

FINANCIAL SERVICES ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS AND SCHEDULES

Objectives of FSA etc

Section 1: Financial stability objective

27. This section amends section 2 of FSMA to give the FSA an additional regulatory objective (or ‘general duty’) concerning financial stability. It inserts a new section 3A in FSMA, which provides that the objective is to contribute to the protection and enhancement of the stability of the UK financial system. This is similar to the financial stability objective of the Bank of England under section 2A of the Bank of England Act 1998 (inserted by section 238 of the Banking Act 2009).
28. New section 3A of FSMA requires the FSA, in considering this objective, to have regard to the economic and fiscal consequences of instability and also to any effects on economic growth of regulatory actions taken for stability reasons. In addition the FSA, in considering this objective, must have regard to the possible impact on UK financial stability of events and circumstances outside the UK. The section also requires the FSA to develop and keep under review a strategy concerning this objective, in consultation with the Treasury.
29. *Schedule 2* makes consequential amendments to FSMA. Paragraph 2 of that Schedule substitutes the term “the UK financial system” for “the financial system” in section 3(1) of FSMA (which deals with the “market confidence” objective) and provides a definition of that term in section 3(2) of FSMA. Similar substitutions are made by paragraphs 3 and 6(2) to sections 4 and 14 of FSMA respectively. Paragraph 31 amends section 417 of FSMA (definitions) to clarify that the definition of “UK financial system” in section 3(2) of FSMA applies for the purposes of that Act.

Section 2: Enhancing public understanding of financial matters etc

30. *Subsections (2)(a) and (3)* of this section remove the FSA’s regulatory objective of promoting public understanding of the financial system. *Subsection (2)(b)* requires the FSA to have regard to the desirability of enhancing the understanding and knowledge of the public of financial matters when the FSA discharges its general functions set out in section 2(4) of FSMA.
31. *Subsection (4)* requires the FSA, when discharging its consumer protection regulatory objective, to have regard to information provided to the FSA by the new consumer financial education body to be established under new section 6A of FSMA.
32. *Subsection (5)* inserts a new section 6A in FSMA which imposes an obligation on the FSA to establish a body, referred to as the consumer financial education body (the “CFEB”). The CFEB’s function is defined in new section 6A and the main purposes are to help members of the public to:
 - better understand financial matters; and

- improve their ability to manage their own financial affairs.
33. New section 6A(2) provides illustrations of the types of activity the CFEB might carry out in accordance with its function under new section 6A(1). This includes delivering the money guidance service and programmes to improve financial capability in the UK. New section 6A(2)(e) allows CFEB to deliver information and advice to members of the public. “Advice” has an ordinary meaning and does not include advice which is regulated under FSMA.
 34. *Subsection (6)* introduces Schedule 1, which inserts new Schedule 1A into FSMA. Schedule 1A makes further provision for the establishment and operation of the CFEB.
 35. *Paragraph 1* requires the FSA to ensure that the CFEB can undertake the activities set out in new section 6A. The FSA has a number of responsibilities under this schedule, including appointing the board, approving the CFEB’s annual budget and annual plan, and making rules for the collection from FSA-regulated firms of amounts towards the CFEB’s establishment and running costs. *Paragraph 1(2)* enables the FSA to provide services (such as HR or IT support) to the CFEB.
 36. *Paragraph 2* provides that the CFEB must have a chair, a chief executive and a board, and that these persons (who are the CFEB’s directors) are appointed by the FSA (in the case of the chair and chief executive, with the agreement of the Treasury). The FSA has the power to remove any member from the board (acting, in the case of the chair and chief executive of the board, with the agreement of the Treasury), but the terms of each board member’s appointment (e.g. length of appointment, the basis on which they may be dismissed) must be sufficient for the director (and the board) to be independent from the FSA. The FSA can only appoint someone to the CFEB board if satisfied that the person has knowledge or experience likely to be relevant to the CFEB’s function.
 37. *Paragraph 3* provides that the CFEB and its members and employees will not be acting on behalf of the Crown and its employees will not be civil servants.
 38. *Paragraph 4* makes it clear that the CFEB can arrange for others to act on the CFEB’s behalf as the CFEB’s agent in delivering its consumer financial education function or can support others in undertaking activities which would fall within the CFEB’s function. This can include providing financial support and payment to others to undertake such activities.
 39. *Paragraph 5* permits a body to undertake work for the CFEB even where it would otherwise not be able to do so. This would enable bodies (such as those established by royal charter or with limited charitable aims) to operate where otherwise their constitution may not permit them to do so.
 40. *Paragraph 6* requires the CFEB when exercising its function to have regard to the importance of maintaining confidence in the financial system and the stability of the financial system.
 41. *Paragraph 7* requires the CFEB to prepare a budget before the beginning of each financial year (or in its first year, as quickly as is reasonably practicable) and for the budget to be approved by the FSA. When preparing the budget or planning to vary it the CFEB must consult the persons listed in *sub-paragraph (4)*. The CFEB may vary a budget which has been adopted, with the agreement of the FSA. It is anticipated that, in addition to the sums received by exercising the powers given to the FSA under paragraph 12 and the OFT under paragraph 13, the CFEB may receive public funds under paragraph 14. It is also anticipated that sums will be provided to the CFEB pursuant to directions issued under section 22 of the Dormant Bank and Building Society Accounts Act 2008. As the provisions of paragraphs 12 and 13 make clear, the FSA and the OFT respectively are required to take into account other anticipated sources of funding when fixing a levy on FSA-regulated and OFT-licensed firms. The

