Financial Services (Banking Reform) Act 2013

2013 CHAPTER 33

An Act to make further provision about banking and other financial services, including provision about the Financial Services Compensation Scheme; to make provision for the amounts owed in respect of certain deposits to be treated as a preferential debt on insolvency; to make further provision about payment systems and securities settlement systems; to make provision about the accounts of the Bank of England and its wholly owned subsidiaries; to make provision in relation to persons providing claims management services; and for connected purposes. [18th December 2013]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

RING-FENCING

Ring-fencing

VALID FROM 01/01/2019

1 Objectives of Prudential Regulation Authority

(1) Section 2B of FSMA 2000 (the PRA's general objective) is amended as follows.

(2) In subsection (3)—

(a) at the end of paragraph (a), omit "and", and

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(b) after paragraph (b) insert ", and

(c) discharging its general functions in relation to the matters mentioned in subsection (4A) in a way that seeks to—

(i) ensure that the business of ring-fenced bodies is carried on in a way that avoids any adverse effect on the continuity of the provision in the United Kingdom of core services,

(ii) ensure that the business of ring-fenced bodies is protected from risks (arising in the United Kingdom or elsewhere) that could adversely affect the continuity of the provision in the United Kingdom of core services, and

(iii) minimise the risk that the failure of a ring-fenced body or of a member of a ring-fenced body's group could affect the continuity of the provision in the United Kingdom of core services."

(3) In subsection (4), for "subsection (3)" substitute " subsection (3)(a) and (b) ".

(4) After subsection (4) insert—

"(4A) The matters referred to in subsection (3)(c) are—

(a) Part 9B (ring-fencing);

(b) ring-fenced bodies (see section 142A);

(c) any body corporate incorporated in the United Kingdom that has a ring-fenced body as a member of its group;

(d) applications under Part 4A which, if granted, would result, or would be capable of resulting, in a person becoming a ring-fenced body."

(5) In section 2J of FSMA 2000 (interpretation of Chapter 2 of Part 1)—

(a) in subsection (3), for "a PRA-authorised" substitute " an authorised ",

(b) after that subsection insert—

"(3A) For the purposes of this Chapter, the cases in which a person ("P") other than an authorised person is to be regarded as failing include any case where P enters insolvency.", and

(c) in subsection (4), for "subsection (3)(a)" substitute " subsections (3)(a) and (3A) ".

VALID FROM 01/01/2019

2 Modification of objectives of Financial Conduct Authority

After section 1I of FSMA 2000 insert—

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"Modifications applying if core activity not regulated by PRA

1IA Modifications applying if core activity not regulated by PRA

(1) If and so long as any regulated activity is a core activity (see section 142B) without also being a PRA-regulated activity (see section 22A), the provisions of this Chapter are to have effect subject to the following modifications.

(2) Section 1B is to have effect as if—

(a) in subsection (3), after paragraph (c) there were inserted—

"(d) in relation to the matters mentioned in section 1EA(2), the continuity objective (see section 1EA).", and

(b) in subsection (4), for "or the integrity objective," there were substituted " , the integrity objective or (in relation to the matters mentioned in section 1EA(2)) the continuity objective, ".

(3) After section 1E there is to be taken to be inserted—

"**1EA Continuity objective**

(1) In relation to the matters mentioned in subsection (2), the continuity objective is: protecting the continuity of the provision in the United Kingdom of core services (see section 142C).

(2) Those matters are—

(a) Part 9B (ring-fencing);

(b) ring-fenced bodies (see section 142A);

(c) any body corporate incorporated in the United Kingdom that has a ring-fenced body as a member of its group;

(d) applications under Part 4A which, if granted, would result, or would be capable of resulting, in a person becoming a ring-fenced body.

(3) The FCA's continuity objective is to be advanced primarily by—

(a) seeking to ensure that the business of ring-fenced bodies is carried on in a way that avoids any adverse effect on the continuity of the provision in the United Kingdom of core services,

(b) seeking to ensure that the business of ring-fenced bodies is protected from risks (arising in the United Kingdom or elsewhere) that could adversely affect the continuity of the provision in the United Kingdom of core services, and

(c) seeking to minimise the risk that the failure of a ring-fenced body or of a member of a ring-fenced body's group could adversely affect the continuity of the provision in the United Kingdom of core services.

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(4) In subsection (3)(c), "failure" is to be read in accordance with section 2J(3) to (4).""

Commencement Information

I1 S. 2 in force at 1.1.2019 by S.I. 2018/1306, **art. 2(b)**

VALID FROM 01/01/2019

3 Amendment of PRA power of direction

In section 3I of FSMA 2000 (power of PRA to require FCA to refrain from specified action), in subsection (4)—

(a) at the end of paragraph (a), omit "or", and

(b) at the end of paragraph (b), insert ", or

(c) threaten the continuity of core services provided in the United Kingdom."

4 Ring-fencing of certain activities

(1) After Part 9A of FSMA 2000 insert—

"**PART 9B**

RING-FENCING

Introductory

142A **"Ring-fenced body"**

(1) In this Act "ring-fenced body" means a UK institution which carries on one or more core activities (see section 142B) in relation to which it has a Part 4A permission.

(2) But "ring-fenced body" does not include—

(a) a building society within the meaning of the Building Societies Act 1986, or

(b) a UK institution of a class exempted by order made by the Treasury.

(3) An order under subsection (2)(b) may be made in relation to a class of UK institution only if the Treasury are of the opinion that the exemption conferred by the order would not be likely to have a significant adverse effect on the continuity of the provision in the United Kingdom of core services.

(4) Subject to that, in deciding whether and, if so, how to exercise their powers under subsection (2)(b), the Treasury must have regard to the desirability of minimising any adverse effect that the ring-fencing provisions might be

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expected to have on competition in the market for services provided in the course of carrying on core activities, including any adverse effect on the ease with which new entrants can enter the market.

(5) In subsection (4) "the ring-fencing provisions" means ring-fencing rules and the duty imposed as a result of section 142G.

(6) An order under subsection (2)(b) may provide for the exemption to be subject to conditions.

(7) In this section "UK institution" means a body corporate incorporated in the United Kingdom.

142B **Core activities**

(1) References in this Act to a "core activity" are to be read in accordance with this section.

(2) The regulated activity of accepting deposits (whether carried on in the United Kingdom or elsewhere) is a core activity unless it is carried on in circumstances specified by the Treasury by order.

(3) An order under subsection (2) may be made only if the Treasury are of the opinion that it is not necessary for either of the following purposes that the regulated activity of accepting deposits should be a core activity when carried on in the specified circumstances.

(4) Those purposes are—

(a) to secure an appropriate degree of protection for the depositors concerned, or

(b) to protect the continuity of the provision in the United Kingdom of services provided in the course of carrying on the regulated activity of accepting deposits.

(5) The Treasury may by order provide for a regulated activity other than that of accepting deposits to be a core activity, either generally or when carried on in circumstances specified in the order.

(6) An order under subsection (5) may be made only if the Treasury are of the opinion—

(a) that an interruption of the provision of services provided in the United Kingdom in the carrying on of the regulated activity concerned could adversely affect the stability of the UK financial system or of a significant part of that system, and

(b) that the continuity of the provision of those services can more effectively be protected by treating the activity as a core activity.

142C **Core services**

(1) References in this Act to "core services" are to be read in accordance with this section.

(2) The following are core services—

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(a) facilities for the accepting of deposits or other payments into an account which is provided in the course of carrying on the core activity of accepting deposits;

(b) facilities for withdrawing money or making payments from such an account;

(c) overdraft facilities in connection with such an account.

(3) The Treasury may by order provide that any other specified services provided in the course of carrying on the core activity of accepting deposits are also core services.

(4) If an order under section 142B(5) provides for an activity other than that of accepting deposits to be a core activity, the Treasury must by order provide that specified services provided in the course of carrying on that activity are core services.

(5) The services specified by order under subsection (4) must be services in relation to which the Treasury are of the opinion mentioned in section 142B(6)(a).

142D **Excluded activities**

(1) References in this Act to an "excluded activity" are to be read in accordance with this section.

(2) The regulated activity of dealing in investments as principal (whether carried on in the United Kingdom or elsewhere) is an excluded activity unless it is carried on in circumstances specified by the Treasury by order.

(3) An order under subsection (2) may be made only if the Treasury are of the opinion that allowing ring-fenced bodies to deal in investments as principal in the specified circumstances would not be likely to result in any significant adverse effect on the continuity of the provision in the United Kingdom of core services.

(4) The Treasury may by order provide for an activity other than the regulated activity of dealing in investments as principal to be an excluded activity, either generally or when carried on in circumstances specified in the order.

(5) An activity to which an order under subsection (4) relates—

(a) need not be a regulated activity, and

(b) may be an activity carried on in the United Kingdom or elsewhere.

(6) In deciding whether to make an order under subsection (4) in relation to any activity, the Treasury must—

(a) have regard to the risks to which a ring-fenced body would be exposed if it carried on the activity concerned, and

(b) consider whether the carrying on of that activity by a ring-fenced body would make it more likely that the failure of the body would have an adverse effect on the continuity of the provision in the United Kingdom of core services.

(7) An order under subsection (4) may be made only if the Treasury are of the opinion that the making of the order is necessary or expedient for the purpose

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of protecting the continuity of the provision in the United Kingdom of core services.

142E **Power of Treasury to impose prohibitions**

(1) The Treasury may by order prohibit ring-fenced bodies from—

(a) entering into transactions of a specified kind or with persons falling within a specified class;

(b) establishing or maintaining a branch in a specified country or territory;

(c) holding in specified circumstances shares or voting power in companies of a specified description.

(2) In deciding whether to make an order under this section imposing a prohibition, the Treasury must—

(a) have regard to the risks to which a ring-fenced body would be exposed if it did the thing to which the prohibition relates, and

(b) consider whether the doing of that thing by a ring-fenced body would make it more likely that the failure of the body would have an adverse effect on the continuity of the provision in the United Kingdom of core services.

(3) An order under this section may be made only if the Treasury are of the opinion that the making of the order is necessary or expedient for the purpose of protecting the continuity of the provision in the United Kingdom of core services.

(4) An order under this section may in particular—

(a) provide for any prohibition to be subject to exemptions specified in the order;

(b) provide for any exemption to be subject to conditions specified in the order.

142F **Orders under section 142A, 142B, 142D or 142E**

(1) An order made under section 142A, 142B, 142D or 142E may—

(a) authorise or require the making of rules by a regulator for the purposes of, or for purposes connected with, any provision of the order;

(b) authorise the making of other instruments by a regulator for the purposes of, or for purposes connected with, any provision of the order;

(c) refer to a publication issued by a regulator, another body in the United Kingdom or an international organisation, as the publication has effect from time to time.

(2) If the order confers powers on a regulator or authorises or requires the making of rules or other instruments by a regulator, the order may also—

(a) impose conditions on the exercise of any power conferred on the regulator;

(b) impose consultation requirements on the regulator;

(c) make the exercise of a power by the regulator subject to the consent of the Treasury.

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Ring-fenced bodies not to carry on excluded activities or contravene prohibitions

142G **Ring-fenced bodies not to carry on excluded activities or contravene prohibitions**

(1) A ring-fenced body which—

(a) carries on an excluded activity or purports to do so, or

(b) contravenes any provision of an order under section 142E,

is to be taken to have contravened a requirement imposed on the body by the appropriate regulator under this Act.

(2) The contravention does not—

(a) make a person guilty of an offence;

(b) make a transaction void or unenforceable;

(c) (subject to subsection (3)) give rise to any right of action for breach of statutory duty.

(3) In such cases as the Treasury may specify by order, the contravention is actionable at the suit of a person who suffers loss as a result of the contravention, subject to the defences and other incidents applying to actions for breach of statutory duty.

(4) In this section "the appropriate regulator" means—

(a) in relation to a ring-fenced body which is a PRA-authorised person, the PRA;

(b) in relation to any other ring-fenced body, the FCA.

Ring-fencing rules

142H **Ring-fencing rules**

(1) In the exercise of its power to make general rules, the appropriate regulator must in particular make rules—

(a) requiring a ring-fenced body to make arrangements to ensure the effective provision to the ring-fenced body of services and facilities that it requires in relation to the carrying on of a core activity, and

(b) making provision for the group ring-fencing purposes applying to ring-fenced bodies and to authorised persons who are members of a ring-fenced body's group.

(2) Section 142E(1)(c) does not affect the power of the appropriate regulator to make general rules imposing restrictions on the extent of the shares or voting power that a ring-fenced body may hold in another company, except where a restriction on the extent of the shares or voting power that the ring-fenced body may hold in the company is imposed by order under section 142E(1)(c).

(3) General rules that are required by this section or make provision falling within subsection (2) are in this Act referred to as "ring-fencing rules".

(4) The "group ring-fencing purposes" are—

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(a) ensuring as far as reasonably practicable that the carrying on of core activities by a ring-fenced body is not adversely affected by the acts or omissions of other members of its group;

(b) ensuring as far as reasonably practicable that in carrying on its business a ring-fenced body—

(i) is able to take decisions independently of other members of its group, and

(ii) does not depend on resources which are provided by a member of its group and which would cease to be available to the ring-fenced body in the event of the insolvency of the other member;

(c) ensuring as far as reasonably practicable that the ring-fenced body would be able to continue to carry on core activities in the event of the insolvency of one or more other members of its group.

(5) Ring-fencing rules made for the group ring-fencing purposes must include—

(a) provision restricting the power of a ring-fenced body to enter into contracts with other members of its group otherwise than on arm's length terms;

(b) provision restricting the payments that a ring-fenced body may make (by way of dividend or otherwise) to other members of its group;

(c) provision requiring the disclosure to the appropriate regulator of information relating to transactions between a ring-fenced body and other members of its group;

(d) provision requiring a ring-fenced body to ensure that its board of directors (or if there is no such board, the equivalent management body) includes to a specified extent—

(i) members who are treated by the rules as being independent of other members of the ring-fenced body's group,

(ii) members who are treated by the rules as being independent of the ring-fenced body itself, and

(iii) non-executive members;

(e) provision requiring a ring-fenced body to act in accordance with a remuneration policy meeting specified requirements;

(f) provision requiring a ring-fenced body to act in accordance with a human resources policy meeting specified requirements;

(g) provision requiring arrangements made by the ring-fenced body for the identification, monitoring and management of risk to meet specified requirements;

(h) such other provision as the appropriate regulator considers necessary or expedient for any of the purposes in subsection (4).

(6) The reference in subsection (5)(e) to a remuneration policy is a reference to a policy about the remuneration of officers, employees and other persons who (in each case) are of a specified description.

(7) The reference in subsection (5)(f) to a human resources policy is a reference to a policy about the appointment and management of officers, employees and other persons who (in each case) are of a specified description.

(8) In this section—

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"the appropriate regulator" means—

(a) in relation to a PRA-authorised person, the PRA;

(b) in relation to any other authorised person, the FCA;

"shares" has the meaning given in section 422;

"specified" means specified in the rules;

"voting power" has the meaning given in section 422.

142I **Powers of Treasury in relation to ring-fencing rules**

(1) The Treasury may by order require the appropriate regulator, as defined in section 142H(8), to include (or not to include) in ring-fencing rules specified provision relating to—

(a) any of the matters mentioned in section 142H(5)(a) to (g), or

(b) any other specified matter.

(2) The power to make an order under this section is exercisable only if the Treasury consider it necessary or expedient to do so—

(a) for any of the group ring-fencing purposes as defined in section 142H(4), or

(b) otherwise for securing the independence of ring-fenced bodies from other members of their groups.

(3) "Specified" means specified in the order.

142J **Review of ring-fencing rules etc**

(1) The PRA must carry out reviews of its ring-fencing rules and of any rules made by it under section 192JA (rules applying to parent undertakings of ring-fenced bodies).

(2) The first review must be completed before the end of the period of 5 years beginning with the day on which the first ring-fencing rules come into force.

(3) Subsequent reviews must be completed before the end of the period of 5 years beginning with the day on which the previous review was completed.

(4) The PRA must give the Treasury a report of each review.

(5) The Treasury must lay a copy of the report before Parliament.

(6) The PRA must publish the report in such manner as it thinks fit.

(7) If (because any ring-fenced body is not a PRA-authorised person) section 142H has the effect of requiring the FCA to make ring-fencing rules, subsections (1) to (6) apply to the FCA as they apply to the PRA.

Group restructuring powers

142K **Cases in which group restructuring powers become exercisable**

(1) The appropriate regulator may exercise the group restructuring powers only if it is satisfied that one or more of Conditions A to D is met in relation to a ring-fenced body that is a member of a group.

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(2) Condition A is that the carrying on of core activities by the ring-fenced body is being adversely affected by the acts or omissions of other members of its group.

(3) Condition B is that in carrying on its business the ring-fenced body—

(a) is unable to take decisions independently of other members of its group, or

(b) depends on resources which are provided by a member of its group and which would cease to be available in the event of the insolvency of the other member.

(4) Condition C is that in the event of the insolvency of one or more other members of its group the ring-fenced body would be unable to continue to carry on the core activities carried on by it.

(5) Condition D is that the ring-fenced body or another member of its group has engaged, or is engaged, in conduct which is having, or would apart from this section be likely to have, an adverse effect on the advancement by the appropriate regulator—

(a) in the case of the PRA, of the objective in section 2B(3)(c), or

(b) in the case of the FCA, of the continuity objective.

(6) The appropriate regulator may not exercise the group restructuring powers in relation to any person if—

(a) either regulator has previously exercised the group restructuring powers in relation to that person, and

(b) the decision notice in relation to the current exercise is given before the second anniversary of the day on which the decision notice in relation to the previous exercise was given.

(7) In this section and sections 142L to 142Q "the appropriate regulator" means—

(a) where the ring-fenced body is a PRA-authorised person, the PRA;

(b) where it is not, the FCA.

142L **Group restructuring powers**

(1) In this Part "the group restructuring powers" means one or more of the powers conferred by this section.

(2) Where the appropriate regulator is the PRA, the powers conferred by this section are as follows—

(a) in relation to the ring-fenced body, power to impose a requirement on the ring-fenced body requiring it to take any of the steps mentioned in subsection (5),

(b) in relation to any member of the ring-fenced body's group which is a PRA-authorised person, power to impose a requirement on the PRA-authorised person requiring it to take any of the steps mentioned in subsection (6),

(c) in relation to any member of the ring-fenced body's group which is an authorised person but not a PRA-authorised person, power to direct the FCA to impose a requirement on the authorised person requiring it to take any of the steps mentioned in subsection (6), and

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(d) in relation to a qualifying parent undertaking, power to give a direction under this paragraph to the parent undertaking requiring it to take any of the steps mentioned in subsection (6).

(3) Where the appropriate regulator is the FCA, the powers conferred by this section are as follows—

(a) in relation to the ring-fenced body, power to impose a requirement on the ring-fenced body requiring it to take any of the steps mentioned in subsection (5),

(b) in relation to any member of the ring-fenced body's group which is an authorised person but not a PRA-authorised person, power to impose a requirement on the authorised person requiring it to take any of the steps mentioned in subsection (6),

(c) in relation to any member of the ring-fenced body's group which is a PRA-authorised person, power to direct the PRA to impose a requirement on the authorised person requiring it to take any of the steps mentioned in subsection (6), and

(d) in relation to a qualifying parent undertaking, power to give a direction under this paragraph to the parent undertaking requiring it to take any of the steps mentioned in subsection (6).

(4) A parent undertaking of a ring-fenced body by reference to which the group restructuring powers are exercisable is for the purposes of this Part a "qualifying parent undertaking" if—

(a) it is a body corporate which is incorporated in the United Kingdom and has a place of business in the United Kingdom, and

(b) it is not itself an authorised person.

(5) The steps that the ring-fenced body may be required to take are—

(a) to dispose of specified property or rights to an outside person;

(b) to apply to the court under Part 7 for an order sanctioning a ring-fencing transfer scheme relating to the transfer of the whole or part of the business of the ring-fenced body to an outside person;

(c) otherwise to make arrangements discharging the ring-fenced body from specified liabilities.

(6) The steps that another authorised person or a qualifying parent undertaking may be required to take are—

(a) to dispose of any shares in, or securities of, the ring-fenced body to an outside person;

(b) to dispose of any interest in any other body corporate that is a member of the ring-fenced body's group to an outside person;

(c) to dispose of other specified property or rights to an outside person;

(d) to apply to the court under Part 7 for an order sanctioning a ring-fencing transfer scheme relating to the transfer of the whole or part of the business of the authorised person or qualifying parent undertaking to an outside person.

(7) In subsections (5) and (6) "outside person" means a person who, after the implementation of the disposal or scheme in question, will not be a member of the group of the ring-fenced body by reference to which the powers are

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exercised (whether or not that body is to remain a ring-fenced body after the implementation of the disposal or scheme in question).

