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# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

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

#### THE REGULATORS

### CHAPTER 3

#### FURTHER PROVISIONS RELATING TO FCA AND PRA

#### *[<sup>F1</sup>Relationship between 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.](#)

### **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

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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.
- (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.
- (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,

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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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