para. 21 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 22 In paragraph 9 (budget), for “Authority”, in each place, substitute “ FCA ”.

**Commencement Information**

**I221** Sch. 11 para. 22 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 23 After paragraph 9 insert—

*“Annual plan*

- 9A (1) The scheme operator must in respect of each of its financial years prepare an annual plan.
- (2) The plan must be prepared before the start of the financial year.
- (3) An annual plan in respect of a financial year must make provision about the use of the resources of the scheme operator.
- (4) The plan may include material relating to periods longer than the financial year in question.
- (5) Before preparing an annual plan, the scheme operator must consult such persons (if any) as the scheme operator considers appropriate.
- (6) The scheme operator must publish each annual plan in the way it considers appropriate.”

**Commencement Information**

**I222** Sch. 11 para. 23 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 24 In paragraph 13 (procedural rules)—
- (a) for “Authority”, in each place, substitute “ FCA ”,

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- (b) for “Authority's”, in each place, (including the italic heading), substitute “FCA's”, and
- (c) in sub-paragraph (4)(b), for “Part X” substitute “ Part 9A ”.

**Commencement Information**

**I223** Sch. 11 para. 24 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 25 In paragraph 14 (scheme operator's rules)—
- (a) in sub-paragraph (2), after paragraph (f) insert—
    - “(fa) allow the correction of any clerical mistake in the written statement of a determination made by an ombudsman;
    - (fb) provide that any irregularity arising from a failure to comply with any provisions of the scheme rules does not of itself render a determination void;”, and”
  - (b) in sub-paragraph (7), for “Authority” substitute “ FCA ”.

**Commencement Information**

**I224** Sch. 11 para. 25 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 26 In paragraph 16B (procedure for complaints etc), in sub-paragraph (1), after paragraph (d) insert—
- “(e) may provide that an ombudsman may correct any clerical mistake in a determination made by that ombudsman;
  - (f) provide that any irregularity arising from a failure to comply with any provisions of the consumer credit rules does not of itself render a determination void.”

**Commencement Information**

**I225** Sch. 11 para. 26 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 27 In paragraph 16E (consumer credit rules), for “Authority”, in each place, substitute “ FCA ”.

**Commencement Information**

**I226** Sch. 11 para. 27 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 28 In paragraph 18 (terms of reference), for “Authority”, in each place, substitute “ FCA ”.

**Commencement Information**

**I227** Sch. 11 para. 28 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 29 In paragraph 19 (delegation), in sub-paragraph (3), for “Authority” substitute “ FCA ”.

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#### Commencement Information

**I228** Sch. 11 para. 29 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 30 In paragraph 20 (voluntary jurisdiction rules: procedure), for “Authority”, in each place, substitute “ FCA ”.

#### Commencement Information

**I229** Sch. 11 para. 30 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

## SCHEDULE 12

Section 41

### AMENDMENTS OF PARTS 11 AND 23 OF FSMA 2000

#### PART 1

##### PART 11 OF FSMA 2000: INFORMATION GATHERING AND INVESTIGATIONS

VALID FROM 01/04/2013

- 1 (1) Section 165 (power to require information) is amended as follows.
- (2) In subsection (1), for “The Authority” substitute “ Either regulator ”.
- (3) In subsection (3), for “Authority” substitute “ regulator ”.
- (4) In subsection (4), for “the Authority” substitute “ either regulator ”.
- (5) In subsections (5) and (6) for “The Authority”, in each place, substitute “ The regulator in question ”.
- (6) In subsection (7), for the words from “exercised” to the end substitute “exercised—
- (a) by either regulator, to impose requirements on a person who is connected with an authorised person;
  - (b) by the FCA, to impose requirements on an operator, trustee or depositary of a scheme recognised under section 270 or 272 who is not an authorised person;
  - (c) by the FCA, to impose requirements on a recognised investment exchange;
  - (d) by the FCA, to impose requirements on a person who is connected with a recognised investment exchange.”.
- (7) In subsection (9)—
- (a) for “the Authority”, in the first place, substitute “ the regulator exercising the power ”,
  - (b) for “the Authority's” substitute “that regulator's”, and
  - (c) for “the Authority”, in the second place, substitute “ that regulator ”.

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- (8) In subsection (11)—
- (a) in the opening words, for “an authorised person” substitute “ another person ”, and
  - (b) in paragraph (d), at the end insert “ (reading references in that Part to the authorised person as references to A) ”.
- (9) In the heading, for “Authority's” substitute “Regulators”.

VALID FROM 01/04/2013

- 2 In section 165A (power to require information relevant to financial stability)—
- (a) for “Authority”, in each place, substitute “ PRA ”, and
  - (b) in the heading, for “Authority's” substitute “PRA's”.

VALID FROM 01/04/2013

- 3 In section 165B (safeguards relating to section 165A)—
- (a) for “Authority”, in each place, substitute “ PRA ”, and
  - (b) for “Authority's”, in each place, substitute “PRA's”.

VALID FROM 01/04/2013

- 4 In section 165C (orders under section 165A(2)(d)) for subsection (1) substitute—
- “(1) The Treasury may make an order under section 165A(2)(d) only if either or both of the following conditions is met in relation to the provision made by the order.
- (1A) Condition A is that the Treasury consider that—
- (a) the activities carried on by the prescribed person or persons of the prescribed description, or the way in which those activities (or any part of them) are carried on, or
  - (b) any failure to carry on those activities (or any part of them), pose, or would be likely to pose, a serious threat to the stability of the UK financial system.
- (1B) Condition B is that the provision implements all or part of a recommendation made by the Financial Policy Committee of the Bank of England under section 9P of the Bank of England Act 1998.”

- 5 For section 166 (reports by skilled persons) substitute—

**“166 Reports by skilled persons**

- (1) This section applies where either regulator has required or could require a person to whom subsection (2) applies (“the person concerned”) to provide

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information or produce documents with respect to any matter (“the matter concerned”).

- (2) This subsection applies to—
  - (a) an authorised person (“A”),
  - (b) any other member of A's group,
  - (c) a partnership of which A is a member, or
  - (d) a person who has at any relevant time been a person falling within paragraph (a), (b) or (c),who is, or was at the relevant time, carrying on a business.
- (3) The regulator mentioned in subsection (1) may either—
  - (a) by notice in writing given to the person concerned, require the person concerned to provide the regulator with a report on the matter concerned, or
  - (b) itself appoint a person to provide the regulator with a report on the matter concerned.
- (4) When acting under subsection (3)(a), the regulator may require the report to be in such form as may be specified in the notice.
- (5) The regulator must give notice of an appointment under subsection (3)(b) to the person concerned.
- (6) The person appointed to make a report—
  - (a) must be a person appearing to the regulator to have the skills necessary to make a report on the matter concerned, and
  - (b) where the appointment is to be made by the person concerned, must be a person nominated or approved by the regulator.
- (7) It is the duty of—
  - (a) the person concerned, and
  - (b) any person who is providing (or who has at any time provided) services to the person concerned in relation to the matter concerned,to give the person appointed to prepare a report all such assistance as the appointed person may reasonably require.
- (8) The obligation imposed by subsection (7) is enforceable, on the application of the regulator in question, by an injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.
- (9) A regulator may make rules providing for expenses incurred by it in relation to an appointment under subsection (3)(b) to be payable as a fee by the person concerned.
- (10) The powers conferred by this section may also be exercised by the FCA in relation to a person to whom subsection (11) applies, (and references to the person concerned are to be read accordingly).
- (11) This subsection applies to—
  - (a) a recognised investment exchange (“A”),
  - (b) any other member of A's group,
  - (c) a partnership of which A is a member, or

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(d) a person who has at any time been a person falling within paragraph (a), (b) or (c),  
who is, or was at the relevant time, carrying on a business.”

#### Commencement Information

**I230** Sch. 12 para. 5 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

6 After section 166 insert—

#### “166A Appointment of skilled person to collect and update information

- (1) This section applies if either regulator considers that an authorised person has contravened a requirement in rules made by that regulator to collect, and keep up to date, information of a description specified in the rules.
- (2) The regulator may either—
  - (a) require the authorised person to appoint a skilled person to collect or update the information, or
  - (b) itself appoint a skilled person to do so.
- (3) References in this section to a skilled person are to a person—
  - (a) appearing to the regulator to have the skills necessary to collect or update the information in question, and
  - (b) where the appointment is to be made by the authorised person, nominated or approved by the regulator.
- (4) The regulator must give notice of an appointment under subsection (2)(b) to the authorised person.
- (5) The skilled person may require any person to provide all such assistance as the skilled person may reasonably require to collect or update the information in question.
- (6) A requirement imposed under subsection (5) is enforceable, on the application of the regulator in question, by an injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.
- (7) A contractual or other requirement imposed on a person (“P”) to keep any information in confidence does not apply if—
  - (a) the information is or may be relevant to anything required to be done as a result of this section,
  - (b) an authorised person or a skilled person requests or requires P to provide the information for the purpose of securing that those things are done, and
  - (c) the regulator in question has approved the making of the request or the imposition of the requirement before it is made or imposed.
- (8) An authorised person may provide information (whether received under subsection (7) or otherwise) that would otherwise be subject to a contractual or other requirement to keep it in confidence if it is provided for the purposes of anything required to be done as a result of this section.

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- (9) A regulator may make rules providing for expenses incurred by it in relation to an appointment under subsection (2)(b) to be payable as a fee by the authorised person.
- (10) In this section “authorised person”, in relation to the PRA, means PRA-authorised person.”

#### Commencement Information

**I231** Sch. 12 para. 6 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

VALID FROM 01/04/2013

- 7 (1) Section 167 (appointment of investigator in general cases) is amended as follows.
- (2) In subsection (1), for “the Authority or the Secretary of State (“the investigating authority”)” substitute “ an investigating authority ”.
- (3) After subsection (5) insert—
- “(5A) Investigating authority” means—
- (a) in relation to a recognised investment exchange, the Secretary of State or the FCA;
  - (b) in relation to an authorised person or former authorised person, the FCA or the PRA;
  - (c) in relation to an appointed representative or former appointed representative, the FCA or the PRA.”
- 8 (1) Section 168 (appointment of investigator in specific cases) is amended as follows.
- (2) In subsection (1)—
- (a) omit paragraph (a), and
  - (b) in paragraph (b), for “191” substitute “ 191F ”.
- (3) In subsection (2)—
- (a) in paragraph (a), for “or 397” substitute “ or under Part 7 of the Financial Services Act 2012 ”, and
  - (b) after paragraph (b) insert—
- “(ba) an authorised person may have contravened section 20 in relation to a credit-related regulated activity;”.
- (4) In subsection (4)—
- (a) in the opening words, for “the Authority” substitute “ an investigating authority ”,
  - (b) in paragraph (c), for “Authority” substitute “ investigating authority ”,
  - (c) after that paragraph insert—
- “(ca) a recognised investment exchange may have contravened the recognition requirements (within the meaning of Part 18);”.
- (d) in paragraph (f), for “an authorised or exempt person” substitute “ a person ”,
  - (e) in paragraph (h), for “the Authority” substitute “ a regulator ”,

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- (f) in paragraph (j), omit the words from “or by any” to the end, and
- (g) for paragraph (k) substitute—
  - “(k) a person may have contravened a qualifying EU provision that is specified, or of a description specified, for the purposes of this subsection by the Treasury by order.”

(5) In subsection (5), for “Authority” substitute “investigating authority”.

(6) For subsection (6) substitute—

“(6) Investigating authority” means—

- (a) in subsections (1) to (3), the FCA, the PRA or the Secretary of State;
- (b) in subsections (4) and (5), the FCA or the PRA.”

#### Commencement Information

**I232** Sch. 12 para. 8 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2

- 9 (1) Section 169 (investigations at the request of an overseas regulator) is amended as follows.
- (2) In subsection (1), for “the Authority” substitute “a regulator”.
  - (3) In subsections (3) and (4), in each place, for “Authority” substitute “regulator”.
  - (4) In subsection (5), in each place, for “Authority” substitute “regulator”.
  - (5) In subsection (6), for “Authority” substitute “regulator”.
  - (6) In subsection (7), for “the Authority” substitute “a regulator”.
  - (7) In subsection (8), for “Authority” substitute “regulator”.
  - (8) In subsection (9), for “The Authority” substitute “Each regulator”.
  - (9) In subsection (11), for “Authority” substitute “regulator”.

#### Commencement Information

**I233** Sch. 12 para. 9 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

VALID FROM 01/04/2013

- 10 In section 169A (supporting an overseas regulator regarding financial stability), in subsection (1), for “Authority” substitute “PRA”.

VALID FROM 01/04/2013

- 11 In section 170 (investigations: general), in subsection (10), for paragraphs (a) and (b) substitute—
- “(a) the FCA, if the FCA appointed the investigator;
  - (aa) the PRA, if the PRA appointed the investigator;



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(b) the Secretary of State, if the Secretary of State appointed the investigator.”

VALID FROM 01/04/2013

12 In section 174 (admissibility of statements to investigators), in subsection (2), for “the Authority” substitute “ a regulator ”.

VALID FROM 01/04/2013

13 (1) Section 175 (information and documents: supplemental) is amended as follows.  
(2) In subsection (1), for “the Authority” substitute “ either regulator ”.  
(3) After subsection (2) insert—  
    “(2A) A document so produced may be retained for so long as the person to whom it is produced considers that it is necessary to retain it (rather than copies of it) for the purposes for which the document was requested.  
    (2B) If the person to whom a document is so produced has reasonable grounds for believing—  
        (a) that the document may have to be produced for the purposes of any legal proceedings, and  
        (b) that it might otherwise be unavailable for those purposes,  
    it may be retained until the proceedings are concluded.”  
(4) In subsection (3), for “Authority” substitute “ regulator ”.

VALID FROM 01/04/2013

14 (1) Section 176 (entry of premises under warrant) is amended as follows.  
(2) In subsection (1), for “the Authority” substitute “ either regulator ”.  
(3) After subsection (5) insert—  
    “(5A) A warrant under this section may be executed by any constable.  
    (5B) The warrant may authorise persons to accompany any constable who is executing it.  
    (5C) The powers in subsection (5) may be exercised by a person authorised by the warrant to accompany a constable; but that person may exercise those powers only in the company of, and under the supervision of, a constable.”  
(4) In subsection (6), for “16” substitute “ 16(3) to (12) ”.  
(5) In subsection (7), for “18” substitute “ 18(3) to (12) ”.  
(6) Omit subsection (8).  
(7) In subsection (11), in paragraph (a), for “the Authority” substitute “ a regulator ”.

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VALID FROM 01/04/2013

15 After section 176 insert—

**“176A Retention of documents taken under section 176**

- (1) Any document of which possession is taken under section 176 (“a seized document”) may be retained so long as it is necessary to retain it (rather than copies of it) in the circumstances.
- (2) A person claiming to be the owner of a seized document may apply to a magistrates' court or (in Scotland) the sheriff for an order for the delivery of the document to the person appearing to the court or sheriff to be the owner.
- (3) If on an application under subsection (2) the court or (in Scotland) the sheriff cannot ascertain who is the owner of the seized document the court or sheriff (as the case may be) may make such order as the court or sheriff thinks fit.
- (4) An order under subsection (2) or (3) does not affect the right of any person to take legal proceedings against any person in possession of a seized document for the recovery of the document.
- (5) Any right to bring proceedings (as described in subsection (4)) may only be exercised within 6 months of the date of the order made under subsection (2) or (3).”

VALID FROM 01/04/2013

**PART 2**

PART 23 OF FSMA 2000: PUBLIC RECORD,  
DISCLOSURE OF INFORMATION AND CO-OPERATION

16 (1) Section 347 (record of authorised persons) is amended as follows.

- (2) In subsections (1) to (6), for “Authority”, in each place, substitute “ FCA ”.
- (3) Omit subsection (1)(f).
- (4) In subsection (2), in paragraph (e)—
  - (a) omit “or recognised clearing house,”, and
  - (b) omit “or clearing house”.
- (5) In subsection (8), for “Authority” substitute “ FCA or the PRA ”.

17 After section 347 insert—

**“347A Duty of PRA to disclose information relevant to the record**

- (1) The PRA must, for the purpose of assisting the FCA to comply with its duty under section 347—

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- (a) notify the FCA if the information included in the record as required under section 347(2)(a) appears to the PRA to be incomplete or inaccurate,
  - (b) if it makes a prohibition order relating to an individual, provide the FCA with information falling within section 347(2)(f) in relation to that order,
  - (c) where it is the appropriate regulator in relation to an approved person, provide the FCA with information falling within section 347(2)(g) in relation to that approved person, and
  - (d) where the FCA has notified the PRA that it considers it appropriate to include in the record information of a certain description, disclose to the FCA such information of that description as the PRA has in its possession.
- (2) The duty to provide information under this section does not apply to information which the PRA reasonably believes is in the possession of the FCA.
- (3) Subsection (1) does not require or authorise the disclosure of information whose disclosure is prohibited by or under section 348.
- (4) This section is without prejudice to any other power to disclose information.
- (5) In this section references to the “record” are to the record maintained under section 347.”
- 18 (1) Section 348 (restrictions on disclosure of information) is amended as follows.
- (2) In subsection (2)(b)—
    - (a) for “Authority” substitute “ FCA, the PRA ”, and
    - (b) omit “, the competent authority for the purposes of Part VI”.
  - (3) In subsection (5)—
    - (a) for paragraph (a) substitute—
      - “(a) the FCA;
      - (aa) the PRA;”
    - (b) omit paragraph (b),
    - (c) in paragraph (d), for “139E” substitute “ 166A ”, and
    - (d) after paragraph (e) insert—
      - “(ea) a person who is or has been engaged to provide services to a person mentioned in those paragraphs;”.
  - (4) In subsection (6)—
    - (a) in paragraph (a), for “the competent authority” substitute “ the FCA ”,
    - (b) in paragraph (b), for “Authority” substitute “ FCA, the PRA ”, and
    - (c) omit paragraph (c).
  - (5) In the heading for “Authority” substitute “ FCA, PRA ”.
- 19 (1) Section 349 (exceptions from section 348) is amended as follows.
- (2) In subsection (2)(c), for “Authority” substitute “ FCA or the PRA ”.