(8) It is immaterial whether a requirement to be imposed on an authorised person by the appropriate regulator, or by the other regulator at the direction of the appropriate regulator, is one that the regulator imposing it could impose under section 55L or 55M.

142M **Procedure: preliminary notices**

(1) If the appropriate regulator proposes to exercise the group restructuring powers in relation to any authorised person or qualifying parent undertaking ("the person concerned"), the regulator must give each of the relevant persons a notice (a "preliminary notice").

(2) The preliminary notice must—

(a) state that it is a preliminary notice,

(b) state that the regulator proposes to exercise the group restructuring powers,

(c) state the action which the regulator proposes to take in the exercise of those powers,

(d) be in writing, and

(e) give reasons for the proposed action (which must include the regulator's reasons for being satisfied as to the matters mentioned in section 142K(1)).

(3) The appropriate regulator must give a copy of the preliminary notice to the Treasury.

(4) The preliminary notice must specify a reasonable period (which may not be less than 14 days) within which any of the relevant persons may make representations to the regulator.

(5) The relevant persons are—

(a) the person concerned,

(b) the ring-fenced body, if not the person concerned, and

(c) any other authorised person who will, in the opinion of the appropriate regulator, be significantly affected by the exercise of the group restructuring powers.

142N **Procedure: warning notice and decision notice**

(1) If the appropriate regulator has given a preliminary notice under section 142M, it must either—

(a) if, having considered any representations made by any of the relevant persons, it still proposes to exercise the group restructuring powers, give each of the relevant persons a warning notice during the warning notice period, or

(b) before the end of the warning notice period, give each of them a written notice stating that it has decided not to exercise the powers and give a copy of that notice to the Treasury.

(2) The "warning notice period" is the period—

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(a) beginning 3 months after the end of the period specified under section 142M(4) as that within which any representations must be made, and

(b) ending 6 months after the end of that period.

(3) Before giving a warning notice under subsection (1)(a), the appropriate regulator must—

(a) give the Treasury a draft of the notice,

(b) provide the Treasury with any information that the Treasury may require in order to decide whether to give their consent, and

(c) obtain the consent of the Treasury.

(4) The action specified in the warning notice may be different from that specified in the preliminary notice if—

(a) the appropriate regulator considers that different action is appropriate as a result of any change in circumstances since the preliminary notice was given, or

(b) the person concerned consents to the change.

(5) The regulator must, in particular, have regard to anything that—

(a) has been done by the person concerned since the giving of the preliminary notice, and

(b) represents action that would have been required in pursuance of the proposals in that notice.

(6) If the regulator decides to exercise the group restructuring powers it must give each of the relevant persons a decision notice.

(7) The decision notice must specify the date or dates by which each of the following must be completed—

(a) any disposal of shares, securities or other property that is required by the notice;

(b) any transfer of liabilities for which the notice requires arrangements to be made.

(8) The giving of consent for the purpose of subsection (4)(b) does not affect any right to refer to the Tribunal the matter to which any decision notice resulting from the warning notice relates.

(9) "The relevant persons" has the same meaning as in section 142M.

142O **References to Tribunal**

(1) A notified person who is aggrieved by—

(a) the imposition by either regulator of a requirement as a result of section 142L(2)(a) or (b) or (3)(a) or (b),

(b) a requirement to be imposed as a result of the giving by one regulator to the other of a direction under section 142L(2)(c) or (3)(c), or

(c) the giving by either regulator of a direction under section 142L(2)(d) or (3)(d),

may refer the matter to the Tribunal.

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Changes to legislation: *There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

(2) "Notified person" means a person to whom a decision notice under section 142N(6) was given or ought to have been given.

142P **Subsequent variation of requirement or direction**

(1) A regulator may at any time with the consent of the person concerned vary—

(a) a requirement imposed by it as a result of section 142L(2)(a) or (b) or (3)(a) or (b), or

(b) a direction given by it as a result of section 142L(2)(c) or (d) or (3)(c) or (d).

(2) The person concerned may at any time apply to the appropriate regulator for the variation of—

(a) a requirement imposed by it as a result of section 142L(2)(a) or (b) or (3)(a) or (b), or

(b) a direction given by it as a result of section 142L(2)(c) or (d) or (3)(c) or (d).

(3) Sections 55U, 55V, 55X and 55Z3 apply to an application under subsection (2) as they apply to an application for the variation of a requirement imposed by the appropriate regulator under section 55L or 55M.

142Q **Consultation etc. between regulators**

(1) Where a notice under section 142M or a warning notice or decision notice under section 142N relates to a requirement to be imposed in pursuance of a direction to be given as a result of section 142L(2)(c) or (3)(c), the appropriate regulator must—

(a) consult the other regulator before giving the notice, and

(b) give a copy of the notice to the other regulator.

(2) The appropriate regulator must consult the other regulator before varying under section 142P a direction given as a result of section 142L(2)(c) or (3)(c).

(3) Directions given by the FCA as a result of section 142L(3)(c) are subject to any directions given to the FCA under section 3I.

142R **Relationship with regulators' powers under Parts 4A and 12A**

(1) Subsection (2) applies in relation to—

(a) a ring-fenced body which is a member of a mixed group, and

(b) a parent undertaking of such a ring-fenced body.

(2) A regulator may not exercise its general powers in relation to the ring-fenced body or parent undertaking so as to achieve either of the results in subsection (3).

(3) Those results are—

(a) that no existing group member is a parent undertaking of the ring-fenced body;

(b) that the ring-fenced body is not a member of a mixed group.

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(4) In subsection (3)(a) "existing group member" means a person who is a member of the ring-fenced body's group at the time when the requirement is imposed or the direction given.

(5) Except as provided by subsections (1) to (4), the provisions of sections 142K to 142Q do not limit the general powers of either regulator.

(6) For the purposes of this section, a regulator's "general powers" are its powers under the following provisions—

(a) section 55L or 55M (imposition of requirements in connection with Part 4A permission);

(b) section 192C (power to direct qualifying parent undertaking).

(7) For the purposes of this section, a ring-fenced body is a member of a mixed group if a member of the ring-fenced body's group carries on an excluded activity.

Failure of parent undertaking to comply with direction

142S **Power to impose penalty or issue censure**

(1) This section applies if a regulator is satisfied that a person who is or has been a qualifying parent undertaking ("P") has contravened a requirement of a direction given to P by that regulator as a result of section 142L(2)(d) or (3)(d).

(2) The regulator may impose a penalty of such amount as it considers appropriate on—

(a) P, or

(b) any person who was knowingly concerned in the contravention.

(3) The regulator may, instead of imposing a penalty on a person, publish a statement censuring the person.

(4) The regulator may not take action against a person under this section after the end of the limitation period unless, before the end of that period, it has given a warning notice to the person under section 142T.

(5) "The limitation period" means the period of 3 years beginning with the first day on which the regulator knew of the contravention.

(6) For this purpose a regulator is to be treated as knowing of a contravention if it has information from which the contravention can reasonably be inferred.

(7) The requirements that a regulator may be required to impose as a result of a direction under section 142L(2)(c) or (3)(c) include requirements that the regulator would not but for the direction have power to impose.

142T **Procedure and right to refer to Tribunal**

(1) If a regulator proposes to take action against a person under section 142S, it must give the person a warning notice.

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(2) A warning notice about a proposal to impose a penalty must state the amount of the penalty.

(3) A warning notice about a proposal to publish a statement must set out the terms of the statement.

(4) If the regulator decides to take action against a person under section 142S, it must give the person a decision notice.

(5) A decision notice about the imposition of a penalty must state the amount of the penalty.

(6) A decision notice about the publication of a statement must set out the terms of the statement.

(7) If the regulator decides to take action against a person under section 142S, the person may refer the matter to the Tribunal.

142U **Duty on publication of statement**

After a statement under section 142S(3) is published, the regulator must send a copy of the statement to—

(a) the person in respect of whom it is made, and

(b) any person to whom a copy of the decision notice was given under section 393(4).

142V **Imposition of penalties under section 142S: statement of policy**

(1) Each regulator must prepare and issue a statement of policy with respect to—

(a) the imposition of penalties under section 142S, and

(b) the amount of penalties under that section.

(2) A regulator's policy in determining what the amount of a penalty should be must include having regard to—

(a) the seriousness of the contravention,

(b) the extent to which the contravention was deliberate or reckless, and

(c) whether the person on whom the penalty is to be imposed is an individual.

(3) A regulator may at any time alter or replace a statement issued under this section.

(4) If a statement issued under this section is altered or replaced, the regulator must issue the altered or replacement statement.

(5) In exercising, or deciding whether to exercise, a power under section 142S(2) in the case of any particular contravention, a regulator must have regard to any statement of policy published under this section and in force at a time when the contravention occurred.

(6) A statement under this section must be published by the regulator concerned in the way appearing to the regulator to be best calculated to bring it to the attention of the public.

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(7) A regulator may charge a reasonable fee for providing a person with a copy of the statement published under this section.

(8) A regulator must, without delay, give the Treasury a copy of any statement which it publishes under this section.

(9) Section 192I applies in relation to a statement under this section as it applies in relation to a statement under section 192H.

Pension liabilities

142W **Pension liabilities**

(1) The Treasury may by regulations require a ring-fenced body to make arrangements for any one or more of the following purposes—

(a) ensuring that, except in prescribed cases, the ring-fenced body cannot become liable to meet, or contribute to the meeting of, pension liabilities which arise in connection with persons' service on or after a date specified in the regulations ("the specified date") in any employment, other than service in an employment in respect of which the employer is a ring-fenced body;

(b) ensuring that, except in prescribed cases, the default of a person other than another ring-fenced body would not result in the ring-fenced body becoming liable to meet, or contribute to the meeting of, pension liabilities arising in connection with persons' service in any employment before the specified date;

(c) to the extent that it is not possible to ensure the result mentioned in paragraph (a) or (b), minimising any potential liability falling within paragraph (a) or (b).

(2) The regulations may make provision enabling the trustees or managers of a relevant pension scheme in respect of which the employer or one of the employers is a ring-fenced body—

(a) to transfer to another relevant pension scheme all or part of the pension liabilities arising in connection with persons' service before the specified date together with all or part of the assets of the scheme, or

(b) to divide the scheme into two or more sections in relation to which prescribed conditions are met.

(3) The regulations may make provision—

(a) enabling a ring-fenced body to apply to the court in a case where the ring-fenced body has been unable to reach agreement with another person ("P") about the making of arrangements with P on commercial terms for one or more of the purposes in subsection (1), and

(b) enabling the court on such an application to order P to enter into arrangements with the ring-fenced body for those purposes on such terms as the court considers fair and reasonable in the circumstances.

(4) The regulations must provide that any terms specified by the court by virtue of provision made under subsection (3)—

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(a) must be terms which, in the court's opinion, represent terms on which the arrangements might be entered into if they were being entered into for commercial reasons between willing parties dealing at arm's length, and

(b) may involve the payment of any sum by instalments.

(5) The regulations may make other provision—

(a) about the making by a ring-fenced body of arrangements for one or more of the purposes in subsection (1);

(b) about any transfer or division falling within subsection (2).

(6) The regulations may in particular—

(a) require a ring-fenced body to cease to participate in a relevant pension scheme unless the scheme is divided into two or more sections in relation to which prescribed conditions are met;

(b) provide that assets or liabilities of a relevant pension scheme may not be transferred under the arrangements to another occupational pension scheme unless the other scheme meets prescribed conditions;

(c) require ring-fenced bodies to establish new occupational pension schemes in prescribed circumstances;

(d) provide that any provision of a relevant pension scheme that might prevent the making of the arrangements, other than a provision requiring the consent of the trustees or managers of the scheme, is not to have effect in prescribed circumstances;

(e) make provision enabling the trustees or managers of a relevant pension scheme, with the consent of the employers in relation to the scheme, to modify the scheme by resolution for the purpose of enabling the arrangements to be made;

(f) require the trustees or managers of a relevant pension scheme or any employer in relation to a relevant pension scheme to give notice of prescribed matters to prescribed persons;

(g) make provision enabling the court, on an application made in accordance with the regulations by a ring-fenced body, if it appears to the court that the trustees or managers of a relevant pension scheme, or an employer in relation to such a scheme, have unreasonably refused their consent to any step that would enable the arrangements to be made, to order that the step may be taken without that consent;

(h) confer exemption from any provision of the regulations in prescribed cases;

(i) confer functions on the PRA;

(j) provide that a ring-fenced body which contravenes a prescribed requirement of the regulations is to be taken to have contravened a requirement imposed by the PRA under this Act;

(k) modify, exclude or apply (with or without modification) any primary or subordinate legislation.

(7) The Treasury may by regulations require an authorised person who will or may be a ring-fenced body or an authorised person who will or may be a member of a ring-fenced body's group to do all it can to obtain from the Pensions Regulator a clearance statement in relation to any arrangements to be made for the purpose of complying with—

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(a) regulations under this section, or
(b) any provision made by or under this Part (other than this section) when the provision comes into force.

(8) A "clearance statement" is a statement issued by the Pensions Regulator under any of the following provisions—
(a) section 42 of the Pensions Act 2004 (clearance statements relating to contribution notice under section 38);
(b) section 46 of that Act (clearance statements relating to financial support directions);
(c) Article 38 of the Pensions (Northern Ireland) Order 2005 (clearance statements relating to contribution notices under article 34);
(d) Article 42 of that Order (clearance statements relating to financial support directions).

(9) In relation to a ring-fenced body that is not a PRA-authorised person, references in subsection (6) to the PRA are to be read as references to the FCA.

(10) Regulations under this section may not require ring-fenced bodies to achieve the results mentioned in subsection (1) before 1 January 2026, but this does not prevent the regulations requiring steps to be taken at any time after the regulations come into force.

142X **Further interpretative provisions for section 142W**

(1) The following provisions have effect for the interpretation of section 142W and this section.

(2) "Relevant pension scheme" means an occupational pension scheme that is not a money purchase scheme.

(3) "Occupational pension scheme" has the meaning given in section 1 of the Pension Schemes Act 1993 or section 1 of the Pension Schemes (Northern Ireland) Act 1993 and, in relation to such a scheme, "member" and "trustees or managers" have the same meaning as in Part 1 of the Pensions Act 1995 or Part 2 of the Pensions (Northern Ireland) Order 1995.

(4) "Money purchase scheme" has the meaning given in section 181(1) of the Pension Schemes Act 1993 or section 176(1) of the Pension Schemes (Northern Ireland) Act 1993.

(5) "Employer", in relation to a relevant pension scheme, means—
(a) a person who is for the purposes of Part 1 of the Pensions Act 1995 or Part 2 of the Pensions (Northern Ireland) Order 1995 an employer in relation to the scheme, and
(b) any other person who has or may have any liability under the scheme.

(6) "Employment" has the meaning given in section 181(1) of the Pension Schemes Act 1993 or section 176(1) of the Pension Schemes (Northern Ireland) Act 1993.

(7) "Pension liabilities" means liabilities attributable to or associated with the provision under a relevant pension scheme of pensions or other benefits.

(8) "The court" means—

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(a) in relation to England and Wales or Northern Ireland, the High Court, and

(b) in relation to Scotland, the Court of Session.

Loss-absorbency requirements

142Y **Power of Treasury in relation to loss-absorbency requirements**

(1) The Treasury may by order make provision about the exercise by either regulator of its functions under this Act, so far as they are (apart from the order) capable of being exercised in relation to a relevant body so as to require the relevant body—

(a) to issue any debt instrument, or

(b) to ensure that any part of the relevant body's debt consists of debt owed by it in respect of debt instruments, or debt instruments of a particular kind.

(2) A "relevant body" is—

(a) a ring-fenced body,

(b) any other body corporate that has a Part 4A permission relating to the regulated activity of accepting deposits, or

(c) a body corporate that is a member of the group of a body falling within paragraph (a) or (b).

(3) "Debt instrument" means—

(a) a bond,

(b) any other instrument creating or acknowledging a debt, or

(c) an instrument giving rights to acquire a debt instrument.

(4) An order under this section may in particular—

(a) require the regulator to exercise its functions so as to require relevant bodies to do either or both of the things mentioned in subsection (1);

(b) limit the extent to which the regulator may require a relevant body's debt to consist of debt owed in respect of debt instruments or of debt instruments of a kind specified in the order;

(c) require the regulator—

(i) to make, or not to make, provision by reference to specified matters, or

(ii) to have regard, or not to have regard, to specified matters;

(d) require the regulator to consult, or obtain the consent of, the Treasury before making rules of a specified description or exercising any other specified function;

(e) impose on the regulator in connection with the exercise of a specified function procedural requirements which would not otherwise apply to the exercise of the function;

(f) refer to a publication issued by a regulator, another body in the United Kingdom or an international organisation, as the publication has effect from time to time.

(5) "Specified" means specified in the order.

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General

142Z **Affirmative procedure in relation to certain orders under Part 9B**

(1) This section applies to an order containing provision made under any of the following provisions of this Part—

(a) section 142A(2)(b);

(b) section 142B(2) or (5);

(c) section 142C;

(d) section 142D(2) or (4);

(e) section 142E;

(f) section 142I;

(g) section 142Y.

(2) No order to which this section applies may be made unless—

(a) a draft of the order has been laid before Parliament and approved by a resolution of each House, or

(b) subsection (4) applies.

(3) Subsection (4) applies if an order under 142D(4) or 142E 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.

(4) 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).

(5) The "relevant period" is a period of 28 days beginning with the day on which the order is made.

(6) In calculating the relevant period no account is to be taken of any time during which Parliament is dissolved or prorogued or during which either House is adjourned for more than 4 days.

142Z1 **Interpretation of Part 9B**

(1) This section has effect for the interpretation of this Part.

(2) Any reference to—

(a) the regulated activity of accepting deposits, or

(b) the regulated activity of dealing in investments as principal,

is to be read in accordance with Schedule 2, taken with any order under section 22.

(3) Any reference to the group restructuring powers is to be read in accordance with section 142L(1).

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(4) Any reference to a qualifying parent undertaking is to be read in accordance with section 142L(4).”

(2) In section 133 of FSMA 2000 (proceedings before Tribunal), in subsection (7A), after paragraph (i) insert—

“(ia) a decision to take action under section 142S;”.

(3) In section 391 of FSMA 2000 (publication), in subsection (1ZB), after paragraph (i) insert—

“(ia) section 142N;”.

(4) In section 392 of FSMA 2000 (application of sections 393 and 394)—

(a) in paragraph (a), after “131H(1),” insert “ 142T(1), ”, and

(b) in paragraph (b), after “131H(4),” insert “ 142T(4), ”.

(5) In section 417 of FSMA 2000 (definitions), in subsection (1)—

(a) after the definition of “control of information rules” insert—

““core activities” has the meaning given in section 142B;

“core services” has the meaning given in section 142C;”,

(b) after the definition of “ESMA” insert—

““excluded activities” has the meaning given in section 142D;”, and

(c) after the definition of “regulator” insert—

““ring-fenced body” has the meaning given in section 142A;

“ring-fencing rules” has the meaning given in section 142H;”.

(6) In Schedule 1ZA to FSMA 2000 (the Financial Conduct Authority), in paragraph 8(3)(c)(i), after “138N,” insert “ 142V, ”.

(7) In Schedule 1ZB to FSMA 2000 (the Prudential Regulation Authority), in paragraph 16(3)(c)(i), after “69,” insert “ 142V, ”.

Commencement Information

I2 S. 4 in force at 1.3.2014 for specified purposes by S.I. 2014/377, art. 2(1)(b), **Sch. Pt. 2**

VALID FROM 01/01/2019

5 PRA annual report

(1) In Schedule 1ZB to FSMA 2000 (the Prudential Regulation Authority), paragraph 19 (annual report) is amended as follows.

(2) After sub-paragraph (1) insert—

“(1A) In the report the PRA must also report in general terms on—

(a) the extent to which, in its opinion, ring-fenced bodies have complied with the ring-fencing provisions,

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(b) steps taken by ring-fenced bodies in order to comply with the ring-fencing provisions,

(c) steps taken by it to enforce the ring-fencing provisions,

(d) the extent to which ring-fenced bodies are carrying on the regulated activity of dealing in investments as principal (whether in the United Kingdom or elsewhere) in circumstances where as a result of an order under section 142D(2) that activity is not an excluded activity,

(e) the extent to which ring-fenced bodies are carrying on activities that would be excluded activities by virtue of an order under section 142D(4) but for an exemption or exclusion made by such an order,

(f) the extent to which ring-fenced bodies are doing things that they would be prohibited from doing by an order under section 142E but for an exemption made by such an order, and

(g) the extent to which ring-fenced bodies appear to it to have acted in accordance with any guidance which it has given to ring-fenced bodies and which relates to the operation of the ring-fencing provisions.

