

Changes to legislation: Financial Services Act 2012, SCHEDULE 13 is up to date with all changes known to be in force on or before 03 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

SCHEDULES

SCHEDULE 13

Section 42

AUDITORS AND ACTUARIES

1 FSMA 2000 is amended as follows.

Commencement Information

II Sch. 13 para. 1 in force at 1.4.2013 by S.I. 2013/423, art. 3, Sch.

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(1) 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

I2 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
I3 Sch. 13 para. 2 in force at 1.4.2013 in so far as not already in force by S.I. 2013/423, art. 3, Sch.

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-*authorised 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-*authorised persons*, and
- (b) may make rules—
- (i) imposing such other duties on auditors of PRA-*authorised persons* as may be specified, and
- (ii) imposing such duties on actuaries acting for PRA-*authorised persons* as may be specified.
- (3B) The FCA may make rules imposing on auditors of, or actuaries acting for, *authorised 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-*authorised 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.”

Commencement Information

I4 Sch. 13 para. 3 in force at 1.4.2013 by S.I. 2013/423, art. 3, Sch.

- 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 ”,

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- (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) For “the Authority”, in each other place (including the heading), substitute “ a regulator ”.

Commencement Information

I5 Sch. 13 para. 4 in force at 1.4.2013 by S.I. 2013/423, art. 3, Sch.

- 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 ”.

Commencement Information

I6 Sch. 13 para. 5 in force at 1.4.2013 by S.I. 2013/423, art. 3, Sch.

- 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—

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“(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;
- (b) in any other case, the FCA.”

Commencement Information

I7 Sch. 13 para. 6 in force at 1.4.2013 by S.I. 2013/423, art. 3, Sch.

- 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

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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).
- (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).

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- (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.

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

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- (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.
- (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.”

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- I8** 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
I9 Sch. 13 para. 7 in force at 1.4.2013 in so far as not already in force by S.I. 2013/423, art. 3, Sch.

- 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) ”.

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Commencement Information

- I10** Sch. 13 para. 8 in force at 1.4.2013 by S.I. 2013/423, art. 3, Sch.

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Act power to apply conferred (temp.) by [2014 c. 21 s. 79\(4\)](#)
- Act power to apply conferred (temp.) by [2014 c. 21 s. 81\(10\)](#)