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- (3) In subsection (3A)(a), for “Authority” substitute “ FCA or the PRA ”.
- (4) In subsection (3B)(c), for “Authority's functions” substitute “ functions of the FCA or the PRA ”.
- 20 (1) Section 350 (disclosure of information by HMRC) is amended as follows.
- (2) For subsection (1) substitute—
- “(1) No obligation as to secrecy imposed by statute or otherwise prevents the disclosure of Revenue information to—
- (a) the FCA or the PRA, if the disclosure is made for the purpose of assisting or enabling that regulator to discharge its functions under this or any other Act, or
- (b) the Secretary of State, if the disclosure is made for the purpose of assisting in the investigation of a matter under section 168 or with a view to the appointment of an investigator under that section.”
- (3) In subsection (4), for “subsection (1)” substitute “ subsection (1)(b) ”.
- 21 Omit section 351 (competition information).
- 22 In section 351A (disclosure under the UCITS directive), in subsection (1), for “the Authority” substitute “ the FCA or the PRA ”.
- 23 (1) In section 353 (removal of other restrictions on disclosure), in subsection (1)(b)—
- (a) for “Authority”, in the first place, substitute “ FCA or the PRA ”, and
- (b) for “Authority”, in the second place, substitute “ either of them ”.
- 24 After section 353 insert—

*“Information received from Bank of England*

**353A Information received from Bank of England**

- (1) A regulator must not disclose to any person specially protected information.
- (2) “Specially protected information” is information in relation to which the first and second conditions are met.
- (3) The first condition is that the regulator received the information from—
- (a) the Bank of England (“the Bank”), or
- (b) the other regulator where that regulator had received the information from the Bank.
- (4) The second condition is that the Bank notified the regulator to which it disclosed the information that the Bank held the information for the purpose of its functions with respect to any of the following—
- (a) monetary policy;
- (b) financial operations intended to support financial institutions for the purposes of maintaining stability;
- (c) the provision of private banking services and related services.
- (5) The notification referred to in subsection (4) must be—

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- (a) in writing, and
  - (b) given before, or at the same time as, the Bank discloses the information.
- (6) The prohibition in subsection (1) does not apply—
- (a) to disclosure by one regulator to the other regulator where the regulator making the disclosure informs the other regulator that the information is specially protected information by virtue of this section;
  - (b) where the Bank has consented to disclosure of the information;
  - (c) to information which has been made available to the public by virtue of being disclosed in any circumstances in which, or for any purposes for which, disclosure is not precluded by this section;
  - (d) to information which the regulator is required to disclose in pursuance of any EU obligation.
- (7) In this section references to disclosure by or to a regulator or by the Bank include references to disclosure by or to—
- (a) persons who are, or are acting as,—
    - (i) officers of, or members of the staff of, the regulator, or
    - (ii) officers, employees or agents of the Bank, or
  - (b) auditors, experts, contractors or investigators appointed by the regulator or the Bank under powers conferred by this Act or otherwise.
- (8) References to disclosure by a regulator do not include references to disclosure between persons who fall within any paragraph of subsection (7)(a) or (b) in relation to that regulator.
- (9) Each regulator must take such steps as are reasonable in the circumstances to prevent the disclosure of specially protected information, in cases not excluded by subsection (6), by those who are or have been—
- (a) its officers or members of staff (including persons acting as its officers or members of staff);
  - (b) auditors, experts, contractors or investigators appointed by the regulator under powers conferred by this Act or otherwise;
  - (c) persons to whom the regulator has delegated any of its functions.”

25

For section 354 substitute—

**“354A FCA's duty to co-operate with others**

- (1) The FCA must take such steps as it considers appropriate to co-operate with other persons (whether in the United Kingdom or elsewhere) who have functions—
  - (a) similar to those of the FCA, or
  - (b) in relation to the prevention or detection of financial crime.
- (2) The persons referred to in subsection (1) do not include the Bank of England or the PRA (but see sections 3D and 3Q).

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- (3) The FCA must take such steps as it considers appropriate to co-operate with—
  - (a) the Panel on Takeovers and Mergers;
  - (b) an authority designated as a supervisory authority for the purposes of Article 4.1 of the Takeovers Directive;
  - (c) any other person or body that exercises functions of a public nature, under legislation in any country or territory outside the United Kingdom, that appear to the FCA to be similar to those of the Panel on Takeovers and Mergers.
- (4) Co-operation may include the sharing of information which the FCA is not prevented from disclosing.
- (5) “Financial crime” has the meaning given in section 1H(3).

#### **354B PRA's duty to co-operate with others**

- (1) The PRA must take such steps as it considers appropriate to co-operate with—
  - (a) other persons (whether in the United Kingdom or elsewhere) who have functions similar to those of the PRA, and
  - (b) other bodies that have functions relevant to financial stability.
- (2) The persons referred to in subsection (1) do not include the Bank of England or the FCA (but see sections 3D and 3Q).
- (3) Co-operation may include the sharing of information which the PRA is not prevented from disclosing.

#### **354C PRA's duty to provide information to Bank of England**

- (1) The PRA must disclose to the Bank of England (“the Bank”) any information in its possession that it thinks will or may assist the Bank in achieving its financial stability objective.
- (2) The duty in subsection (1) applies whether or not the Bank has requested that the information be disclosed to it.
- (3) Subsection (1) does not require or authorise the disclosure of information whose disclosure—
  - (a) is prohibited by or under section 348 or any other enactment;
  - (b) is incompatible with any EU obligation;
  - (c) would constitute or be punishable as a contempt of court.
- (4) This section is without prejudice to any other power to disclose information.
- (5) The Bank's financial stability objective is the objective set out in section 2A(1) of the Bank of England Act 1998.
- (6) In this section “enactment” includes—
  - (a) an Act of the Scottish Parliament,
  - (b) Northern Ireland legislation, and

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(c) a Measure or Act of the National Assembly for Wales.”

## SCHEDULE 13

Section 42

### AUDITORS AND ACTUARIES

VALID FROM 01/04/2013

1 FSMA 2000 is amended as follows.

2 In Part 22 (auditors and actuaries), before section 340 (and the italic heading immediately before it) insert—

*“General duties of PRA*

#### **General duties of PRA in relation to auditors**

339A) The arrangements maintained by the PRA under section 2K (supervision of PRA-~~authorised~~ persons) must include arrangements for—

- (a) the sharing with auditors of PRA-~~authorised~~ persons of information that the PRA is not prevented from disclosing, and
  - (b) the exchange of opinions with auditors of PRA-~~authorised~~ persons.
- (2) The PRA must issue and maintain a code of practice describing how it will comply with subsection (1).
  - (3) The PRA may at any time alter or replace a code issued under this section.
  - (4) If a code is altered or replaced, the PRA must issue the altered or replacement code.
  - (5) When the PRA issues a code under this section the PRA must—
    - (a) give a copy of the code to the Treasury, and
    - (b) publish the code in such manner as the PRA thinks fit.
  - (6) The Treasury must lay before Parliament a copy of the code.
  - (7) “Auditor” means an auditor appointed under or as a result of a statutory provision.”

#### **Commencement Information**

I234 Sch. 13 para. 2 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

VALID FROM 01/04/2013

3 (1) Section 340 (appointment) is amended as follows.



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- (2) In subsection (1), for “Rules may require” substitute “ The appropriate regulator may make rules requiring ”.
- (3) In subsection (2), for “Rules may require” substitute “ The appropriate regulator may make rules requiring ”.
- (4) For subsection (3) substitute—
- “(3A) The PRA—
- (a) must make rules imposing on auditors of PRA-authorized persons such duties as may be specified in relation to co-operation with the PRA in connection with the supervision by the PRA of PRA-authorized persons, and
- (b) may make rules—
- (i) imposing such other duties on auditors of PRA-authorized persons as may be specified, and
- (ii) imposing such duties on actuaries acting for PRA-authorized persons as may be specified.
- (3B) The FCA may make rules imposing on auditors of, or actuaries acting for, authorized persons such duties as may be specified.”
- (5) In subsection (4), for “Authority”, in each place, substitute “ regulator making the rules ”.
- (6) In subsection (5), for “(3)” substitute “ (3A) or (3B) ”.
- (7) After subsection (5) insert—
- “(5A) In subsections (1) and (2) “the appropriate regulator” means—
- (a) in the case of a PRA-authorized person, the PRA;
- (b) in any other case, the FCA.”
- (8) In subsection (6), for “(3)” substitute “ (3B) ”.
- (9) After subsection (7) insert—
- “(8) The powers conferred by this section enable only the making of such rules as appear to the regulator making them to be necessary or expedient—
- (a) in the case of the FCA, for the purpose of advancing one or more of its operational objectives, or
- (b) in the case of the PRA, for the purpose of advancing any of its objectives.”

VALID FROM 01/04/2013

- 4 (1) Section 342 (information given by auditor or actuary) is amended as follows.
- (2) In subsection (1), after “authorised person” insert “ or recognised investment exchange, ”.
- (3) In subsection (3)—
- (a) for “the Authority”, in the first place, substitute “ a regulator ”,
- (b) after “authorised person” insert “ or recognised investment exchange ”, and



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- (c) for “the Authority”, in the second place, substitute “ that regulator ”.
- (4) In subsection (4), for “Authority” substitute “ regulator ”.
- (5) In subsection (7), after “authorised person” insert “ or recognised investment exchange ”.
- (6) For “the Authority”, in each other place (including the heading), substitute “ a regulator ”.

VALID FROM 01/04/2013

- 5
- (1) Section 343 (information given by auditor or actuary: persons with close links) is amended as follows.
  - (2) In subsection (1)—
    - (a) in paragraph (a), after “authorised person” insert “ or recognised investment exchange, ”, and
    - (b) in paragraph (b), after “authorised person” insert “ or recognised investment exchange ”.
  - (3) In subsection (3)—
    - (a) for “the Authority”, in the first place, substitute “ a regulator ”,
    - (b) after “authorised person” insert “ or recognised investment exchange ”, and
    - (c) for “the Authority”, in the second place, substitute “ that regulator ”.
  - (4) In subsection (4), for “Authority” substitute “ regulator ”.
  - (5) in subsection (7), after “authorised person” insert “ or recognised investment exchange ”.
  - (6) In subsection (8), after “authorised person” insert “ or recognised investment exchange ”.
  - (7) For “the Authority”, in each other place (including the heading), substitute “ a regulator ”.

VALID FROM 01/04/2013

- 6
- (1) Section 344 (duty of auditor or actuary resigning to give notice) is amended as follows.
  - (2) In each place for “Authority” substitute “ appropriate regulator ”.
  - (3) In subsection (2)(a), after “authorised person” insert “ or recognised investment exchange ”.
  - (4) In subsection (3)(a), for “Authority's” substitute “regulator's”.
  - (5) After subsection (3) insert—
    - “(4) In this section “the appropriate regulator” means—
      - (a) in the case of an auditor of, or an actuary acting for, a PRA-  
authorised person, the PRA;

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(b) in any other case, the FCA.”

- 7 (1) For section 345 (disqualification of auditor or actuary) and the italic heading before it substitute—

*“Disciplinary measures*

**345 Disciplinary measures: FCA**

- (1) Subsection (2) applies if it appears to the FCA that an auditor or actuary to whom section 342 applies—
- (a) has failed to comply with a duty imposed on the auditor or actuary by rules made by the FCA, or
  - (b) has failed to comply with a duty imposed under this Act to communicate information to the FCA.
- (2) The FCA may do one or more of the following—
- (a) disqualify the auditor or actuary from being the auditor of, or (as the case may be) from acting as an actuary for, any authorised person or any particular class of authorised person;
  - (b) disqualify the auditor from being the auditor of any recognised investment exchange or any particular class of recognised investment exchange;
  - (c) publish a statement to the effect that it appears to the FCA that the auditor or (as the case may be) actuary has failed to comply with the duty;
  - (d) impose on the auditor or actuary a penalty, payable to the FCA, of such amount as the FCA considers appropriate.
- (3) If an auditor or actuary has been disqualified by the PRA under section 345A(4)(a), the FCA may disqualify the auditor or actuary, so long as the disqualification under that provision remains in force, from being the auditor of, or (as the case may be) from acting as an actuary for—
- (a) any FCA-authorised person,
  - (b) any particular class of FCA-authorised person,
  - (c) any recognised investment exchange, or
  - (d) any particular class of recognised investment exchange.
- (4) In subsection (3) “FCA-authorised person” means an authorised person who is not a PRA-authorised person.
- (5) Where under subsection (2) or (3) the FCA disqualifies a person from being the auditor of an authorised person or recognised investment exchange or class of authorised person or recognised investment exchange and that authorised person or recognised investment exchange is also, or any person within that class is also, a recognised clearing house, the FCA must —
- (a) notify the Bank of England, and
  - (b) notify the disqualified person that it has made a notification under paragraph (a).

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- (6) The FCA may remove any disqualification imposed under paragraph (a) or (b) of subsection (2) if satisfied that the disqualified person will in future comply with the duty in question.
- (7) The FCA may at any time remove any disqualification imposed under subsection (3).

### **345A Disciplinary measures: PRA**

- (1) The following provisions of this section have effect only if the Treasury, by order made after consultation with the PRA, so provide.
- (2) Subsection (3) applies if it appears to the PRA that an auditor or actuary to whom section 342 applies—
  - (a) has failed to comply with a duty imposed on the auditor or actuary by rules made by the PRA, or
  - (b) has failed to comply with a duty imposed under this Act to communicate information to the PRA.
- (3) The PRA may exercise one or more of the specified powers.
- (4) The specified powers are such one or more of the following as may be specified in the order under subsection (1)—
  - (a) to disqualify the auditor or actuary from being the auditor of, or (as the case may be) from acting as an actuary for, any PRA-authorised person or any particular class of PRA-authorised person;
  - (b) to publish a statement to the effect that it appears to the PRA that the auditor or (as the case may be) actuary has failed to comply with the duty;
  - (c) to impose on the auditor or actuary a penalty, payable to the PRA, of such amount as the PRA considers appropriate.
- (5) Where the PRA disqualifies a person under subsection (4)(a) it must—
  - (a) notify the FCA, and
  - (b) notify the person concerned that it has made a notification under paragraph (a).
- (6) Where the PRA disqualifies a person from being the auditor of a PRA-authorised person or class of PRA-authorised person, and that PRA-authorised person is also, or any person within that class is also, a recognised clearing house, the PRA must, in addition to complying with subsection (5)—
  - (a) notify the Bank of England, and
  - (b) notify the disqualified person that it has made a notification under paragraph (a).
- (7) The PRA may remove any disqualification imposed under subsection (4)(a) if satisfied that the disqualified person will in future comply with the duty in question.

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### **345B Procedure and right to refer to Tribunal**

- (1) If the FCA proposes to act under section 345(2) or the PRA proposes to act under section 345A(3), it must give the auditor or actuary to whom the action would relate a warning notice.
- (2) A warning notice about a proposal to impose a penalty must state the amount of the penalty.
- (3) A warning notice about a proposal to publish a statement must set out the terms of the statement.
- (4) If the FCA decides to act under section 345(2) or the PRA decides to act under section 345A(3), it must give the auditor or actuary to whom the action would relate a decision notice.
- (5) A decision notice about the imposition of a penalty must state the amount of the penalty.
- (6) A decision notice about the publication of a statement must set out the terms of the statement.
- (7) If the FCA decides to act under section 345(2) or the PRA decides to act under section 345A(3), the auditor or actuary concerned may refer the matter to the Tribunal.

### **345C Duty on publication of statement**

After a statement under section 345(2)(c) or 345A(4)(b) is published, the regulator that published it must send a copy of the statement to—

- (a) the auditor or actuary, and
- (b) any person to whom a copy of the decision notice was given under section 393(4).

### **345D Imposition of penalties on auditors or actuaries: statement of policy**

- (1) The FCA must prepare and issue a statement of its policy with respect to—
  - (a) the imposition of penalties under section 345(2)(d), and
  - (b) the amount of penalties under that provision.
- (2) If by virtue of an order under section 345A(1), the PRA has power to impose penalties under section 345A(4)(c), the PRA must prepare and issue a statement of its policy with respect to—
  - (a) the imposition of penalties under section 345A(4)(c), and
  - (b) the amount of penalties under that provision.
- (3) A regulator's policy in determining what the amount of a penalty should be must include having regard to—
  - (a) the seriousness of the contravention, and
  - (b) the extent to which the contravention was deliberate or reckless.
- (4) A regulator may at any time alter or replace a statement issued under this section.

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- (5) If a statement issued under this section is altered or replaced, the regulator must issue the altered or replacement statement.
- (6) A regulator must, without delay, give the Treasury a copy of any statement which it publishes under this section.
- (7) A statement issued under this section must be published by the regulator in the way appearing to the regulator to be best calculated to bring it to the attention of the public.
- (8) In deciding whether to exercise a power under section 345(2)(d) in the case of any particular contravention, the FCA must have regard to any statement of policy published by it under this section and in force at a time when the contravention occurred.
- (9) In deciding whether to exercise a power under section 345A(4)(c) in the case of any particular contravention, the PRA must have regard to any statement of policy published by it under this section and in force at a time when the contravention occurred.
- (10) A regulator may charge a reasonable fee for providing a person with a copy of the statement.

#### **345E Statements of policy: procedure**

- (1) Before a regulator issues a statement under section 345D, the regulator must publish a draft of the proposed statement in the way appearing to the regulator to be best calculated to bring it to the attention of the public.
- (2) The draft must be accompanied by notice that representations about the proposal may be made to the regulator within a specified time.
- (3) Before issuing the proposed statement, the regulator must have regard to any representations made to it in accordance with subsection (2).
- (4) If the regulator issues the proposed statement it must publish an account, in general terms, of—
  - (a) the representations made to it in accordance with subsection (2), and
  - (b) its response to them.
- (5) If the statement differs from the draft published under subsection (1) in a way which is, in the opinion of the regulator, significant, the regulator must (in addition to complying with subsection (4)) publish details of the difference.
- (6) A regulator may charge a reasonable fee for providing a person with a copy of a draft under subsection (1).
- (7) This section also applies to a proposal to alter or replace a statement.”

#### **Commencement Information**

**I235** Sch. 13 para. 7 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

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- 8 (1) Section 392 (application of sections 393 and 394) is amended as follows.
- (2) In paragraph (a), for “345(2) (whether as a result of subsection (1) of that section” substitute “ 345B(1) (whether as a result of section 345(2), 345A(3) ”.
- (3) In paragraph (b), for “345(3) (whether as a result of subsection (1) of that section” substitute “ 345B(4) (whether as a result of section 345(2), 345A(3) ”.

VALID FROM 01/04/2013

## SCHEDULE 14

Section 44

### AMENDMENTS OF PART 24 OF FSMA 2000: INSOLVENCY

- 1 Part 24 of FSMA 2000 is amended as follows.
- 2 In section 355 (interpretation of Part 24) at the end of subsection (1) insert—
- ““PRA-regulated person” means a person who—
- (a) is or has been a PRA-authorised person,
- (b) is or has been an appointed representative whose principal (or one of whose principals) is, or was, a PRA-authorised person, or
- (c) is carrying on or has carried on a PRA-regulated activity in contravention of the general prohibition.”
- 3 (1) Section 356 (powers to participate in proceedings: company voluntary arrangements) is amended as follows.
- (2) In subsections (1) and (2), for “the Authority” substitute “ or recognised investment exchange, the appropriate regulator ”.
- (3) In subsection (3)—
- (a) for “the Authority”, in the first place, substitute “ a regulator ”, and
- (b) for “the Authority”, in the second place, substitute “ the appropriate regulator ”.
- (4) After subsection (3) insert—
- “(4) The appropriate regulator” means—
- (a) in the case of a PRA-authorised person—
- (i) for the purposes of subsections (1) and (2), the FCA or the PRA, and
- (ii) for the purposes of subsection (3), each of the FCA and the PRA;
- (b) in any other case, the FCA.
- (5) If either regulator makes an application to the court under any of those provisions in relation to a PRA-authorised person, the other regulator is entitled to be heard at any hearing relating to the application.”

