



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### [<sup>F1</sup>PART 1A

#### THE REGULATORS

### [<sup>F1</sup>CHAPTER 3

#### FURTHER PROVISIONS RELATING TO FCA AND PRA

##### Textual Amendments

- F1** Pt. 1A substituted for Pt. 1 (24.1.2013 for specified purposes, 19.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), ss. **6(1)**, 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(b)(c)(2), Sch. Pts. 2, 3, 4; S.I. 2013/423, art. 3, Sch.

#### *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”;<sup>F2</sup> ...
  - (b) the meaning of “the appropriate regulator” in Part 18 (recognised investment exchanges and clearing houses) [<sup>F3</sup>or

*Status: Point in time view as at 01/03/2016.*

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- (c) the meaning of “regulator” in sections 410A and 410B (fees to meet certain expenses of Treasury).]

#### Textual Amendments

- F2** Word in s. 3A(3)(a) omitted (1.3.2014) by virtue of [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), **ss. 135(2)(a)**, 148(5); S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1
- F3** S. 3A(3)(c) and word inserted (1.3.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), **ss. 135(2)(b)**, 148(5); S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1

### *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 [F42H(2)] 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;
  - (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).

#### Textual Amendments

- F4** Word in s. 3B(1) substituted (1.3.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), **ss. 130(2)**, 148(5); S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1

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### *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—
  - (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.

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- (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.
- (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).

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### **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.
- (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—

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- (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.

*Power of PRA to restrain proposed action by FCA*

**31 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-authorized persons generally, a class of PRA-authorized persons or a particular PRA-authorized person, or
  - (b) to exercise any of its insolvency powers in relation to—
    - (i) a PRA-authorized person,
    - (ii) an appointed representative whose principal, or one of whose principals, is a PRA-authorized 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 authorized persons, other than its powers in relation to consent for the purposes of section 55F or 55I [<sup>F5</sup>, a power conferred on it by sections 234I to 234M] 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-authorized 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.

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- (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-authorized person is to be read in accordance with section 2J(3) and (4).

#### Textual Amendments

**F5** Words in s. 3I(3)(a) inserted (1.11.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), [Sch. 8 para. 4](#); [S.I. 2014/2458](#), art. 2(b)(bb)(ii)

### 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.

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- (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.
- (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 [<sup>F6</sup>capital requirements directive];



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- (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;
  - <sup>F7</sup>(c) .....
  - (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).
  - <sup>F8</sup>(e) [ Directive 2014/59/EU of the European Parliament and of the Council of 15th May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms.]
- (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.

#### Textual Amendments

- F6** Words in s. 3M(3)(a) substituted (1.1.2014) by [The Capital Requirements Regulations 2013 \(S.I. 2013/3115\)](#), reg. 1(2), [Sch. 2 para. 3\(a\)](#)
- F7** S. 3M(3)(c) omitted (1.1.2014) by virtue of [The Capital Requirements Regulations 2013 \(S.I. 2013/3115\)](#), reg. 1(2), [Sch. 2 para. 3\(b\)](#)

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**F8** S. 3M(3)(e) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **113**

### **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.

### **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.

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### *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.

### *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.

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*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
  - (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.]

**Status:**

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