

SCHEDULES

SCHEDULE 23

CONSEQUENTIAL AMENDMENTS OF THE FINANCIAL SERVICES ACT 1986

PART I

GENERAL AMENDMENTS

- 1 (1) Section 13 of the Financial Services Act 1986 (power to direct alteration of rules of recognised self-regulating organisation) is amended as follows.
- (2) Omit subsection (1).
- (3) For subsection (2) substitute—
- “*(2)* If at any time it appears to the Secretary of State that—
- (a) a recognised self-regulating organisation is concerned with two or more kinds of investment business, and
- (b) the requirement in paragraph 3(1) of Schedule 2 to this Act is not satisfied in respect of investment business of one or more but not all of those kinds,
- he may, instead of revoking the recognition order or making an application under section 12 above, direct the organisation to alter, or himself alter, its rules so that they preclude a member from carrying on investment business of a kind in respect of which that requirement is not satisfied, unless he is an authorised person otherwise than by virtue of membership of the organisation or is an exempted person in respect of that business.”.
- (4) For subsection (3) substitute—
- “*(3)* A direction under this section is enforceable on the application of the Secretary of State by injunction or, in Scotland, by an order under section 45 of the Court of Session Act 1988.”.
- (5) Omit subsections (4) to (6).
- 2 (1) Section 48 of the Financial Services Act 1986 (conduct of business rules) is amended as follows.
- (2) In subsection (1) omit the words “members of a recognised self-regulating organisation or” and “organisation or”.
- (3) After subsection (10) insert—
- “*(11)* Section 63A below (application of designated rules) has effect as regards the application of rules under this section to members of recognised self-regulating organisations in respect of investment business in the carrying on of which they are subject to the rules of the organisation.”.

Status: This is the original version (as it was originally enacted).

- 3 (1) Section 49 of the Financial Services Act 1986 (financial resources rules) is amended as follows.
- (2) For subsection (1) substitute—
- “(1) The Secretary of State may make rules requiring—
- (a) a person authorised to carry on investment business by virtue of section 25 or 31 above, or
- (b) a member of a recognised self-regulating organisation carrying on investment business in the carrying on of which he is subject to the rules of the organisation,
- to have and maintain in respect of that business such financial resources as are required by the rules.”.
- (3) After subsection (2) insert—
- “(3) Section 63A below (application of designated rules) has effect as regards the application of rules under this section to members of recognised self-regulating organisations in respect of investment business in the carrying on of which they are subject to the rules of the organisation.”.
- 4 In section 50 of the Financial Services Act 1986 (power of Secretary of State to modify conduct of business and financial resources rules for particular cases), after subsection (3) insert—
- “(4) The powers conferred by subsection (1) above shall not be exercised in a case where the powers conferred by section 63B below are exercisable (powers of recognised self-regulating organisation in relation to designated rules).”.
- 5 In section 52 of the Financial Services Act 1986 (notification regulations), in subsection (3) (application to member of recognised self-regulating organisation or professional body), for “subject to any of the rules made under section 48 above” substitute “not subject to the rules of that organisation or body”.
- 6 (1) Section 55 of the Financial Services Act 1986 (clients' money) is amended as follows.
- (2) In subsection (2)(b) and (e) omit the words “a member of a recognised self-regulating organisation or” and “organisation or”.
- (3) In subsection (3) omit the words “organisation or”.
- (4) After subsection (5) insert—
- “(6) Section 63A below (application of designated regulations) has effect as regards the application of regulations under this section to members of recognised self-regulating organisations in respect of investment business in the carrying on of which they are subject to the rules of the organisation.”.
- 7 In section 56 of the Financial Services Act 1986 (unsolicited calls), for subsection (7) substitute—
- “(7) Section 63A below (application of designated regulations) has effect as regards the application of regulations under this section to members of recognised self-regulating organisations in respect of investment business in the carrying on of which they are subject to the rules of the organisation.

Status: This is the original version (as it was originally enacted).