(1B) In sub-paragraph (1A)—

(a) references to "ring-fenced bodies" relate only to ring-fenced bodies that are PRA-authorised persons, and

(b) "the ring-fencing provisions" means ring-fencing rules and the duty imposed as a result of section 142G."

(3) In sub-paragraph (2), for "Sub-paragraph (1) does not" substitute " Sub-paragraphs (1) and (1A) do not ".

6 Ring-fencing transfer schemes

Schedule 1 (which contains amendments of Part 7 of FSMA 2000 relating to ring-fencing transfer schemes) has effect.

Commencement Information

I3 S. 6 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

VALID FROM 01/01/2019

7 Building societies: power to make provision about ring-fencing

(1) The Treasury may by regulations—

(a) make provision in relation to building societies for purposes corresponding to those of any provision made, in relation to authorised persons other than building societies, by or under any provision of Part 9B of FSMA 2000 (ring-fencing) apart from sections 142W to 142Y, and

(b) provide for the application of the relevant continuity provision in relation to the exercise by the FCA or the PRA of any function conferred on it by or under provision made pursuant to paragraph (a).

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(2) The regulations may, in particular—

(a) amend the Building Societies Act 1986;

(b) apply any of the provisions contained in, or made under, Part 9B of FSMA 2000, with such modifications as the Treasury consider appropriate;

(c) authorise the making of rules or other instruments by the FCA or the PRA for the purposes of, or for purposes connected with, any provision made by the regulations;

(d) confer functions on the FCA or the PRA;

(e) make such consequential provision including amendments of any enactment as the Treasury consider appropriate.

(3) This section does not affect the application of section 142Y of FSMA 2000 (power of Treasury in relation to loss-absorbency requirements) to building societies that are relevant bodies for the purposes of that section.

(4) In this section—

"building society" has the same meaning as in the Building Societies Act 1986;

"the relevant continuity provision" means—

(a) in the case of functions exercisable by the FCA, the continuity objective set out in section 1EA of FSMA 2000, or

(b) in the case of functions exercisable by the PRA, section 2B(3)(c) and (4A) of that Act.

VALID FROM 01/01/2019

Reviews

8 Independent review of operation of legislation relating to ring-fencing

(1) The Treasury must, before the end of the initial period, appoint a panel of at least 5 persons ("the review panel") to carry out a review of the operation of the legislation relating to ring-fencing.

(2) "The legislation relating to ring-fencing" means—

(a) Part 9B of FSMA 2000 (as inserted by section 4);

(b) orders and regulations made by the Treasury under that Part;

(c) ring-fencing rules, as defined by section 142H(3) of FSMA 2000, made by the FCA or the PRA;

(d) section 192JA of FSMA 2000 (as inserted by section 133);

(e) rules made by the FCA or the PRA under that section.

(3) The initial period is the period of 2 years beginning with the first day on which section 142G of FSMA 2000 is fully in force.

(4) The members of the review panel must be persons—

(a) who appear to the Treasury to be independent of the PRA, the FCA, the Bank of England and the Treasury, and

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(b) who do not appear to the Treasury to have any financial or other interests that could reasonably be regarded as affecting their suitability to serve as members of the review panel.

(5) In appointing the members of the review panel, the Treasury—

(a) must have regard to the need to ensure that the review panel (considered as a whole) has the necessary experience to undertake the review, and

(b) must ensure that at least one of the members is a person appearing to the Treasury to have substantial experience in central banking or banking regulation at a senior level.

(6) Before appointing the members of the review panel, the Treasury must consult the chair of the Treasury Committee of the House of Commons.

(7) The reference in subsection (6) to the Treasury Committee of the House of Commons—

(a) if the name of that Committee is changed, is a reference to that Committee by its new name, and

(b) if the functions of that Committee (or substantially corresponding functions) become functions of a different Committee of the House of Commons, is to be treated as a reference to the Committee by which the functions are exercisable;

and any question arising under paragraph (a) or (b) is to be determined by the Speaker of the House of Commons.

(8) The Treasury must appoint one of the members of the review panel to be the chair of the panel.

(9) The review panel must, within a reasonable time after the end of the initial period, make a written report to the Treasury—

(a) setting out the results of the review, and

(b) making such recommendations (if any) as the panel considers appropriate.

(10) The Treasury must—

(a) lay a copy of the report before Parliament, and

(b) publish the report in such manner as they think fit.

(11) Any expenses reasonably incurred in the conduct of the review are to be paid by the Treasury out of money provided by Parliament.

9 PRA review of proprietary trading

(1) The PRA must carry out a review of proprietary trading engaged in (whether or not as a regulated activity) by relevant authorised persons, for the purpose of considering whether further restrictions on any kind of proprietary trading ought to be imposed.

(2) The review must begin before the end of the 12 months beginning with the first day on which section 142G of FSMA 2000 is fully in force.

(3) On completion of the review, the PRA must make a written report to the Treasury on—

(a) the extent to which relevant authorised persons engage in proprietary trading;

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(b) whether proprietary trading engaged in by relevant authorised persons gives rise to any risks to their safety and soundness;

(c) whether any kinds of proprietary trading are particularly likely to give rise to such risks;

(d) anything done by the PRA to minimise risks to the safety and soundness of relevant authorised persons arising from proprietary trading engaged in by them;

(e) any difficulties encountered by the PRA in seeking to minimise such risks.

(4) The report must include an assessment by the PRA of each of the following—

(a) whether the PRA's powers under FSMA 2000 are, and might be expected to continue to be, sufficient to enable it to advance its objectives in relation to relevant authorised persons who engage in proprietary trading;

(b) the effectiveness of restrictions imposed in countries or territories outside the United Kingdom on proprietary trading by banks (so far as experience in those countries or territories appears to the PRA to be of relevance to the United Kingdom).

(5) The report must be made within 9 months of the beginning of the review.

(6) The Treasury must lay a copy of the report before Parliament.

(7) The PRA must publish the report in such manner as it thinks fit.

(8) The functions of the PRA under this section are to be taken for the purposes of FSMA 2000 to be functions under that Act.

(9) This section is to be read with the interpretative provisions in section 11.

10 Independent review of proprietary trading

(1) The Treasury must, after receiving the report of the PRA under section 9 but before the end of the initial period, appoint one or more persons ("the review panel") to carry out a review of proprietary trading engaged in (whether or not as a regulated activity) by relevant authorised persons.

(2) The initial period is the period of 2 years beginning with the first day on which section 142G of FSMA 2000 is fully in force.

(3) The members of the review panel must be persons—

(a) who appear to the Treasury to be independent of the PRA, the FCA, the Bank of England and the Treasury, and

(b) who do not appear to the Treasury to have any financial or other interests that could reasonably be regarded as affecting their suitability to serve as members of the review panel.

(4) In appointing the members of the review panel, the Treasury must have regard to the need to ensure that the review panel (considered as a whole) has the necessary experience to undertake the review.

(5) Before appointing the members of the review panel, the Treasury must consult the chair of the Treasury Committee of the House of Commons.

(6) The reference in subsection (5) to the Treasury Committee of the House of Commons—

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(a) if the name of that Committee is changed, is a reference to that Committee by its new name, and

(b) if the functions of that Committee (or substantially corresponding functions) become functions of a different Committee of the House of Commons, is to be treated as a reference to the Committee by which the functions are exercisable;

and any question arising under paragraph (a) or (b) is to be determined by the Speaker of the House of Commons.

(7) If the review panel consists of two or more members, the Treasury must appoint one of them to be the chair of the panel.

(8) The review panel must, within a reasonable time after the end of the initial period, make a written report to the Treasury—

(a) stating whether the panel agrees with the conclusions reached by the PRA in its report under section 9,

(b) stating whether the panel recommends any further restrictions on any kind of proprietary trading in relation to relevant authorised persons, and

(c) making such other recommendations as the panel thinks fit.

(9) The Treasury must—

(a) lay a copy of the report before Parliament, and

(b) publish the report in such manner as they think fit.

(10) Any expenses reasonably incurred in the conduct of the review are to be paid by the Treasury out of money provided by Parliament.

(11) This section is to be read with the interpretative provisions in section 11.

11 Reviews of proprietary trading: interpretation

(1) This section has effect for the interpretation of sections 9 and 10.

(2) A person engages in "proprietary trading" where the person trades in commodities or financial instruments as principal.

(3) In subsection (2)—

(a) "commodity" includes any produce of agriculture, forestry or fisheries, or any mineral, either in its natural state or having undergone only such processes as are necessary or customary to prepare the produce or mineral for the market;

(b) "financial instrument" includes anything specified in Section C of Annex I to **[**[F1]Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014**]** on markets in financial instruments.

(4) "Relevant authorised person" means a PRA-authorised person which—

(a) is a UK institution,

(b) meets condition A or B, and

(c) is not an insurer.

(5) Condition A is that the UK institution has permission under Part 4A of FSMA 2000 to carry on the regulated activity of accepting deposits.

(6) Condition B is that—

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(a) the institution is for the purposes of FSMA 2000 an investment firm (see section 424A of that Act),

(b) it has permission under Part 4A to carry on the regulated activity of dealing in investments as principal, and

(c) when carried on by it, that activity is a PRA-regulated activity.

(7) In subsections (4) to (6)—

(a) "UK institution" means an institution which is incorporated in, or formed under the law of any part of, the United Kingdom;

(b) "insurer" means an institution which is authorised under FSMA 2000 to carry on the regulated activity of effecting or carrying out contracts of insurance as principal;

(c) "PRA-authorised person" and "PRA-regulated activity" have the same meaning as in FSMA 2000.

(8) Subsections (5), (6)(b) and (7)(b) are to be read in accordance with section 22 of FSMA 2000, taken with Schedule 2 to that Act and any order under that section.

Textual Amendments

F1 Words in s. 11(3)(b) substituted (29.6.2017 for specified purposes, 3.7.2017 for specified purposes, 31.7.2017 for specified purposes, 3.1.2018 in so far as not already in force) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (S.I. 2017/701), reg. 1(2)(3)(4)(6), **Sch. 4 para. 15** (with reg. 7)

12 Right to obtain documents and information

(1) A review panel appointed under section 8 or 10—

(a) has a right of access at any reasonable time to all such documents as the panel may reasonably require for the purposes of the review, and

(b) may require any person holding or accountable for any such document to provide such information and explanation as are reasonably necessary for that purpose.

(2) An obligation imposed on a person as a result of the exercise of the powers conferred by subsection (1) is enforceable by injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.

PART 2

DEPOSITOR PREFERENCE AND THE FINANCIAL SERVICES COMPENSATION SCHEME

Depositor preference

13 Preferential debts: Great Britain

(1) In Schedule 6 to the Insolvency Act 1986 (categories of preferential debts) after paragraph 15A insert—

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"**Category 7: Deposits covered by Financial Services Compensation Scheme**

15B So much of any amount owed at the relevant date by the debtor in respect of an eligible deposit as does not exceed the compensation that would be payable in respect of the deposit under the Financial Services Compensation Scheme to the person or persons to whom the amount is owed.

Interpretation for Category 7

15C (1) In paragraph 15B "eligible deposit" means a deposit in respect of which the person, or any of the persons, to whom it is owed would be eligible for compensation under the Financial Services Compensation Scheme.

(2) For this purpose a "deposit" means rights of the kind described in—

(a) paragraph 22 of Schedule 2 to the Financial Services and Markets Act 2000 (deposits), or

(b) section 1(2)(b) of the Dormant Bank and Building Society Accounts Act 2008 (balances transferred under that Act to authorised reclaim fund)."

(2) In section 386 of the Insolvency Act 1986 (categories of preferential debt), in subsection (1), after "production" insert " ; deposits covered by Financial Services Compensation Scheme ".

(3) In Part 1 of Schedule 3 to the Bankruptcy (Scotland) Act 1985 (list of preferred debts), after paragraph 6A insert—

"**Deposits covered by Financial Services Compensation Scheme**

6B So much of any amount owed at the relevant date by the debtor in respect of an eligible deposit as does not exceed the compensation that would be payable in respect of the deposit under the Financial Services Compensation Scheme to the person or persons to whom the amount is owed."

(4) In Part 2 of Schedule 3 to the Bankruptcy (Scotland) Act 1985 (interpretation of Part 1), after paragraph 9 insert—

"**Meaning of eligible deposit**

9A (1) In paragraph 6B "eligible deposit" means a deposit in respect of which the person, or any of the persons, to whom it is owed would be eligible for compensation under the Financial Services Compensation Scheme.

(2) For this purpose a "deposit" means rights of the kind described in paragraph 22 of Schedule 2 to the Financial Services and Markets Act 2000 (deposits)."

Commencement Information

I4 S. 13 in force at 31.12.2014 by S.I. 2014/3160, **art. 2(1)(a)**

Status: *Point in time view as at 16/12/2015. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

Financial Services Compensation Scheme

14 Discharge of functions by the scheme manager

After section 224 of FSMA 2000 insert—

"**224ZA Discharge of functions**

(1) In discharging its functions the scheme manager must have regard to—

(a) the need to ensure efficiency and effectiveness in the discharge of those functions, and

(b) the need to minimise public expenditure attributable to loans made or other financial assistance given to the scheme manager for the purposes of the scheme.

(2) In subsection (1)(b) "financial assistance" includes the giving of guarantees and indemnities and any other kind of financial assistance (actual or contingent)."

Commencement Information

I5 S. 14 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

15 Power to require information from scheme manager

After section 218A of FSMA 2000 insert—

"**218B Treasury's power to require information from scheme manager**

(1) The Treasury may by notice in writing require the scheme manager to provide specified information or information of a specified description that the Treasury reasonably require in connection with the duties of the Treasury under the Government Resources and Accounts Act 2000.

(2) Information required under this section must be provided before the end of such reasonable period as may be specified.

(3) "Specified" means specified in the notice."

Commencement Information

I6 S. 15 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

16 Scheme manager: appointment of accounting officer

(1) Section 212 of FSMA 2000 (the scheme manager of the Financial Services Compensation Scheme) is amended as follows.

(2) In subsection (3)—

(a) omit the "and" following paragraph (a),

(b) after that paragraph insert—

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"(aa) a chief executive (who is to be the accounting officer); and", and

(c) in paragraph (b), after "chairman" insert " and chief executive ".

(3) In subsection (4)—

(a) after "chairman", in the first place, insert " , chief executive ", and

(b) after "chairman", in the second place, insert " and the chief executive ".

Commencement Information

I7 S. 16 in force at 1.4.2014 by S.I. 2014/377, **art. 2(2)(a)**

PART 3

BAIL-IN STABILISATION OPTION

17 Bail-in stabilisation option

(1) Schedule 2 (which contains amendments relating to a new stabilisation option in Part 1 of the Banking Act 2009) has effect.

(2) The Treasury may by order make any provision they consider appropriate in consequence of the application to building societies of the amendments made by this Part.

(3) An order may, in particular—

(a) enable the Bank of England, for the purpose of enabling it to exercise in relation to the business of a building society any of the powers exercisable as a result of the amendments made by this Part—

(i) to convert the building society into a company, or

(ii) to transfer the business of the building society to a company which immediately before the transfer is owned by the Bank or by a person of a description specified in the order;

(b) enable the Bank of England, in connection with the exercise of a power conferred by virtue of paragraph (a), to cancel membership rights or shares in the building society;

(c) provide for any power exercisable as a result of the amendments made by this Part to be exercisable in relation to the company—

(i) into which the building society is converted, or

(ii) to which the business of the building society is transferred;

(d) enable the Bank of England, in a case where it has transferred the business of a building society by virtue of paragraph (a)(ii), to dissolve the building society at any time after the transfer;

(e) confer functions on the Treasury, the Bank of England, the FCA, the PRA or a **[**F2resolution administrator**]**;

(f) make further amendments of Part 1 of the Banking Act 2009;

(g) amend or modify the effect of the Building Societies Act 1986 or any other enactment to which this subsection applies.

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Changes to legislation: *There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

(4) Subsection (3) applies to any enactment (including a fiscal enactment) passed or made—

(a) before the passing of this Act, or

(b) on or before the last day of the Session in which this Act is passed.

(5) In this section—

F3 . . . . . .

"building society" has the same meaning as in section 84 of the Banking Act 2009;

"company" means a company as defined in section 1(1) of the Companies Act 2006 which is a public company limited by shares.

[F4"resolution administrator" is to be read in accordance with sections 62B to 62E of the Banking Act 2009.**]**

Textual Amendments

F2 Words in s. 17(3)(e) substituted (10.1.2015) by The Bank Recovery and Resolution (No. 2) Order 2014 (S.I. 2014/3348), art. 1(2), **Sch. 3 para. 6(a)**

F3 S. 17(5) definition of "bail-in administrator" omitted (10.1.2015) by virtue of The Bank Recovery and Resolution (No. 2) Order 2014 (S.I. 2014/3348), art. 1(2), **Sch. 3 para. 6(b)(i)**

F4 S. 17(5) definition of "resolution administrator" inserted (10.1.2015) by The Bank Recovery and Resolution (No. 2) Order 2014 (S.I. 2014/3348), art. 1(2), **Sch. 3 para. 6(b)(ii)**

Commencement Information

I8 S. 17 in force at 1.3.2014 for specified purposes by S.I. 2014/377, art. 2(1)(b), **Sch. Pt. 2**

I9 S. 17 in force at 31.12.2014 in so far as not already in force by S.I. 2014/3160, **art. 2(1)(b)**

PART 4

CONDUCT OF PERSONS WORKING IN FINANCIAL SERVICES SECTOR

Amendments of FSMA 2000

18 Functions for which approval is required

(1) Section 59 of FSMA 2000 (approval for particular arrangements) is amended as follows.

(2) Omit subsection (5).

(3) For subsection (6) substitute—

"(6) The PRA may specify a description of function under subsection (3)(a) only if, in relation to the carrying on of a regulated activity by a PRA-authorised person, it is satisfied that the function is a senior management function as defined in section 59ZA."

(4) After subsection (6) insert—

"(6A) If—

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(a) a function of a description specified in rules made by the FCA under subsection (3)(a) or (b) is a controlled function in relation to the carrying on of a regulated activity by a relevant authorised person, and

(b) the FCA is satisfied that, in relation to the carrying on of a regulated activity by a relevant authorised person, the function is a senior management function as defined in section 59ZA,

the FCA must designate the function in the rules as a senior management function.

(6B) If a function of a description specified in rules made by the PRA under subsection (3)(a) is a controlled function in relation to the carrying on of a regulated activity by a relevant authorised person, the PRA must designate the function in the rules as a senior management function.

(6C) For the meaning of "relevant authorised person", see section 71A."

(5) Omit subsections (7) to (7B) and (11).

Commencement Information

I10 S. 18 in force at 25.7.2014 for specified purposes by S.I. 2014/1819, **art. 2(2)(a)**

19 Senior management functions

After section 59 of FSMA 2000 insert—

"**59ZA Senior management functions**

(1) This section has effect for determining whether a function is for the purposes of section 59(6) or (6A) a senior management function.

(2) A function is a "senior management function", in relation to the carrying on of a regulated activity by an authorised person, if—

(a) the function will require the person performing it to be responsible for managing one or more aspects of the authorised person's affairs, so far as relating to the activity, and

(b) those aspects involve, or might involve, a risk of serious consequences—

(i) for the authorised person, or

(ii) for business or other interests in the United Kingdom.

(3) In subsection (2)(a) the reference to managing one or more aspects of an authorised person's affairs includes a reference to taking decisions, or participating in the taking of decisions, about how one or more aspects of those affairs should be carried on."

Commencement Information

I11 S. 19 in force at 25.7.2014 by S.I. 2014/1819, **art. 2(1)(a)**

Status: *Point in time view as at 16/12/2015. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

20 Statements of responsibilities

(1) Section 60 of FSMA 2000 (applications for approval) is amended as follows.

(2) After subsection (2) insert—

"(2A) If—

(a) the application is for the approval of a person to perform a designated senior management function, and

(b) the authorised person concerned is a relevant authorised person (see section 71A),

the appropriate regulator must require the application to contain, or be accompanied by, a statement setting out the aspects of the affairs of the authorised person concerned which it is intended that the person will be responsible for managing in performing the function.

(2B) A statement provided under subsection (2A) is known as a "statement of responsibilities".

(2C) In subsection (2A) "designated senior management function" means a function designated as a senior management function under section 59(6A) or (6B)."

(3) After subsection (6) insert—

"(6A) Subsection (6) applies to references to a relevant authorised person as it applies to references to the authorised person concerned."