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- (5) In the heading, for “Authority's powers” substitute “ Powers of FCA and PRA ”.
- 4 (1) Section 357 (powers to participate in proceedings: individual voluntary arrangements) is amended as follows.
- (2) In subsections (1) to (5), for “Authority” substitute “ appropriate regulator ”.
- (3) In subsection (6)—
- (a) for “the Authority”, in the first place, substitute “ a regulator ”, and
- (b) for “the Authority”, in the second place, substitute “ the appropriate regulator ”.
- (4) After subsection (6) insert—
- “(7) The appropriate regulator” means—
- (a) in the case of a PRA-authorised person—
- (i) for the purposes of subsections (1) and (4) to (6), each of the FCA and the PRA, and
- (ii) for the purposes of subsection (3), the FCA or the PRA;
- (b) in any other case, the FCA.
- (8) If either regulator makes an application to the court under any of the provisions mentioned in subsection (5) in relation to a PRA-authorised person, the other regulator is entitled to be heard at any hearing relating to the application.”
- (5) In the heading, for “Authority's powers” substitute “ Powers of FCA and PRA ”.
- 5 (1) Section 358 (powers to participate in proceedings: trust deeds for creditors in Scotland) is amended as follows.
- (2) In subsections (1), (2) and (6), after “authorised person” insert “ or recognised investment exchange ”.
- (3) In subsections (2) to (4), for “Authority” substitute “ appropriate regulator ”.
- (4) In subsection (5)—
- (a) for “the Authority”, in the first place, substitute “ the appropriate regulator ”, and
- (b) for “the Authority”, in the second place, substitute “ that regulator ”.
- (5) In subsection (6), for “the Authority” substitute “ a regulator ”.
- (6) After subsection (6) insert—
- “(6A) The appropriate regulator” means—
- (a) in the case of a PRA-authorised person—
- (i) for the purposes of subsections (2), (3) and (4), each of the FCA and the PRA, and
- (ii) for the purposes of subsection (5), the FCA or the PRA;
- (b) in any other case, the FCA.”
- (7) In the heading, for “Authority's powers” substitute “ Powers of FCA and PRA ”.
- 6 (1) Section 359 (administration order) is amended as follows.

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- (2) In subsection (1)—
- (a) for “Authority” substitute “ FCA ”, and
  - (b) in paragraph (a), after “authorised person” insert “ or recognised investment exchange ”.
- (3) After subsection (1) insert—
- “(1A) The PRA may make an administration application under Schedule B1 to the 1986 Act or Schedule B1 to the 1989 Order in relation to a company or insolvent partnership which is a PRA-regulated person.”
- (4) In subsection (2), for “the Authority” substitute “ a regulator ”.
- (5) In subsection (4), in the definition of “authorised deposit taker”, for “Part IV”, in both places, substitute “ Part 4A ”.
- 7 (1) Section 361 (administrator's duty to report) is amended as follows.
- (2) For subsection (2) substitute—
- “(2) If the administrator thinks that the company or partnership is carrying on, or has carried on—
- (a) a regulated activity in contravention of the general prohibition, or
  - (b) a credit-related regulated activity in contravention of section 20,
- the administrator must report the matter to the appropriate regulator without delay.”
- (3) After subsection (2) insert—
- “(2A) The appropriate regulator” means—
- (a) where the regulated activity is a PRA-regulated activity, the FCA and the PRA;
  - (b) in any other case, the FCA.”
- (4) For subsection (3) substitute—
- “(3) Subsection (2) does not apply where—
- (a) the administration arises out of an administration order made on an application made or petition presented by a regulator, and
  - (b) the regulator's application or petition depended on a contravention by the company or partnership of the general prohibition.”
- (5) In the heading, for “Authority” substitute “ FCA and PRA ”.
- 8 (1) Section 362 (powers to participate in proceedings: administration orders) is amended as follows.
- (2) In subsection (1)—
- (a) omit “other than the Authority”, and
  - (b) in paragraph (a), after “authorised person” insert “ or recognised investment exchange ”.
- (3) After subsection (1A) insert—
- “(1B) This section also applies in relation to—



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- (a) the appointment under paragraph 22 of Schedule B1 to the 1986 Act (as applied by order under section 420 of the 1986 Act), or under paragraph 23 of Schedule B1 to the 1989 Order (as applied by order under Article 364 of the 1989 Order), of an administrator of a partnership of a kind described in subsection (1)(a) to (c), or
  - (b) the filing with the court of a copy of notice of intention to appoint an administrator under either of those paragraphs (as so applied).”
- (4) In subsections (2) to (6), for “Authority” substitute “ appropriate regulator ”.
- (5) After subsection (6) insert—
- “(7) The appropriate regulator” means—
- (a) for the purposes of subsections (2) to (4) and (6)—
    - (i) where the company or partnership is a PRA-regulated person, each of the FCA and the PRA, and
    - (ii) in any other case, the FCA;
  - (b) for the purposes of subsection (5)—
    - (i) where the company or partnership is a PRA-regulated person, the FCA or the PRA, and
    - (ii) in any other case, the FCA.
- (8) But where the administration application was made by a regulator “the appropriate regulator” does not include that regulator.”
- (6) In the heading, for “Authority's powers” substitute “ Powers of FCA and PRA ”.
- 9 (1) Section 362A (administrator appointed by company or directors) is amended as follows.
- (2) In subsection (1), after “company” insert “ or partnership ”.
- (3) For subsection (2) substitute—
- “(2) An administrator of the company or partnership may not be appointed under a provision specified in subsection (2A) without the consent of the appropriate regulator.
- (2A) Those provisions are—
- (a) paragraph 22 of Schedule B1 to the 1986 Act (including that paragraph as applied in relation to partnerships by order under section 420 of that Act);
  - (b) paragraph 23 of Schedule B1 to the 1989 Order (including that paragraph as applied in relation to partnerships by order under article 364 of that Order).
- (2B) “The appropriate regulator” means—
- (a) where the company or partnership is a PRA-regulated person, the PRA, and
  - (b) in any other case, the FCA.”
- 10 (1) Section 363 (powers to participate in proceedings: receivership) is amended as follows.

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- (2) In subsection (1)(a), after “authorised person” insert “ or recognised investment exchange ”.
- (3) In subsections (2) to (5), for “Authority” substitute “ appropriate regulator ”.
- (4) After subsection (5) insert—
- “(6) The appropriate regulator” means—
- (a) for the purposes of subsections (2) to (4)—
- (i) where the company is a PRA-regulated person, each of the FCA and the PRA, and
- (ii) in any other case, the FCA;
- (b) for the purposes of subsection (5)—
- (i) where the company is a PRA-regulated person, the FCA or the PRA, and
- (ii) in any other case, the FCA.”
- (5) In the heading, for “Authority's powers” substitute “ Powers of FCA and PRA ”.
- 11 In section 364 (receiver's duty to report to Authority)—
- (a) in paragraph (b), after “prohibition” insert “ or a credit-related regulated activity in contravention of section 20 ”,
- (b) for “to the Authority without delay” substitute “ without delay to the FCA and, if the regulated activity concerned is a PRA-regulated activity, to the PRA ”, and
- (c) in the heading, for “Authority” substitute “ FCA and PRA ”.
- 12 (1) Section 365 (powers to participate in proceedings: voluntary winding up) is amended as follows.
- (2) In subsection (1)(b), after “authorised person” insert “ or recognised investment exchange ”.
- (3) In subsections (2) to (7), for “Authority” substitute “ appropriate regulator ”.
- (4) After subsection (7) insert—
- “(8) The appropriate regulator” means—
- (a) for the purposes of subsections (2) to (4), (6) and (7)—
- (i) where the company is a PRA-authorized person, each of the FCA and the PRA, and
- (ii) in any other case, the FCA;
- (b) for the purposes of subsection (5)—
- (i) where the company is a PRA-authorized person, the FCA or the PRA, and
- (ii) in any other case, the FCA.”
- (5) In the heading, for “Authority's powers” substitute “ Powers of FCA and PRA ”.
- 13 (1) Section 366 (insurers effecting or carrying out long-term contracts of insurance) is amended as follows.
- (2) In subsections (1), (2) and (5), for “Authority” substitute “ PRA ”.
- (3) At the end insert—

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- “(9) Before giving or refusing consent under subsection (1), the PRA must consult the FCA.
- (10) In the event that the activity of effecting or carrying out long-term contracts of insurance as principal is not to any extent a PRA-regulated activity—
- (a) references to the PRA in subsections (1), (2) and (5) are to be read as references to the FCA, and
  - (b) subsection (9) does not apply.”
- 14 (1) Section 367 (winding-up petitions) is amended as follows.
- (2) In subsection (1)—
    - (a) for “Authority” substitute “ FCA ”, and
    - (b) in paragraph (a), after “authorised person” insert “ or recognised investment exchange ”.
  - (3) After that subsection insert—

“(1A) The PRA may present a petition to the court for the winding up of a body which is a PRA-regulated person.”
  - (4) In subsection (2), for “subsection (1)” substitute “ subsections (1) and (1A) ”.
  - (5) In subsection (6), after “(1)” insert “ or (1A) ”.
- 15 (1) Section 368 (winding-up petitions: EEA and Treaty firms) is amended as follows.
- (2) The existing provision becomes subsection (1).
  - (3) In that subsection—
    - (a) for “The Authority” substitute “ A regulator ”, and
    - (b) after “it” insert “ or the other regulator ”.
  - (4) After that subsection insert—

“(2) If a regulator receives from the home state regulator of a body falling within subsection (1)(a) or (b) a request to present a petition to the court under section 367 for the winding up of the body, it must—

    - (a) notify the other regulator of the request, and
    - (b) provide the other regulator with such information relating to the request as it thinks fit.”
- 16 (1) Section 369 (insurers: service of petition etc. on Authority) is amended as follows.
- (2) In subsection (1)—
    - (a) for “the Authority” substitute “ a regulator ”, and
    - (b) for “on the Authority” substitute “ on the appropriate regulator ”.
  - (3) In subsection (2)—
    - (a) for “the Authority” substitute “ a regulator ”, and
    - (b) for “on the Authority” substitute “ on the appropriate regulator ”.
  - (4) After that subsection insert—

“(3) The appropriate regulator” means—

    - (a) in relation to a PRA-authorized person, the FCA and the PRA, and

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- (b) in any other case, the FCA.
- (4) If either regulator—
- (a) presents a petition for the winding up of a PRA-authorized person with permission to effect or carry out contracts of insurance, or
  - (b) applies to have a provisional liquidator appointed under section 135 of the 1986 Act (or Article 115 of the 1989 Order) in respect of a PRA-authorized person with permission to effect or carry out contracts of insurance,
- that regulator must serve a copy of the petition or application (as the case requires) on the other regulator.”
- (5) In the heading, for “Authority” substitute “ FCA and PRA ”.
- 17 (1) Section 369A (reclaim funds: service of petition etc. on Authority) is amended as follows.
- (2) In subsection (1)—
- (a) for “other than the Authority” substitute “ other than a regulator ”, and
  - (b) for “on the Authority” substitute “ on the appropriate regulator ”.
- (3) In subsection (2)—
- (a) for “other than the Authority” substitute “ other than a regulator ”, and
  - (b) for “on the Authority” substitute “ on the appropriate regulator ”.
- (4) After subsection (3) insert—
- “(4) The appropriate regulator” means—
- (a) in relation to an authorised reclaim fund that is a PRA-authorized person, the FCA and the PRA, and
  - (b) in relation to any other authorised reclaim fund, the FCA.
- (5) If either regulator—
- (a) presents a petition for the winding up of an authorised reclaim fund that is a PRA-authorized person, or
  - (b) applies to have a provisional liquidator appointed under section 135 of the 1986 Act (or Article 115 of the 1989 Order) in respect of an authorised reclaim fund that is a PRA-authorized person,
- that regulator must serve a copy of the petition or application (as the case requires) on the other regulator.”
- (5) In the heading, for “Authority” substitute “ FCA and PRA ”.
- 18 For section 370 substitute—
- “370 Liquidator's duty to report to FCA and PRA**
- (1) If—
- (a) a company is being wound up voluntarily or a body is being wound up on a petition presented by any person, and
  - (b) it appears to the liquidator that the company or body is carrying on, or has carried on—

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- (i) a regulated activity in contravention of the general prohibition, or
      - (ii) a credit-related regulated activity in contravention of section 20,
    - the liquidator must report the matter without delay to the FCA and, if the regulated activity concerned is a PRA-regulated activity, to the PRA.
  - (2) Subsection (1) does not apply where—
    - (a) a body is being wound up on a petition presented by a regulator, and
    - (b) the regulator's petition depended on a contravention by the body of the general prohibition.”
- 19 (1) Section 371 (power to participate in proceedings: winding up by the court) is amended as follows.
- (2) In subsection (1)—
    - (a) omit “other than the Authority”, and
    - (b) in paragraph (a), after “authorised person” insert “ or recognised investment exchange ”.
  - (3) In subsections (2) to (5), for “Authority” substitute “ appropriate regulator ”.
  - (4) After subsection (5) insert—
    - “(6) The appropriate regulator” means—
      - (a) for the purposes of subsections (2), (3) and (5)—
        - (i) where the body is a PRA-regulated person, each of the FCA and the PRA, and
        - (ii) in any other case, the FCA;
      - (b) for the purposes of subsection (4)—
        - (i) where the body is a PRA-regulated person, the FCA or the PRA, and
        - (ii) in any other case, the FCA.
    - (7) But where the petition was presented by a regulator “the appropriate regulator” does not include the regulator which presented the petition.”
  - (5) In the heading, for “Authority's powers” substitute “ Powers of FCA and PRA ”.
- 20 (1) Section 372 (bankruptcy petitions) is amended as follows.
- (2) In subsection (1), for “Authority” substitute “ FCA ”.
  - (3) After that subsection insert—
    - “(1A) The PRA may present a petition to the court—
      - (a) under section 264 of the 1986 Act (or Article 238 of the 1989 Order) for a bankruptcy order to be made against an individual who is a PRA-regulated person;
      - (b) under section 5 of the 1985 Act for the sequestration of the estate of an individual who is a PRA-regulated person.”
    - (4) In subsection (2), for “such a petition may be presented” substitute “ a petition may be presented by virtue of subsection (1) or (1A) ”.

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- (5) In subsection (4)(a)—
- (a) for “the Authority”, in the first place, substitute “ a regulator ”, and
  - (b) for “the Authority”, in the second place, substitute “ that regulator ”.
- (6) In subsection (6)—
- (a) after “(1)(b)” insert “ or (1A)(b) ”, and
  - (b) in paragraph (a), for “the Authority” substitute “ the regulator by which the petition is presented ”.
- 21 (1) Section 373 (insolvency practitioner's duty to report to Authority) is amended as follows.
- (2) In subsection (1)—
- (a) in paragraph (a), omit the words from “by virtue of” to “Authority”,
  - (b) in paragraph (b), for the words from “carried on” to the end substitute “carried on—
    - (i) a regulated activity in contravention of the general prohibition, or
    - (ii) a credit-related regulated activity in contravention of section 20,”, and
  - (c) for “to the Authority without delay” substitute “ without delay to the FCA and, if the regulated activity concerned is a PRA-regulated activity, to the PRA ”.
- (3) After that subsection insert—
- “(1A) Subsection (1) does not apply where—
- (a) the bankruptcy order or sequestration award is in force by virtue of a petition presented by a regulator, and
  - (b) the regulator's petition depended on a contravention by the individual of the general prohibition.”
- (4) In the heading, for “to Authority” substitute “ to FCA and PRA ”.
- 22 (1) Section 374 (Authority's powers to participate in proceedings: bankruptcy) is amended as follows.
- (2) In subsection (1), omit “other than the Authority”.
- (3) In subsections (2) to (4), for “Authority” substitute “ appropriate regulator ”.
- (4) After subsection (6) insert—
- “(7) The appropriate regulator” means—
- (a) for the purposes of subsections (2) and (3)—
    - (i) where the individual or entity is a PRA-regulated person, each of the FCA and the PRA, and
    - (ii) in any other case, the FCA;
  - (b) for the purposes of subsection (4)—
    - (i) where the individual or entity is a PRA-regulated person, the FCA or the PRA, and
    - (ii) in any other case, the FCA.

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	<p>(8) But where the petition was presented by a regulator “the appropriate regulator” does not include the regulator which presented the petition.”</p>
	<p>(5) In the heading, for “Authority's powers” substitute “ Powers of FCA or PRA ”.</p>
23	<p>(1) Section 375 (Authority's right to apply for an order relating to debt avoidance) is amended as follows.</p> <p>(2) In subsection (1), for “Authority” substitute “ FCA ”.</p> <p>(3) After subsection (1) insert—</p> <p>“(1A) The PRA may apply for an order under section 423 of the 1986 Act (or Article 367 of the 1989 Order) in relation to a debtor if—</p> <p>(a) at the time the transaction at an undervalue was entered into, the debtor was carrying on a PRA-regulated activity (whether or not in contravention of the general prohibition); and</p> <p>(b) a victim of the transaction is or was party to an agreement entered into with the debtor, the making or performance of which constituted or was part of a PRA-regulated activity carried on by the debtor.”</p> <p>(4) In subsection (2), after “subsection (1)(b)” insert “ or subsection (1A)(b) (as the case may be) ”.</p> <p>(5) In the heading, for “Authority's right” substitute “ Right of FCA and PRA ”.</p>
24	<p>(1) Section 376 (continuation of contracts of long-term insurance where insurer in liquidation) is amended as follows.</p> <p>(2) In subsection (11)(c), for “Authority” substitute “ PRA ”.</p> <p>(3) After subsection (11) insert—</p> <p>“(11A) The PRA must—</p> <p>(a) consult the FCA before making an application under subsection (10), and</p> <p>(b) provide the FCA with a copy of any actuary's report made to the PRA under that subsection.</p> <p>(11B) In the event that the activity of effecting or carrying out long-term contracts of insurance as principal is not to any extent a PRA-authorized activity—</p> <p>(a) the reference in subsection (11)(c) to the PRA is to be read as a reference to the FCA, and</p> <p>(b) subsection (11A) does not apply.”</p>

SCHEDULE 15

Section 45

THE CONSUMER FINANCIAL EDUCATION BODY

- 1 Schedule 1A (further provision about the consumer financial education body) is amended as follows.



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**Commencement Information**

**I236** Sch. 15 para. 1 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 2 In paragraph 1 (ensuring exercise of functions) for “Authority”, in each place, substitute “ FCA ”.

**Commencement Information**

**I237** Sch. 15 para. 2 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 3 In paragraph 2 (constitution) for “Authority”, in each place, substitute “ FCA ”.

**Commencement Information**

**I238** Sch. 15 para. 3 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 4 In paragraph 3 (status), in sub-paragraph (2), omit “board members,”.

**Commencement Information**

**I239** Sch. 15 para. 4 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 5 In paragraph 4 (discharge of functions by others), in sub-paragraph (1)(a), for “section 6A(1)” substitute “ section 3S(3) ”.

**Commencement Information**

**I240** Sch. 15 para. 5 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 6 In paragraph 5 in sub-paragraph (1), for “section 6A(1)” substitute “ section 3S(3) ”.

**Commencement Information**

**I241** Sch. 15 para. 6 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 7 For paragraph 6 (and the italic heading before it) substitute—

*“Discharge of functions: considerations*

- 6 In discharging the consumer financial education function the consumer financial education body must have regard to the duty of the FCA to advance its operational objectives.

*Relationship with the FCA*

- 6A (1) The consumer financial education body and the FCA must each take such steps as it considers appropriate to co-operate with the other in the exercise of their functions under this Act.



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- (2) The consumer financial education body and the FCA must prepare and maintain a memorandum describing how they intend to comply with sub-paragraph (1).
  - (3) The consumer financial education body must ensure that the memorandum as currently in force is published in the way appearing to it to be best calculated to bring it to the attention of the public.
- 6B If the consumer financial education body considers that it has information that, in its opinion, would or might be of assistance to the FCA in advancing one or more of the FCA's operational objectives, it must disclose that information to the FCA.”

**Commencement Information**

I242 Sch. 15 para. 7 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 8 In paragraph 7 (budget) for “Authority”, in each place, substitute “ FCA ”.

**Commencement Information**

I243 Sch. 15 para. 8 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 9 In paragraph 8 (annual plan)—
- (a) for “Authority”, in each place, substitute “ FCA ”, and
  - (b) in sub-paragraph (6), after paragraph (d) insert—  
“(da) the Smaller Business Practitioner Panel;”.