CFEB is also required to publish each budget or variation of the budget, in a way the CFEB considers appropriate.

42. *Paragraph 8* requires the CFEB to prepare an annual plan before the beginning of each financial year (or in its first year, as quickly as is reasonably possible) setting out its objectives (both long and short term), the priority to be given to each objective, how it intends to allocate its resources and the tools it will use in determining the extent to which its objectives have been met. It may vary its plan at any point during that year. The annual plan and any variation of it must be approved by the FSA. When preparing the annual plan or planning to vary it the CFEB must consult the persons listed in *sub-paragraph (6)*. The CFEB is also required to publish each annual plan or variation of the annual plan, in a way the CFEB considers appropriate.
43. *Paragraph 9* requires the CFEB to prepare a report, at least annually, on its activities, setting out how it has met the objectives and priorities set out in the annual plan for the period covered by the report and annexing its latest accounts. The CFEB has to publish each report in the way it considers appropriate.
44. *Paragraph 10* exempts the CFEB and those acting on its behalf from the requirement to obtain a licence under Part 3 of the Consumer Credit Act 1974 (“CCA”). A licence is required under Part 3 for businesses (with certain exceptions) to carry on consumer credit, consumer hire or ancillary credit business. *Sub-paragraph (2)* disapplies Parts 4 and 10 of the CCA to the CFEB and those acting on its behalf. Part 4 of the CCA relates to advertising and other aspects of seeking credit business and Part 10 relates to ancillary credit business. These provisions are included because the CFEB may on occasion engage in activities which could fall within the ambit of these Parts of the CCA, for example, if a CFEB staff member or one of CFEB’s agents were to help an individual to use an online credit card comparison tool during a Money Guidance session, this could be ‘credit brokerage’ and fall within the definition of ancillary credit business in Part 10.
45. *Paragraph 11* defines “relevant costs” for the purpose of Part 2 of Schedule 1A to mean the expenses the FSA incurs in establishing the CFEB and the costs incurred or to be incurred by the CFEB.
46. *Paragraph 12* gives the FSA the power to levy sums from persons authorised under FSMA and certain payment service providers defined in the Payment Services Regulations 2009 to meet part of the “relevant costs”. The FSA levies by way of making rules to required authorised persons or payment services providers specified in the rules to pay sums to the FSA to meet the “relevant costs”. The FSA will determine the amount to be levied but under *sub-paragraph (2)* must take into account other anticipated funding for the CFEB before making its rules. The FSA is required to pay sums it collects to the CFEB, but can deduct from such sums the costs of collecting the money.
47. *Paragraph 13* gives the OFT power to levy CCA licence holders and applicants for such licences to meet part of the “relevant costs”. *Sub-paragraph (3)* defines the type of consumer credit licensees and applicants who can be included in a levy, by referring to those persons specified in an order made under section 226A(2)(e) of FSMA (which specifies types of business to be included in the consumer credit jurisdiction of the Financial Ombudsman Scheme). The OFT levies by way of a general notice to the relevant licence holders or applicants. Under *sub-paragraph (4)*, the OFT must take into account other anticipated funding for the CFEB before issuing a general notice. *Sub-paragraph (5)* requires the OFT to consult the FSA, the CFEB and any other relevant persons before issuing a general notice. The OFT is also required to pay sums it collects to the CFEB, but can deduct from such sums the costs of collecting the money. *Sub-paragraph (8)* makes it clear that a general notice can impose different requirements on different licence holders or applicants and can exempt persons from a requirement to pay sums.