Commencement Information

I12 S. 20 in force at 25.7.2014 for specified purposes by S.I. 2014/1819, **art. 2(3)**

VALID FROM 07/03/2016

21 Vetting by relevant authorised persons of candidates for approval

After section 60 of FSMA 2000 insert—

"**60A Vetting of candidates by relevant authorised persons**

(1) Before a relevant authorised person may make an application for a regulator's approval under section 59, the authorised person must be satisfied that the person in respect of whom the application is made ("the candidate") is a fit and proper person to perform the function to which the application relates.

(2) In deciding that question, the authorised person must have regard, in particular, to whether the candidate, or any person who may perform a function on the candidate's behalf—

(a) has obtained a qualification,

(b) has undergone, or is undergoing, training,

(c) possesses a level of competence, or

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(d) has the personal characteristics,

required by general rules made by the regulator in relation to persons performing functions of the kind to which the application relates.

(3) For the meaning of "relevant authorised person", see section 71A."

VALID FROM 07/03/2016

22 Determination of applications for approval

In section 61 of FSMA 2000 (determination of applications), in subsection (2)—

(a) omit the "or" at the end of paragraph (b), and

(b) after paragraph (c) insert "or

(d) has the personal characteristics,".

VALID FROM 07/03/2016

23 Power to give approval subject to conditions or for limited period

(1) Section 61 of FSMA 2000 (determination of applications) is amended as follows.

(2) For subsection (1) substitute—

"(1) The regulator to which an application for approval is made under section 60 may grant the application only if—

(a) it is satisfied that the person in respect of whom the application is made ("the candidate") is a fit and proper person to perform the function to which the application relates, or

(b) in a case where the application is for approval to perform a designated senior management function in relation to the carrying on of a regulated activity by a relevant authorised person (a "relevant senior management application"), it is satisfied that the condition in paragraph (a) will be met if the application is granted subject to one or more conditions (as to which, see subsection (2B))."

(3) In subsection (2), for "deciding that question" substitute " determining the application ".

(4) After subsection (2A) insert—

"(2B) The regulator to which a relevant senior management application is made under section 60 may in particular—

(a) grant the application subject to any conditions that the regulator considers appropriate, and

(b) grant the application so as to give approval only for a limited period.

(2C) A regulator may exercise the power under paragraph (a) or (b) of subsection (2B) only if—

(a) where the regulator is the FCA, it appears to the FCA that it is desirable to do so in order to advance one or more of its operational objectives, and

(b) where the regulator is the PRA, it appears to the PRA that it is desirable to do so in order to advance any of its objectives.

(2D) Consent given by the FCA for the granting of the application may be conditional on the manner in which the PRA exercises its power under subsection (2B).”

(5) After subsection (3) insert—

“(3ZA) In the case of a relevant senior management application, the reference in subsection (3)(a) to granting the application is a reference to granting it without imposing conditions or limiting the period for which the approval has effect.”

(6) After subsection (5) insert—

“(6) In this section—

(a) “designated senior management function” means a function designated as a senior management function under section 59(6A) or (6B);

(b) any reference to a relevant authorised person includes a reference to a person who has applied for permission under Part 4A and will be a relevant authorised person if permission is given.

(7) For the meaning of “relevant authorised person”, see section 71A.”

(7) In section 62 of FSMA 2000 (applications for approval: procedure and right to refer to Tribunal)—

(a) in subsection (2), after “the application” insert “ , or to grant the application subject to conditions or for a limited period (or both) ”;

(b) in subsection (3), after “the application” insert “ , or to grant the application subject to conditions or for a limited period (or both) ”;

(c) in subsection (4), after “the application” insert “ , or to grant the application subject to conditions or for a limited period (or both) ”.

VALID FROM 07/03/2016

24 Changes in responsibilities of senior managers

After section 62 of FSMA 2000 insert—

“**62A Changes in responsibilities of senior managers**

(1) This section applies where—

(a) an authorised person has made an application to the appropriate regulator for approval under section 59 for a person to perform a designated senior management function,

(b) the application contained, or was accompanied by, a statement of responsibilities under section 60(2A), and

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(c) the application has been granted.

(2) If, since the granting of the application, there has been any significant change in the aspects of the authorised person's affairs which the person is responsible for managing in performing the function, the authorised person must provide the appropriate regulator with a revised statement of responsibilities.

(3) The appropriate regulator may require the authorised person—

(a) to provide information which the person is required to give under this section in such form as the appropriate regulator may direct, or

(b) to verify such information in such a way as the appropriate regulator may direct.

(4) In this section—

"the appropriate regulator" has the same meaning as in section 60;

"designated senior management function" means a function designated as a senior management function under section 59(6A) or (6B)."

VALID FROM 07/03/2016

25 Duty to notify regulator of grounds for withdrawal of approval

In section 63 of FSMA 2000 (withdrawal of approval), after subsection (2) insert—

"(2A) At least once a year each relevant authorised person must, in relation to every person in relation to whom an approval has been given on the application of the authorised person—

(a) consider whether there are any grounds on which a regulator could withdraw the approval under this section, and

(b) if the authorised person is of the opinion that there are such grounds, notify the regulator of those grounds.

(For the meaning of "relevant authorised person", see section 71A.)"

VALID FROM 07/03/2016

26 Variation of approval

After section 63 of FSMA 2000 insert—

"**63ZA Variation of senior manager's approval at request of relevant authorised person**

(1) Where an application for approval under section 59 is granted subject to conditions, the authorised person concerned may apply to the appropriate regulator to vary the approval by—

(a) varying a condition,

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(b) removing a condition, or

(c) imposing a new condition.

(2) "The appropriate regulator"—

(a) in the case of an application for variation of an approval in a way described in subsection (1)(a) or (b), means whichever of the FCA or the PRA imposed the condition concerned;

(b) in the case of an application for variation of an approval in the way described in subsection (1)(c), means the regulator who gave the approval.

(3) The PRA must consult the FCA before determining an application under this section, unless the application relates to the variation or removal of a condition which was imposed by the PRA in exercise of its power under section 63ZB.

(4) The regulator to which an application is made under this section must, before the end of the period for consideration, determine whether—

(a) to grant the application; or

(b) to give a warning notice under section 62(2).

(5) "The period for consideration" means the period of 3 months beginning with the date on which the regulator receives the application.

(6) The FCA may refuse an application under this section if it appears to the FCA that it is desirable to do so in order to advance one or more of its operational objectives.

(7) The PRA may refuse an application under this section if it appears to the PRA that it is desirable to do so in order to advance any of its objectives.

(8) The following provisions apply to an application made under this section for variation of an approval as they apply to an application for approval made under section 60—

section 60(2) to (8),

section 61(4) and (5),

section 62.

63ZB Variation of senior manager's approval on initiative of regulator

(1) The FCA may vary an approval under section 59 given by the FCA or the PRA for the performance of a designated senior management function in relation to the carrying on of a regulated activity by a relevant authorised person if the FCA considers that it is desirable to do so in order to advance one or more of its operational objectives.

(2) The PRA may vary an approval under section 59 for the performance of a designated senior management function in relation to the carrying on of a regulated activity by a relevant authorised person if—

(a) either—

(i) the PRA gave the approval, or

(ii) the FCA gave the approval and the relevant authorised person is a PRA-authorised person, and

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(b) the PRA considers that it is desirable to do so in order to advance any of its objectives.

(3) A regulator may vary an approval by—

(a) imposing a condition,

(b) varying a condition,

(c) removing a condition, or

(d) limiting the period for which the approval is to have effect.

(4) Before one regulator varies an approval given by the other regulator, it must consult the other regulator.

(5) In this section "designated senior management function" means a function designated as a senior management function under section 59(6A) or (6B).

(6) For the meaning of "relevant authorised person", see section 71A.

63ZC Exercise of power under section 63ZB: procedure

(1) This section applies to an exercise, by either regulator, of the power to vary an approval under section 63ZB.

(2) A variation takes effect—

(a) immediately, if the notice given under subsection (4) states that that is the case,

(b) on such date as is specified in the notice, or

(c) if no date is specified in the notice, when the matter to which the notice relates is no longer open to review.

(3) A variation may be expressed to take effect immediately (or on a specified date) only if the regulator concerned, having regard to the ground on which it is exercising the power to vary, reasonably considers that it is necessary for the variation to take effect immediately (or on that date).

(4) If either regulator proposes to vary an approval or varies an approval with immediate effect, it must give each of the interested parties written notice.

(5) The notice must—

(a) give details of the variation,

(b) state the regulator's reasons for the variation,

(c) inform the interested parties that each of them may make representations to the regulator within such period as may be specified in the notice (whether or not any of the interested parties has referred the matter to the Tribunal),

(d) inform the interested parties of when the variation takes effect, and

(e) inform the interested parties of the right of each of them to refer the matter to the Tribunal.

(6) "The interested parties", in relation to an approval, are—

(a) the person on whose application it was given ("A"),

(b) the person in respect of whom it was given ("B"), and

(c) the person by whom B's services are retained, if not A.

(7) The regulator giving the notice may extend the period allowed under the notice for making representations.

(8) If having considered the representations made by the interested parties, the regulator decides—

(a) to vary the approval, or

(b) if the variation has taken effect, not to rescind it,

it must give each of the interested parties written notice.

(9) If having considered the representations made by the interested parties, the regulator decides—

(a) not to vary the approval,

(b) to vary the approval in a different way, or

(c) if the variation has taken effect, to rescind it,

it must give each of the interested parties written notice.

(10) A notice under subsection (8) must inform the interested parties of the right of each of them to refer the matter to the Tribunal.

(11) A notice under subsection (9)(b) must comply with subsection (5).

(12) If a notice informs the interested parties of the right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.

(13) For the purposes of subsection (2)(c), whether a matter is open to review is to be determined in accordance with section 391(8).

(14) "Approval" means an approval under section 59."

27 Statement of policy

After section 63ZC of FSMA 2000 (inserted by section 26 above) insert—

"**63ZD Statement of policy relating to conditional approval and variation**

(1) Each regulator must prepare and issue a statement of its policy with respect to—

(a) its giving of approval under section 59 subject to conditions or for a limited period only, and

(b) its variation under section 63ZA or 63ZB of an approval given under section 59.

(2) A regulator may at any time alter or replace a statement issued by it under this section.

(3) If a statement issued under this section is altered or replaced by a regulator, the regulator must issue the altered or replacement statement.

(4) A statement issued under this section must be published by the regulator concerned in the way appearing to the regulator to be best calculated to bring it to the attention of the public.

(5) A regulator may charge a reasonable fee for providing a person with a copy of a statement published under this section.

Status: *Point in time view as at 16/12/2015. This version of this Act contains provisions that are not valid for this point in time.*
***Changes to legislation:** There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

(6) A regulator must, without delay, give the Treasury a copy of any statement which it publishes under this section.

63ZE Statement of policy: procedure

(1) Before issuing a statement of policy under section 63ZD, a regulator ("the issuing regulator") must—

(a) consult the other regulator, and

(b) publish a draft of the proposed statement in the way appearing to the issuing regulator to be best calculated to bring it to the attention of the public.

(2) The duty of the FCA to consult the PRA under subsection (1)(a) applies only in so far as the statement of policy applies to persons whose approval under section 59 relates to the performance of a function designated by the FCA as a senior management function under section 59(6A) in relation to the carrying on by PRA-authorised persons of regulated activities.

(3) The draft must be accompanied by notice that representations about the proposal may be made to the issuing regulator within a specified time.

(4) Before issuing the proposed statement, the issuing regulator must have regard to any representations made to it in accordance with subsection (3).

(5) If the issuing regulator issues the proposed statement it must publish an account, in general terms, of—

(a) the representations made to it in accordance with subsection (3), and

(b) its response to them.

(6) If the statement differs from the draft published under subsection (1) in a way which is in the opinion of the issuing regulator significant, the issuing regulator—

(a) must before issuing it carry out any consultation required by subsection (1)(a), and

(b) must (in addition to complying with subsection (5)) publish details of the difference.

(7) The issuing regulator may charge a reasonable fee for providing a person with a draft published under subsection (1)(b).

(8) This section also applies to a proposal to alter or replace a statement."

Commencement Information
I13 S. 27 in force at 25.7.2014 by S.I. 2014/1819, **art. 2(1)(b)**

28 Extension of limitation periods for imposing sanctions

(1) Section 63A of FSMA 2000 (power to impose penalties) is amended as follows.

(2) In subsection (4), for "period of three years" substitute " relevant period ".

(3) After subsection (5A) insert—

Status: *Point in time view as at 16/12/2015. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

"(5B) The relevant period" is—

(a) in relation to the performance of a controlled function without approval before the day on which this subsection comes into force, the period of 3 years, and

(b) in relation to the performance of a controlled function without approval on or after that day, the period of 6 years."

(4) Section 66 of FSMA 2000 (disciplinary powers) is amended as follows.

(5) In subsection (4), for "period of three years" substitute " relevant period ".

(6) After subsection (5) insert—

"(5ZA) The relevant period" is—

(a) in relation to misconduct which occurs before the day on which this subsection comes into force, the period of 3 years, and

(b) in relation to misconduct which occurs on or after that day, the period of 6 years."

Commencement Information

I14 S. 28 in force at 25.7.2014 by S.I. 2014/1819, **art. 2(1)(c)**

29 Certification of employees by relevant authorised persons

After section 63D of FSMA 2000 insert—

"Certification of employees

63E Certification of employees by relevant authorised persons

(1) A relevant authorised person ("A") must take reasonable care to ensure that no employee of A performs a specified function under an arrangement entered into by A in relation to the carrying on by A of a regulated activity, unless the employee has a valid certificate issued by A under section 63F.

(2) "Specified function"—

(a) in relation to the carrying on of a regulated activity by a PRA-authorised person, means a function of a description specified in rules made by the FCA or the PRA, and

(b) in relation to the carrying on of a regulated activity by any other authorised person, means a function of a description specified in rules made by the FCA.

(3) The FCA may specify a description of function under subsection (2)(a) or (b) only if, in relation to the carrying on of a regulated activity by a relevant authorised person of a particular description—

(a) the function is not a controlled function in relation to the carrying on of that activity by a relevant authorised person of that description, but

(b) the FCA is satisfied that the function is nevertheless a significant-harm function.

Status: *Point in time view as at 16/12/2015. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

(4) The PRA may specify a description of function under subsection (2)(a) only if, in relation to the carrying on of a regulated activity by a relevant PRA-authorised person of a particular description—

(a) the function is not a controlled function in relation to the carrying on of that activity by a relevant PRA-authorised person of that description, but

(b) the PRA is satisfied that the function is nevertheless a significant-harm function.

(5) A function is a "significant-harm function", in relation to the carrying on of a regulated activity by an authorised person, if—

(a) the function will require the person performing it to be involved in one or more aspects of the authorised person's affairs, so far as relating to the activity, and

(b) those aspects involve, or might involve, a risk of significant harm to the authorised person or any of its customers.

(6) Each regulator must—

(a) keep under review the exercise of its power under subsection (2) to specify any significant-harm function as a specified function, and

(b) exercise that power in a way that it considers will minimise the risk of employees of relevant authorised persons performing significant-harm functions which they are not fit and proper persons to perform.

(7) Subsection (1) does not apply to an arrangement which allows an employee to perform a function if the question of whether the employee is a fit and proper person to perform the function is reserved under any of the single market directives or the emission allowance auctioning regulation to an authority in a country or territory outside the United Kingdom.

(8) In this section—

"controlled function" has the meaning given by section 59(3);

"customer", in relation to an authorised person, means a person who is using, or who is or may be contemplating using, any of the services provided by the authorised person;

"relevant PRA-authorised person" means a PRA-authorised person that is a relevant authorised person.

(9) In this section any reference to an employee of a person ("A") includes a reference to a person who—

(a) personally provides, or is under an obligation personally to provide, services to A under an arrangement made between A and the person providing the services or another person, and

(b) is subject to (or to the right of) supervision, direction or control by A as to the manner in which those services are provided.

(10) For the meaning of "relevant authorised person", see section 71A.

Status: *Point in time view as at 16/12/2015. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

63F Issuing of certificates

(1) A relevant authorised person may issue a certificate to a person under this section only if the authorised person is satisfied that the person is a fit and proper person to perform the function to which the certificate relates.

(2) In deciding whether the person is a fit and proper person to perform the function, the relevant authorised person must have regard, in particular, to whether the person—

(a) has obtained a qualification,

(b) has undergone, or is undergoing, training,

(c) possesses a level of competence, or

(d) has the personal characteristics,

required by general rules made by the appropriate regulator in relation to employees performing functions of that kind.

(3) In subsection (2) "the appropriate regulator" means—

(a) in relation to employees of PRA-authorised persons, the FCA or the PRA, and

(b) in relation to employees of any other authorised person, the FCA.

(4) A certificate issued by a relevant authorised person to a person under this section must—

(a) state that the authorised person is satisfied that the person is a fit and proper person to perform the function to which the certificate relates, and

(b) set out the aspects of the affairs of the authorised person in which the person will be involved in performing the function.

(5) A certificate issued under this section is valid for a period of 12 months beginning with the day on which it is issued.

(6) If, after having considered whether a person is a fit and proper person to perform a specified function, a relevant authorised person decides not to issue a certificate to the person under this section, the authorised person must give the person a notice in writing stating—

(a) what steps (if any) the authorised person proposes to take in relation to the person as a result of the decision, and

(b) the reasons for proposing to take those steps.

(7) A relevant authorised person must maintain a record of every employee who has a valid certificate issued by it under this section.

(8) Expressions used in this section and in section 63E have the same meaning in this section as they have in that section."

Commencement Information

I15 S. 29 in force at 25.7.2014 for specified purposes by S.I. 2014/1819, **art. 2(2)(b)**

Status: *Point in time view as at 16/12/2015. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

30 Rules of conduct

(1) Part 5 of FSMA 2000 (performance of regulated activities) is amended as follows.

(2) Omit sections 64 and 65 (and the italic cross-heading preceding them).

(3) Before section 66 insert—

"Conduct of approved persons and others

64A **Rules of conduct**

(1) If it appears to the FCA to be necessary or expedient for the purpose of advancing one or more of its operational objectives, the FCA may make rules about the conduct of the following persons—

(a) persons in relation to whom either regulator has given its approval under section 59;

(b) persons who are employees of relevant authorised persons (see section 71A).

(2) If it appears to the PRA to be necessary or expedient for the purpose of advancing any of its objectives, the PRA may make rules about the conduct of the following persons—

(a) persons in relation to whom it has given its approval under section 59;

(b) persons in relation to whom the FCA has given its approval under section 59 in respect of the performance by them of a relevant senior management function in relation to the carrying on by a PRA-authorised person of a regulated activity;

(c) persons who are employees of relevant PRA-authorised persons.

(3) In subsection (2)—

"relevant PRA-authorised person" means a PRA-authorised person that is a relevant authorised person (see section 71A), and

"relevant senior management function" means a function which the PRA is satisfied is a senior management function as defined in section 59ZA (whether or not the function has been designated as such by the FCA).

(4) Rules made under this section must relate to the conduct of persons in relation to the performance by them of qualifying functions.

(5) In subsection (4) "qualifying function", in relation to a person, means a function relating to the carrying on of activities (whether or not regulated activities) by—

(a) in the case of an approved person, the person on whose application approval was given, and

(b) in any other case, the person's employer.

(6) In this section any reference to an employee of a person ("P") includes a reference to a person who—

(a) personally provides, or is under an obligation personally to provide, services to P under an arrangement made between P and the person providing the services or another person, and

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Changes to legislation: *There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

(b) is subject to (or to the right of) supervision, direction or control by P as to the manner in which those services are provided,

and "employer" is to be read accordingly.

64B **Rules of conduct: responsibilities of relevant authorised persons**

(1) This section applies where a regulator makes rules under section 64A ("conduct rules").

(2) Every relevant authorised person must—

(a) notify all relevant persons of the conduct rules that apply in relation to them, and

(b) take all reasonable steps to secure that those persons understand how those rules apply in relation to them.

(3) The steps which a relevant authorised person must take to comply with subsection (2)(b) include, in particular, the provision of suitable training.

(4) In this section "relevant person", in relation to an authorised person, means—

(a) any person in relation to whom an approval is given under section 59 on the application of the authorised person, and

(b) any employee of the authorised person.

(5) If a relevant authorised person knows or suspects that a relevant person has failed to comply with any conduct rules, the authorised person must notify the regulator of that fact.

(6) In this section "employee", in relation to an authorised person, has the same meaning as in section 64A.

(7) For the meaning of "relevant authorised person", see section 71A."

