



# Financial Services Act 2012

## 2012 CHAPTER 21

### PART 8

#### AMENDMENTS OF BANKING ACT 2009

##### *Inter-bank payment systems*

#### **104 Inter-bank payment systems**

- (1) Part 5 of the Banking Act 2009 (inter-bank payment systems) is amended as follows.
- (2) After section 186 insert—

##### **“186A Amendment of recognition order**

- (1) The Treasury may amend a recognition order.
- (2) Before amending a recognition order the Treasury must—
  - (a) consult the Bank of England,
  - (b) notify the operator of the recognised inter-bank payment system, and
  - (c) consider any representations made.
- (3) In addition, the Treasury—
  - (a) must consult the FCA before amending a recognition order in respect of a payment system the operator of which—
    - (i) is, or has applied to become, a recognised investment exchange, or
    - (ii) has, or has applied for, a Part 4A permission, and
  - (b) if the operator has, or has applied for, a Part 4A permission for the carrying on of a PRA-regulated activity, must also consult the PRA.
- (4) The Treasury must consider any request by the operator of a recognised inter-bank payment system for the amendment of its recognition order.”

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(3) For section 191 substitute—

**“191 Directions**

- (1) The Bank of England may give directions in writing to the operator of a recognised inter-bank system.
  - (2) A direction may—
    - (a) require or prohibit the taking of specified action in the operation of the system;
    - (b) set standards to be met in the operation of the system.
  - (3) If a direction is given for the purpose of resolving or reducing a threat to the stability of the UK financial system, the operator (including its officers and staff) has immunity from liability in damages in respect of action or inaction in accordance with the direction.
  - (4) A direction given for the purpose mentioned in subsection (3) must—
    - (a) include a statement that it is given for that purpose, and
    - (b) inform the operator of the effect of that subsection.
  - (5) The Treasury may by order confer immunity on any person from liability in damages in respect of action or inaction in accordance with a direction (including a direction given for the purpose mentioned in subsection (3)).
  - (6) An order—
    - (a) is to be made by statutory instrument, and
    - (b) is subject to annulment in pursuance of a resolution of either House of Parliament.
  - (7) An immunity conferred by or under this section does not extend to action or inaction—
    - (a) in bad faith, or
    - (b) in contravention of section 6(1) of the Human Rights Act 1998.”
- (4) In section 186 (procedure)—
- (a) for subsection (2) substitute—
 

“(2) In addition, the Treasury—

    - (a) must consult the FCA before making a recognition order in respect of a payment system the operator of which—
      - (i) is, or has applied to become, a recognised investment exchange, or
      - (ii) has, or has applied for, a Part 4A permission, and
    - (b) if the operator has, or has applied for, a Part 4A permission for the carrying on of a PRA-regulated activity, must also consult the PRA.”, and
  - (b) in subsection (3), for “or the FSA” substitute “, the FCA or the PRA”.
- (5) In section 187 (de-recognition), for subsection (4) substitute—
- “(4) In addition, the Treasury—

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- (a) must consult the FCA before revoking a recognition order in respect of a payment system the operator of which—
    - (i) is, or has applied to become, a recognised investment exchange, or
    - (ii) has, or has applied for, a Part 4A permission, and
  - (b) if the operator has, or has applied for, a Part 4A permission for the carrying on of a PRA-regulated activity, must also consult the PRA.”
- (6) In section 192 (role of FSA)—
  - (a) in subsection (1), for “the FSA” substitute “the FCA or the PRA”,
  - (b) for subsection (2) substitute—
    - “(2) The Bank of England—
      - (a) must consult the FCA before taking action under this Part in respect of a recognised inter-bank payment system the operator of which satisfies section 186(2)(a), and
      - (b) must consult the PRA before taking action under this Part in respect of a recognised inter-bank payment system the operator of which satisfies section 186(2)(b).”
  - (c) in subsection (3)—
    - (i) for “the FSA”, in the first place, substitute “the FCA or the PRA”,
    - (ii) for “the FSA”, in the second place, substitute “it”,
    - (iii) for “section 186(2)” substitute “section 186(2)(a) or (b)”, and
    - (iv) in paragraph (a), for “the FSA” substitute “the FCA or (as the case may be) the PRA”, and
  - (d) in the heading, for “FSA” substitute “FCA and PRA”.
- (7) After section 202 insert—