**Commencement Information**

I244 Sch. 15 para. 9 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 10 In paragraph 9 (annual reports)—
- (a) for “Authority”, in each place, substitute “ FCA ”, and
  - (b) at the end insert—
    - “(5) The Treasury may—
      - (a) require the consumer financial education body to comply with any provision of the Companies Act 2006 about accounts and their audit which would not otherwise apply to it, or
      - (b) direct that any provision of that Act about accounts and their audit is to apply to the consumer financial education body with such modifications as are specified in the direction, whether or not the provision would otherwise apply to it.
    - (6) Compliance with any requirement under sub-paragraph (5)(a) or (b) is enforceable by injunction or, in Scotland, an order for specific performance under section 45 of the Court of Session Act 1988.

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(7) Proceedings under sub-paragraph (6) may be brought only by the Treasury.”

**Commencement Information**

**I245** Sch. 15 para. 10 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

11 After paragraph 9 insert—

*“Audit of accounts*

- 9A (1) The consumer financial education body must send a copy of its annual accounts to the Comptroller and Auditor General and the Treasury as soon as is reasonably practicable.
- (2) The Comptroller and Auditor General must—
- (a) examine, certify and report on accounts received under this paragraph, and
  - (b) send a copy of the certified accounts and the report to the Treasury.
- (3) The Treasury must lay the copy of the certified accounts and the report before Parliament.
- (4) The consumer financial education body must send a copy of the certified accounts and the report to the FCA.
- (5) Except as provided for by paragraph 9(5), the consumer financial education body is exempt from the requirements of Part 16 of the Companies Act 2006 (audit) and its balance sheet must contain a statement to that effect.
- (6) In this paragraph “annual accounts” has the meaning given by section 471 of the Companies Act 2006.”

**Commencement Information**

**I246** Sch. 15 para. 11 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

12 In paragraph 11 (meaning of “relevant costs”) for “Authority” substitute “ FCA ”.

**Commencement Information**

**I247** Sch. 15 para. 12 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

13 In paragraph 12 (funding) for “Authority”, in each place, substitute “ FCA ”.

**Commencement Information**

**I248** Sch. 15 para. 13 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

14 In paragraph 13 (funding by consumer credit licensees), in sub-paragraph (5)(a), for “Authority” substitute “ FCA ”.

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#### Commencement Information

**I249** Sch. 15 para. 14 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 15 In paragraph 15 (reviews of use of resources), for “Authority”, in each place, substitute “ FCA ”.

#### Commencement Information

**I250** Sch. 15 para. 15 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 16 In the title to the Schedule, in the marginal reference, for “Section 6A” substitute “ Section 3S ”.

#### Commencement Information

**I251** Sch. 15 para. 16 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

VALID FROM 01/04/2013

## SCHEDULE 16

Section 46

### PROVISION OF FINANCIAL SERVICES BY MEMBERS OF THE PROFESSIONS

- 1 In section 325 (general duty)—
- (a) for “Authority”, in each place, substitute “ FCA ”, and
  - (b) in the heading, for “Authority's” substitute “FCA's”.
- 2 In section 328 (directions relating to the general prohibition), for “Authority”, in each place, substitute “ FCA ”.
- 3 In section 329 (orders relating to the general prohibition), for “Authority”, in each place, substitute “ FCA ”.
- 4 In section 330 (consultation)—
- (a) for “Authority”, in each place, substitute “ FCA ”, and
  - (b) for subsection (10) substitute—
    - “(10) Cost benefit analysis” means—
      - (a) an analysis of the costs together with an analysis of the benefits that will arise—
        - (i) if the proposed direction is given, or
        - (ii) if subsection (5)(b) applies, from the direction that has been given, and
      - (b) subject to subsection (10A), an estimate of those costs and of those benefits.
- (10A) If, in the opinion of the FCA—

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	(a) the costs or benefits referred to in subsection (10) cannot reasonably be estimated, or
	(b) it is not reasonably practicable to produce an estimate, the cost benefit analysis need not estimate them, but must include a statement of the FCA's opinion and an explanation of it.”
5	In section 331 (procedure for making orders), for “Authority”, in each place, substitute “ FCA ”.
6	In section 332 (rules relating to persons to whom the general prohibition does not apply), for “Authority”, in each place, substitute “ FCA ”.

VALID FROM 01/04/2013

## SCHEDULE 17

Section 106

### AMENDMENTS OF BANKING ACT 2009 RELATED TO PART 2 OF THIS ACT

#### PART 1

##### AMENDMENTS OF PART 1 OF THE ACT

1	Part 1 of the Banking Act 2009 is amended as follows.		
2	(1) Section 1 (overview) is amended as follows.		
	(2) In subsection (5), for paragraph (c) and the “and” before it, substitute—		
	“(c) the Prudential Regulation Authority, and		
	(d) the Financial Conduct Authority.”		
	(3) In the Table, after the entry relating to sections 82 and 83, insert—		
	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%; padding: 5px;">“Section 83A</td> <td style="padding: 5px;">Banks not regulated by the PRA”.</td> </tr> </table>	“Section 83A	Banks not regulated by the PRA”.
“Section 83A	Banks not regulated by the PRA”.		
3	In section 2 (interpretation: “bank”), for “Part 4” substitute “ Part 4A ”.		
4	In section 3 (interpretation: other expressions), for the definition of “the FSA” and the “and” following it, substitute—		
	““the PRA” means the Prudential Regulation Authority,		
	“the FCA” means the Financial Conduct Authority, and”.		
5	In section 4 (special resolution objectives), in subsection (3), for paragraph (b) and the “and” following it, substitute—		
	“(b) the PRA,		
	(ba) the FCA, and”.		
6	In section 5 (code of practice), in subsection (5), for paragraph (b) and the “and” following it, substitute—		
	“(b) the PRA,		

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	(ba) the FCA, and”.
7	(1) Section 6 (code of practice: procedure) is amended as follows. (2) Omit subsections (1) and (2). (3) For subsection (4) substitute— “(4) Before re-issuing the code of practice the Treasury must consult— (a) the PRA, (b) the FCA, (c) the Bank of England, and (d) the scheme manager of the Financial Services Compensation Scheme (established under Part 15 of the Financial Services and Markets Act 2000). (5) As soon as is reasonably practicable after re-issuing the code of practice the Treasury shall lay a copy before Parliament.”
8	(1) Section 7 (general conditions) is amended as follows. (2) In subsection (1), for “FSA” substitute “ PRA ”. (3) In subsection (2), omit the words from “(within” to the end. (4) In subsection (4), for “FSA” substitute “ PRA ”. (5) After that subsection insert— “(4A) The threshold conditions” means the threshold conditions, as defined by subsection (1) of section 55B of the Financial Services and Markets Act 2000, for which the PRA is treated as responsible under subsection (2) of that section.” (6) In subsection (5)— (a) for “FSA” substitute “ PRA ”, and (b) at the end of paragraph (a) insert— “(aa) the FCA,”.
9	In section 8 (specific conditions: private sector purchaser and bridge bank), in subsection (3), for paragraph (a) and the “and” following it, substitute— “(a) the PRA, (aa) the FCA, and”.
10	In section 9 (specific conditions: temporary public ownership), in subsection (4), for paragraph (a) and the “and” following it, substitute— “(a) the PRA, (aa) the FCA, and”.
11	In section 10 (Banking Liaison Panel), in subsection (3), for paragraph (c) substitute— “(c) a member appointed by the PRA, (ca) a member appointed by the FCA,”.
12	In section 24 (procedure: instruments), in subsection (1), for paragraph (c) and the “and” following it, substitute— “(c) the PRA,

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	(ca) the FCA, and”.
13	In section 25 (procedure: orders), in subsection (2), for paragraph (c) and the “and” following it, substitute— “(c) the PRA, (ca) the FCA, and”.
14	In section 26 (supplemental instruments), in subsection (5), for paragraph (a) and the “and” following it, substitute— “(a) the PRA, (aa) the FCA, and”.
15	In section 27 (supplemental orders), in subsection (5), for paragraph (a) and the “and” following it, substitute— “(a) the PRA, (aa) the FCA, and”.
16	In section 28 (onward transfer), in subsection (6), for paragraph (a) and the “and” following it, substitute— “(a) the PRA, (aa) the FCA, and”.
17	In section 29 (reverse share transfer), in subsection (6), for paragraph (a) and the “and” following it, substitute— “(a) the PRA, (aa) the FCA, and”.
18	In section 30 (bridge bank: share transfers), in subsection (5), for paragraph (a) and the “and” following it, substitute— “(a) the PRA, (aa) the FCA, and”.
19	In section 31 (bridge bank: reverse share transfer), in subsection (5), for paragraph (a) and the “and” following it, substitute— “(a) the PRA, (aa) the FCA, and”.
20	In section 41 (procedure), in subsection (1), for paragraph (c) and the “and” following it, substitute— “(c) the PRA, (ca) the FCA, and”.
21	In section 42 (supplemental instruments), in subsection (5), for paragraph (a) and the “and” following it, substitute— “(a) the PRA, (aa) the FCA, and”.
22	In section 43 (onward transfer), in subsection (7), for paragraph (a) and the “and” following it, substitute— “(a) the PRA, (aa) the FCA, and”.
23	In section 44 (reverse property transfer), in subsection (6), for paragraph (a) and the “and” following it, substitute— “(a) the PRA,

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- (aa) the FCA, and”.
- 24 In section 45 (temporary public ownership: property transfer), in subsection (8), for paragraph (a) and the “and” following it, substitute—
- “(a) the PRA,  
(aa) the FCA, and”.
- 25 In section 46 (temporary public ownership: reverse property transfer), in subsection (7), for paragraph (a) and the “and” following it, substitute—
- “(a) the PRA,  
(aa) the FCA, and”.
- 26 In section 57 (valuation principles), in subsection (4)(a), for “Part 4” substitute “Part 4A”.
- 27 (1) Section 82 (temporary public ownership) is amended as follows.
- (2) In subsection (2), for “the FSA are” substitute “the PRA is”.
- (3) In subsection (5), for paragraph (a) and the “and” following it, substitute—
- “(a) the PRA,  
(aa) the FCA, and”.
- 28 After section 83 insert—

*“Banks not regulated by PRA*

### **83A Modifications of Part**

(1) In the application of this Part to an FCA-regulated bank the modifications specified in the Table apply.

(2) In this section—

“FCA-regulated bank” means a bank which does not carry on any activity which is a PRA-regulated activity for the purposes of the Financial Services and Markets Act 2000;

“immediate group” has the meaning given by section 421ZA of the Financial Services and Markets Act 2000;

“PRA-authorized person” has the meaning given by section 2B(5) of that Act.

## **PART 2**

### **AMENDMENTS OF PART 2 OF THE ACT**

- 29 Part 2 of the Banking Act 2009 is amended as follows.
- 30 In section 91 (interpretation: “bank”), for “Part 4” substitute “Part 4A”.
- 31 In section 93 (interpretation: other expressions), for subsection (1) substitute—
- “(1) In this Part—
- (a) “the PRA” means the Prudential Regulation Authority, and
- (b) “the FCA” means the Financial Conduct Authority.”

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- 32 In section 95 (application), in subsection (1)(b), for “FSA” substitute “ PRA ”.
- 33 In section 96 (grounds for applying), for “FSA”, in each place, substitute “ PRA ”.
- 34 In section 97 (grounds for making), in subsection (1), for “FSA” substitute “ PRA ”.
- 35 In section 98 (commencement), in subsection (2), for “FSA”, in both places, substitute “ PRA ”.
- 36 (1) Section 100 (liquidation committee) is amended as follows.
- (2) For subsection (2) substitute—
- “(2) The liquidation committee is to consist initially of—
- (a) two individuals nominated by the Bank of England,
- (b) one individual nominated by the PRA,
- (c) one individual nominated by the FCA, and
- (d) one individual nominated by the FSCS.”
- (3) In subsection (6)(c), for “and the FSA” substitute “ , the PRA and the FCA ”.
- 37 In section 101 (liquidation committee: supplemental), in subsection (7), for “FSA” substitute “ PRA, the FCA ”.
- 38 In section 103 (general powers, duties and effect), in the Table—
- (a) in the entry relating to section 147 of the Insolvency Act 1986, for “FSA” substitute “ PRA ”, and
- (b) in the entry relating to section 241 of that Act, for “FSA” substitute “ PRA ”.
- 39 (1) Section 108 (removal by court) is amended as follows.
- (2) In subsection (1)(b), for “FSA” substitute “ PRA ”.
- (3) In subsection (2)—
- (a) for “FSA” substitute “ PRA ”, and
- (b) after “England” insert “ and the FCA ”.
- (4) In subsection (3), for “FSA” substitute “ PRA and the FCA ”.
- 40 In section 109 (removal by creditors), in subsection (4) for “and the FSA” substitute “ , the PRA and the FCA ”.
- 41 In section 113 (company voluntary arrangement), in subsection (2)(b), for sub-paragraph (i) substitute—
- “(i) the PRA,
- (ia) the FCA,”.
- 42 In section 115 (dissolution), in subsection (2)(b), for sub-paragraph (i) substitute—
- “(i) the PRA,
- (ia) the FCA,”.
- 43 In section 117 (bank insolvency as alternative order), in subsection (2)(a)—
- (a) for “FSA” substitute “ PRA ”, and
- (b) after “England” insert “ and the FCA ”.



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- 44 (1) Section 120 (notice of preliminary steps) is amended as follows.
- (2) For “FSA”, in each place (including the heading), substitute “ PRA ”.
- (3) In subsection (6), after “filed” insert “ (in Scotland, lodged) ”.
- (4) In subsection (10), in paragraph (a), after “England” insert “ and the FCA ”.

45 After section 129 insert—

**“129A Banks not regulated by PRA**

(1) In the application of this Part to an FCA-regulated bank the modifications specified in the Table apply.

(2) In this section—

“FCA-regulated bank” means a bank which does not carry on any activity which is a PRA-regulated activity for the purposes of the Financial Services and Markets Act 2000;

“immediate group” has the meaning given by section 421ZA of the Financial Services and Markets Act 2000;

“PRA-authorised person” has the meaning given by section 2B(5) of that Act.

**PART 3**

AMENDMENTS OF PART 3 TO THE ACT

46 Part 3 of the Banking Act 2009 is amended as follows.

47 In section 147 (administrator's proposals), in subsection (6), for “FSA” substitute “ PRA and a copy of it to the FCA ”.

48 In section 153 (successful rescue), in subsection (3), for “FSA” substitute “ PRA and the FCA ”.

49 In section 157 (other processes), in subsection (1), for “Before exercising an insolvency power in respect of a residual bank the FSA” substitute “ Before the PRA or the FCA exercises an insolvency power in respect of a residual bank, whichever of them is exercising the power ”.

50 After section 157 insert—

**“157A Banks not regulated by PRA**

(1) In the application of this Part to an FCA-regulated bank the modifications specified in the Table apply.

(2) In this section “FCA-regulated bank” means a bank which does not carry on any activity which is a PRA-regulated activity for the purposes of the Financial Services and Markets Act 2000.

51 In section 166 (interpretation: general), for subsection (2) substitute—

“(2) In this Part—

“the FCA” means the Financial Conduct Authority, and

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“the PRA” means the Prudential Regulation Authority.”

## PART 4

### AMENDMENTS OF PARTS 4 TO 6 OF THE ACT

- 52           Parts 4 to 6 of the Banking Act 2009 are amended as follows.
- 53           (1) Section 183 (interpretation of Part 5) is amended as follows.
- (2) In paragraph (c)—
- (a) for “section 3(2)” substitute “ section 11 ”, and
- (b) omit “(market confidence)”.
- (3) For paragraph (e), and the “and” before it, substitute—
- “(e) the FCA” means the Financial Conduct Authority,
- (f) “Part 4A permission” has the meaning given by section 55A of the Financial Services and Markets Act 2000,
- (g) “the PRA” means the Prudential Regulation Authority,
- (h) “PRA-regulated activity” has the meaning given by section 22A of the Financial Services and Markets Act 2000, and
- (i) “recognised investment exchange” has the meaning given by section 285 of that Act.”
- 54           In section 223 (termination of right to issue), in subsections (5) and (6), for “Part 4” substitute “ Part 4A ”.
- 55           (1) Section 232 (definition) is amended as follows.
- (2) In subsections (2) and (6)(a), for “Part 4” substitute “ Part 4A ”.
- (3) In subsection (5B), in the definition of “rules”, for “section 139(1)” substitute “ section 137B(1) ”.
- (4) After subsection (6) insert—
- “(7) The Treasury may by order amend the definition of “investment activity” in subsection (5B), including by defining that term by reference to rules or guidance made by the PRA or the FCA under the Financial Services and Markets Act 2000.”
- 56           In section 234 (regulations: details), for subsection (8)(b) substitute—
- “(b) the Prudential Regulation Authority,
- (ba) the Financial Conduct Authority,”.
- 57           In section 235 (regulations: procedure), at the end insert—
- “(6) An order under section 232(7)—
- (a) is to be made by statutory instrument, and
- (b) is subject to annulment in pursuance of a resolution of either House of Parliament.”
- 58           In section 246 (information), in subsection (2)—
- (a) for paragraph (b) substitute—
- “(b) the Prudential Regulation Authority;

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	(ba) the Financial Conduct Authority;”, and
	(b) in paragraph (d), for “or the Financial Services Authority” substitute, “the Prudential Regulation Authority or the Financial Conduct Authority”.
59	(1) Section 249 (functions) is amended as follows.
	(2) In subsection (1)—
	(a) for “Financial Services Authority” substitute “ Prudential Regulation Authority or the Financial Conduct Authority ”, and
	(b) for “the Authority” substitute “ that authority ”.
	(3) In subsection (2), for “Financial Services Authority” substitute “ Prudential Regulation Authority or the Financial Conduct Authority ”.
	(4) Omit subsection (3).
60	In section 250 (information), for “Financial Services Authority” substitute “ Prudential Regulation Authority. ”
61	(1) Section 259 (statutory instruments) is amended as follows.
	(2) In the entry in the Table relating to section 232, for “232” substitute “ 232(6) ”.
	(3) After that entry insert—
“232(7)	Investment banks: definition of investment Negative resolution”.
	activity
	(4) In the entry in the Table relating to section 249, for “FSA—” substitute “ PRA or FCA— ”.
62	In the Table in section 261 (index of defined terms)—
	(a) after the entry relating to “enactment” insert—
	“FCA 3, 93, 166 & 183”
	(b) omit the entry relating to the FSA, and
	(c) after the entry relating to “partial property transfer” insert—
	“PRA 3, 93, 166 & 183”.

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## SCHEDULE 18

Section 114(1)

## FURTHER MINOR AND CONSEQUENTIAL AMENDMENTS

## PART 1

## AMENDMENTS OF FSMA 2000

VALID FROM 01/04/2013

1 FSMA 2000 is amended as follows.

VALID FROM 01/04/2013

- 2
- (1) Section 33 (withdrawal of authorisation) is amended as follows.
  - (2) In subsection (1)(a), for “Part IV permission” substitute “ Part 4A permission ”.
  - (3) In subsection (2), for “Authority” substitute “ appropriate regulator ”.
  - (4) After that subsection insert—
    - “(2A) In subsection (2) “the appropriate regulator” means—
    - (a) in the case of a PRA-authorised person, the PRA, and
    - (b) in any other case, the FCA.”
  - (5) In the heading, omit “by the Authority”.

VALID FROM 01/04/2013

- 3
- (1) Section 36 (persons authorised as a result of being concerned in collective investment schemes) is amended as follows.
  - (2) In subsection (1), for “Authority” substitute “ FCA ”.
  - (3) In subsection (2), for “Part IV permission” substitute “ Part 4A permission ”.