Commencement Information

I16 S. 30 in force at 25.7.2014 for specified purposes by S.I. 2014/1819, **art. 2(2)(c)**

31 Requirement to notify regulator of disciplinary action

After section 64B of FSMA 2000 (inserted by section 30 above) insert—

"**64C Requirement for relevant authorised persons to notify regulator of disciplinary action**

(1) If—

(a) a relevant authorised person takes disciplinary action in relation to a relevant person, and

(b) the reason, or one of the reasons, for taking that action is a reason specified in rules made by the appropriate regulator for the purposes of this section,

the relevant authorised person must notify that regulator of that fact.

(2) "Disciplinary action", in relation to a person, means any of the following—

Status: *Point in time view as at 16/12/2015. This version of this Act contains provisions that are not valid for this point in time.*
***Changes to legislation:** There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

(a) the issuing of a formal written warning;
(b) the suspension or dismissal of the person;
(c) the reduction or recovery of any of the person's remuneration.

(3) "The appropriate regulator" means—
(a) in relation to relevant authorised persons that are PRA-authorised persons, the FCA or the PRA;
(b) in relation to any other relevant authorised persons, the FCA.

(4) "Relevant person" has the same meaning as in section 64B.

(5) For the meaning of "relevant authorised person", see section 71A."

Commencement Information
I17 S. 31 in force at 25.7.2014 for specified purposes by S.I. 2014/1819, **art. 2(2)(d)**

VALID FROM 07/03/2016

32 Definition of "misconduct"

(1) In section 66 of FSMA 2000 (disciplinary powers)—
(a) after subsection (1) insert—

"(1A) For provision about when a person is guilty of misconduct for the purposes of action by a regulator—
(a) see section 66A, in the case of action by the FCA, and
(b) see section 66B, in the case of action by the PRA.";
(b) omit subsections (2), (2A), (6) and (7).

(2) After that section insert—

"**66A Misconduct: action by the FCA**

(1) For the purposes of action by the FCA under section 66, a person is guilty of misconduct if any of conditions A to C is met in relation to the person.

(2) Condition A is that—
(a) the person has at any time failed to comply with rules made by the FCA under section 64A, and
(b) at that time the person was—
(i) an approved person, or
(ii) an employee of a relevant authorised person.

(3) Condition B is that—
(a) the person has at any time been knowingly concerned in a contravention of a relevant requirement by an authorised person, and
(b) at that time the person was—
(i) an approved person in relation to the authorised person, or

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Changes to legislation: *There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

(ii) in the case of a relevant authorised person, an employee of the authorised person.

(4) In this section "relevant requirement" means a requirement—

(a) imposed by or under this Act, or

(b) imposed by any qualifying EU provision specified, or of a description specified, for the purposes of this subsection by the Treasury by order.

(5) Condition C is that—

(a) the person has at any time been a senior manager in relation to a relevant authorised person,

(b) there has at that time been (or continued to be) a contravention of a relevant requirement by the authorised person, and

(c) the senior manager was at that time responsible for the management of any of the authorised person's activities in relation to which the contravention occurred.

(6) But a person ("P") is not guilty of misconduct by virtue of subsection (5) if P satisfies the FCA that P had taken such steps as a person in P's position could reasonably be expected to take to avoid the contravention occurring (or continuing).

(7) For the purposes of subsection (5)—

"senior manager", in relation to a relevant authorised person, means a person who has approval under section 59 to perform a designated senior management function in relation to the carrying on by the authorised person of a regulated activity;

"designated senior management function" means a function designated as a senior management function under section 59(6A) or (6B).

(8) In this section—

"approved person"—

(a) means a person in relation to whom an approval is given under section 59, and

(b) in relation to an authorised person, means a person in relation to whom such approval is given on the application of the authorised person;

"employee", in relation to a person, has the same meaning as in section 64A.

(9) For the meaning of "relevant authorised person", see section 71A.

66B Misconduct: action by the PRA

(1) For the purposes of action by the PRA under section 66, a person is guilty of misconduct if any of conditions A to C is met in relation to the person.

(2) Condition A is that—

(a) the person has at any time failed to comply with rules made by the PRA under section 64A, and

(b) at that time the person was—

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Changes to legislation: *There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

(i) an approved person, or

(ii) an employee of a relevant PRA-authorised person.

(3) Condition B is that—

(a) the person has at any time been knowingly concerned in a contravention of a relevant requirement by a PRA-authorised person, and

(b) at that time the person was—

(i) an approved person in respect of the performance of a relevant senior management function in relation to the carrying on by the PRA-authorised person of a regulated activity, or

(ii) in the case of a relevant PRA-authorised person, an employee of the authorised person.

(4) In this section "relevant requirement" means a requirement—

(a) imposed by or under this Act, or

(b) imposed by any qualifying EU provision specified, or of a description specified, for the purposes of this subsection by the Treasury by order.

(5) Condition C is that—

(a) the person has at any time been a senior manager in relation to a relevant PRA-authorised person,

(b) there has at that time been (or continued to be) a contravention of a relevant requirement by the authorised person, and

(c) the senior manager was at that time responsible for the management of any of the authorised person's activities in relation to which the contravention occurred.

(6) But a person ("P") is not guilty of misconduct by virtue of subsection (5) if P satisfies the PRA that P had taken such steps as a person in P's position could reasonably be expected to take to avoid the contravention occurring (or continuing).

(7) For the purposes of subsection (5)—

"senior manager", in relation to a relevant PRA-authorised person, means a person who has approval under section 59 to perform a designated senior management function in relation to the carrying on by the authorised person of a regulated activity;

"designated senior management function" means a function designated as a senior management function under section 59(6A) or (6B).

(8) In this section—

"approved person"—

(a) means a person in relation to whom—

(i) the PRA has given its approval under section 59, or

(ii) the FCA has given its approval under section 59 in respect of the performance by the person of a relevant senior management function in relation to the carrying

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on by a PRA-authorised person of a regulated activity, and

(b) in relation to an authorised person, means a person in relation to whom approval under section 59 is given on the application of the authorised person;

"employee", in relation to a person, has the same meaning as in section 64A;

"relevant PRA-authorised person" means a PRA-authorised person that is a relevant authorised person;

"relevant senior management function" means a function which the PRA is satisfied is a senior management function as defined in section 59ZA (whether or not the function has been designated as such by the FCA).

(9) For the meaning of "relevant authorised person", see section 71A."

33 Meaning of "relevant authorised person"

In Part 5 of FSMA 2000 (performance of regulated activities), after section 71 insert—

" "Relevant authorised person"

71A Meaning of "relevant authorised person"

(1) In this Part "relevant authorised person" means a UK institution which—

(a) meets condition A or B, and

(b) is not an insurer.

(2) Condition A is that the institution has permission under Part 4A to carry on the regulated activity of accepting deposits.

(3) Condition B is that—

(a) the institution is an investment firm,

(b) it has permission under Part 4A to carry on the regulated activity of dealing in investments as principal, and

(c) when carried on by it, that activity is a PRA-regulated activity.

(4) The Treasury may by order provide that authorised persons falling within any of the following descriptions are "relevant authorised persons" for the purposes of this Part—

(a) non-UK institutions (or non-UK institutions of a specified description) that are credit institutions;

(b) non-UK institutions that are investment firms of a specified description.

"Specified" means specified in the order.

(5) If the Treasury propose to make an order under subsection (4) they must consult—

(a) the FCA,

(b) the PRA,

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***Changes to legislation:** There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

(c) any organisations that appear to them to be representative of interests substantially affected by the proposals, and

(d) any other persons that they consider appropriate.

(6) In this section—

(a) "UK institution" means an institution which is incorporated in, or formed under the law of any part of, the United Kingdom;

(b) "non-UK institution" means an institution that is not a UK institution;

(c) "credit institution" means any credit institution as defined in Article 4.1(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council;

(d) "insurer" means an institution which is authorised under this Act to carry on the regulated activity of effecting or carrying out contracts of insurance as principal.

(7) Subsections (2), (3) and (6)(d) are to be read in accordance with Schedule 2, taken with any order under section 22."

Commencement Information

I18 S. 33 in force at 25.7.2014 by S.I. 2014/1819, **art. 2(1)(d)**

VALID FROM 07/03/2016

34 Recording information about senior managers

(1) Section 347 of FSMA 2000 (the record of authorised persons etc.) is amended as follows.

(2) In subsection (2)—

(a) in paragraph (g), after sub-paragraph (iii) insert—

"(iv) in a case where the authorised person concerned is a relevant authorised person, whether or not the person is a senior manager;";

(b) after that paragraph insert—

"(h) in the case of an approved person who is a senior manager in relation to a relevant authorised person—

(i) whether a final notice has been given to the person under section 390; and

(ii) if so, any information about the matter to which the notice relates which has been published under section 391(4)."

(3) After subsection (8) insert—

"(8A) In this section—

"relevant authorised person" has the same meaning as in Part 5 (see section 71A),

"senior manager", in relation to a relevant authorised person, means a person who has approval under section 59 to perform a

Status: *Point in time view as at 16/12/2015. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

designated senior management function in relation to the carrying on by the authorised person of a regulated activity, and

"designated senior management function" means a function designated as a senior management function under section 59(6A) or (6B)."

(4) For subsection (9) substitute—

"(9) The authorised person concerned", in relation to an approved person, means the person on whose application approval was given."

35 Consequential amendments relating to Part 4

Schedule 3 (which contains further amendments relating to the provisions of this Part) has effect.

Commencement Information

I19 S. 35 in force at 25.7.2014 for specified purposes by S.I. 2014/1819, **art. 2(4)**

VALID FROM 07/03/2016

Offence

36 Offence relating to a decision causing a financial institution to fail

(1) A person ("S") commits an offence if—

(a) at a time when S is a senior manager in relation to a financial institution ("F"), S—

(i) takes, or agrees to the taking of, a decision by or on behalf of F as to the way in which the business of a group institution is to be carried on, or

(ii) fails to take steps that S could take to prevent such a decision being taken,

(b) at the time of the decision, S is aware of a risk that the implementation of the decision may cause the failure of the group institution,

(c) in all the circumstances, S's conduct in relation to the taking of the decision falls far below what could reasonably be expected of a person in S's position, and

(d) the implementation of the decision causes the failure of the group institution.

(2) A "group institution", in relation to a financial institution ("F"), means F or any other financial institution that is a member of F's group for the purpose of FSMA 2000 (see section 421 of that Act).

(3) Subsections (1) and (2) are to be read with the interpretative provisions in section 37.

(4) A person guilty of an offence under this section is liable—

(a) on summary conviction—

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***Changes to legislation:** There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

(i) in England and Wales, to imprisonment for a term not exceeding 12 months (or 6 months, if the offence was committed before the commencement of section 154(1) of the Criminal Justice Act 2003) or a fine, or both;

(ii) in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum, or both;

(iii) in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum, or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 7 years or a fine, or both.

37 Section 36: interpretation

(1) This section has effect for the interpretation of section 36.

(2) "Financial institution" means a UK institution which—

(a) meets condition A or B, and

(b) is not an insurer or a credit union.

(3) Condition A is that it has permission under Part 4A of FSMA 2000 to carry on the regulated activity of accepting deposits.

(4) Condition B is that—

(a) it is for the purposes of FSMA 2000 an investment firm (see section 424A of that Act),

(b) it has permission under Part 4A of that Act to carry on the regulated activity of dealing in investments as principal, and

(c) when carried on by it, that activity is a PRA-regulated activity.

(5) In subsection (2)—

(a) "UK institution" means an institution which is incorporated in, or formed under the law of any part of, the United Kingdom;

(b) "insurer" means an institution which is authorised under FSMA 2000 to carry on the regulated activity of effecting or carrying out contracts of insurance as principal;

(c) "credit union" means a credit union as defined by section 31 of the Credit Unions Act 1979 or a credit union as defined by Article 2(2) of the Credit Unions (Northern Ireland) Order 1985.

(6) Subsections (3), (4) and (5)(b) are to be read in accordance with sections 22 and 22A of FSMA 2000, taken with Schedule 2 to that Act and any order under section 22.

(7) A person is a "senior manager" in relation to a financial institution if, under an arrangement entered into by the institution, or by a contractor of the institution, in relation to the carrying on by the institution of a regulated activity, the person performs a senior management function.

(8) A "senior management function" is a function designated as such—

(a) by the FCA under subsection (6A) of section 59 of FSMA 2000 (approval for particular arrangements), or

(b) by the PRA under subsection (6B) of that section.

(9) A financial institution ("F") is to be regarded as failing where—

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Changes to legislation: *There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

(a) F enters insolvency,
(b) any of the stabilisation options in Part 1 of the Banking Act 2009 is achieved in relation to F, or
(c) F is taken for the purposes of the Financial Services Compensation Scheme to be unable, or likely to be unable, to satisfy claims against F.

(10) In subsection (9)(a) "insolvency" includes—
(a) bankruptcy,
(b) liquidation,
(c) bank insolvency,
(d) administration,
(e) bank administration,
(f) receivership,
(g) a composition between F and F's creditors, and
(h) a scheme of arrangement of F's affairs.

38 Institution of proceedings

(1) In this section "an offence" means an offence under section 36.

(2) Proceedings for an offence may be instituted in England and Wales only—
(a) by the FCA, the PRA or the Secretary of State, or
(b) by or with the consent of the Director of Public Prosecutions.

(3) Proceedings for an offence may be instituted in Northern Ireland only—
(a) by the FCA, the PRA or the Secretary of State, or
(b) by or with the consent of the Director of Public Prosecutions for Northern Ireland.

(4) In exercising its power to institute proceedings for an offence, the FCA or the PRA must comply with any conditions or restrictions imposed in writing by the Treasury.

(5) Conditions or restrictions may be imposed under subsection (4) in relation to—
(a) proceedings generally, or
(b) such proceedings, or categories of proceedings, as the Treasury may direct.

PART 5

REGULATION OF PAYMENT SYSTEMS

Overview

39 Overview

(1) This Part contains provision for the establishment of a new body (the "Payment Systems Regulator") to exercise functions in relation to payment systems.

(2) Section 40 provides for the establishment of the Payment Systems Regulator.

(3) Sections 41 and 42 contain definitions of "payment system" and related terms.

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***Changes to legislation:** There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

(4) Sections 43 to 48 make provision about designating a payment system as a regulated payment system.

(5) Sections 49 to 53 contain provision about the general duties of the Payment Systems Regulator under this Part.

(6) Sections 54 to 67 confer various regulatory and competition functions on the Payment Systems Regulator.

(7) Sections 68 to 70 contain provision about the making of complaints to the Payment Systems Regulator.

(8) Sections 71 to 80 contain provision about enforcement and appeals.

(9) Sections 81 to 95 contain information and investigation powers and provision about the disclosure of information.

(10) Sections 96 and 97 contain supplementary powers.

(11) Sections 98 to 102 contain provision about the Payment Systems Regulator's relationship with other regulators.

(12) Sections 103 to 107 contain provision about consultation, accountability and oversight.

(13) Sections 108 to 110 contain miscellaneous and supplemental provision.

Commencement Information
I20 S. 39 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

The Payment Systems Regulator

40 The Payment Systems Regulator

(1) The FCA must establish a body corporate to exercise the functions conferred on the body by or under this Part.

(2) The body established under subsection (1) is referred to in this Part as the Payment Systems Regulator.

(3) The FCA must take such steps as are necessary to ensure that the Payment Systems Regulator is, at all times, capable of exercising the functions referred to in subsection (1).

(4) In complying with the duty imposed by subsection (3) the FCA may, in particular—
(a) provide staff to the Payment Systems Regulator, and
(b) provide services to the Payment Systems Regulator which the FCA considers would facilitate the exercise of any of those functions.

(5) Schedule 4 (which contains further provision about the Payment Systems Regulator) has effect.

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Modifications etc. (not altering text)
C1 S. 40(3)(4) applied (with modifications) (9.12.2015) by The Payment Card Interchange Fee Regulations 2015 (S.I. 2015/1911), regs. 1, **15(1)**

Commencement Information
I21 S. 40 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

"Payment system" etc

41 Meaning of "payment system"

(1) In this Part "payment system" means a system which is operated by one or more persons in the course of business for the purpose of enabling persons to make transfers of funds, and includes a system which is designed to facilitate the transfer of funds using another payment system.

(2) But "payment system" does not include—

(a) any arrangements for the physical movement of cash;

(b) a system which does not make any provision for the transfer of funds by payers, or to recipients, in the United Kingdom;

(c) a securities settlement system operated by a person approved under regulations under section 785 of the Companies Act 2006 (provision enabling procedures for evidencing and transferring title);

(d) a system operated by a recognised clearing house;

(e) any other system whose primary purpose is not that of enabling persons to transfer funds.

(3) In this section—

"recognised clearing house" has the meaning given by section 285(1) of FSMA 2000;

"securities settlement system" means a computer-based system, and procedures, which enable title to units of a security to be evidenced and transferred without a written instrument, and which facilitate supplementary and incidental matters.

(4) The Treasury may by order amend this section so as to—

(a) add descriptions of systems or arrangements that are not to be regarded as payment systems, or

(b) vary or remove any such description.

Commencement Information
I22 S. 41 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

42 Participants in payment systems etc

(1) This section applies for the purposes of this Part.

(2) The following persons are "participants" in a payment system—

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(a) the operator of the payment system (see subsection (3));
(b) any infrastructure provider (see subsection (4));
(c) any payment service provider (see subsection (5)).

(But see also subsection (8).)

(3) "Operator", in relation to a payment system, means any person with responsibility under the system for managing or operating it; and any reference to the operation of a payment system includes a reference to its management.

(4) "Infrastructure provider", in relation to a payment system, means any person who provides or controls any part of the infrastructure used for the purposes of operating the payment system.

(5) "Payment service provider", in relation to a payment system, means any person who provides services to persons who are not participants in the system for the purposes of enabling the transfer of funds using the payment system.

(6) A payment service provider has "direct access" to a payment system if the payment service provider is able to provide services for the purposes of enabling the transfer of funds using the payment system as a result of arrangements made between the payment service provider and the operator of the payment system.

(7) Any reference to participation in a payment system is to be read in accordance with this section, and in particular—
(a) in the case of an operator of a payment system, includes a reference to developing the system, and
(b) in the case of a payment service provider with direct access to a payment system, includes a reference to entering into an agreement with a person to enable the person to become a payment service provider in relation to the system.

(8) The Bank of England is not to be regarded as a participant of any kind in any payment system.

Commencement Information
I23 S. 42 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

Designation as a regulated payment system

43 Designation orders

(1) The Treasury may by order (a "designation order") designate a payment system as a regulated payment system for the purposes of this Part.

(2) A designation order must specify in as much detail as is reasonably practicable the arrangements that constitute the payment system.

Commencement Information
I24 S. 43 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

Status: *Point in time view as at 16/12/2015. This version of this Act contains provisions that are not valid for this point in time.*
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44 Designation criteria

(1) The Treasury may make a designation order in respect of a payment system only if they are satisfied that any deficiencies in the design of the system, or any disruption of its operation, would be likely to have serious consequences for those who use, or are likely to use, the services provided by the system.

(2) In considering whether to make a designation order in respect of a payment system, the Treasury must have regard to—

(a) the number and value of the transactions that the system presently processes or is likely to process in the future,

(b) the nature of the transactions that the system presently processes or is likely to process in the future,

(c) whether those transactions or their equivalent could be handled by other payment systems, and

(d) the relationship between the system and other payment systems.

Commencement Information

I25 S. 44 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

45 Procedure

(1) Before making a designation order in respect of a payment system the Treasury must—

(a) consult the Payment Systems Regulator and, if the system is a recognised inter-bank payment system, the Bank of England,

(b) notify the operator of the system, and

(c) consider any representations made.

(2) In considering whether to make a designation order in respect of a payment system, the Treasury may rely on information provided by—

(a) the Bank of England,

(b) the FCA,

(c) the PRA, or

(d) the Payment Systems Regulator.

Commencement Information

I26 S. 45 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

46 Amendment of designation order

(1) The Treasury may amend a designation order.

(2) Before amending a designation order made in respect of a payment system, the Treasury must—

(a) consult the Payment Systems Regulator and, if the payment system is a recognised inter-bank payment system, the Bank of England,

(b) notify the operator of the payment system, and

(c) consider any representations made.

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(3) The Treasury must consider any request by the operator of a regulated payment system for the amendment of its designation order.

Commencement Information
I27 S. 46 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

47 Revocation of designation orders

(1) The Treasury may revoke a designation order.

(2) The Treasury must revoke a designation order if they are not satisfied that the criteria in section 44 are met in respect of the payment system to which the order relates.

(3) Before revoking a designation order made in respect of a payment system, the Treasury must—

(a) consult the Payment Systems Regulator and, if the payment system is a recognised inter-bank payment system, the Bank of England,

(b) notify the operator of the payment system, and

(c) consider any representations made.