As it applies to such persons in respect of such business the reference in subsection (1) above to conduct permitted by regulations made by the Secretary of State shall be construed—

- (a) where or to the extent that the regulations do not apply, as a reference to conduct permitted by the rules of the organisation; and
- (b) where or to the extent that the regulations do apply but are expressed to have effect subject to the rules of the organisation, as a reference to conduct permitted by the regulations together with the rules of the organisation.

(7A) In the application of this section to anything done by a person certified by a recognised professional body in carrying on investment business in the carrying on of which he is subject to the rules of the body, the reference in subsection (1) above to conduct permitted by regulations made by the Secretary of State shall be construed as a reference to conduct permitted by the rules of the body.”.

- 8 In section 86 of the Financial Services Act 1986 (collective investment schemes constituted in other member States), in subsection (7) (restriction on application of conduct of business rules), at the end add—

“This subsection also applies to statements of principle under section 47A and codes of practice under section 63A so far as they relate to matters falling within the rule-making power in section 48.”.

- 9 In section 95 of the Financial Services Act 1986 (collective investment schemes: contraventions), after subsection (2) add—

“(3) The disciplinary action which may be taken by virtue of section 47A(3) (failure to comply with statement of principle) includes—

- (a) the giving of a direction under section 91(2), and
- (b) the application by the Secretary of State for an order under section 93;

and subsection (6) of section 47A (duty of the Secretary of State as to exercise of powers) has effect accordingly.”.

- 10 (1) Section 107 of the Financial Services Act 1986 (appointment of auditors) is amended as follows.

- (2) For subsection (1) (power to make rules) substitute—

“(1) The Secretary of State may make rules requiring—

- (a) a person authorised to carry on investment business by virtue of section 25 or 31 above, or
- (b) a member of a recognised self-regulating organisation carrying on investment business in the carrying on of which he is subject to the rules of the organisation,

and who, apart from the rules, is not required by or under any enactment to appoint an auditor, to appoint as an auditor a person satisfying such conditions as to qualifications and otherwise as may be specified in or imposed under the rules.”.

- (3) After subsection (3) add—

Status: This is the original version (as it was originally enacted).

“(4) In its application to members of recognised self-regulating organisations, this section has effect subject to section 107A below.”.

11 After section 107 of the Financial Services Act 1986 insert—

“107A Application of audit rules to members of self-regulating organisations

- (1) The Secretary of State may in rules under section 107 designate provisions which apply, to such extent as may be specified, to a member of a recognised self-regulating organisation in respect of investment business in the carrying on of which he is subject to the rules of the organisation.
- (2) It may be provided that the designated rules have effect, generally or to such extent as may be specified, subject to the rules of the organisation.
- (3) A member of a recognised self-regulating organisation who contravenes a rule applying to him by virtue of that section shall be treated as having contravened the rules of the organisation.
- (4) Except as mentioned above, rules made under section 107 do not apply to members of recognised self-regulating organisations in respect of investment business in the carrying on of which they are subject to the rules of the organisation.
- (5) A recognised self-regulating organisation may on the application of a member of the organisation—
 - (a) modify a rule designated under this section so as to adapt it to his circumstances or to any particular kind of business carried on by him, or
 - (b) dispense him from compliance with any such rule, generally or in relation to any particular kind of business carried on by him.
- (6) The powers conferred by subsection (5) shall not be exercised unless it appears to the organisation—
 - (a) that compliance with the rule in question would be unduly burdensome for the applicant having regard to the benefit which compliance would confer on investors, and
 - (b) that the exercise of those powers will not result in any undue risk to investors.
- (7) The powers conferred by subsection (5) may be exercised unconditionally or subject to conditions; and subsection (3) applies in the case of a contravention of a condition as in the case of contravention of a designated rule.
- (8) The reference in paragraph 4(1) of Schedule 2 (requirements for recognition of self-regulating organisations) to monitoring and enforcement of compliance with rules includes monitoring and enforcement of compliance with conditions imposed by the organisation under subsection (7).”.

12 (1) Section 114 of the Financial Services Act 1986 (power to transfer functions to designated agency) is amended as follows.

(2) For subsection (9) substitute—

Status: This is the original version (as it was originally enacted).