VALID FROM 01/04/2013

4 In section 38 (exemption orders), in subsection (2), for “Part IV permission” substitute “ Part 4A permission ”.

- 5
- (1) Section 39 (exemption of appointed representatives) is amended as follows.
  - (2) In subsection (1B), for “Authority”, in each place, substitute “ FCA ”.
  - (3) For subsection (4) substitute—
    - “(4) In determining whether an authorised person has complied with—
    - (a) a provision contained in or made under this Act, or

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- (b) a qualifying EU provision that is specified, or of a description specified, for the purposes of this subsection by the Treasury by order,

anything which a relevant person has done or omitted as respects business for which the authorised person has accepted responsibility is to be treated as having been done or omitted by the authorised person.”

#### Commencement Information

**I252** Sch. 18 para. 5 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2

VALID FROM 01/04/2013

- 6 In section 39A (tied agents operating outside the United Kingdom), for “Authority”, in each place, substitute “ FCA ”.

VALID FROM 01/04/2013

- 7 In section 97(1)(d) (contravention of Part 6 rules: appointment of persons to carry out investigations), for “83, 85, 87G or 98” substitute “ 85 or 87G ”.

VALID FROM 01/04/2013

- 8 In section 177 (offences), in subsection (2), after “director or” insert “ other ”.

VALID FROM 01/04/2013

- 9 (1) In each of the provisions of Part 17 (collective investment schemes) mentioned in sub-paragraph (2), for “Authority”, or “Authority's”, in each place, substitute “ FCA ” or “FCA's”.

(2) Those provisions are—

- (a) sections 237 to 239;
- (b) sections 242 to 252A;
- (c) sections 254 to 262 (including the heading to section 259);
- (d) section 264;
- (e) section 266;
- (f) sections 271 to 283B.

- 10 (1) Section 249 (disqualification of auditor for breach of trust scheme rules) is amended as follows.

(2) In subsection (1) for the words from “it may” to the end substitute “it may do one or more of the following—

- (a) disqualify the auditor from being the auditor of any authorised unit trust scheme or authorised open-ended investment company;

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- (b) publish a statement to the effect that it appears to the FCA that the auditor has failed to comply with the duty;
- (c) impose on the auditor a penalty, payable to the FCA, of such amount as the FCA considers appropriate.”

(3) For subsection (2) substitute—

“(2) Sections 345B to 345E have effect in relation to the taking of action under subsection (1) as they have effect in relation to the taking of action under section 345(2).”

(4) For the heading substitute “ Disciplinary measures ”.

#### Commencement Information

**I253** Sch. 18 para. 10 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

VALID FROM 01/04/2013

11 (1) Section 250 (modification or waiver of rules) is amended as follows.

(2) In subsection (4)—

- (a) for “Subsections (3) to (9) and (11) of section 148” substitute “ Section 138A and subsections (1) to (3), (5) and (6) of section 138B ”,
- (b) for “section 148(2)” substitute “ section 138A(1) ”, and
- (c) in paragraph (c), for “subsection (7)(b)” substitute “ section 138B(3)(c) ”.

(3) In subsection (5)—

- (a) for “Subsections (3) to (9) and (11) of section 148” substitute “ Section 138A and subsections (1) to (3), (5) and (6) of section 138B ”,
- (b) for “section 148(2)” substitute “ section 138A(1) ”,
- (c) in paragraph (a), for “subsection (4)(a)” substitute “ subsection (4)(a) of section 138A ”,
- (d) in paragraph (b), for “subsection (7)(b) and (11)” substitute “ section 138B(3)(c) and the definition of “immediate group” in section 421ZA as it applies to that section ”,
- (e) in paragraph (c), for “subsection (7)(b)” substitute “ section 138B(3)(c) ”,
- (f) in paragraph (d), for “subsection (8)” substitute “ section 138B(5) ”, and
- (g) in paragraph (e), for “subsection (9)” substitute “ section 138A(7) ”.

VALID FROM 01/04/2013

12 In section 257 (directions), in subsection (5), for “section 150” substitute “ section 138D ”.

VALID FROM 01/04/2013

13 In section 267 (power to suspend promotion of scheme)—

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- (a) in subsections (1), (2), (4) (in both places) and (5) (in both places), for “Authority” substitute “ FCA ”, and
- (b) in the heading for “Authority” substitute “ FCA ”.

VALID FROM 01/04/2013

- 14 In section 268 (section 267: procedure)—
- (a) in subsection (2), for “Authority” substitute “ FCA ”,
  - (b) in subsection (3), for “the Authority” substitute “ the FCA ”,
  - (c) in subsection (4)(c), for “Authority's” substitute “FCA's”,
  - (d) in subsections (4)(d), (5) and (6) for “Authority” substitute “ FCA ”,
  - (e) in subsection (7), for “The Authority” substitute “ The FCA ”,
  - (f) in subsection (8), for “Authority” substitute “ FCA ”,
  - (g) in subsection (9), for “The Authority” substitute “ The FCA ”,
  - (h) in subsection (13), for “Authority's” substitute “FCA's”, and
  - (i) in the heading, for “Authority's” substitute “FCA's”.

VALID FROM 01/04/2013

- 15 In section 269 (procedure: application for variation or revocation of direction)—
- (a) in subsections (1), (2), (4) and (5), for “Authority” substitute “ FCA ”, and
  - (b) in subsection (6), for “The Authority” substitute “ The FCA ”.

VALID FROM 01/04/2013

- 16 In section 270 (schemes authorised in designated countries or territories)—
- (a) in subsection (1), in each place, for “Authority” substitute “ FCA ”,
  - (b) in subsections (2)(b) and (5) (in both places), for “the Authority” substitute “ the FCA ”, and
  - (c) in subsection (6), for “Authority” substitute “ FCA ”.

VALID FROM 01/04/2013

- 17 In section 284 (power to investigate), in subsection (11), for “the Authority” substitute “ the FCA ”.

VALID FROM 01/04/2013

- 18 In section 404 (consumer redress scheme), for “Authority”, in each place, substitute “ FCA ”.

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VALID FROM 01/04/2013

- 19 In section 404A (supplementary provision relating to rules under section 404), for “Authority” or “Authority's”, in each place, substitute “ FCA ” or “FCA's”.

VALID FROM 01/04/2013

- 20 (1) Section 404F (definitions etc.) is amended as follows.
- (2) For “Authority”, in each place, substitute “ FCA ”.
- (3) In subsection (8), for paragraph (a) substitute—
- “(a) the variation under section 55H or 55J of a Part 4A permission,
  - (aa) the imposition or variation of a requirement under section 55L, or”.

VALID FROM 01/04/2013

- 21 (1) Section 405 (directions) is amended as follows.
- (2) In subsection (1)—
- (a) for “Authority” substitute “ appropriate regulator ”,
  - (b) in paragraph (a), for “Part IV” substitute “ Part 4A ”, and
  - (c) in paragraphs (c) and (d), for “notice of control” substitute “ section 178 notice ”.
- (3) In subsection (2)(b), for “notices of control” substitute “ section 178 notices ”.
- (4) After subsection (4) insert—
- “(4A) The appropriate regulator”—
- (a) for the purposes of subsection (1)(a) and (b), is the regulator to which the application for permission under Part 4A is made;
  - (b) for the purposes of subsection (1)(c) and (d), is the appropriate regulator as defined in section 178(2A).
- (4B) “Section 178 notice” means a notice given under section 178.”

VALID FROM 01/04/2013

- 22 (1) Section 407 (consequences of a direction under section 405) is amended as follows.
- (2) In subsection (1)—
- (a) for “the Authority”, in the first place, substitute “ a regulator ”,
  - (b) in paragraph (a), for “subsections (7) to (9) of section 52 do” substitute “ section 55X does ”, and
  - (c) in paragraph (b), for “Authority” substitute “ regulator ”.
- (3) In subsection (2)—
- (a) for “the Authority”, in the first place, substitute “ a regulator ”,



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(b) in paragraph (a), for “section 52(1) and (2)” substitute “ subsections (1) to (3) of section 55V ”, and

(c) in paragraph (b), for “Authority” substitute “ regulator ”.

(4) In subsection (3)—

(a) for “the Authority”, in the first place, substitute “ a regulator ”, and

(b) in paragraph (b), for “Authority” substitute “ regulator ”.

VALID FROM 01/04/2013

23 In section 409 (Gibraltar), in subsection (2), for “Part IV permission” substitute “ Part 4A permission ”.

VALID FROM 01/04/2013

24 In section 415 (jurisdiction in civil proceedings), in subsection (1), for paragraph (a) substitute—

“(a) the FCA,

(aa) the PRA,

(ab) the Bank of England.”.

VALID FROM 01/04/2013

25 (1) Section 415A (interpretation of powers under the Act) is amended as follows.

(2) For “Authority” substitute “ FCA, the PRA or the Bank of England ”.

(3) In the heading to the section and the italic heading before it, for “of the Authority” substitute “ under the Act ”.

VALID FROM 01/04/2013

26 In paragraph 8 of Schedule 6 (additional threshold conditions), in subparagraph (2)(b), for “the Authority” substitute “ such of the FCA or the PRA as may be specified, ”.

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VALID FROM 01/04/2013

## PART 2

### AMENDMENTS OF OTHER ACTS OF PARLIAMENT

#### *Bankers' Books Evidence Act 1879 (c. 11)*

- 27 In section 9 of the Bankers' Books Evidence Act 1879 (interpretation), in subsection (1A)(a), for “Part 4” substitute “ Part 4A ”.

#### *Agricultural Credits Act 1928 (c. 43)*

- 28 In section 5 of the Agricultural Credits Act 1928 (agricultural charges on farming stock and assets), in subsection (7), in the definition of “Bank”, for “Part 4” substitute “ Part 4A ”.

#### *Agricultural Credits (Scotland) Act 1929 (19 & 20 Geo. 5 c. 13)*

- 29 In section 9 of the Agricultural Credits (Scotland) Act 1929 (interpretation), in subsection (2), in the definition of “Bank”, for “Part 4” substitute “ Part 4A ”.

#### *Fire Services Act 1947 (c. 41)*

- 30 In section 27A of the Fire Services Act 1947 (information in connection with firemen's pensions etc.) (as that section continues to have effect by virtue of the Firefighters' Pension Scheme (England and Scotland) Order 2004 and the Fire and Rescue Services Act 2004 (Firefighters' Pension Scheme) (Wales) Order 2004), in subsection (2)(a), for “section 150” substitute “ section 138D ”.

#### *Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 (c. 65)*

- 31 In section 57 of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 (life policies: supplementary provisions), in subsection (5A), for “section 150” substitute “ section 138D ”.

#### *Theft Act 1968 (c. 60)*

- 32 In section 24A of the Theft Act 1968 (dishonestly retaining a wrongful credit), in subsection (9), for paragraph (c) substitute—  
“(c) a person falling within any of paragraphs (a) to (j) of the definition of “electronic money issuer” in regulation 2(1) of the Electronic Money Regulations 2011.”

#### *Decimal Currency Act 1969 (c. 19)*

- 33 In section 7 of the Decimal Currency Act 1969 (payments under friendly society and industrial assurance contracts: supplemental), in subsection (5), for “section 138” substitute “ sections 137A and 137G ”.

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*Employers' Liability (Compulsory Insurance) Act 1969 (c. 57)*

- 34 In section 1 of the Employers' Liability (Compulsory Insurance) Act 1969 (insurance against liability for employees), in subsection (3)(b)(i), for “Part 4” substitute “ Part 4A ”.

*Superannuation Act 1972 (c. 11)*

- 35 In section 1 of the Superannuation Act 1972 (superannuation schemes: civil servants), in subsection (9), in the definition of “authorised provider”, for “Part 4” substitute “ Part 4A ”.

*Employment Agencies Act 1973 (c. 35)*

- 36 In section 9 of the Employment Agencies Act 1973 (inspection), in subsection (1AC), for “Part 4” substitute “ Part 4A ”.

*Consumer Credit Act 1974 (c. 39)*

- 37 (1) The Consumer Credit Act 1974 is amended as follows.
- (2) In section 16 (exempt agreements)—
- (a) in subsection (3A), in the Table—
- (i) for “Financial Services Authority”, in the first place, substitute “ Financial Conduct Authority ”, and
- (ii) for “and the Financial Services Authority”, substitute “ , the Financial Conduct Authority and the Prudential Regulation Authority ”, and
- (b) in subsection (10), in paragraphs (a)(i) and (b)(i), for “Part 4” substitute “Part 4A.
- (3) In section 25 (licensee to be a fit person), in subsection (1B)—
- (a) for “Part 4” substitute “ Part 4A ”, and
- (b) for “the Financial Services Authority” substitute “ the regulator which granted the permission under Part 4A ”.
- (4) In section 35 (the register), in subsection (1A), for “Financial Services Authority” substitute “ Financial Conduct Authority or the Prudential Regulation Authority ”.

*Solicitors Act 1974 (c. 47)*

- 38 In section 87 of the Solicitors Act 1974 (interpretation), in the definition of “bank” in subsection (1) and in subsection (1A)(a), for “Part 4” substitute “ Part 4A ”.

*House of Commons Disqualification Act 1975 (c. 24)*

- 39 In Part 3 of Schedule 1 to the House of Commons Disqualification Act 1975 (other disqualifying offices)—
- (a) omit the entry “Member of the governing body of the Financial Services Authority”, and

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- (b) at the appropriate place in each case insert— “ Member of the governing body of the Financial Conduct Authority; ”; “ Member of the governing body of the Prudential Regulation Authority; ”.

*Northern Ireland Assembly Disqualification Act 1975 (c. 25)*

40 In Part 3 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (other disqualifying offices)—

- (a) omit the entry “Member of the governing body of the Financial Services Authority”, and
- (b) at the appropriate place in each case insert— “ Member of the governing body of the Financial Conduct Authority; ”; “ Member of the governing body of the Prudential Regulation Authority; ”.

*Police Pensions Act 1976 (c. 35)*

41 In section 8A of the Police Pensions Act 1976 (information in connection with police pensions etc.), in subsection (2)(a), for “section 150” substitute “ section 138D ”.

*Judicial Pensions Act 1981 (c. 20)*

42 In section 33A of the Judicial Pensions Act 1981 (voluntary contributions), in subsection (9), in paragraph (a) of the definition of “authorised provider”, for “Part 4” substitute “ Part 4A ”.

*Lloyd's Act 1982 (c. xiv)*

43 In section 7 of the Lloyd's Act 1982 (the Disciplinary Committee and the Appeal Tribunal), in subsection (1A)(c), for “Financial Services Authority” substitute “ Prudential Regulation Authority or the Financial Conduct Authority ”.

*Inheritance Tax Act 1984 (c. 51)*

44 In section 59 of the Inheritance Tax Act 1984 (qualifying interest in possession), in subsection (3)(b)(i), for “Part 4” substitute “ Part 4A ”.

*Companies Act 1985 (c. 6)*

45 The Companies Act 1985 is amended as follows.

46 In Schedule 15C (specified persons), for paragraph 7 substitute—

- “7           The Financial Conduct Authority.
- 7A           The Prudential Regulation Authority.
- 7B           The Bank of England.”

47 (1) Schedule 15D (disclosures) is amended as follows.

- (2) In paragraph 28 for “Financial Services Authority” substitute “ Financial Conduct Authority or the Prudential Regulation Authority ”.

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	(3) In paragraph 29 for the words from “competent authority” to the end substitute “Financial Conduct Authority to exercise its functions under Part 6 of the Financial Services and Markets Act 2000.”
	(4) In paragraph 43, for paragraph (a) substitute— “(a) a decision of the Financial Conduct Authority; (aa) a decision of the Prudential Regulation Authority;”.
	<i>Trustee Savings Banks Act 1985 (c. 58)</i>
48	In Part 3 of Schedule 1 to the Trustee Savings Banks Act 1985 (supplementary transfer provisions), in paragraph 11(4A)(a), for “Part 4” substitute “Part 4A”.
	<i>Administration of Justice Act 1985 (c. 61)</i>
49	In section 21 of the Administration of Justice Act 1985 (professional indemnity and compensation), in subsection (5)(a), for “Part 4” substitute “Part 4A”.
	<i>Housing Act 1985 (c. 68)</i>
50	In section 622 of the Housing Act 1985 (minor definitions: general), in subsection (1), in the definitions of “authorised deposit taker”, “authorised insurer” and “authorised mortgage lender”, for “Part 4” substitute “Part 4A”.
	<i>Insolvency Act 1986 (c. 45)</i>
51	The Insolvency Act 1986 is amended as follows.
52	(1) Section 4A (approval of proposed voluntary arrangement) is amended as follows. (2) In subsection (5), for “Financial Services Authority” substitute “appropriate regulator”. (3) After that subsection insert— “(5A) The appropriate regulator” means— (a) where the regulated company is a PRA-regulated company within the meaning of paragraph 44 of Schedule A1, the Financial Conduct Authority and the Prudential Regulation Authority, and (b) in any other case, the Financial Conduct Authority.”
53	In section 422 (order relating to formerly authorised banks), in subsection (1)— (a) for “Financial Services Authority” substitute “Financial Conduct Authority and the Prudential Regulation Authority”, and (b) in paragraph (b), for “Part IV” substitute “Part 4A”.
54	(1) Paragraph 44 of Schedule A1 (moratorium where directors propose voluntary arrangement; modifications relating to regulated companies) is amended as follows. (2) In sub-paragraphs (2) to (4), for “Authority” substitute “appropriate regulator”. (3) In sub-paragraph (5)— (a) for “the Authority”, in the first place, substitute “a regulator”, and

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- (b) for “the Authority”, in the second place, substitute “ the appropriate regulator ”.
- (4) In sub-paragraph (6), for “Authority” substitute “ appropriate regulator ”.
- (5) In sub-paragraph (7)—
  - (a) for “the Authority”, in the first place, substitute “ a regulator ”, and
  - (b) for “the Authority”, in the second place, substitute “ the appropriate regulator ”.
- (6) In sub-paragraphs (8) to (11), for “Authority” substitute “ appropriate regulator ”.
- (7) In sub-paragraph (12)—
  - (a) for “the Authority”, in the first place, substitute “ a regulator ”, and
  - (b) for “the Authority”, in the second place, substitute “ the appropriate regulator ”.
- (8) In sub-paragraph (13), for “Authority” substitute “ appropriate regulator ”.
- (9) In sub-paragraph (14)—
  - (a) for “the Authority”, in the first place, substitute “ a regulator ”, and
  - (b) for “the Authority”, in the second place, substitute “ the appropriate regulator ”.
- (10) In sub-paragraph (15), for “Authority” substitute “ appropriate regulator ”.
- (11) In sub-paragraph (16)—
  - (a) for “the Authority”, in the first place, substitute “ a regulator ”, and
  - (b) for “the Authority”, in the second place, substitute “ the appropriate regulator ”.
- (12) After sub-paragraph (16) insert—
 

“(16A) If either regulator makes an application to the court under any of the provisions mentioned in sub-paragraphs (5), (7), (12), (14) or (16) in relation to a PRA-regulated company, the other regulator is entitled to be heard on the application.”
- (13) In sub-paragraph (17), for “Authority” substitute “ appropriate regulator ”.
- (14) After sub-paragraph (17) insert—
 

“(17A) The appropriate regulator” means—

  - (a) for the purposes of sub-paragraphs (2) to (8) and (10) to (17)—
    - (i) where the regulated company is a PRA-regulated company, each of the Financial Conduct Authority and the Prudential Regulation Authority, and
    - (ii) in any other case, the Financial Conduct Authority;
  - (b) for the purposes of sub-paragraph (9)—
    - (i) where the regulated company is a PRA-regulated company, the Financial Conduct Authority or the Prudential Regulation Authority, and
    - (ii) in any other case, the Financial Conduct Authority.”
- (15) In sub-paragraph (18)—

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- (a) for the definition of “the Authority” and the “and” following it substitute—
- ““PRA-authorised person” has the meaning given by section 2B(5) of the Financial Services and Markets Act 2000;
- “PRA-regulated activity” has the meaning given by section 22A of the Financial Services and Markets Act 2000;
- “PRA-regulated company” means a regulated company which—
- (a) is, or has been, a PRA-authorised person,
- (b) is, or has been, an appointed representative within the meaning given by section 39 of the the Financial Services and Markets Act 2000, whose principal (or one of whose principals) is, or was, a PRA-authorised person, or
- (c) is carrying on, or has carried on, a PRA-regulated activity in contravention of the general prohibition;”.
- (b) after the definition of “regulated company” insert—
- ““regulator” means the Financial Conduct Authority or the Prudential Regulation Authority.”
- (16) In the italic heading, for “Financial Services Authority” substitute “ Financial Conduct Authority and Prudential Regulation Authority ”.
- 55 (1) Schedule B1 (administration) is amended as follows.
- (2) In paragraph 40 (dismissal of pending winding-up petition), in sub-paragraph (2) (b), for “Financial Services Authority” substitute “ Financial Conduct Authority or Prudential Regulation Authority ”.
- (3) In paragraph 42 (moratorium on insolvency proceedings), in sub-paragraph (4) (b), for “Financial Services Authority” substitute “ Financial Conduct Authority or Prudential Regulation Authority ”.
- (4) In paragraph 82 (public interest winding-up), in sub-paragraph (1)(b), for “Financial Services Authority” substitute “ Financial Conduct Authority or Prudential Regulation Authority ”.
- Debtors (Scotland) Act 1987 (c. 18)*
- 56 In section 73F of the Debtors (Scotland) Act 1987 (protection of minimum balance in bank accounts), in subsection (5)(b), for “Part 4” substitute “ Part 4A ”.
- Housing (Scotland) Act 1987 (c. 26)*
- 57 In section 338 of the Housing (Scotland) Act 1987 (interpretation), in subsection (1)—
- (a) in the definition of “bank”, for “Part 4” substitute “ Part 4A ”, and
- (b) in the definition of “insurance company” for “Part 4” substitute “ Part 4A ”.
- Income and Corporation Taxes Act 1988 (c. 1)*
- 58 (1) The Income and Corporation Taxes Act 1988 is amended as follows.