(4) The Treasury must consider any request by the operator of a regulated payment system for the revocation of its designation order.

Commencement Information
I28 S. 47 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

48 Publication

(1) The Treasury must publish any designation order.

(2) If the Treasury amends a designation order, the Treasury must publish the amended order.

(3) The Treasury must publish any revocation of a designation order.

Commencement Information
I29 S. 48 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

General duties of Regulator

49 Regulator's general duties in relation to payment systems

(1) In discharging its general functions relating to payment systems the Payment Systems Regulator must, so far as is reasonably possible, act in a way which advances one or more of its payment systems objectives.

(2) The payment systems objectives of the Payment Systems Regulator are—

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(a) the competition objective (see section 50),
(b) the innovation objective (see section 51), and
(c) the service-user objective (see section 52).

(3) In discharging its general functions relating to payment systems the Payment Systems Regulator must have regard to—
(a) the importance of maintaining the stability of, and confidence in, the UK financial system,
(b) the importance of payment systems in relation to the performance of functions by the Bank of England in its capacity as a monetary authority, and
(c) the regulatory principles in section 53.

(4) The general functions of the Payment Systems Regulator relating to payment systems are—
(a) its function of giving general directions under section 54 (considered as a whole),
(b) its functions in relation to the giving of general guidance under section 96 (considered as a whole), and
(c) its function of determining the general policy and principles by reference to which it performs particular functions.

Commencement Information
I30 S. 49 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

50 The competition objective

(1) The competition objective is to promote effective competition in—
(a) the market for payment systems, and
(b) the markets for services provided by payment systems,
in the interests of those who use, or are likely to use, services provided by payment systems.

(2) The reference in subsection (1) to promoting effective competition includes, in particular, promoting effective competition—
(a) between different operators of payment systems,
(b) between different payment service providers, and
(c) between different infrastructure providers.

(3) The matters to which the Payment Systems Regulator may have regard in considering the effectiveness of competition in a market mentioned in subsection (1) include—
(a) the needs of different persons who use, or may use, services provided by payment systems;
(b) the ease with which persons who may wish to use those services can do so;
(c) the ease with which persons who obtain those services can change the person from whom they obtain them;
(d) the needs of different payment service providers or persons who wish to become payment service providers;

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(e) the ease with which payment service providers, or persons who wish to become payment service providers, can provide services using payment systems;

(f) the ease with which payment service providers can change the payment system they use to provide their services;

(g) the needs of different infrastructure providers or persons who wish to become infrastructure providers;

(h) the ease with which infrastructure providers, or persons who wish to become infrastructure providers, can provide infrastructure for the purposes of operating payment systems;

(i) the needs of different operators of payment systems;

(j) the ease with which operators of payment systems can change the infrastructure used to operate the payment systems;

(k) the level and structure of fees, charges or other costs associated with participation in payment systems;

(l) the ease with which new entrants can enter the market;

(m) how far competition is contributing to the development of efficient and effective infrastructure for the purposes of operating payment systems;

(n) how far competition is encouraging innovation.

Commencement Information
I31 S. 50 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

51 The innovation objective

(1) The innovation objective is to promote the development of, and innovation in, payment systems in the interests of those who use, or are likely to use, services provided by payment systems, with a view to improving the quality, efficiency and economy of payment systems.

(2) The reference in subsection (1) to promoting the development of, and innovation in, payment systems includes, in particular, a reference to promoting the development of, and innovation in, infrastructure to be used for the purposes of operating payment systems.

Commencement Information
I32 S. 51 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

52 The service-user objective

The service-user objective is to ensure that payment systems are operated and developed in a way that takes account of, and promotes, the interests of those who use, or are likely to use, services provided by payment systems.

Commencement Information
I33 S. 52 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

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53 Regulatory principles

The regulatory principles referred to in section 49(3)(c) are as follows—

(a) the need to use the resources of the Payment Systems 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 those who use services provided by payment systems should take responsibility for their decisions;

(e) the responsibilities of the senior management of persons subject to requirements imposed by or under this Part, including those affecting persons who use services provided by payment systems, in relation to compliance with those requirements;

(f) the desirability where appropriate of the Payment Systems 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 Part;

(g) the desirability in appropriate cases of the Payment Systems Regulator publishing information relating to persons on whom requirements are imposed by or under this Part, or requiring such persons to publish information, as a means of contributing to the advancement by the Payment Systems Regulator of its payment systems objectives;

(h) the principle that the Payment Systems Regulator should exercise its functions as transparently as possible.

Commencement Information

I34 S. 53 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

Regulatory and competition functions

54 Directions

(1) The Payment Systems Regulator may give directions in writing to participants in regulated payment systems.

(2) A direction given to a participant in a regulated payment system may—

(a) require or prohibit the taking of specified action in relation to the system;

(b) set standards to be met in relation to the system.

(3) A direction under this section may apply—

(a) generally,

(b) in relation to—

(i) all operators, or every operator of a regulated payment system of a specified description,

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(ii) all infrastructure providers, or every person who is an infrastructure provider in relation to a regulated payment system of a specified description, or

(iii) all payment service providers, or every person who is a payment service provider in relation to a regulated payment system of a specified description, or

(c) in relation to specified persons or persons of a specified description.

(4) The Payment Systems Regulator must publish any direction given under this section that applies as mentioned in subsection (3)(a) or (b).

(5) A direction under this section that applies as mentioned in subsection (3)(a) or (b) is referred to in this Part as a "general direction".

Commencement Information
I35 S. 54 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

55 System rules

(1) The Payment Systems Regulator may require the operator of a regulated payment system—

(a) to establish rules for the operation of the system;

(b) to change the rules in a specified way or so as to achieve a specified purpose;

(c) to notify the Payment Systems Regulator of any proposed change to the rules;

(d) not to change the rules without the approval of the Payment Systems Regulator.

(2) A requirement under subsection (1)(c) or (d) may be general or specific.

(3) A requirement under this section that is imposed on—

(a) all operators of regulated payment systems, or

(b) every operator of a regulated payment system of a specified description,

is referred to in this Part as a "generally-imposed requirement".

Commencement Information
I36 S. 55 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

56 Power to require granting of access to payment systems

(1) This section applies where a person ("the applicant") applies for an order under this section.

(2) The Payment Systems Regulator may by order require the operator of a regulated payment system to enable the applicant to become a payment service provider in relation to the system.

(3) The Payment Systems Regulator may by order require any payment service provider with direct access to a regulated payment system to enter into an agreement with the

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applicant to enable the applicant to become a payment service provider in relation to the system.

(4) An order under this section may provide for the applicant to become a payment service provider in relation to a payment system—

(a) for a period specified in the order;

(b) on terms and conditions specified in the order.

Commencement Information

I37 S. 56 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

57 Variation of agreements relating to payment systems

(1) This section applies to the following agreements—

(a) any agreement made between the operator of a regulated payment system and a payment service provider;

(b) any agreement made between a payment service provider with direct access to a regulated payment system and another person for the purpose of enabling that other person to become a payment service provider in relation to the system;

(c) any agreement concerning fees or charges payable in connection with—

(i) participation in a regulated payment system, or

(ii) the use of services provided by a regulated payment system.

(2) The Payment Systems Regulator may, on the application of a party to an agreement to which this section applies, vary the agreement by—

(a) varying any of the fees or charges payable under the agreement, or

(b) in the case of an agreement within subsection (1)(a) or (b), varying any other terms and conditions relating to the payment service provider's participation in the payment system.

(3) In the case of an agreement within subsection (1)(b), the reference in subsection (2)(b) to the payment service provider is to the payment service provider which does not have direct access to the payment system.

(4) The power under this section to vary any fee or charge includes power to specify a maximum fee or charge.

(5) If the Payment Systems Regulator varies an agreement under this section, the agreement has effect subject to the variation.

Commencement Information

I38 S. 57 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

58 Power to require disposal of interest in payment system

(1) The Payment Systems Regulator may require a person who has an interest in **[**F5—

(a) the operator of a regulated payment system, or

(b) an infrastructure provider in relation to such a system,

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to dispose of all or part of that interest. **]**

(2) The power conferred by subsection (1) may be exercised only if the Payment Systems Regulator is satisfied that, if the power is not exercised, there is likely to be a restriction or distortion of competition in—

(a) the market for payment systems, or

(b) a market for services provided by payment systems.

[F6(2A) The reference in subsection (2) to a restriction or distortion of competition includes, in particular, a restriction or distortion of competition—

(a) between different operators of payment systems,

(b) between different payment services providers, or

(c) between different infrastructure providers.**]**

(3) The Payment Systems Regulator may not exercise the power conferred by subsection (1) without the consent of the Treasury.

(4) If the Payment Systems Regulator decides to exercise the power conferred by subsection (1) in relation to a person who has an interest in the operator of a regulated payment system—

(a) the Payment Systems Regulator must notify the relevant competition authorities (see subsection (5)), and

(b) the relevant competition authorities may not take any action in relation to the person that would require the person to dispose of all or part of that interest.

(5) The relevant competition authorities are—

(a) the Secretary of State,

(b) the Competition and Markets Authority, and

(c) the FCA.

Textual Amendments

F5 Words in s. 58(1) substituted (26.5.2015) by Small Business, Enterprise and Employment Act 2015 (c. 26), **ss. 14(3)**, 164(3)(a)(v)

F6 S. 58(2A) inserted (26.5.2015) by Small Business, Enterprise and Employment Act 2015 (c. 26), **ss. 14(4)**, 164(3)(a)(v)

Commencement Information

I39 S. 58 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

59 The Regulator's functions under Part 4 of the Enterprise Act 2002

(1) The functions to which this subsection applies are to be concurrent functions of the Payment Systems Regulator and the Competition and Markets Authority ("the CMA").

(2) Subsection (1) applies to the functions of the CMA under Part 4 of the Enterprise Act 2002 (market investigations), so far as those functions—

(a) are exercisable by the CMA Board (within the meaning of Schedule 4 to the Enterprise and Regulatory Reform Act 2013), and

(b) relate to participation in payment systems.

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(3) But subsection (1) does not apply to functions under the following sections of the Enterprise Act 2002—

section 166 (duty to maintain register of undertakings and orders);

section 171 (duty to publish guidance).

(4) So far as is necessary for the purposes of, or in connection with, subsections (1) and (2)—

(a) references in Part 4 of the Enterprise Act 2002 to the CMA (including references in provisions of that Act applied by that Part) are to be read as including references to the Payment Systems Regulator,

(b) references in that Part to section 5 of that Act are to be read as including references to section 64 of this Act, and

(c) references in that Part to consumers are to be read as including references to any person who uses, or is likely to use, services provided by payment systems in the course of a business carried on by the person.

(5) But subsection (4) does not apply—

(a) in relation to section 166 or 171 of that Act, or

(b) where the context otherwise requires.

(6) Section 130A of the Enterprise Act 2002 is to have effect in relation to the Payment Systems Regulator by virtue of subsections (1) and (2) as if—

(a) in subsection (2)(a) of that section, the reference to the acquisition or supply of goods or services of one or more than one description in the United Kingdom were a reference to the participation in payment systems used to provide services in the United Kingdom, and

(b) in subsection (2)(b) of that section, the reference to the extent to which steps can and should be taken were a reference to the extent to which steps that might include steps under Part 4 of that Act can and should be taken.

Commencement Information

I40 S. 59 in force at 1.4.2014 by S.I. 2014/823, **art. 2(a)**

60 Restrictions on exercise of functions under Part 4 of the Enterprise Act 2002

(1) Before the CMA or the Payment Systems Regulator first exercises any of the concurrent functions in relation to any matter, it must consult the other.

(2) Neither the CMA nor the Payment Systems Regulator may exercise any of the concurrent functions in relation to any matter if any of those functions have been exercised in relation to that matter by the other.

(3) In subsections (1) and (2) "the concurrent functions" means the functions which by virtue of section 59 are concurrent functions of the Payment Systems Regulator and the CMA.

(4) Before the FCA or the Payment Systems Regulator first exercises any of the concurrent functions in relation to any matter, it must consult the other.

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(5) Neither the FCA nor the Payment Systems Regulator may exercise any of the concurrent functions in relation to any matter if any of those functions have been exercised in relation to that matter by the other.

(6) In subsections (4) and (5) "the concurrent functions"—

(a) in relation to the Payment Systems Regulator, means the functions which by virtue of section 59 are concurrent functions of the Payment Systems Regulator and the CMA, and

(b) in relation to the FCA, means the functions which by virtue of section 234I of FSMA 2000 are concurrent functions of the FCA and the CMA.

(7) In this section "the CMA" means the Competition and Markets Authority.

Commencement Information

I41 S. 60(1)(2)(3)(7) in force at 1.4.2014 by S.I. 2014/823, **art. 2(b)**

I42 S. 60(4)-(6) in force at 1.4.2015 by S.I. 2014/2458, **art. 3(b)(i)**

61 The Regulator's functions under the Competition Act 1998

(1) The functions to which this subsection applies are to be concurrent functions of the Payment Systems Regulator and the Competition and Markets Authority ("the CMA").

(2) Subsection (1) applies to the functions of the CMA under the provisions of Part 1 of the Competition Act 1998, so far as relating to any of the following that relate to participation in payment systems—

(a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act,

(b) conduct of the kind mentioned in section 18(1) of that Act,

(c) agreements, decisions or concerted practices of the kind mentioned in Article 101(1) of the Treaty on the Functioning of the European Union, and

(d) conduct which amounts to abuse of the kind mentioned in Article 102 of the Treaty on the Functioning of the European Union.

(3) But subsection (1) does not apply to functions under the following sections of that Act—

section 31D(1) to (6) (duty to publish guidance);

section 38(1) to (6) (duty to publish guidance about penalties);

section 40B(1) to (4) (duty to publish statement of policy on penalties);

section 51 (rules).

(4) So far as necessary for the purposes of, or in connection with, the provisions of subsections (1) and (2), references to the CMA in Part 1 of the Competition Act 1998 are to be read as including references to the Payment Systems Regulator.

(5) But subsection (4) does not apply—

(a) in relation to sections 31D(1) to (6), 38(1) to (6), 40B(1) to (4), 51, 52(6) and (8) and 54 of that Act, or

(b) where the context otherwise requires.

Status: *Point in time view as at 16/12/2015. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

Commencement Information

I43 S. 61 in force at 1.11.2014 for specified purposes by S.I. 2014/2458, **art. 2(a)(i)**

I44 S. 61 in force at 1.4.2015 in so far as not already in force by S.I. 2014/2458, **art. 3(b)(ii)**

62 Duty to consider exercise of powers under Competition Act 1998

(1) Before exercising any power within subsection (2), the Payment Systems Regulator must consider whether it would be more appropriate to proceed under the Competition Act 1998.

(2) The powers referred to in subsection (1) are—

(a) its power to give a direction under section 54 (apart from the power to give a general direction);

(b) its power to impose a requirement under section 55 (apart from the power to impose a generally-imposed requirement);

(c) its powers under sections 56, 57 and 58.

(3) The Payment Systems Regulator must not exercise the power if it considers that it would be more appropriate to proceed under the Competition Act 1998.

Commencement Information

I45 S. 62 in force at 1.4.2015 by S.I. 2014/2458, **art. 3(a)**

63 Provision of information and assistance to a CMA group

(1) For the purpose of assisting a CMA group in carrying out a relevant investigation, the Payment Systems Regulator must give the CMA group—

(a) any relevant information which it has in its possession, and

(b) any other assistance which the CMA group may reasonably require in relation to any matters falling within the scope of the investigation.

(2) A "relevant investigation" is an investigation carried out on a reference made by the Payment Systems Regulator under section 131 of the Enterprise Act 2002 by virtue of section 59.

(3) "Relevant information", in relation to a relevant investigation, is information—

(a) which relates to matters falling within the scope of the investigation, and

(b) which—

(i) is requested by the CMA group for the purpose of the investigation, or

(ii) in the opinion of the Payment Systems Regulator, it would be appropriate to give to the CMA group for that purpose.

(4) A CMA group, in carrying out a relevant investigation, must take into account any information given to it under this section.

(5) In this section "CMA group" has the same meaning as in Schedule 4 to the Enterprise and Regulatory Reform Act 2013.

Status: *Point in time view as at 16/12/2015. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

Commencement Information
I46 S. 63 in force at 1.4.2014 by S.I. 2014/823, **art. 2(c)**

64 Function of keeping markets under review

(1) For the purpose of the functions conferred on it by sections 58 to 63 the Payment Systems Regulator is to have the function of keeping under review—

(a) the market for payment systems, and

(b) the markets for services provided by payment systems.

(2) The function conferred by subsection (1) is to be carried out with a view to (among other things) ensuring that the Payment Systems Regulator has sufficient information to take informed decisions and to carry out its other functions effectively.

Commencement Information
I47 S. 64 in force at 1.4.2014 by S.I. 2014/823, **art. 2(d)**

65 Exclusion of general duties

(1) Section 49 (the Payment Systems Regulator's general duties) does not apply in relation to anything done by the Payment Systems Regulator in the carrying out of its functions by virtue of sections 59 to 63.

(2) But in the carrying out of any functions by virtue of sections 59 to 63, the Payment Systems Regulator may have regard to any of the matters in respect of which a duty is imposed by section 49 if it is a matter to which the Competition and Markets Authority is entitled to have regard in the carrying out of those functions.

Commencement Information
I48 S. 65 in force at 1.4.2014 by S.I. 2014/823, **art. 2(e)**

66 Concurrent competition powers: supplementary provision

(1) If any question arises as to whether, by virtue of section 59 or 61, any functions fall to be, or are capable of being, carried out by the Payment Systems Regulator in relation to any particular case, that question is to be referred to, and determined by, the Treasury.

(2) No objection is to be taken to anything done under the Competition Act 1998 or Part 4 of the Enterprise Act 2002 by or in relation to the Payment Systems Regulator on the ground that it should have been done by or in relation to the Competition and Markets Authority.

Commencement Information
I49 S. 66 in force at 1.4.2014 by S.I. 2014/823, **art. 2(f)**

Status: *Point in time view as at 16/12/2015. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

67 Amendments relating to Regulator's competition powers

(1) In section 9E of the Company Directors Disqualification Act 1986 (interpretation of sections 9A to 9D), in subsection (2), after paragraph (f) insert—

"(g) the Payment Systems Regulator established under section 40 of the Financial Services (Banking Reform) Act 2013."

(2) In section 54 of the Competition Act 1998 (regulators), in subsection (1), omit the "and" at the end of paragraph (g) and after paragraph (h) insert—

"(i) the Payment Systems Regulator established under section 40 of the Financial Services (Banking Reform) Act 2013."

(3) In section 136 of the Enterprise Act 2002 (investigations and reports on market investigation references)—

(a) in subsection (7), at the end insert—

"(j) in relation to the Payment Systems Regulator, section 59 of the Financial Services (Banking Reform) Act 2013.";

(b) in subsection (8), for "or Monitor" substitute " , Monitor or the Payment Systems Regulator. ";

(c) at the end insert—

"(10) In this section "the Payment Systems Regulator" means the body established under section 40 of the Financial Services (Banking Reform) Act 2013."

(4) In section 52(4) of the Enterprise and Regulatory Reform Act 2013 (power to remove concurrent competition functions of sectoral regulators), after paragraph (f) insert—

"(g) the Payment Systems Regulator established under section 40 of the Financial Services (Banking Reform) Act 2013."

(5) In Schedule 4 to the Enterprise and Regulatory Reform Act 2013 (the Competition and Markets Authority), in paragraph 16 (concurrency report), at the end of sub-paragraph (7) insert—

"(h) the Payment Systems Regulator established under section 40 of the Financial Services (Banking Reform) Act 2013."

Commencement Information

I50 S. 67(1) in force at 1.4.2015 by S.I. 2014/2458, **art. 3(b)(iii)**

I51 S. 67(2) in force at 1.11.2014 for specified purposes by S.I. 2014/2458, **art. 2(a)(ii)**

I52 S. 67(2) in force at 1.4.2015 in so far as not already in force by S.I. 2014/2458, **art. 3(b)(iii)**

I53 S. 67(3)(4)(5) in force at 1.4.2014 by S.I. 2014/823, **art. 2(g)**

Complaints

68 Complaints by representative bodies

(1) A designated representative body may make a complaint to the Payment Systems Regulator that a feature, or combination of features, of a market in the United Kingdom for services provided by payment systems is, or appears to be, significantly damaging the interests of those who use, or are likely to use, those services ("service-users").

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***Changes to legislation:** There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

(2) "Designated representative body" means a body designated by the Treasury by order.

(3) The Treasury—

(a) may designate a body only if it appears to them to represent the interests of service-users of any description, and

(b) must publish in such manner as they think fit (and may from time to time vary) criteria to be applied by them in determining whether to make or revoke a designation.