“(9) The Secretary of State shall not make a delegation order transferring any legislative functions unless—

- (a) the agency has furnished him with a copy of the instruments it proposes to issue or make in the exercise of those functions, and
- (b) he is satisfied that those instruments will afford investors an adequate level of protection and, in the case of such provisions as are mentioned in Schedule 8 to this Act, comply with the principles set out in that Schedule.

In this subsection “legislative functions” means the functions of issuing or making statements of principle, rules, regulations or codes of practice.”.

- (3) In subsection (12) for “rules or regulations made” substitute “statements of principle, rules, regulations or codes of practice issued or made”.
- 13 (1) Section 115 of the Financial Services Act 1986 (resumption of transferred functions) is amended as follows.
- (2) For subsection (5) substitute—

“(5) Where the transferred functions consist of or include any legislative functions, an order may be made under subsection (2) above if at any time it appears to the Secretary of State that the instruments issued or made by the agency do not satisfy the requirements of section 114(9)(b) above.”.
 - (3) In subsection (7)—
 - (a) in the opening words, for “subsection (2)(b) above” substitute “this section”, and
 - (b) in paragraph (a) for “functions of making rules or regulations” substitute “functions of issuing or making statements of principle, rules, regulations or codes of practice”.
- 14 (1) Section 119 of the Financial Services Act 1986 (competition scrutiny: recognition orders) is amended as follows.
- (2) In subsection (1) (considerations relevant to making of recognition order), for paragraphs (a) and (b) substitute—
 - “(a) in the case of a self-regulating organisation, the rules and any guidance of which copies are furnished with the application for the order, together with any statements of principle, rules, regulations or codes of practice to which members of the organisation would be subject by virtue of Chapter V of this Part,
 - (b) in the case of an investment exchange, the rules and any guidance of which copies are furnished with the application for the order, together with any arrangements of which particulars are furnished with the application,
 - (c) in the case of a clearing house, the rules and any guidance of which copies are furnished with the application for the order,”.
 - (3) In subsection (2) (circumstances in which powers are exercisable in relation to recognised body), for paragraphs (a) to (c) substitute—
 - “(a) in the case of a self-regulating organisation—
 - (i) any rules made or guidance issued by the organisation,

Status: This is the original version (as it was originally enacted).

- (ii) any practices of the organisation, or
 - (iii) any practices of persons who are members of, or otherwise subject to the rules made by, the organisation,
- together with any statements of principle, rules, regulations or codes of practice to which members of the organisation are subject by virtue of Chapter V of this Part,
- (b) in the case of a recognised investment exchange—
 - (i) any rules made or guidance issued by the exchange,
 - (ii) any practices of the exchange, or
 - (iii) any practices of persons who are members of, or otherwise subject to the rules made by, the exchange,
 - (c) in the case of a recognised clearing house—
 - (i) any rules made or guidance issued by the clearing house,
 - (ii) any practices of the clearing house, or
 - (iii) any practices of persons who are members of, or otherwise subject to the rules made by, the clearing house,
 or any clearing arrangements made by the clearing house.”.
- (4) In subsection (3) (powers exercisable in relation to recognised body)—
- (a) in paragraph (b) for “the rules” substitute “its rules, or the”, and
 - (b) in paragraph (c) for “the rules” substitute “its rules”.
- (5) In subsection (5) (construction of references to practices)—
- (a) for “paragraph (b)” substitute “paragraph (a)(ii), (b)(ii) and (c)(ii)”, and
 - (b) omit the words from “and the practices referred to in paragraph (c)” to the end.
- (6) After that subsection insert—
- “(6) The practices referred to in paragraph (a)(iii), (b)(iii) and (c)(iii) of subsection (2) above are—
- (a) in relation to a recognised self-regulating organisation, practices in relation to business in respect of which the persons in question are subject to—
 - (i) the rules of the organisation, or
 - (ii) statements of principle, rules, regulations or codes of practice to which its members are subject by virtue of Chapter V of this Part,
 and which are required or contemplated by the rules of the organisation or by those statements, rules, regulations or codes, or by guidance issued by the organisation,
 - (b) in relation to a recognised investment exchange or clearing house, practices in relation to business in respect of which the persons in question are subject to the rules of the exchange or clearing house, and which are required or contemplated by its rules or guidance,

or which are otherwise attributable to the conduct of the organisation, exchange or clearing house as such.”.
- 15 (1) Section 121 of the Financial Services Act 1986 (competition scrutiny: designated agencies) is amended as follows.