*These notes refer to the Financial Services Act 2010
(c.28) which received Royal Assent on 8 April 2010*

48. *Paragraph 14* gives the Treasury and the Secretary of State the power to make grants or loans or provide other financial assistance to the CFEB. It is intended that the powers of the Secretary of State in this Schedule will be exercised by the Secretary of State for Business, Innovation and Skills.
49. *Paragraph 15* enables the FSA to appoint an independent reviewer to review the efficiency of the CFEB's use of its resources. The FSA must consult the Treasury before making such an appointment. The reviewer must set out the results of the review and any recommendations in a written report. The FSA must publish the report in the way it considers appropriate and must meet the expenses of the review.
50. *Paragraph 16* provides the independent reviewer appointed under paragraph 15 with the right of access to documents and information held by the CFEB which are reasonably required for the review.
51. *Subsection (7)* provides that if staff of the FSA are transferred to the CFEB the Transfer of Undertakings (Protection of Employment) Regulations 2006 will apply to such a transfer.

Section 3: Meeting FSA's regulatory objectives

52. This section amends four sections of FSMA so as to broaden the ends towards which the FSA can use its rule-making, permission-varying and intervention powers. As a result of this section, these powers will be exercisable for the purpose of meeting any of the FSA's regulatory objectives and not just the consumer protection objective.
53. *Subsection (2)* amends section 44 of FSMA, which deals with the FSA's power to vary or cancel an authorised person's permission (to undertake a regulated activity) at their request. The amendment to section 44(3) provides that the FSA may refuse an application if this is desirable to meet any of its regulatory objectives.
54. *Subsection (3)* amends section 45 of FSMA, which concerns the FSA's power, on its own initiative, to modify or cancel an authorised person's permission. *Subsection (3)(a)* substitutes a new *subsection (1)(c)* which enables the FSA to use this power in pursuit of any of its regulatory objectives. *Subsection (3)(b)* inserts a provision making clear that the consumers being protected by the exercise of the power need not be consumers of services of the authorised person whose permission is being varied.
55. *Subsection (4)* amends section 138 of FSMA to enable the FSA to use its general rule-making power in pursuit of any of its regulatory objectives.
56. *Subsection (5)* amends section 194 of FSMA, which concerns the FSA's power to intervene in relation to an incoming firm from another EEA state. *Subsection (5)(a)* substitutes a new subsection (1)(c) enabling the FSA to use this power in pursuit of any of its regulatory objectives. *Subsection (5)(b)* makes an amendment to clarify that the power may be exercised to protect consumers who need not be consumers of the services of the firm in respect of which the FSA is intervening.
57. *Schedule 2* makes consequential amendments to FSMA. These include paragraph 32 which inserts new sections 425A and 425B into FSMA, which contain definitions of "consumers" and paragraphs 11 and 35(3), which remove the existing definitions of "consumers" from section 138 of, and Schedule 4 to, FSMA respectively. Paragraphs 4, 5, 6(3), 28 and 35(4) of this Schedule insert provisions applying the definitions in new sections 425A and 425B of FSMA (as appropriate) for the purposes of sections 5, 10, 14, 391 of, and Schedule 4 to, FSMA respectively.