(4) The reference in subsection (1) to a feature of a market in the United Kingdom for services provided by payment systems is a reference to—

(a) the structure of the market concerned or any aspect of that structure,

(b) any conduct (whether or not in the market concerned) of one or more than one person who supplies or acquires services in the market concerned, or

(c) any conduct relating to the market concerned of customers of any person who supplies or acquires services,

and "conduct" includes any failure to act (whether or not intentional) and any other unintentional conduct.

(5) In this section "market in the United Kingdom" includes a market which operates only in a part of the United Kingdom.

(6) In section 234C of FSMA 2000 (complaints by consumer bodies), after subsection (1) insert—

"(1A) But a complaint may not be made to the FCA under this section if it is a complaint which could be made to the Payment Systems Regulator by a designated representative body under section 68 of the Financial Services (Banking Reform) Act 2013 (complaints by representative bodies).

"Designated representative body" and "the Payment Systems Regulator" have the same meaning in this subsection as they have in that section."

Commencement Information

I54 S. 68 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

69 Response by Regulator

(1) The Payment Systems Regulator must within 90 days after the day on which it receives a complaint under section 68 publish a response stating how it proposes to deal with the complaint, and in particular—

(a) whether it has decided to take any action, or to take no action, and

(b) if it has decided to take action, what action it proposes to take.

(2) The response must—

(a) include a copy of the complaint, and

(b) state the Payment Systems Regulator's reasons for its proposals.

(3) The Treasury may by order amend subsection (1) by substituting any period for the period for the time being specified there.

Status: *Point in time view as at 16/12/2015. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

Commencement Information
I55 S. 69 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

70 Complaints: guidance

(1) The guidance given by the Payment Systems Regulator under section 96—

(a) must include guidance about the presentation of a reasoned case for a complaint under section 68, and

(b) may include guidance about any other matters that appear to the Payment Systems Regulator to be appropriate for the purposes of that section.

(2) Guidance given in accordance with subsection (1) is to be treated as general guidance for the purposes of this Part.

Commencement Information
I56 S. 70 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

Enforcement and appeals

71 Meaning of "compliance failure"

In this Part "compliance failure" means a failure by a participant in a regulated payment system to—

(a) comply with a direction given under section 54, or

(b) comply with a requirement imposed under section 55 or 56.

Commencement Information
I57 S. 71 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

72 Publication of compliance failures etc

(1) The Payment Systems Regulator may publish details of a compliance failure by a participant in a regulated payment system.

(2) The Payment Systems Regulator may publish details of a sanction imposed under section 73.

Commencement Information
I58 S. 72 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

73 Penalties

(1) The Payment Systems Regulator may require a participant in a regulated payment system to pay a penalty in respect of a compliance failure.

Status: *Point in time view as at 16/12/2015. This version of this Act contains provisions that are not valid for this point in time.*
***Changes to legislation:** There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

(2) A penalty—

(a) must be paid to the Payment Systems Regulator, and

(b) may be enforced by the Payment Systems Regulator as a debt.

(3) The Payment Systems Regulator must prepare a statement of the principles which it will apply in determining—

(a) whether to impose a penalty, and

(b) the amount of a penalty.

(4) The Payment Systems Regulator must—

(a) publish the statement on its website,

(b) send a copy to the Treasury,

(c) review the statement from time to time and revise it if necessary (and paragraphs (a) and (b) apply to a revision), and

(d) in applying the statement to a compliance failure, apply the version in force when the compliance failure occurred.

Commencement Information

I59 S. 73 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

74 Warning notices

(1) Before imposing a sanction on any person the Payment Systems Regulator must—

(a) give the person a notice in writing (a "warning notice"),

(b) give the person at least 21 days to make representations,

(c) consider any representations made, and

(d) as soon as is reasonably practicable, give the person a notice in writing stating whether or not it intends to impose the sanction.

(2) In subsection (1) any reference to imposing a sanction is a reference to—

(a) publishing details under section 72(1), or

(b) requiring the payment of a penalty under section 73.

Commencement Information

I60 S. 74 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

75 Injunctions

(1) If, on the application of the Payment Systems Regulator, 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 Payment Systems Regulator, the court is satisfied—

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Changes to legislation: *There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

(a) that there has been a compliance failure by a participant in a regulated payment system, and

(b) that there are steps which could be taken for remedying the failure,

the court may make an order requiring the participant, 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 Payment Systems Regulator, the court is satisfied—

(a) that there may have been a compliance failure by a participant in a regulated payment system, or

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

the court may make an order restraining the participant or the person (as the case may be) from dealing with any assets which it is satisfied the participant 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.

Commencement Information

I61 S. 75 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

76 Appeals: general

(1) A person who is affected by any of the following decisions of the Payment Systems Regulator may appeal against the decision—

(a) a decision to give a direction under section 54 (other than a general direction),

(b) a decision to impose a requirement under section 55 (other than a generally-imposed requirement),

(c) a decision to exercise its power under section 56, 57 or 58,

(d) a decision to impose a sanction.

(2) In subsection (1) the reference to imposing a sanction is a reference to—

(a) publishing details under section 72(1), or

(b) requiring the payment of a penalty under section 73.

(3) If the decision is a CAT-appealable decision, the appeal must be made to the Competition Appeal Tribunal in accordance with section 77.

(4) A "CAT-appealable decision" means—

(a) a decision to give a direction under section 54,

(b) a decision to impose a requirement under section 55, or

(c) a decision to publish details under section 72(1).

Status: *Point in time view as at 16/12/2015. This version of this Act contains provisions that are not valid for this point in time.*
***Changes to legislation:** There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

(5) If the decision is a decision to impose a penalty on the person under section 73, the appeal must be made to the Competition Appeal Tribunal in accordance with section 78.

(6) If the decision is a CMA-appealable decision, the appeal must be made to the Competition and Markets Authority ("the CMA") in accordance with section 79.

(7) A "CMA-appealable decision" means—

(a) a decision to impose a requirement under section 56,

(b) a decision to vary an agreement under section 57, or

(c) a decision to impose a requirement under section 58.

(8) The permission of the CMA is required for an appeal to be made in accordance with section 79.

(9) The CMA may refuse permission for an appeal only if—

(a) the appeal is made for reasons that are trivial or vexatious, or

(b) the appeal has no reasonable prospect of success.

Commencement Information

I62 S. 76 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

77 Appeals to Competition Appeal Tribunal

(1) This section applies where a person is appealing to the Competition Appeal Tribunal ("the Tribunal") against a CAT-appealable decision.

(2) The means of making an appeal is by sending the Tribunal a notice of appeal in accordance with Tribunal rules.

(3) The notice of appeal must be sent within the period specified, in relation to the decision appealed against, in those rules.

(4) In determining an appeal made in accordance with this section, the Tribunal must apply the same principles as would be applied by a court on an application for judicial review.

(5) The Tribunal must either—

(a) dismiss the appeal, or

(b) quash the whole or part of the decision to which the appeal relates.

(6) If the Tribunal quashes the whole or part of a decision, it may refer the matter back to the Payment Systems Regulator with a direction to reconsider and make a new decision in accordance with its ruling.

(7) The Tribunal may not direct the Payment Systems Regulator to take any action which it would not otherwise have the power to take in relation to the decision.

(8) The effect of a decision to publish details under section 72(1) is suspended by the making of an appeal against the decision (and the details may not be published until the appeal has been determined).

Status: *Point in time view as at 16/12/2015. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

(9) The effect of any other CAT-appealable decision is not suspended by the making of an appeal against the decision.

(10) In this section and section 78 "Tribunal rules" means rules under section 15 of the Enterprise Act 2002.

Commencement Information
I63 S. 77 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

78 Appeals in relation to penalties

(1) This section applies where a person is appealing to the Competition Appeal Tribunal ("the Tribunal") against a decision to impose a penalty under section 73.

(2) The person may appeal against—
(a) the imposition of the penalty,
(b) the amount of the penalty, or
(c) any date by which the penalty, or any part of it, is required to be paid.

(3) The means of making an appeal is by sending the Tribunal a notice of appeal in accordance with Tribunal rules.

(4) The notice of appeal must be sent within the period specified, in relation to the decision appealed against, in those rules.

(5) The Tribunal may do any of the following—
(a) uphold the penalty;
(b) set aside the penalty;
(c) substitute for the penalty a penalty of an amount decided by the Tribunal;
(d) vary any date by which the penalty, or any part of it, is required to be paid.

(6) If an appeal is made in accordance with this section, the penalty is not required to be paid until the appeal has been determined.

(7) Subsections (2), (5) and (6) do not restrict the power to make Tribunal rules; and those subsections are subject to Tribunal rules.

(8) Except as provided by this section, the validity of the penalty may not be questioned by any legal proceedings whatever.

(9) In the case of an appeal made in accordance with this section, a decision of the Tribunal has the same effect as, and may be enforced in the same manner as, a decision of the Payment Systems Regulator.

Commencement Information
I64 S. 78 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

Status: *Point in time view as at 16/12/2015. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

79 Appeals to Competition and Markets Authority

(1) This section applies where a person is appealing to the Competition and Markets Authority ("the CMA") against a CMA-appealable decision.

(2) In determining the appeal the CMA must have regard, to the same extent as is required of the Payment Systems Regulator, to the matters to which the Payment Systems Regulator must have regard in discharging its functions under this Part.

(3) In determining the appeal the CMA—

(a) may have regard to any matter to which the Payment Systems Regulator was not able to have regard in relation to the decision, but

(b) must not, in the exercise of that power, have regard to any matter to which the Payment Systems Regulator would not have been entitled to have regard in reaching its decision had it had the opportunity of doing so.

(4) The CMA must either—

(a) dismiss the appeal, or

(b) quash the whole or part of the decision to which the appeal relates.

(5) The CMA may act as mentioned in subsection (4)(b) only to the extent that it is satisfied that the decision was wrong on one or more of the following grounds—

(a) that the Payment Systems Regulator failed properly to have regard to any matter mentioned in subsection (2);

(b) that the Payment Systems Regulator failed to give the appropriate weight to any matter mentioned in subsection (2);

(c) that the decision was based, wholly or partly, on an error of fact;

(d) that the decision was wrong in law.

(6) If the CMA quashes the whole or part of a decision, it may either—

(a) refer the matter back to the Payment Systems Regulator with a direction to reconsider and make a new decision in accordance with its ruling, or

(b) substitute its own decision for that of the Payment Systems Regulator.

(7) The CMA may not direct the Payment Systems Regulator to take any action which it would not otherwise have the power to take in relation to the decision.

(8) Schedule 5 contains further provision about the making of appeals in accordance with this section.

Commencement Information
I65 S. 79 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

80 Enforcement of requirement to dispose of interest in payment system

(1) A requirement imposed under section 58 is enforceable by civil proceedings brought by the Payment Systems Regulator for an injunction or for interdict or for any other appropriate relief or remedy.

(2) Civil proceedings may not be brought to enforce a requirement imposed under that section unless—

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Changes to legislation: *There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

(a) the time for bringing an appeal against the decision to impose the requirement has expired and no appeal has been brought within that time, or

(b) the person on whom the requirement was imposed has within that time brought such an appeal and the appeal has been dismissed or withdrawn.

Commencement Information

I66 S. 80 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

Information and investigation powers

81 Power to obtain information or documents

(1) The Payment Systems Regulator may by notice in writing require a person to provide information or documents—

(a) which the Payment Systems Regulator thinks will help the Treasury in determining whether to make a designation order, or

(b) which the Payment Systems Regulator otherwise requires in connection with its functions under this Part.

(2) In particular, a notice under subsection (1) may require a participant in a regulated payment system to notify the Payment Systems Regulator if events of a specified kind occur.

(3) A notice under subsection (1) may require information or documents to be provided—

(a) in a specified form or manner;

(b) at a specified time;

(c) in respect of a specified period.

Modifications etc. (not altering text)

C2 Ss. 81-93 applied (with modifications) (9.12.2015) by The Payment Card Interchange Fee Regulations 2015 (S.I. 2015/1911), regs. 1, **14(1)**

Commencement Information

I67 S. 81 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

82 Reports by skilled persons

(1) The Payment Systems Regulator may—

(a) require a person who is a participant in a regulated payment system to provide the Payment Systems Regulator with a report on any matter relating to the person's participation in the system ("the matter concerned"), or

(b) appoint a person to provide the Payment Systems Regulator with a report on the matter concerned.

The person whose participation in the payment system is to be the subject of the report is referred to in this section as "the relevant participant".

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***Changes to legislation:** There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

(2) The power conferred by subsection (1)(a) is exercisable by giving the relevant participant a notice in writing.

(3) When acting under subsection (1)(a), the Payment Systems Regulator may require the report to be in a form specified in the notice.

(4) The Payment Systems Regulator must give written notice of an appointment under subsection (1)(b) to the relevant participant.

(5) A person appointed to make a report under this section—

(a) must be a person appearing to the Payment Systems Regulator to have the skills necessary to make a report on the matter concerned, and

(b) where the appointment is to be made by the relevant participant, must be a person nominated or approved by the Payment Systems Regulator.

(6) It is the duty of—

(a) the relevant participant, and

(b) any person who is providing (or who has at any time provided) services to the relevant participant in relation to the matter concerned,

to give the person appointed to prepare a report all such assistance as the appointed person may reasonably require.

(7) The obligation imposed by subsection (6) is enforceable, on the application of the Payment Systems Regulator, by an injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.

(8) The Payment Systems Regulator may direct the relevant participant to pay any expenses incurred by the Payment Systems Regulator in relation to an appointment under subsection (1)(b).

Modifications etc. (not altering text)

C2 Ss. 81-93 applied (with modifications) (9.12.2015) by The Payment Card Interchange Fee Regulations 2015 (S.I. 2015/1911), regs. 1, **14(1)**

Commencement Information

I68 S. 82 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

83 Appointment of persons to conduct investigations

(1) If it considers that it is desirable to do so in order to advance any of its payment systems objectives, the Payment Systems Regulator may appoint one or more competent persons to conduct an investigation on its behalf into the nature, conduct or state of the business of any participant in a regulated payment system.

(2) If it appears to the Payment Systems Regulator that there are circumstances suggesting that there may have been a compliance failure, the Payment Systems Regulator may appoint one or more competent persons to conduct an investigation on its behalf.

Modifications etc. (not altering text)

C2 Ss. 81-93 applied (with modifications) (9.12.2015) by The Payment Card Interchange Fee Regulations 2015 (S.I. 2015/1911), regs. 1, **14(1)**

Commencement Information

I69 S. 83 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

84 Investigations: general

(1) This section applies if the Payment Systems Regulator appoints one or more competent persons ("investigators") under section 83 to conduct an investigation on its behalf.

(2) The Payment Systems Regulator must give written notice of the appointment of an investigator to the person who is the subject of the investigation.

(3) Subsections (2) and (9) do not apply if—

(a) the Payment Systems Regulator believes that the notice required by subsection (2) or (9) would be likely to result in the investigation being frustrated, or

(b) the investigator is appointed under subsection (2) of section 83.

(4) A notice under subsection (2) must—

(a) specify the provision under which the investigator was appointed, and

(b) state the reason for the appointment.

(5) Nothing prevents the Payment Systems Regulator from appointing as an investigator—

(a) a member of its staff, or

(b) a member of staff of the FCA.

(6) An investigator who conducts an investigation must make a report of the investigation to the Payment Systems Regulator.

(7) The Payment Systems Regulator may, by a direction to an investigator, control—

(a) the scope of the investigation,

(b) the period during which the investigation is to be conducted,

(c) the conduct of the investigation, and

(d) the reporting of the investigation.

(8) A direction may, in particular—

(a) confine the investigation to particular matters;

(b) extend the investigation to additional matters;

(c) require the investigator to discontinue the investigation or to take only those steps that are specified in the direction;

(d) require the investigator to make such interim reports as are so specified.

(9) If there is a change in the scope or conduct of the investigation and, in the opinion of the Payment Systems Regulator, the person who is the subject of the investigation is likely to be significantly prejudiced by not being made aware of it, that person must be given written notice of the change.

Status: *Point in time view as at 16/12/2015. This version of this Act contains provisions that are not valid for this point in time.*
***Changes to legislation:** There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

Modifications etc. (not altering text)

C2 Ss. 81-93 applied (with modifications) (9.12.2015) by The Payment Card Interchange Fee Regulations 2015 (S.I. 2015/1911), regs. 1, **14(1)**

Commencement Information

I70 S. 84 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

85 Powers of persons appointed under section 83

(1) An investigator may require any person within subsection (2)—

(a) to attend before the investigator at a specified time and place and answer questions, or

(b) otherwise to provide any information which the investigator requires.

(2) The persons referred to in subsection (1) are—

(a) the person who is the subject of the investigation ("the person under investigation");

(b) any person connected with the person under investigation;

(c) in the case of an investigation into whether there has been a compliance failure, any person who in the investigator's opinion is or may be able to give information which is or may be relevant to the investigation.

(3) An investigator may also require any person to produce at a specified time and place any specified documents or documents of a specified description.

(4) A requirement under subsection (1) or (3) may be imposed only so far as the investigator concerned reasonably considers the question, provision of information or production of the document to be relevant to the purposes of the investigation.

(5) In the case of an investigation into whether there has been a compliance failure, the investigator may also require any person falling within subsection (2)(c) to give the investigator all assistance in connection with the investigation which the person is reasonably able to give.

(6) For the purposes of this section, a person is connected with the person under investigation ("A") if the person is or has at any relevant time been—

(a) a member of A's group,

(b) a controller of A, or

(c) a partnership of which A is a member.

(7) In this section—

"controller" has the same meaning as in FSMA 2000 (see section 422 of that Act);

"group" has the same meaning as in FSMA 2000 (see section 421 of that Act);

"investigator" means a person conducting an investigation under section 83;

"specified" means specified in a notice in writing.

Status: *Point in time view as at 16/12/2015. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

Modifications etc. (not altering text)

C2 Ss. 81-93 applied (with modifications) (9.12.2015) by The Payment Card Interchange Fee Regulations 2015 (S.I. 2015/1911), regs. 1, **14(1)**

Commencement Information

I71 S. 85 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

86 Information and documents: supplemental provisions

(1) In this section "relevant document" means a document produced in response to a requirement imposed under section 81 or 85.

(2) In a case where—

(a) the Payment Systems Regulator has power under section 81, or an investigator has power under section 85, to require a person to produce a document, but

(b) it appears that the document is in the possession of another person,

the power may be exercised in relation to that other person.

(3) Any person to whom a relevant document is produced may—

(a) take copies or extracts from the document, or

(b) require the person producing the document, or any relevant person (see subsection (4)), to provide an explanation of the document.

(4) "Relevant person", in relation to a person who is required to produce a document, means a person who—

(a) has been or is or is proposed to be a director or controller of that person,

(b) has been or is an auditor of that person,

(c) has been or is an actuary, accountant or lawyer appointed or instructed by that person, or

(d) has been or is an employee of that person.

(5) A relevant document may be retained for so long as the person to whom it is produced considers that it is necessary to retain it (rather than copies of it) for the purposes for which the document was requested.

(6) If the person to whom a relevant document is produced has reasonable grounds for believing—

(a) that the document may have to be produced for the purposes of any legal proceedings, and

(b) that it might otherwise be unavailable for those purposes,

it may be retained until the proceedings are concluded.

(7) If a person who is required under section 81 or 85 to produce a document fails to do so, the Payment Systems Regulator or an investigator may require the person to state, to the best of the person's knowledge and belief, where the document is.

(8) A lawyer may be required under section 81 or 85 or this section to provide the name and address of a client.

Status: *Point in time view as at 16/12/2015. This version of this Act contains provisions that are not valid for this point in time.*
***Changes to legislation:** There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

(9) A person may not be required under section 81 or 85 or this section to disclose information or produce a document in respect of which the person owes an obligation of confidence as a result of carrying on the business of banking unless—

(a) the person is the person under investigation or a member of that person's group,

(b) the person to whom the obligation of confidence is owed is the person under investigation or a member of that person's group,

(c) the person to whom the obligation of confidence is owed consents to the disclosure or production, or

(d) the imposing on the person of a requirement with respect to such information or document has been specifically authorised by the Payment Systems Regulator.

(10) If a person claims a lien on a document, its production under section 81 or 85 does not affect the lien.

(11) In this section—

"controller" has the same meaning as in FSMA 2000 (see section 422 of that Act);

"group" has the same meaning as in FSMA 2000 (see section 421 of that Act);

"investigator" means a person appointed under section 83.