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- (2) In section 266 (life assurance premiums), in subsection (2)(a)(i), for “Part 4” substitute “ Part 4A ”.
- (3) In section 376 (qualifying borrowers and qualifying lenders), in subsection (4)(e), for “Part 4” substitute “ Part 4A ”.
- (4) In section 376A (the register of qualifying lenders), in subsection (1A)(a), for “Part 4” substitute “ Part 4A ”.
- (5) In section 431 (interpretation: insurance companies), in subsection (2), in the definition of “insurance company”, for “Part 4” substitute “ Part 4A ”.
- (6) In section 444AB (transfer schemes)—
  - (a) in subsection (2)(b), for “Part 4” substitute “ Part 4A ”, and
  - (b) in subsection (2A)(b), for “Part 4” substitute “ Part 4A ”.

*Access to Medical Reports Act 1988 (c. 28)*

- 59 In section 2 of the Access to Medical Reports Act 1988 (interpretation), in subsection (1), in the definition of “insurer”, for “Part 4” substitute “ Part 4A ”.

*Road Traffic Act 1988 (c. 52)*

- 60 In section 95 of the Road Traffic Act 1988 (notification of refusal of insurance on grounds of health), in subsection (3)(a), for “Part 4” substitute “ Part 4A ”.

*Water Act 1989 (c. 15)*

- 61 In section 174 of the Water Act 1989 (restriction on disclosure of information), in subsection (2)(e), for “or the Financial Services Authority” substitute “ , the Financial Conduct Authority, the Prudential Regulation Authority or the Bank of England ”.

*Companies Act 1989 (c. 40)*

- 62 The Companies Act 1989 is amended as follows.
- 63 (1) Section 82 (request for assistance by overseas regulatory authority) is amended as follows.
- (2) In subsection (2)(a)—
    - (a) in sub-paragraph (ii), for “Financial Services Authority” substitute “ FCA, the PRA or the Bank of England ”, and
    - (b) omit sub-paragraph (iii).
  - (3) In subsection (3), for “Financial Services Authority” substitute “ corresponding UK regulator (if any) ”.
  - (4) After that subsection insert—
    - “(3A) In subsection (3), “the corresponding UK regulator” means such one or more of the FCA, PRA and the Bank of England as appears to the Secretary of State to exercise functions corresponding to the regulatory functions for the purposes of which the request is made.”



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- (5) In subsection (5)—
- (a) for “Financial Services Authority”, in the first place, substitute “ FCA and the PRA ”,
  - (b) for “Financial Services Authority”, in the second place, substitute “ FCA or the PRA ”, and
  - (c) for “the Authority” substitute “ the body giving the notification ”.
- 64 (1) Section 87 (exceptions from restrictions on disclosure) is amended as follows.
- (2) In subsection (2)(b), for sub-paragraph (i) substitute—
- “(i) a decision of the FCA;
  - (ia) a decision of the PRA;”.
- (3) In subsection (4), in the Table, in the entry relating to the Financial Services Authority, for “The Financial Services Authority” substitute “ The FCA or the PRA ”.
- 65 (1) Section 157 (change in default rules) is amended as follows.
- (2) In subsection (1)—
- (a) for “Authority”, in the first place, substitute “ appropriate regulator ”, and
  - (b) for “Authority”, in the second place, substitute “ regulator ”.
- (3) At the end insert—
- “(4) The appropriate regulator”—
  - (a) in relation to a recognised UK investment exchange, means the FCA, and
  - (b) in relation to a recognised UK clearing house, means the Bank of England.”
- 66 (1) Section 162 (duty to report on completion of default proceedings) is amended as follows.
- (2) In subsections (1) and (1A), for “Authority” substitute “ appropriate regulator ”.
- (3) In subsection (4), for “Authority” substitute “ appropriate regulator ”.
- (4) At the end insert—
- “(7) The appropriate regulator”—
  - (a) in relation to a recognised investment exchange or a recognised overseas investment exchange, means the FCA, and
  - (b) in relation to a recognised clearing house or a recognised overseas clearing house, means the Bank of England.”
- 67 (1) Section 167 (application to determine whether default proceedings to be taken) is amended as follows.
- (2) In subsections (1B), (3) (in both places), (4) and (5) (in both places), for “Authority” substitute “ appropriate regulator ”.
- (3) At the end insert—
- “(6) The appropriate regulator”—

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	(a) in relation to a responsible investment exchange, means the FCA, and
	(b) in relation to a responsible clearing house, means the Bank of England.”
68	(1) Section 169 (supplementary provisions) is amended as follows.
	(2) In subsection (3A), for paragraph (b) and the “and” before it, substitute—
	“(b) in the case of a UK investment exchange, the FCA, and
	(c) in the case of a UK clearing house, the Bank of England.”
	(3) In subsection (5), for “or the Authority” substitute “ , the FCA or the Bank of England ”.
69	(1) Section 176 (power to make provision about certain charges) is amended as follows.
	(2) In subsection (2)—
	(a) in paragraph (b), for “Authority” substitute “ Bank of England ”, and
	(b) in paragraph (d), for “Part 4” substitute “ Part 4A ”.
	(3) In subsection (6)—
	(a) for “Authority”, in the first place, substitute “ Bank of England ”, and
	(b) for “Authority”, in the second place, substitute “ FCA ”.
70	(1) Section 190 (minor definitions) is amended as follows.
	(2) Omit the definition of “the Authority”.
	(3) After the definition of “charge” insert—
	““the FCA” means the Financial Conduct Authority;”.
	(4) After the definition of “overseas” insert—
	““the PRA” means the Prudential Regulation Authority;”.
71	(1) Section 191 (index of defined expressions) is amended as follows.
	(2) Omit the entry relating to “the Authority”.
	(3) After the entry relating to “designated non-member” insert—
	“the FCA
	Section 190(1)”
	(4) After the entry relating to “permanent trustee” insert—
	“the PRA
	Section 190(1)”
	<i>Water Industry Act 1991 (c. 56)</i>
72	In section 206 of the Water Industry Act 1991 (restriction on disclosure of information), in subsection (3)(e), for “or the Financial Services Authority” substitute “ , the Financial Conduct Authority, the Prudential Regulation Authority or the Bank of England ”.

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*Water Resources Act 1991 (c. 57)*

- 73 In section 204 of the Water Resources Act 1991 (restriction on disclosure of information), in subsection (2)(e), for “or the Financial Services Authority” substitute “, the Financial Conduct Authority, the Prudential Regulation Authority or the Bank of England”.

*Social Security Administration Act 1992 (c. 5)*

- 74 (1) The Social Security Administration Act 1992 is amended as follows.
- (2) In section 15A (payment out of benefit of sums in respect of mortgage interest), in subsection (4), in the definitions of “deposit taker” and “insurer”, for “Part 4” substitute “ Part 4A ”.
- (3) In section 109B (power to require information), in subsection (7), in the definitions of “bank” and “insurer”, for “Part IV” substitute “ Part 4A ”.

*Judicial Pensions and Retirement Act 1993 (c. 8)*

- 75 (1) The Judicial Pensions and Retirement Act 1993 is amended as follows.
- (2) In section 10 (additional benefits from voluntary contributions), in subsection (8), in the definitions of “authorised provider” and “insurer”, for “Part 4” substitute “ Part 4A ”.
- (3) In Part 1 of Schedule 2 (transfer of accrued benefits: interpretation), in paragraph 1, in the definition of “authorised insurer”, for “Part 4” substitute “ Part 4A ”.

*Criminal Justice Act 1993 (c. 36)*

- 76 In Schedule 1 to the Criminal Justice Act 1993 (special defences), in paragraph 5(2), for “section 144(1)” substitute “ section 137Q ”.

*Railways Act 1993 (c. 43)*

- 77 (1) The Railways Act 1993 is amended as follows.
- (2) In section 145 (restrictions on disclosure of information), in subsection (2)(c), for “or the Financial Services Authority” substitute “, the Financial Conduct Authority or the Prudential Regulation Authority”.
- (3) In section 151 (general interpretation), in subsection (1), in the definition of “securities”, for “section 74(5)” substitute “ section 102A(2) ”.

*Pension Schemes Act 1993 (c. 48)*

- 78 (1) The Pension Schemes Act 1993 is amended as follows.
- (2) In section 149 (procedure on an investigation by the Pensions Ombudsman), in subsection (6)—
- (a) for paragraph (e) substitute—
- “(e) the Financial Conduct Authority,  
(ea) the Prudential Regulation Authority,  
(eb) the Bank of England,” and

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(b) in paragraph (o), for “a body corporate established in accordance with paragraph 2(1)” substitute “the body corporate mentioned in paragraph 2”.

(3) In section 158A (disclosures by the Secretary of State), in subsection (1), in the Table, for the entry relating to the Financial Services Authority substitute—

“The Financial Conduct Authority	Any of its functions.
The Prudential Regulation Authority	Any of its functions.”.

(4) In section 180A (insurer and long-term insurance business), in subsection (1)(a), for “Part 4” substitute “ Part 4A ”.

(5) In section 185 (duty to consult before making regulations)—

- (a) in subsection (7), for “the Financial Services Authority” substitute “ the appropriate regulator ”, and  
 (b) after that subsection insert—

“(7A) The appropriate regulator” means—

- (a) where the group insurance business to which the regulations relate consists only of activities which are PRA-regulated activities, the Prudential Regulation Authority,  
 (b) where the group insurance business to which the regulations relate consists partly of activities which are PRA-regulated activities and partly of other regulated activities, the Prudential Regulation Authority and the Financial Conduct Authority, or  
 (c) in any other case, the Financial Conduct Authority.

(7B) In subsection (7A) “regulated activities” and “PRA-regulated activities” have the same meaning as in the Financial Services and Markets Act 2000.”

*Finance Act 1994 (c. 9)*

79 (1) The Finance Act 1994 is amended as follows.

(2) In Schedule 7 (insurance premium tax), in paragraph 28B—

- (a) in sub-paragraph (1)—  
 (i) for “the Financial Services Authority (“the Authority”)” substitute “ a regulator ”, and  
 (ii) for “assisting the Authority” substitute “ assisting the regulator ”, and  
 (b) in sub-paragraph (2)—  
 (i) for “the Authority”, in the first place, substitute “ a regulator ”, and  
 (ii) for “the Authority”, in the second place, substitute “ the regulator ”.  
 (c) after that sub-paragraph insert—

“(3) In this paragraph “regulator” means—

- (a) the Financial Conduct Authority;  
 (b) the Prudential Regulation Authority.”

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- (3) In Schedule 24 (provisions relating to the Railways Act 1993), in paragraph 19(7), in the definition of “securities”, for “section 74(5)” substitute “ section 102A(2) ”.

*Coal Industry Act 1994 (c. 21)*

- 80 In section 59 of the Coal Industry Act 1994 (information to be kept confidential), in subsection (3)(b), for “and the Financial Services Authority” substitute “ , the Financial Conduct Authority and the Prudential Regulation Authority ”.

*Value Added Tax Act 1994 (c. 23)*

- 81 In Part 2 of Schedule 9 to the Value Added Tax Act 1994 (exemptions: groups), in Group 5 (finance), in Note (6), in the definitions of “closed-ended collective investment undertaking” and “individually recognised overseas scheme”, for “Financial Services Authority” substitute “ Financial Conduct Authority ”.

*Pensions Act 1995 (c. 26)*

- 82 (1) The Pensions Act 1995 is amended as follows.
- (2) In section 49 (responsibilities of trustees etc.), in subsection (8A)(a), for “Part 4” substitute “ Part 4A ”.
- (3) In section 172 (information about public service schemes), in subsection (1)(a), for “section 150” substitute “ section 138D ”.

*Finance Act 1997 (c. 16)*

- 83 In section 96 of the Finance Act 1997 (demutualisation of insurance companies), in subsection (8), in the definition of “general insurance company”, for “Part 4” substitute “ Part 4A ”.

*Social Security (Recovery of Benefits) Act 1997 (c. 27)*

- 84 In Part 1 of Schedule 1 to the Social Security (Recovery of Benefits) Act 1997 (compensation payments: exempted payments), in paragraph 5(2)(a), for “Part 4” substitute “ Part 4A ”.

*Bank of England Act 1998 (c. 11)*

- 85 (1) The Bank of England Act 1998 is amended as follows.
- (2) In section 17 (power to obtain information), in subsections (3D) and (7)(a), for “Part 4” substitute “ Part 4A ”.
- (3) Omit—
- (a) section 21 and the italic heading before it;
  - (b) section 23(2);
  - (c) section 24 and the italic heading before it.
- (4) In Schedule 2 (cash ratio deposits), in paragraph 1(1A)(c), for “Part 4” substitute “ Part 4A ”.

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	(5) In Schedule 7 (restriction on disclosure of information), in paragraph 3, in the Table—
	<ul style="list-style-type: none"> <li>(a) for “Financial Services Authority” substitute “ Financial Conduct Authority or the Prudential Regulation Authority ”, and</li> <li>(b) omit the entry relating to the competent authority for the purposes of Part 6 of the Financial Services Act 2000.</li> </ul>
	<i>Data Protection Act 1998 (c. 29)</i>
86	In Schedule 7 to the Data Protection Act 1998 (miscellaneous exemptions), in paragraph 6(3), in the definition of “relevant person”, in paragraph (a), for “Part IV” substitute “ Part 4A ”.
	<i>Terrorism Act 2000 (c. 11)</i>
87	(1) The Terrorism Act 2000 is amended as follows.
	(2) In Part 2 of Schedule 3A (supervisory authorities), in paragraph 4(1)—
	<ul style="list-style-type: none"> <li>(a) for paragraph (c) substitute—</li> <li style="padding-left: 40px;">“(c) the Financial Conduct Authority;”, and</li> <li>(b) after paragraph (e) insert—</li> <li style="padding-left: 40px;">“(ea) the Prudential Regulation Authority;”.</li> </ul>
	(3) In Schedule 6 (financial information), in paragraph 6(1)(a), for “Part 4” substitute “ Part 4A ”.
	<i>Regulation of Investigatory Powers Act 2000 (c. 23)</i>
88	In Part 1 of Schedule 1 to the Regulation of Investigatory Powers Act 2000 (relevant authorities), for paragraph 19 substitute—
	<p>“19 The Financial Conduct Authority.</p> <p>19A The Prudential Regulation Authority.”</p>
	<i>Utilities Act 2000 (c. 27)</i>
89	In section 105 of the Utilities Act 2000 (general restriction on disclosure of information), in subsection (4)(da), for “or the Financial Services Authority” substitute “ , the Financial Conduct Authority, the Prudential Regulation Authority or the Bank of England ”.
	<i>Trustee Act 2000 (c. 29)</i>
90	(1) Section 29 of the Trustee Act 2000 (remuneration of certain trustees) is amended as follows.
	(2) In subsection (3)—
	<ul style="list-style-type: none"> <li>(a) for “an authorised institution under the Banking Act 1987” substitute “ a deposit taker ”, and</li> <li>(b) for “institution's” substitute “deposit taker's”.</li> </ul>
	(3) After that subsection insert—

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“(3A) In subsection (3), “deposit taker” means—

- (a) a person who has permission under Part 4A of the Financial Services and Markets Act 2000 to accept deposits, or
- (b) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12(1) of that Schedule) to accept deposits.

(3B) A reference in subsection (3A) to a person or firm with permission to accept deposits does not include a person or firm with permission to do so only for the purposes of, or in the course of, carrying on another regulated activity in accordance with that permission.

(3C) Subsections (3A) and (3B) must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000,
- (b) any relevant order under that section, and
- (c) Schedule 2 to that Act.”.

*Freedom of Information Act 2000 (c. 36)*

91 In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (other public bodies and offices: general)—

- (a) omit the entry relating to the Financial Services Authority, and
- (b) at the appropriate place in each case insert— “ The Financial Conduct Authority. ”; “ The Prudential Regulation Authority. ”.

*Criminal Justice and Police Act 2001 (c. 16)*

92 In section 57 of the Criminal Justice and Police Act 2001 (retention of seized items), in subsection (1)(o), for “section 176(8)” substitute “ section 176A ”.

*Anti-terrorism, Crime and Security Act 2001 (c. 24)*

93 In Part 5 of Schedule 1 to the Anti-terrorism, Crime and Security Act 2001 (property earmarked as terrorist property), in paragraph 16(6)—

- (a) for “Financial Services Authority under” substitute “ Financial Conduct Authority, the Prudential Regulation Authority or the Bank of England under or by virtue of”, and
- (b) omit “of authority”.

*Proceeds of Crime Act 2002 (c. 29)*

94 (1) The Proceeds of Crime Act 2002 is amended as follows.

(2) In section 282 (exemptions), in subsection (3)—

- (a) for “Financial Services Authority” substitute “ Financial Conduct Authority or the Prudential Regulation Authority ”, and
- (b) for “the authority” substitute “ it ”.

(3) In section 308 (general exceptions), in subsection (7)(a)—



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- (a) for “Financial Services Authority under” substitute “ Financial Conduct Authority, the Prudential Regulation Authority or the Bank of England under or by virtue of”, and
- (b) omit “of authority”.