Status: This is the original version (as it was originally enacted).

- (2) In subsection (1) for “rules, regulations” substitute “statements of principle, rules, regulations, codes of practice”.
 - (3) In subsection (2)(a) and (c) for “rules or regulations made” substitute “statements of principle, rules, regulations or codes of practice issued or made”.
 - (4) In subsection (3)(b) for “rules, regulations” substitute “statements of principle, rules, regulations, codes of practice”.
 - (5) In subsection (4) for “rules or regulations” (twice) substitute “statements of principle, rules, regulations or codes of practice”.
- 16 (1) Section 122 of the Financial Services Act 1986 (reports by Director General of Fair Trading) is amended as follows.
- (2) In subsection (1) for “and regulations” substitute “, statements of principle, regulations and codes of practice”.
 - (3) In subsection (2) for “regulations,” substitute “statements of principle, regulations, codes of practice,”.
 - (4) In subsection (4)—
 - (a) in paragraph (a) for “rules, guidance, arrangements and regulations” substitute “rules, statements of principle, regulations, codes of practice, guidance and arrangements”, and
 - (b) in the words following the paragraphs, for “rules, guidance, arrangements, regulations” substitute “rules, statements of principle, regulations, codes of practice, guidance, arrangements”, and for “rules, guidance, arrangements or regulations” substitute “rules, statements of principle, regulations, codes of practice, guidance or arrangements”.
- 17 (1) Section 124 of the Financial Services Act 1986 (matters to be left out of account for certain purposes in connection with competition scrutiny) is amended as follows.
- (2) In subsection (1) (matters to be left out of account in determining whether monopoly situation exists), in paragraph (c) for “rules or regulations made or guidance issued” substitute “statements of principle, rules, regulations, codes of practice or guidance issued or made”.
 - (3) In subsection (3) (matters to be excluded from consideration where monopoly situation exists)—
 - (a) in paragraph (a), for “rules or regulations made” substitute “statements of principle, rules, regulations or codes of practice issued or made”,
 - (b) in paragraph (b), for “rules or regulations” substitute “statements of principle, rules, regulations or codes of practice”, and
 - (c) in the closing words, for “rules, regulations” substitute “statements of principle, rules, regulations, codes of practice”.
- 18 For section 205 of the Financial Services Act 1986 (regulations, rules and orders) substitute—

“205 General power to make regulations

The Secretary of State may make regulations prescribing anything which by this Act is authorised or required to be prescribed.

205A Supplementary provisions with respect to subordinate legislation

- (1) The following provisions apply to any power of the Secretary of State under this Act—
 - (a) to issue statements of principle,
 - (b) to make rules or regulations,
 - (c) to make orders (other than such orders as are excepted by subsection (4) below), or
 - (d) to issue codes of practice.
 - (2) Any such power is exercisable by statutory instrument and includes power to make different provision for different cases.
 - (3) Except as otherwise provided, a statutory instrument containing statements of principle, rules or regulations shall be subject to annulment in pursuance of a resolution of either House of Parliament.
 - (4) The above provisions do not apply to a recognition order, an order declaring a collective investment scheme to be an authorised unit trust scheme or a recognised scheme or to an order revoking any such order.”.
- 19 In section 206(1) of the Financial Services Act 1986 (publication of information and advice)—
- (a) in paragraph (a), for “rules and regulations made” substitute “statements of principle, rules, regulations and codes of practice issued or made”, and
 - (b) in paragraph (b) for “rules or regulations” substitute “statements of principle, rules, regulations or codes of practice”.
- 20 In Schedule 2 to the Financial Services Act 1986 (requirements for recognition of self-regulating organisations), in paragraph 4(1) (monitoring and enforcement) for “rules or regulations” substitute “statements of principle, rules, regulations or codes of practice”.
- 21 In Schedule 3 to the Financial Services Act 1986 (requirements for recognition of professional bodies), in paragraph 4(2) (monitoring and enforcement) for “rules or regulations” substitute “statements of principle, rules, regulations or codes of practice”.
- 22 In Schedule 7 to the Financial Services Act 1986 (qualifications of designated agency), in paragraph 2(2) (arrangements for discharge of functions: matters to be decided upon by the governing body) for “rules or regulations must be made” substitute “statements of principle, rules, regulations and codes of practice must be issued or made”.
- 23 (1) Schedule 8 to the Financial Services Act 1986 (principles applicable to designated agency’s rules and regulations) is amended as follows.
- (2) In the heading for “RULES AND REGULATIONS” substitute “LEGISLATIVE PROVISIONS”.
 - (3) For paragraph 1, and the cross-heading preceding it, substitute—