#### **“202A Injunctions**

- (1) If, on the application of the Bank of England, the court is satisfied—
  - (a) that there is a reasonable likelihood that there will be a compliance failure, or
  - (b) that there has been a compliance failure and there is a reasonable likelihood that it will continue or be repeated,the court may make an order restraining the conduct constituting the failure.
- (2) If, on the application of the Bank of England, the court is satisfied—
  - (a) that there has been a compliance failure by the operator of a recognised inter-bank payment system, and
  - (b) that there are steps which could be taken for remedying the failure,the court may make an order requiring the operator, and anyone else who appears to have been knowingly concerned in the failure, to take such steps as the court may direct to remedy it.
- (3) If, on the application of the Bank of England, the court is satisfied—
  - (a) that there may have been a compliance failure by the operator of a recognised inter-bank payment system, or

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- (b) that a person may have been knowingly concerned in a compliance failure,

the court may make an order restraining the operator or person from dealing with any assets which it is satisfied the operator or person is reasonably likely to deal with.

- (4) The jurisdiction conferred by this section is exercisable—
  - (a) in England and Wales and Northern Ireland, by the High Court, and
  - (b) in Scotland, by the Court of Session.
- (5) In this section—
  - (a) references to an order restraining anything are, in Scotland, to be read as references to an interdict prohibiting that thing,
  - (b) references to remedying a failure include mitigating its effect, and
  - (c) references to dealing with assets include disposing of them.”

- (8) After section 203 insert—

**“203A Records**

- (1) The Bank of England must maintain satisfactory arrangements for—
  - (a) recording decisions made in the exercise of its functions under this Part, and
  - (b) the safe-keeping of those records which it considers ought to be preserved.
- (2) The duty in subsection (1) does not apply to a decision to issue a notice under section 204(1).

**203B Annual report**

- (1) At least once a year the Bank of England must make a report to the Treasury on—
  - (a) the discharge of its functions under this Part,
  - (b) the extent to which, in its opinion, in discharging those functions its financial stability objective has been met, and
  - (c) such other matters as the Treasury may from time to time direct.
- (2) Subsection (1) does not require the inclusion in the report of any information whose publication would in the opinion of the Bank of England be against the public interest.
- (3) The Treasury must lay before Parliament a copy of each report received by them under this section.”

- (9) In section 204 (information)—
  - (a) after subsection (1), insert—

“(1A) The Bank of England may by notice in writing require the operator of a recognised inter-bank payment system to provide information which the Bank requires in connection with the exercise of its functions (whether under this Part or otherwise) in pursuance of its financial stability objective.”,

- (b) in subsections (2) and (3), after “notice” insert “under subsection (1) or (1A)”,
  - (c) in subsection (4), for paragraph (b) substitute—
    - “(b) the FCA;
    - (ba) the PRA;”, and
  - (d) in paragraph (c) of that subsection, for “or the FSA” substitute “, the FCA or the PRA”.
- (10) In section 206A (services forming part of recognised inter-bank payment systems)—
- (a) in subsection (4)(a), for “and the FSA” substitute “, the FCA and the PRA”, and
  - (b) in subsection (6), for paragraph (b) (and the “and” at the end of it) substitute—
    - “(b) the FCA,
    - (ba) the PRA, and”.

## **105 International obligations**

In Part 5 of the Banking Act 2009, after section 206A insert—

### **“206B International obligations**

- (1) If it appears to the Treasury that any action proposed to be taken by the Bank of England in exercising its powers under this Part would be incompatible with EU obligations or any other international obligations of the United Kingdom, the Treasury may direct the Bank not to take that action.
- (2) If it appears to the Treasury that any action which the Bank of England has power under this Part to take is required for the purpose of implementing any such obligation, the Treasury may direct the Bank to take that action.
- (3) A direction under this section—
  - (a) may include such supplemental or incidental requirements as the Treasury consider necessary or expedient, and
  - (b) is enforceable on an application by the Treasury, by injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.”