(4) In Part 2 of Schedule 9 (supervisory authorities), in paragraph 4(1)—

- (a) for paragraph (c) substitute—  
“ (c) Financial Conduct Authority;” and
- (b) after paragraph (e) insert—  
“ (ea) Prudential Regulation Authority;”.

*Enterprise Act 2002 (c. 40)*

95 (1) The Enterprise Act 2002 is amended as follows.

- (2) In section 213 (enforcers), in subsection (5A)(c), for “Financial Services Authority” substitute “ Financial Conduct Authority ”.
- (3) In Schedule 14 (specified functions), in the entry relating to the Financial Services and Markets Act 2000, for “Chapter 3 of Part 10 and Chapter 2 of Part 18” substitute “ Chapter 4 of Part 9A ”.

*Nationality, Immigration and Asylum Act 2002 (c. 41)*

96 In section 135 of the Nationality, Immigration and Asylum Act 2002 (financial institution to provide information), in subsection (2)(a), for “Part 4” substitute “ Part 4A ”.

*Income Tax (Earnings and Pensions) Act 2003 (c. 1)*

97 (1) The Income Tax (Earnings and Pensions) Act 2003 is amended as follows.

- (2) In Part 4 of Schedule 2 (approved share incentive plans: types of shares that may be awarded), in paragraph 30(3)—
  - (a) for “competent authority for listing” substitute “ Financial Conduct Authority ”, and
  - (b) for “section 74(4)” substitute “ section 73A ”.
- (3) In Part 4 of Schedule 3 (approved SAYE option schemes: applicable shares), in paragraph 21(5)—
  - (a) for “competent authority for listing” substitute “ Financial Conduct Authority ”, and
  - (b) for “section 74(4)” substitute “ section 73A ”.
- (4) In Part 4 of Schedule 4 (approved CSOP schemes: applicable shares), in paragraph 19(5)—
  - (a) for “competent authority for listing” substitute “ Financial Conduct Authority ”, and
  - (b) for “section 74(4)” substitute “ section 73A ”.



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*Finance Act 2003 (c. 14)*

- 98 In section 63 of the Finance Act 2003 (demutualisation of insurance company), in subsection (7), in the definition of “general insurance company”, for “Part 4” substitute “ Part 4A ”.

*Health and Social Care (Community Health and Standards) Act 2003 (c. 43)*

- 99 In Schedule 10 to the Health and Social Care (Community Health and Standards) Act 2003 (recovery of NHS charges (exempted payments)), in paragraph 4(2) (a), for “Part 4” substitute “ Part 4A ”.

*Finance Act 2004 (c. 12)*

- 100 In Part 1 of Schedule 28 to the Finance Act 2004 (pension rules), in paragraph 14(3)(a), for “Financial Services Authority” substitute “ Financial Conduct Authority or the Prudential Regulation Authority ”.

*Energy Act 2004 (c. 20)*

- 101 In Part 4 of Schedule 20 to the Energy Act 2004 (modifications of Insolvency Act 1986), in paragraph 42(3), for “administration applications by Financial Services Authority” substitute “ administration order ”.

*Fire and Rescue Services Act 2004 (c. 21)*

- 102 In section 35 of the Fire and Rescue Services Act 2004 (provision of information in connection with pensions), in subsection (2)(a), for “section 150” substitute “ section 138D ”.

*Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27)*

- 103 In section 14 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (supervision of accounts and reports of issuers of listed securities), in subsections (2)(b) and (7)(b), for “Financial Services Authority” substitute “ Financial Conduct Authority ”.

*Pensions Act 2004 (c. 35)*

- 104 (1) The Pensions Act 2004 is amended as follows.
- (2) In section 115 (borrowing), in subsection (3), in the definition of “deposit- taker”, for “Part 4” substitute “ Part 4A ”.
- (3) In Schedule 3 (disclosure of restricted information by the Pensions Regulator), in the Table—
- |     |  |                             |
|-----|--|-----------------------------|
| (a) | for the entry relating to the Financial Services Authority substitute— |                             |
|     | “The Financial Conduct Authority                                       | Any of its functions.       |
|     | The Prudential Regulation Authority                                    | Any of its functions.”, and |
- (b) in the entry relating to a member of the panel appointed under paragraph 4 of Schedule 17 to the Financial Services and Markets Act 2000, for “established by” substitute “ mentioned in ”.

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(4) In Schedule 8 (disclosure of restricted information by the Board of the Pension Protection Fund), in the Table—

(a) for the entry relating to the Financial Services Authority substitute—

“The Financial Conduct Authority	Any of its functions.
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The Prudential Regulation Authority	Any of its functions.”, and
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(b) in the entry relating to a member of the panel appointed under paragraph 4 of Schedule 17 to the Financial Services and Markets Act 2000, for “established by” substitute “ mentioned in ”.

*Inquiries Act 2005 (c. 12)*

105 In section 23 of the Inquiries Act 2005 (risk of damage to the economy), in subsection (1), for “Financial Services Authority” substitute “ Financial Conduct Authority, the Prudential Regulation Authority ”.

*Serious Organised Crime and Police Act 2005 (c. 15)*

106 (1) Section 71 of the Serious Organised Crime and Police Act 2005 (immunity from prosecution) is amended as follows.

(2) In subsection (4), for paragraph (da) substitute—

“(da) the Financial Conduct Authority;

(daa) the Prudential Regulation Authority;

(dab) the Bank of England, where the indictable offence or offence triable either way which is being investigated or prosecuted is an offence under the Financial Services and Markets Act 2000;”.

(3) In subsection (6A), for “Financial Services Authority” substitute “ Financial Conduct Authority, the Prudential Regulation Authority, the Bank of England ”.

(4) For subsection (6B) substitute—

“(6B) Paragraph 8(1) of Schedule 1ZA and paragraph 16(1) of Schedule 1ZB to the Financial Services and Markets Act 2000 (arrangements for discharging functions) do not apply to the exercise of the powers conferred on the Financial Conduct Authority or the Prudential Regulation Authority under this Chapter.

(6BA) Paragraph 11 of Schedule 1 to the Bank of England Act 1998 (power to delegate) does not apply to the exercise of the powers conferred on the Bank of England under this Chapter.”

(5) In subsection (6C)—

(a) for “Financial Services Authority” substitute “ Financial Conduct Authority, the Prudential Regulation Authority, the Bank of England ”, and

(b) for “either of them” substitute “ any of them ”.

*Gambling Act 2005 (c. 19)*

107 In Part 2 of Schedule 6 to the Gambling Act 2005 (exchange of information: enforcement and regulatory bodies)—

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- (a) omit the entry “The Financial Services Authority”, and
- (b) at the appropriate place in each case insert— “ The Financial Conduct Authority ”; “ The Prudential Regulation Authority ”.

*Finance (No. 2) Act 2005 (c. 22)*

108 In section 18 of the Finance (No. 2) Act 2005 (regulations under section 17), in subsection (3)(a), for “Financial Services Authority” substitute “ Financial Conduct Authority ”.

*Compensation Act 2006 (c. 29)*

109 (1) Section 3 of the Compensation Act 2006 (mesothelioma: damages) is amended as follows.

- (2) In subsection (8)—
  - (a) omit paragraph (a), and
  - (b) in paragraph (f), for “Financial Services Authority” substitute “ Financial Conduct Authority or the Prudential Regulation Authority ”.

(3) Omit subsection (9).

*Companies Act 2006 (c. 46)*

110 The Companies Act 2006 is amended as follows.

111 In section 384 (companies excluded from small companies regime), in subsection (2)(c), for “Part 4” substitute “ Part 4A ”.

112 (1) Section 461 (permitted disclosure of information obtained under compulsory powers) is amended as follows.

(2) In subsection (3), for paragraph (e) and the “or” following it, substitute—

- (e) “(e) the Financial Conduct Authority,  
(ea) the Prudential Regulation Authority, or”.

(3) In subsection (4)(g), for “Financial Services Authority” substitute “ Financial Conduct Authority or the Prudential Regulation Authority ”.

113 In section 467 (companies excluded from being treated as medium-sized), in subsection (1)(b)(i) and (2)(c), for “Part 4” substitute “ Part 4A ”.

114 In section 470 (power to apply provisions to banking partnerships), in subsection (2), for “Part 4” substitute “ Part 4A ”.

115 In section 474 (definitions), in subsection (1), in the definition of “e-money issuer”, for “Part 4” substitute “ Part 4A ”.

116 In section 539 (definitions), in subsection (1), in the definition of “e-money issuer”, for “Part 4” substitute “ Part 4A ”.

117 (1) Section 843 (realised profits and losses of long-term insurance business) is amended as follows.

(2) In subsection (2)(b), for “section 142(2)” substitute “ Part 9A ”.

(3) In subsection (6)(a), for “Part 10” substitute “ Part 9A ”.

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- 118 In section 948 (restrictions on disclosure), in subsection (7)—
- (a) for paragraph (a) substitute—
    - “(a) the Financial Conduct Authority;
    - (aa) the Prudential Regulation Authority;
    - (ab) the Bank of England;”, and
  - (b) in paragraph (c), for “Financial Services Authority” substitute “Financial Conduct Authority or the Prudential Regulation Authority or similar to the regulatory functions of the Bank of England”.
- 119 In section 950 (Panel on Takeovers and Mergers: duty of co-operation), in subsection (1)—
- (a) for paragraph (a) substitute—
    - “(a) the Financial Conduct Authority;
    - (aa) the Prudential Regulation Authority;
    - (ab) the Bank of England;”, and
  - (b) in paragraph (c), for “Financial Services Authority” substitute “Financial Conduct Authority or the Prudential Regulation Authority or similar to the regulatory functions of the Bank of England”.
- 120 In section 995 (petition by Secretary of State), in subsection (1)—
- (a) in paragraph (c), for “or the Financial Services Authority” substitute “, the Financial Conduct Authority, the Prudential Regulation Authority or the Bank of England”, and
  - (b) in paragraph (d), for “or the Financial Services Authority” substitute “, the Financial Conduct Authority, the Prudential Regulation Authority or the Bank of England”.
- 121 In section 1164 (meaning of “banking company” and “banking group”), in subsection (2), for “Part 4” substitute “Part 4A”.
- 122 In section 1165 (meaning of “insurance company” etc.), in subsection (2), for “Part 4” substitute “Part 4A”.
- 123 (1) Schedule 2 (specified persons and descriptions of disclosure for the purposes of section 948) is amended as follows.
- (2) In Part 1, in section (A) (United Kingdom), for paragraph 5 substitute—
 

“**5** The Financial Conduct Authority.

“**5A** The Prudential Regulation Authority.”
  - (3) In Part 2, in section (A) (United Kingdom)—
    - (a) in paragraph 11, for “paragraph 7 of Schedule 1 to the Financial Services and Markets Act 2000” substitute “section 84 of the Financial Services Act 2012”,
    - (b) in paragraph 12, for “section 15 of the Financial Services and Markets Act 2000” substitute “section 69 of the Financial Services Act 2012”,
    - (c) in paragraph 37, for “Financial Services Authority” substitute “Financial Conduct Authority or the Prudential Regulation Authority”,
    - (d) in paragraph 49, for paragraph (a) substitute—
      - “(a) a decision of the Financial Conduct Authority;
      - (aa) a decision of the Prudential Regulation Authority;”.

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- (4) In Part 3, in paragraph 1(2), for “Financial Services Authority” substitute “Financial Conduct Authority or the Prudential Regulation Authority or similar to the regulatory functions of the Bank of England”.
- 124 (1) Schedule 11A (specified persons, description, disclosures etc. for the purposes of section 1224A) is amended as follows.
- (2) In Part 1, for paragraph 5 substitute—
- “5 The Financial Conduct Authority.
- 5A The Prudential Regulation Authority.”
- (3) In Part 2—
- (a) in paragraph 28, for “paragraph 7 of Schedule 1 to the Financial Services and Markets Act 2000” substitute “section 84 of the Financial Services Act 2012”,
- (b) in paragraph 29, for “section 15 of the Financial Services and Markets Act 2000 (c. 8)” substitute “section 69 of the Financial Services Act 2012”,
- (c) in paragraph 52, for “Financial Services Authority” substitute “Financial Conduct Authority or the Prudential Regulation Authority”, and
- (d) in paragraph 71, for paragraph (a) substitute—
- “(a) a decision of the Financial Conduct Authority;
- (aa) a decision of the Prudential Regulation Authority;”.
- Legal Services Act 2007 (c. 29)*
- 125 (1) The Legal Services Act 2007 is amended as follows.
- (2) In section 64 (modification of functions of the Legal Services Board), in subsection (5), in the definition of “authorised insurer”, for “Part 4” substitute “Part 4A”.
- (3) In section 169 (disclosure of information to the Legal Services Board), for subsection (5)(f) substitute—
- “(f) the Financial Conduct Authority;
- (g) the Prudential Regulation Authority;
- (h) the Bank of England.”
- (4) In section 195 (application of the Legal Profession and Legal Aid (Scotland) Act 2007), in subsection (2)(e), for “Financial Services Authority” substitute “Financial Conduct Authority”.
- Regulatory Enforcement and Sanctions Act 2008 (c. 13)*
- 126 In Schedule 5 to the Regulatory Enforcement and Sanctions Act 2008 (Designated Regulators)—
- (a) for “Financial Services Authority” substitute “Financial Conduct Authority”, and
- (b) after the entry for the Pensions Regulator insert— “Prudential Regulation Authority”.

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*Counter-Terrorism Act 2008 (c. 28)*

- 127 (1) Schedule 7 to the Counter-Terrorism Act 2008 (terrorist financing and money laundering) is amended as follows.
- (2) In Part 5 (enforcement: information powers)—
- (a) in paragraph 18(1), for paragraph (a) substitute—
- “(a) The Financial Conduct Authority (“the FCA”),”
- (b) in paragraph 18(2), in both places, for “FSA” substitute “ FCA ”, and
- (c) in paragraph 21(7), for “FSA” substitute “ FCA ”.
- (3) In Part 6 (enforcement: civil penalties)—
- (a) in paragraph 27(1), for “FSA” substitute “ FCA ”, and
- (b) in paragraph 28(1), for “FSA” substitute “ FCA ”.
- (4) In Part 7 (enforcement: offences), in paragraph 33—
- (a) in sub-paragraphs (1)(a) and (2)(a), for “FSA” substitute “ FCA ”, and
- (b) in sub-paragraph (3) omit “by FSA”.
- (5) In Part 8 (supplemental)—
- (a) in paragraph 39(2)(a) for “FSA” substitute “ FCA ”,
- (b) in paragraph 41(1)—
- (i) for “Parts 1, 2 and 4 of Schedule 1” substitute “ “Parts 1, 3 and 5 of Schedule 1ZA”, and
- (ii) for “FSA” substitute “ FCA ”,
- (c) in the italic heading before paragraph 41, for “Financial Services Authority” substitute “ Financial Conduct Authority ”, and
- (d) in paragraph 46, in the index of defined terms, for “the FSA” substitute “ the FCA ”.

*Dormant Bank and Building Society Accounts Act 2008 (c. 31)*

- 128 In section 7 of the Dormant Bank and Building Society Accounts Act 2008 (meaning of “bank”), in subsection (2)(a), for “Part 4” substitute “ Part 4A ”.

*Corporation Tax Act 2010 (c. 4)*

- 129 (1) The Corporation Tax Act 2010 is amended as follows.
- (2) In section 161 (restricted right to dividends), in subsection (8), for paragraph (a), and the “and” following it, substitute—
- “(a) in relation to a dividend paid by a company that is a PRA-  
authorised person for the purposes of the FISMA, the Prudential  
Regulation Authority,
- (aa) in relation to a dividend paid by a company that is authorised for  
the purposes of the FISMA but does not fall within paragraph (a),  
the Financial Conduct Authority, and”.
- (3) In section 635 (application of Chapter 6 of Part 13: banks etc. in compulsory liquidation), in subsection (2)(a), for “Part 4” substitute “ Part 4A ”.
- (4) In section 1120 (meaning of “bank”), in subsection (3), for “Part 4” substitute “ Part 4A ”.



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*Finance Act 2010 (c. 13)*

- 130 In Part 3 of Schedule 1 to the Finance Act 2010 (bank payroll tax: definitions), in paragraph 45(14)—
- (a) for paragraph (a) and the “or” following it, substitute—
    - “(a) the Financial Conduct Authority,
    - (aa) the Prudential Regulation Authority, or”, and
  - (b) in paragraph (b), for “Financial Services Authority” substitute “Financial Conduct Authority or the Prudential Regulation Authority”.

*Equality Act 2010 (c. 15)*

- 131 In Part 1 of Schedule 19 to the Equality Act 2010 (public authorities subject to the public sector equality duty), under the italic heading “Industry, business, finance etc”—
- (a) for “The Financial Services Authority” substitute “The Financial Conduct Authority”, and
  - (b) after the entry for the Office of Communications insert— “The Prudential Regulation Authority”.

*Terrorist Asset-Freezing etc. Act 2010 (c. 38)*

- 132 (1) The Terrorist Asset-Freezing etc Act 2010 is amended as follows.
- (2) In section 23 (general power to disclose information), in subsection (1)—
- (a) in paragraph (e), for “Financial Services Authority” substitute “Financial Conduct Authority, the Prudential Regulation Authority”, and
  - (b) after that paragraph insert—
    - “(ea) to the Bank of England, for the purpose of enabling or assisting the Bank to exercise any powers conferred on it by or under the Financial Services and Markets Act 2000;”.
- (3) In section 41 (meaning of “relevant institution”), in subsection (1)(a), for “Part 4” substitute “Part 4A”.

*Postal Services Act 2011 (c. 5)*

- 133 In Part 3 of Schedule 10 to the Postal Services Act 2011 (conduct of postal administration: modification of enactments), in paragraph 41(3), for “administration applications by FSA” substitute “administration order”.

*Finance Act 2011 (c. 11)*

- 134 (1) Part 4 of Schedule 19 to the Finance Act 2011 (the bank levy) is amended as follows.
- (2) In paragraph 37(2), in both places, for “section 213(2)(b)” substitute “section 213(3)(b)”.
- (3) In paragraph 38(3)(a), for “section 139(1)” substitute “section 137B(1)”.

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*Terrorism Prevention and Investigation Measures Act 2011 (c. 23)*

- 135 In Part 1 of Schedule 1 to the Terrorism Prevention and Investigation Measures Act 2011 (measures), in paragraph 5(4), for “Part 4” substitute “ Part 4A ”.

*Charities Act 2011 (c. 25)*

- 136 In section 109 of the Charities Act 2011 (dormant bank account: supplementary), in subsection (3), for “Part 4” substitute “ Part 4A ”.

*Health and Social Care Act 2012 (c. 7)*

- 137 In section 145 of the Health and Social Care Act 2012 (borrowing), in subsection (3)(a), for “Part 4” substitute “ Part 4A ”.

*Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10)*

- 138 (1) The Legal Aid, Sentencing and Punishment of Offenders Act 2012 is amended as follows.
- (2) In section 57 (effect of rules against referral fees), in subsection (4), for “Financial Services Authority” substitute “ Financial Conduct Authority ”.
- (3) In section 58 (regulation by FSA)—
- (a) in subsections (1) and (3)(c) and (d), for “Financial Services Authority” substitute “ Financial Conduct Authority ”, and
  - (b) in the heading, for “FSA” substitute “ FCA ”.
- (4) In section 59 (regulators and regulated persons)—
- (a) in subsection (1), in the Table, for “Financial Services Authority” substitute “ Financial Conduct Authority ”, and
  - (b) in subsection (2), in the Table, for “Financial Services Authority” substitute “ Financial Conduct Authority ”.