Status: This is the original version (as it was originally enacted).

“Introduction

- 1 (1) In this Schedule “legislative provisions” means the provisions of statements of principle, rules, regulations and codes of practice issued or made under Part I of this Act.
- (2) References in this Schedule to “conduct of business provisions” are to rules made under section 48 of this Act and statements of principle and codes of practice so far as they relate to matters falling within that rule-making power.
- (3) References in this Schedule to provisions made for the purposes of a specified section or Chapter are to rules or regulations made under that section or Chapter and statements of principle and codes of practice so far as they relate to matters falling within that power to make rules or regulations.

Standards

- 1A The conduct of business provisions and the other legislative provisions must promote high standards of integrity and fair dealing in the conduct of investment business.”
- (4) In paragraphs 2 to 7, 9, 11 and 12 for “conduct of business rules” substitute “conduct of business provisions”.
- (5) In paragraph 7 for “those rules and rules under” substitute “those provisions and provisions made for the purposes of”.
- (6) In paragraph 8 for “Rules made under” substitute “Provisions made for the purposes of”.
- (7) In paragraph 9 for “regulations made under” substitute “provisions made for the purposes of”.
- (8) In paragraph 10 for “Rules made under” substitute “Provisions made for the purposes of” and for “under those sections” substitute “for the purposes of those sections”.
- (9) In paragraph 12 for “rules and regulations made under” substitute “provisions made for the purposes of”.
- 24 (1) Schedule 9 to the Financial Services Act 1986 (designated agency: exercise of transferred functions) is amended as follows.
- (2) In paragraph 4(1) (copies of instruments to be sent to Secretary of State), for “any rules or regulations made” substitute “any statements of principle, rules, regulations or codes of practice issued or made”.
- (3) For paragraphs 5 and 6 substitute—
 - “5 Paragraphs 6 to 9 below have effect instead of section 205A of this Act in relation to statements of principle, rules, regulations and codes of practice issued or made by a designated agency in the exercise of powers transferred to it by a delegation order.
 - 6 Any such power is exercisable by instrument in writing and includes power to make different provision for different cases.”

Status: This is the original version (as it was originally enacted).

- (4) In paragraph 8 (instruments to be printed and made available to public)—
- (a) in sub-paragraph (1) for “is made” substitute “is issued or made”, and
 - (b) in sub-paragraph (2) for “rule or regulation” (twice) substitute “statement of principle, rule, regulation or code of practice”.
- (5) In paragraph 9 (proof of instruments), for “made by the agency” (twice) substitute “made or issued by the agency”.
- (6) For paragraph 12 (consultation) substitute—
- “12 (1) Where a designated agency proposes, in the exercise of powers transferred to it by a delegation order, to issue or make any statements of principle, rules, regulations or codes of practice, it shall publish the proposed instrument in such manner as appears to it best calculated to bring the proposals to the attention of the public, together with a statement that representations about the proposals (and, in particular, representations as to the cost of complying with the proposed provisions) can be made to the agency within a specified time.
- (2) Before issuing or making the instrument the agency shall have regard to any representations duly made in accordance with that statement.
- (3) The above requirements do not apply—
- (a) where the agency considers that the delay involved in complying with them would be prejudicial to the interests of investors;
 - (b) to the issuing or making of an instrument in the same, or substantially the same, terms as a proposed instrument which was furnished by the agency to the Secretary of State for the purposes of section 114(9) of this Act.”.