VALID FROM 01/04/2013

**PART 3**

AMENDMENTS OF ACTS OF THE SCOTTISH PARLIAMENT

*Charities and Trustee Investment (Scotland) Act 2005 (asp 10)*

- 139 In section 106 of the Charities and Trustee Investment (Scotland) Act 2005 (general interpretation), in the definition of “relevant financial institution”, for “Part 4” substitute “ Part 4A ”.



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*Housing (Scotland) Act 2006 (asp 1)*

- 140 In section 75 of the Housing (Scotland) Act 2006 (determination by local authorities about applications for a grant or loan), in subsection (5)(a), in the definition of “commercial lender”, for “Part 4” substitute “ Part 4A ”.

VALID FROM 01/04/2013

**PART 4**

AMENDMENTS OF NORTHERN IRELAND LEGISLATION

*County Courts Act (Northern Ireland) 1959 (c. 25 (N.I.))*

- 141 In section 127A of the County Courts Act (Northern Ireland) 1959 (voluntary contributions to judicial pension scheme), in subsection (7), in the definition of “authorised provider”, for “Part 4” substitute “ Part 4A ”.

*District Judges (Magistrates' Courts) Pensions Act (Northern Ireland) 1960 (c. 2 (N.I.))*

- 142 In section 9A of the District Judges (Magistrates' Courts) Pensions Act (Northern Ireland) 1960 (voluntary contributions under the judicial pension scheme), in subsection (7), in the definition of “insurer”, for “Part 4” substitute “ Part 4A ”.

*Charities Act (Northern Ireland) 2008 (c. 12 (N.I.))*

- 143 (1) The Charities Act (Northern Ireland) 2008 is amended as follows.
- (2) In section 48 (power to give directions about dormant bank accounts of charities), in subsection (8)(b)(i), for “Part 4” substitute “ Part 4A ”.
- (3) In section 56 (powers in relation to English, Welsh and Scottish charities), in subsection (7)(a), for “Part 4” substitute “ Part 4A ”.

VALID FROM 01/04/2013

**PART 5**

AMENDMENT OF MEASURE OF THE NATIONAL ASSEMBLY FOR WALES

*Welsh Language (Wales) Measure 2011 (nawm 1)*

- 144 In Schedule 6 to the Welsh Language (Wales) Measure 2011 (public bodies etc: standards)—
- (a) in the Welsh text, omit the entry relating to “Awdurdod Gwasanaethau Ariannol (“*The Financial Services Authority*”)” and at the appropriate place among the entries headed “Cyffredinol” insert—

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“Awdurdod Ariannol ( <i>“Financial Authority”</i> )	Ymddygiad	Safonau cyflenwi gwasanaethau Safonau llunio polisi Safonau gweithredu Safonau cadw cofnodion.”
(b) in the English text, omit the entry relating to “The Financial Services Authority ( <i>“Awdurdod Gwasanaethau Ariannol”</i> )” and at the appropriate place among the entries headed “General” insert—		
“Financial Conduct Authority ( <i>“Awdurdod Ariannol”</i> )	Ymddygiad	Record keeping standards Service delivery standards Policy making standards Operational standards.”
(c) in the Welsh text, at the appropriate place among the entries headed “Cyffredinol”, insert—		
“Awdurdod Darbodus ( <i>“Prudential Regulation Authority”</i> )	Rheoleiddio	Safonau cyflenwi gwasanaethau Safonau llunio polisi Safonau gweithredu Safonau cadw cofnodion.”
(d) in the English text, at the appropriate place among the entries headed “General”, insert—		
“Prudential Authority ( <i>“Awdurdod Rheoleiddio Darbodus”</i> )	Regulation	Record keeping standards Service delivery standards Policy making standards Operational standards.”

VALID FROM 01/04/2013

SCHEDULE 19

Section 114(2)

REPEALS

<i>Short title</i>	<i>Extent of repeal</i>
Bank of England Act 1998	Section 1(3).
Competition Act 1998	In Schedule 2, paragraph 1 and the italic heading before it. In Schedule 7, in paragraph 19A(9)—

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	(a) “or (in the case of the Financial Services and Markets Act 2000 (c 8)) an investigation”, and (b) paragraph (m).
	In Schedule 12, paragraph 8 and the italic heading before it.
	In Schedule 13, in paragraph 26— (a) sub-paragraph (1)(a), (b) sub-paragraph (2), (c) in sub-paragraph (3) the words “and (2)”, and (d) sub-paragraph (3)(a).
Insolvency Act 2000	Section 15(2).
Proceeds of Crime Act 2002	In Schedule 11, paragraph 38 and the italic heading before it.
Enterprise Act 2002	Sections 241A(2)(b) and 243(3)(c). In Schedule 25, sub-paragraphs (2) to (5) and (10) to (15) of paragraph 40.
Communications Act 2003	In Schedule 16, paragraph 5 and the italic heading before it.
Constitutional Reform Act 2005	In Schedule 7, the entry relating to the Financial Services and Markets Act 2000. In Schedule 9, paragraph 70 and the italic heading before it.
Inquiries Act 2005	Section 46.
Companies Act 2006	Section 964(3) and (5). In Part 2 of Schedule 2, paragraph 38. In Schedule 11A, paragraph 53. In Schedule 15, paragraphs 2 and 9.
Tribunals, Courts and Enforcement Act 2007	In Schedule 6, in the Table in Part 3, the entry relating to the Financial Services and Markets Tribunal.
Consumers, Estate Agents and Redress Act 2007	In section 20— (a) in subsection (2), in the definition of “designated body”, paragraph (b), and (b) subsection (3)(a). Section 39. In Schedule 1, paragraph 1(4)(a).
Banking Act 2009	Section 249(4).
Financial Services Act 2010	Section 1. Section 2(2) to (5). Section 3(2) to (4). Section 6. Section 7.

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In Schedule 2, paragraphs 2 to 6, 11 to 14, 27 and 34.

## SCHEDULE 20

Section 119(1)

### TRANSITIONAL PROVISIONS

#### *Interpretation*

- 1 In this Schedule “the relevant commencement” means the time when section 6 comes into force in relation to section 1A(1) of FSMA 2000, (which renames the Financial Services Authority as the Financial Conduct Authority).

#### **Commencement Information**

**I254** Sch. 20 para. 1 in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), Sch. Pt. 1

#### *References in this Act to FCA or Financial Services Authority*

- 2 (1) In this Act, unless the context otherwise requires, a reference (however expressed) to the Financial Services Authority is to be read, in relation to any time after the relevant commencement, as a reference to the Financial Conduct Authority.
- (2) In this Act, unless the context otherwise requires, a reference (however expressed) to the Financial Conduct Authority is to be read, in relation to any time before the relevant commencement, as a reference to the Financial Services Authority.

#### **Modifications etc. (not altering text)**

**C3** Sch. 20 para. 2 excluded (20.2.2013) by The Financial Services Act 2012 (Transitional Provisions) (Rules and Miscellaneous Provisions) Order 2013 (S.I. 2013/161), art. 1(1)(4)

#### **Commencement Information**

**I255** Sch. 20 para. 2 in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), Sch. Pt. 1

#### *Interpretation of documents referring to the Financial Services Authority*

- 3 (1) In a relevant provision, a reference (however expressed) to the Financial Services Authority is, in relation to any time after the relevant commencement, to be read as a reference to the Financial Conduct Authority, but subject to sub-paragraph (2).
- (2) If the relevant provision is predicated on the continuing exercise by the Financial Services Authority of a function which has by virtue of this Act become exercisable by the Prudential Regulation Authority or the Bank of England, the reference is to be read as being or as the case requires including a reference to the Prudential Regulation Authority or the Bank.
- (3) Sub-paragraphs (1) and (2) have effect subject to the provisions of any scheme under paragraph 2 of Schedule 21.

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- (4) In this paragraph “relevant provision” means a provision which—
- (a) has effect before, as well as after, the relevant commencement, and
  - (b) is contained in a document other than an enactment.

**Commencement Information**

**I256** Sch. 20 para. 3 in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), Sch. Pt. 1

*Renaming of companies as Financial Conduct Authority and Prudential Regulation Authority*

- 4 (1) On the relevant commencement, the registrar of companies for England and Wales must give effect to section 1A(1) of FSMA 2000 by—
- (a) entering the new name on the register of companies in place of the former name, and
  - (b) issuing a new certificate of incorporation altered to take account of the new name.
- (2) On the coming into force of section 6 so far as it relates to section 2A(1) of FSMA 2000, (which renames the Prudential Regulation Authority Limited as the Prudential Regulation Authority), the registrar of companies for England and Wales must give effect to that provision by—
- (a) entering the new name on the register of companies in place of the former name, and
  - (b) issuing a new certificate of incorporation altered to take account of the new name.

**Commencement Information**

**I257** Sch. 20 para. 4 in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), Sch. Pt. 1

*Threshold conditions*

- 5 Before section 11 comes into force in relation to section 55B of FSMA 2000 (the threshold conditions), the Treasury must make an order under section 55C of that Act which—
- (a) amends or replaces Parts 1 and 2 of Schedule 6 to that Act, and
  - (b) makes provision as to which of the conditions set out in those Parts of that Schedule are to relate to the discharge by each regulator of its functions.

**Commencement Information**

**I258** Sch. 20 para. 5 in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), Sch. Pt. 1

*Consultation*

- 6 In relation to the first order under section 9L of the Bank of England Act 1998, subsection (2) of that section (which relates to consultation) does not apply.

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#### Commencement Information

**I259** Sch. 20 para. 6 in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), Sch. Pt. 1

- 7 (1) This paragraph applies where a provision of Part 5 or 6 of this Act, or an amendment of FSMA 2000 made by any provision of this Act, imposes on the FCA, the PRA or the Bank of England, in connection with the making or issuing of any rules or other instrument or document—
- (a) a public consultation requirement, or
  - (b) a requirement (however expressed) to consult particular persons.
- (2) The requirement may be satisfied—
- (a) by things done (wholly or in part) before the commencement of the provision in question or the passing of this Act, and
  - (b) by things done by the Financial Services Authority or the Bank of England or by both of them.
- (3) “Public consultation requirement” means a requirement (however expressed) to publish a draft of the instrument or other document with or without other material and to invite representations about it.

#### Modifications etc. (not altering text)

**C4** Sch. 20 para. 7 applied (20.2.2013) by The Financial Services Act 2012 (Transitional Provisions) (Rules and Miscellaneous Provisions) Order 2013 (S.I. 2013/161), arts. 1(1), 7(2)

#### Commencement Information

**I260** Sch. 20 para. 7 in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), Sch. Pt. 1

- 8 (1) The first order under section 22A of FSMA 2000 may, if it imposes on the PRA a public consultation requirement in relation to any statement of policy required by the order to be prepared by the PRA, provide that in relation to the first statement of policy the requirement may be satisfied—
- (a) by things done (wholly or in part) before the commencement of the order or the passing of this Act, and
  - (b) by things done by the Financial Services Authority or the Bank of England or by both of them.
- (2) “Public consultation requirement” has the same meaning as in paragraph 7.

#### Commencement Information

**I261** Sch. 20 para. 8 in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), Sch. Pt. 1

#### Information

- 9 (1) The FSA may disclose to the PRA any information which the FSA considers that it is necessary or expedient to disclose to the PRA in preparation for the commencement of any provision of this Act conferring functions on the PRA.

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- (2) The FSA may disclose to the Bank of England any information which the FSA considers that it is necessary or expedient to disclose to the Bank in preparation for the commencement of any provision of this Act conferring functions on the Bank.
- (3) Section 348 of FSMA 2000 (restrictions on disclosure of confidential information) has effect subject to sub-paragraphs (1) and (2).

**Commencement Information**

**I262** Sch. 20 para. 9 in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), Sch. Pt. 1

*Postal Services Act 2000*

- 10 (1) The following amendments of the Postal Services Act 2000 have effect until the repeal by the Postal Services Act 2011 of the provisions amended has been brought into force for all purposes.
- (2) In section 7 of the Postal Services Act 2000 (exceptions), in subsection (5), in the definition of “deposit taker”, for “Part 4” substitute “ Part 4A ”.
- (3) In Schedule 7 of that Act (disclosure of information), for paragraph 3(2)(s) substitute—
  - “(s) the Financial Conduct Authority,
  - (sa) the Prudential Regulation Authority.”.

**Commencement Information**

**I263** Sch. 20 para. 10 in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), Sch. Pt. 1

SCHEDULE 21

Section 119(2)

TRANSFER SCHEMES

**PART 1**

PROPERTY, RIGHTS AND LIABILITIES OF FINANCIAL SERVICES AUTHORITY

*Interpretation*

- 1 In this Part of this Schedule—
  - “the Bank” means the Bank of England;
  - “the FSA” means the Financial Services Authority.

**Commencement Information**

**I264** Sch. 21 para. 1 in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), Sch. Pt. 1

**Status:** Point in time view as at 27/02/2013. This version of this Act contains provisions that are not valid for this point in time.

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### Transfer schemes

- 2 (1) The FSA must make one or more schemes under this paragraph for the transfer of property, rights and liabilities of the FSA—
- (a) to the PRA or the Bank,
  - (b) to the PRA and the Bank, to be held jointly, or
  - (c) to the FSA and either the PRA or the Bank or both, to be held jointly.
- (2) A scheme under this paragraph made by the FSA is not to be capable of coming into force unless it is approved by the Treasury.
- (3) The FSA may not submit a scheme under this paragraph to the Treasury for their approval without the consent of the Bank.
- (4) Sub-paragraph (5) applies if—
- (a) the FSA fails, before such time as may be notified to it by the Treasury as the latest time for submission of a scheme under this paragraph in connection with the transfer by or under this Act of specified functions of the FSA to the PRA, to the Bank, or to the FSA and the PRA, to submit such a scheme to the Treasury for their approval, or
  - (b) the Treasury decide not to approve a scheme that has been submitted to them by the FSA (either with or without modifications).
- (5) Where this sub-paragraph applies, the Treasury may, after consultation with the FSA and the Bank, make a scheme under this paragraph for the transfer of such of the FSA's property, rights and liabilities as appear to them appropriate to be transferred as mentioned in sub-paragraph (1) in consequence of the transfer of functions by or under this Act.
- (6) The property, rights and liabilities which are the subject of a scheme under this paragraph are transferred in accordance with the provisions of the scheme on such day as the scheme may specify.
- (7) The FSA must provide the Treasury with all such information and other assistance as they may reasonably require for the purposes of, or otherwise in connection with, the exercise of any power conferred on the Treasury by this paragraph.
- (8) In the following provisions of this Part of this Schedule a scheme under this paragraph is referred to as a “transfer scheme”.

#### Commencement Information

**I265** Sch. 21 para. 2 in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), Sch. Pt. 1

- 3 The property, rights and liabilities that may be the subject of a transfer scheme include—
- (a) any that would otherwise be incapable of being transferred or assigned, and
  - (b) rights and liabilities under a contract of employment.

#### Commencement Information

**I266** Sch. 21 para. 3 in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), Sch. Pt. 1

- 4 A transfer scheme may—



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- (a) apportion, or provide for the apportionment of, property, rights and liabilities,
- (b) define the property, rights and liabilities to be transferred by specifying them or by describing them (including describing them by reference to functions that are transferred by or under this Act);
- (c) contain provision for the payment of compensation by the PRA or the Bank to the FSA;
- (d) contain provision for the payment of compensation by the FSA, the PRA or the Bank to any person whose interests are adversely affected by the scheme;
- (e) contain supplemental, incidental, transitional and consequential provision.

**Commencement Information**

**I267** Sch. 21 para. 4 in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), Sch. Pt. 1

- 5 A transfer scheme which relates to rights and liabilities under a contract of employment—
- (a) must provide for the transfer to which the scheme relates to be treated as if it were a relevant transfer for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”), but
  - (b) may, in connection with functions becoming exercisable (alone or jointly) by the PRA—
    - (i) provide for the transfer of rights and liabilities under a contract of employment to the Bank, and
    - (ii) provide for TUPE to have effect as if the relevant transfer were a transfer to the Bank.

**Commencement Information**

**I268** Sch. 21 para. 5 in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), Sch. Pt. 1

## PART 2

### PROPERTY, RIGHTS AND LIABILITIES OF OFFICE OF FAIR TRADING

#### *Interpretation*

- 6 In this Part of this Schedule “the OFT” means the Office of Fair Trading.

**Commencement Information**

**I269** Sch. 21 para. 6 in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), Sch. Pt. 1

#### *Transfer schemes*

- 7 (1) This paragraph applies if after the passing of this Act the Treasury make an order under section 22 of FSMA 2000 which has the effect that an activity—

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- (a) ceases to be an activity in respect of which a licence under section 21 of the Consumer Credit Act 1974 is required or would be required but for the exemption conferred by subsection (2), (3) or (4) of that section or paragraph 15(3) of Schedule 3 to FSMA 2000, and
  - (b) becomes a regulated activity for the purposes of FSMA 2000.
- (2) The OFT must make one or more schemes under this paragraph for the transfer of property, rights and liabilities of the OFT to the FCA.
- (3) A scheme under this paragraph made by the OFT is not to be capable of coming into force unless it is approved by the Treasury and the Secretary of State.
- (4) The OFT may not submit a scheme under this paragraph to the Treasury or the Secretary of State for their approval without the consent of the FCA.
- (5) Sub-paragraph (6) applies if —
- (a) the OFT fails, before such time as may be notified to it by the Treasury as the latest time for submission of a scheme under this paragraph in connection with an order falling within sub-paragraph (1), to submit such a scheme to the Treasury and the Secretary of State for their approval, or
  - (b) the Treasury or the Secretary of State decide not to approve a scheme that has been submitted to them by the OFT (either with or without modifications).
- (6) Where this sub-paragraph applies, the Treasury may, with the approval of the Secretary of State, make a scheme under this paragraph for the transfer to the FCA of such of the OFT's property, rights and liabilities as appear to the Treasury appropriate to be transferred to the FCA in consequence of the order falling within sub-paragraph (1).
- (7) The property, rights and liabilities which are the subject of a scheme under this paragraph are transferred in accordance with the provisions of the scheme on such day as the scheme may specify.
- (8) The OFT must provide the Treasury or the Secretary of State with all such information and other assistance as either of them may reasonably require for the purposes of, or otherwise in connection with, the exercise of any power conferred on the Treasury or the Secretary of State by this paragraph.
- (9) In the following provisions of this Part of this Schedule a scheme under this paragraph is referred to as a “transfer scheme”.

#### Commencement Information

**1270** Sch. 21 para. 7 in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), Sch. Pt. 1

- 8 The property, rights and liabilities that may be the subject of a transfer scheme include—
- (a) any that would not otherwise be capable of being transferred or assigned, and
  - (b) rights and liabilities under a contract of employment.

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**Commencement Information**

**I271** Sch. 21 para. 8 in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), Sch. Pt. 1

- 9 A transfer scheme may—
- (a) apportion, or provide for the apportionment of, property, rights and liabilities,
  - (b) define the property, rights and liabilities to be transferred by specifying them or by describing them (including describing them by reference to functions that are transferred by the order falling within paragraph 7(1));
  - (c) contain provision for the payment of compensation by the FCA to the OFT;
  - (d) contain provision for the payment of compensation by the OFT or the FCA to any person whose interests are adversely affected by the scheme;
  - (e) contain supplemental, incidental, transitional and consequential provision.

**Commencement Information**

**I272** Sch. 21 para. 9 in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), Sch. Pt. 1

- 10 A transfer scheme which relates to rights and liabilities under a contract of employment must provide for the transfer to which the scheme relates to be treated as if it were a relevant transfer for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006.

**Commencement Information**

**I273** Sch. 21 para. 10 in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), Sch. Pt. 1

**Status:**

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**Changes to legislation:**

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