Modifications etc. (not altering text)

C2 Ss. 81-93 applied (with modifications) (9.12.2015) by The Payment Card Interchange Fee Regulations 2015 (S.I. 2015/1911), regs. 1, **14(1)**

Commencement Information

I72 S. 86 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

87 Admissibility of statements made to investigators

(1) A statement made to an investigator by a person in compliance with an information requirement is admissible in evidence in any proceedings, so long as it also complies with any requirements governing the admissibility of evidence in the circumstances in question.

(2) But in criminal proceedings in which that person is charged with an offence to which this subsection applies—

(a) no evidence relating to the statement may be adduced by or on behalf of the prosecution, and

(b) no question relating to the statement may be asked by or on behalf of the prosecution,

unless evidence relating to the statement is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

(3) Subsection (2) applies to any offence other than—

(a) an offence under section 90(6);

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Changes to legislation: *There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

(b) an offence under section 5 of the Perjury Act 1911 (false statements made otherwise than on oath);

(c) an offence under section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made otherwise than on oath);

(d) an offence under Article 10 of the Perjury (Northern Ireland) Order 1979.

(4) In this section—

"information requirement" means a requirement imposed by an investigator under section 85 or 86;

"investigator" means a person appointed under section 83.

Modifications etc. (not altering text)

C2 Ss. 81-93 applied (with modifications) (9.12.2015) by The Payment Card Interchange Fee Regulations 2015 (S.I. 2015/1911), regs. 1, **14(1)**

Commencement Information

I73 S. 87 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

88 Entry of premises under warrant

(1) A justice of the peace may issue a warrant under this section if satisfied on information on oath given by or on behalf of the Payment Systems Regulator or an investigator that there are reasonable grounds for believing that the first or second set of conditions is satisfied.

(2) The first set of conditions is—

(a) that a person on whom an information requirement has been imposed has failed (wholly or in part) to comply with it, and

(b) that on the premises specified in the warrant—

(i) there are documents which have been required, or

(ii) there is information which has been required.

(3) In this section "information requirement" means—

(a) a requirement imposed by the Payment Systems Regulator under section 81 or 86, or

(b) a requirement imposed by an investigator under section 85 or 86.

(4) The second set of conditions is—

(a) that the premises specified in the warrant are premises of a participant in a regulated payment system,

(b) that there are on the premises documents or information in relation to which an information requirement could be imposed, and

(c) that if such a requirement were to be imposed—

(i) it would not be complied with, or

(ii) the documents or information to which it related would be removed, tampered with or destroyed.

(5) A warrant under this section authorises a constable—

(a) to enter the premises specified in the warrant,

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(b) to search the premises and take possession of any documents or information appearing to be documents or information of a kind in respect of which a warrant under this section was issued ("the relevant kind") or to take, in relation to any such documents or information, any other steps which may appear to be necessary for preserving them or preventing interference with them,

(c) to take copies of, or extracts from, any documents or information appearing to be of the relevant kind,

(d) to require any person on the premises to provide an explanation of any document or information appearing to be of the relevant kind or to state where it may be found, and

(e) to use such force as may be reasonably necessary.

(6) A warrant under this section may be executed by any constable.

(7) The warrant may authorise persons to accompany any constable who is executing it.

(8) The powers in subsection (5) may be exercised by a person who—

(a) is authorised by the warrant to accompany a constable, and

(b) exercises those powers in the company of, and under the supervision of, a constable.

(9) In England and Wales, sections 15(5) to (8) and 16(3) to (12) of the Police and Criminal Evidence Act 1984 (execution of search warrants and safeguards) apply to warrants issued under this section.

(10) In Northern Ireland, Articles 17(5) to (8) and 18(3) to (12) of the Police and Criminal Evidence (Northern Ireland) Order 1989 apply to warrants issued under this section.

(11) This section has effect in relation to Scotland as if—

(a) for any reference to a justice of the peace there were substituted a reference to a justice of the peace or a sheriff, and

(b) for any reference to information on oath there were substituted a reference to evidence on oath.

(12) In this section "investigator" means a person appointed under section 83.

Modifications etc. (not altering text)

C2 Ss. 81-93 applied (with modifications) (9.12.2015) by The Payment Card Interchange Fee Regulations 2015 (S.I. 2015/1911), regs. 1, **14(1)**

Commencement Information

I74 S. 88 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

89 Retention of documents taken under section 88

(1) Any document of which possession is taken under section 88 ("a seized document") may be retained so long as it is necessary to retain it (rather than copies of it) in the circumstances.

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Changes to legislation: *There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

(2) A person claiming to be the owner of a seized document may apply to a magistrates' court or (in Scotland) the sheriff for an order for the delivery of the document to the person appearing to the court or sheriff to be the owner.

(3) If on an application under subsection (2) the court or (in Scotland) the sheriff cannot ascertain who is the owner of the seized document the court or sheriff (as the case may be) may make such order as the court or sheriff thinks fit.

(4) An order under subsection (2) or (3) does not affect the right of any person to take legal proceedings against any person in possession of a seized document for the recovery of the document.

(5) Any right to bring proceedings (as described in subsection (4)) may only be exercised within 6 months of the date of the order made under subsection (2) or (3).

Modifications etc. (not altering text)
C2 Ss. 81-93 applied (with modifications) (9.12.2015) by The Payment Card Interchange Fee Regulations 2015 (S.I. 2015/1911), regs. 1, **14(1)**

Commencement Information
I75 S. 89 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

90 Enforcement of information and investigation powers

(1) If a person other than an investigator ("the defaulter") fails to comply with a requirement imposed under any of sections 81 to 88, the person imposing the requirement may certify that fact in writing to the court.

(2) If the court is satisfied that the defaulter failed without reasonable excuse to comply with the requirement, it may deal with the defaulter (and in the case of a body corporate, any director or other officer of the body) as if that person were in contempt.

(3) In subsection (2) "officer", in relation to a limited liability partnership, means a member of the limited liability partnership.

(4) A person who knows or suspects that an investigation is being or is likely to be conducted under section 83 is guilty of an offence if the person—

(a) falsifies, conceals, destroys or otherwise disposes of a document which the person knows or suspects is or would be relevant to such an investigation, or

(b) causes or permits the falsification, concealment, destruction or disposal of such a document.

(5) It is a defence for a person charged with an offence under subsection (4) to show that the person had no intention of concealing facts disclosed by the documents from the investigator.

(6) A person is guilty of an offence if the person, in purported compliance with a requirement imposed under any of sections 81 to 88—

(a) provides information which the person knows to be false or misleading in a material particular, or

(b) recklessly provides information which is false or misleading in a material particular.

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***Changes to legislation:** There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

(7) A person guilty of an offence under subsection (4) or (6) is liable—

(a) on summary conviction—

(i) in England and Wales, to imprisonment for a term not exceeding 12 months (or 6 months, if the offence was committed before the commencement of section 154(1) of the Criminal Justice Act 2003) or a fine, or both;

(ii) in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum, or both;

(iii) in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum, or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine, or both.

(8) Any person who intentionally obstructs the exercise of any rights conferred by a warrant under section 88 is guilty of an offence and liable on summary conviction—

(a) in England and Wales, to imprisonment for a term not exceeding 51 weeks (or 3 months, if the offence was committed before the commencement of section 280(2) of the Criminal Justice Act 2003) or a fine, or both;

(b) in Scotland, to imprisonment for a term not exceeding 3 months or a fine not exceeding level 5 on the standard scale, or both;

(c) in Northern Ireland, to imprisonment for a term not exceeding 3 months or a fine not exceeding level 5 on the standard scale, or both.

(9) In this section—

"court" means the High Court or, in Scotland, the Court of Session;

"investigator" means a person appointed under section 83.

Modifications etc. (not altering text)

C2 Ss. 81-93 applied (with modifications) (9.12.2015) by The Payment Card Interchange Fee Regulations 2015 (S.I. 2015/1911), regs. 1, **14(1)**

Commencement Information

I76 S. 90 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

Disclosure of information

91 Restrictions on disclosure of confidential information

(1) Confidential information must not be disclosed by a primary recipient, or by any person obtaining the information directly or indirectly from a primary recipient, without the consent of—

(a) the person from whom the primary recipient obtained the information, and

(b) if different, the person to whom it relates.

(2) In this section "confidential information" means information which—

(a) relates to the business or other affairs of any person,

(b) was received by the primary recipient for the purposes of, or in the discharge of, any functions of the Payment Systems Regulator under this Part, and

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(c) is not prevented from being confidential information by subsection (4).

(3) It is immaterial for the purposes of subsection (2) whether or not the information was received—

(a) as a result of a requirement to provide it imposed by or under any enactment;

(b) for other purposes as well as purposes mentioned in that subsection.

(4) Information is not confidential information if—

(a) it has been made available to the public by virtue of being disclosed in any circumstances in which, or for any purposes for which, disclosure is not precluded by this section, or

(b) it is in the form of a summary or a collection of information that is framed in such a way that it is not possible to ascertain from it information relating to any particular person.

(5) Each of the following is a primary recipient for the purposes of this section—

(a) the Payment Systems Regulator;

(b) the FCA;

(c) a person who is or has been employed by the Payment Systems Regulator or the FCA;

(d) a person who is or has been engaged to provide services to the Payment Systems Regulator or the FCA;

(e) any auditor or expert instructed by the Payment Systems Regulator or the FCA;

(f) a person appointed to make a report under section 82;

(g) a person appointed under section 83.

(6) Nothing in this section applies to information received by a primary recipient for the purposes of, or in the discharge of, any functions of the Payment Systems Regulator under the Competition Act 1998 or the Enterprise Act 2002 by virtue of section 59 or 61.

(For provision about the disclosure of such information, see Part 9 of the Enterprise Act 2002.)

Modifications etc. (not altering text)

C2 Ss. 81-93 applied (with modifications) (9.12.2015) by The Payment Card Interchange Fee Regulations 2015 (S.I. 2015/1911), regs. 1, **14(1)**

Commencement Information

I77 S. 91 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

92 Exemptions from section 91

(1) Section 91 does not prevent a disclosure of confidential information which—

(a) is made for the purpose of facilitating the carrying out of a public function, and

(b) is permitted by regulations made by the Treasury under this section.

(2) For the purposes of this section "public functions" includes—

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(a) functions conferred by or in accordance with any provision contained in any enactment;

(b) functions conferred by or in accordance with any provision contained in the EU Treaties or any EU instrument;

(c) similar functions conferred on persons by or under provisions having effect as part of the law of a country or territory outside the United Kingdom;

(d) functions exercisable in relation to specified disciplinary proceedings.

(3) Regulations under this section may, in particular, make provision permitting the disclosure of confidential information or of confidential information of a specified kind—

(a) by specified recipients, or recipients of a specified description, to any person for the purpose of enabling or assisting the recipient to discharge specified public functions;

(b) by specified recipients, or recipients of a specified description, to specified persons, or persons of specified descriptions, for the purpose of enabling or assisting those persons to discharge specified public functions;

(c) by the Payment Systems Regulator to the Treasury for any purpose;

(d) by any recipient if the disclosure is with a view to or in connection with specified proceedings.

(4) Regulations under this section may also include provision—

(a) making any permission to disclose confidential information subject to conditions (which may relate to the obtaining of consents or any other matter);

(b) restricting the uses to which confidential information disclosed under the regulations may be put.

(5) In relation to confidential information, each of the following is a "recipient"—

(a) a primary recipient;

(b) a person obtaining the information directly or indirectly from a primary recipient.

(6) In this section—

"confidential information" and "primary recipient" have the same meaning as in section 91;

"specified" means specified in regulations.

Modifications etc. (not altering text)

C2 Ss. 81-93 applied (with modifications) (9.12.2015) by The Payment Card Interchange Fee Regulations 2015 (S.I. 2015/1911), regs. 1, **14(1)**

Commencement Information

I78 S. 92 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

93 Offences relating to disclosure of confidential information

(1) A person who discloses information in contravention of section 91 is guilty of an offence.

(2) A person guilty of an offence under subsection (1) is liable—

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(a) on summary conviction—

(i) in England and Wales, to imprisonment for a term not exceeding 3 months or a fine, or both;

(ii) in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum, or both;

(iii) in Northern Ireland, to imprisonment for a term not exceeding 3 months or a fine not exceeding the statutory maximum, or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine, or both.

(3) A person is guilty of an offence if—

(a) information has been disclosed to the person in accordance with regulations made under section 92, and

(b) the person uses the information in contravention of any provision of those regulations.

(4) A person guilty of an offence under subsection (3) is liable on summary conviction—

(a) in England and Wales, to imprisonment for a term not exceeding 51 weeks (or 3 months, if the offence was committed before the commencement of section 280(2) of the Criminal Justice Act 2003) or a fine, or both;

(b) in Scotland, to imprisonment for a term not exceeding 3 months or a fine not exceeding level 5 on the standard scale, or both;

(c) in Northern Ireland, to imprisonment for a term not exceeding 3 months or a fine not exceeding level 5 on the standard scale, or both.

(5) In proceedings against a person ("P") for an offence under this section it is a defence for P to prove—

(a) that P did not know and had no reason to suspect that the information was confidential information;

(b) that P took all reasonable precautions and exercised all due diligence to avoid committing the offence.

(6) In this section "confidential information" has the same meaning as in section 91.

Modifications etc. (not altering text)

C2 Ss. 81-93 applied (with modifications) (9.12.2015) by The Payment Card Interchange Fee Regulations 2015 (S.I. 2015/1911), regs. 1, **14(1)**

Commencement Information

I79 S. 93 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

94 Information received from Bank of England

(1) The following are regulators for the purposes of this section—

(a) the Payment Systems Regulator;

(b) the FCA.

(2) A regulator must not disclose to any person specially protected information.

Status: *Point in time view as at 16/12/2015. This version of this Act contains provisions that are not valid for this point in time.*
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(3) "Specially protected information" is information in relation to which the first and second conditions are met.

(4) The first condition is that the regulator received the information from—

(a) the Bank of England ("the Bank"), or

(b) the other regulator where that regulator had received the information from the Bank.

(5) The second condition is that the Bank notified the regulator to which it disclosed the information that the Bank held the information for the purpose of its functions with respect to any of the following—

(a) monetary policy;

(b) financial operations intended to support financial institutions for the purposes of maintaining stability;

(c) the provision of private banking services and related services.

(6) The notification referred to in subsection (5) must be—

(a) in writing, and

(b) given before, or at the same time as, the Bank discloses the information.

(7) The prohibition in subsection (2) does not apply—

(a) to disclosure by one regulator to the other regulator where the regulator making the disclosure informs the other regulator that the information is specially protected information by virtue of this section;

(b) where the Bank has consented to disclosure of the information;

(c) to information which has been made available to the public by virtue of being disclosed in any circumstances in which, or for any purposes for which, disclosure is not precluded by this section;

(d) to information which the regulator is required to disclose in pursuance of any EU obligation.

(8) In this section references to disclosure by or to a regulator or by the Bank include references to disclosure by or to any of the following—

(a) persons who are, or are acting as, officers of, or members of the staff of, the regulator;

(b) persons who are, or are acting as, officers, employees or agents of the Bank;

(c) auditors, experts, contractors or investigators appointed by the regulator or the Bank under powers conferred by this Part or otherwise.

(9) References to disclosure by a regulator do not include references to disclosure between persons who fall within subsection (8)(a) or (b) in relation to that regulator.

(10) Each regulator must take such steps as are reasonable in the circumstances to prevent the disclosure of specially protected information, in cases not excluded by subsection (7), by those who are or have been—

(a) its officers or members of staff (including persons acting as its officers or members of staff);

(b) auditors, experts, contractors or investigators appointed by the regulator under powers conferred by this Part or otherwise;

(c) persons to whom the regulator has delegated any of its functions.

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Commencement Information
I80 S. 94 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

95 Disclosure of information by Bank to Regulator

In section 246 of the Banking Act 2009 (information), in subsection (2), after paragraph (c) insert—

"(ca) the Payment Systems Regulator (established under section 40 of the Financial Services (Banking Reform) Act 2013);".

Commencement Information
I81 S. 95 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

Guidance

96 Guidance

(1) The Payment Systems Regulator may give guidance consisting of such information and advice as it considers appropriate—

(a) with respect to the operation of specified provisions of this Part;

(b) with respect to any other matter relating to its functions under this Part;

(c) with respect to any other matters about which it appears to the Payment Systems Regulator to be desirable to give information or advice.

(2) Guidance given by the Payment Systems Regulator under this section must include guidance about how it intends to advance its payment systems objectives in discharging its functions under this Part in relation to different categories of payment system or participants in payment systems.

(3) In this Part "general guidance" means guidance given by the Payment Systems Regulator under this section which—

(a) is given—

(i) to persons generally,

(ii) to participants in payment systems, or regulated payment systems, generally, or

(iii) to a class of participant in a payment system or regulated payment system,

(b) is intended to have continuing effect, and

(c) is given in writing or other legible form.

(4) The Payment Systems Regulator may give financial or other assistance to persons giving information or advice of a kind which the Payment Systems Regulator could give under this section.

(5) The Payment Systems Regulator may—

(a) publish its guidance,

(b) offer copies of its published guidance for sale at a reasonable price, and

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***Changes to legislation:** There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

(c) if it gives guidance in response to a request made by any person, make a reasonable charge for that guidance.

Commencement Information
I82 S. 96 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

Reports

97 Reports

If it considers that it is desirable to do so in order to advance any of its payment systems objectives, the Payment Systems Regulator may prepare and publish a report into any matter which it considers relevant to the exercise of its functions under this Part.

Commencement Information
I83 S. 97 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

Relationship with other regulators

98 Duty of regulators to ensure co-ordinated exercise of functions

(1) The following are regulators for the purposes of this section—
(a) the Payment Systems Regulator;
(b) the Bank of England;
(c) the FCA;
(d) the PRA.

(2) The regulators must co-ordinate the exercise of their relevant functions (see subsection (5)) with a view to ensuring—
(a) that each regulator consults every other regulator (where not otherwise required to do so) in connection with any proposed exercise of a relevant function in a way that may have a material adverse effect on the advancement by that other regulator of any of its objectives;
(b) that where appropriate each regulator obtains information and advice from every other regulator in connection with the exercise of its relevant 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.

(3) The duty in subsection (2) 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.

(4) A function conferred on a regulator relates to matters of common regulatory interest if—

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Changes to legislation: *There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

(a) another regulator exercises similar or related functions in relation to the same persons,

(b) another regulator exercises functions which relate to different persons but relate to similar subject-matter, or

(c) its exercise could affect the advancement by another regulator of any of its objectives.

(5) "Relevant functions" means—

(a) in relation to the Payment Systems Regulator, its functions under this Part **[**F7or Part 2 of the Payment Card Interchange Fee Regulations 2015**]** ;

(b) in relation to the Bank of England, its functions under Part 5 of the Banking Act 2009 (inter-bank payment systems);

(c) in relation to the FCA, the functions conferred on it by or under FSMA 2000 (see section 1A(6) of that Act) **[**F8or Part 3 of the Payment Card Interchange Fee Regulations 2015**]** ;

(d) in relation to the PRA, the functions conferred on it by or under FSMA 2000 (see section 2A(6) of that Act).

(6) "Objectives" means—

(a) in relation to the Payment Systems Regulator, its payment systems objectives **[**F9and ensuring compliance with the interchange fee regulation (see Part 2 of the Payment Card Interchange Fee Regulations 2015)**]** ;

(b) in relation to the Bank of England, its Financial Stability Objective under section 2A of the Bank of England Act 1998;

(c) in relation to the FCA, its strategic objective and operational objectives under section 1B of FSMA 2000 **[**F10and ensuring compliance with Articles 8(2), (5) and (6), 9, 10(1) and (5), 11 and 12 of the interchange fee regulation (see Part 3 of the Payment Card Interchange Fee Regulations 2015)**]** ;

(d) in relation to the PRA, its general objective under section 2B of that Act.

[F11(7) In subsection (6) "the interchange fee regulation" means Regulation (EU) 2015/751 of the European Parliament and of the Council of 29th April 2015 on interchange fees for card-based payment transactions.**]**

Textual Amendments

F7 Words in s. 98(5)(a) inserted (9.12.2015) by The Payment Card Interchange Fee Regulations 2015 (S.I. 2015/1911), regs. 1, **19(a)(i)**

F8 Words in s. 98(5)(c) inserted (9.12.2015) by The Payment Card Interchange Fee Regulations 2015 (S.I. 2015/1911), regs. 1, **19(a)(ii)**

F9 Words in s. 98(6)(a) inserted (9.12.2015) by The Payment Card Interchange Fee Regulations 2015 (S.I. 2015/1911), regs. 1, **19(b)(i)**

F10 Words in s. 98(6)(c) inserted (9.12.2015) by The Payment Card Interchange Fee Regulations 2015 (S.I. 2015/1911), regs. 1, **19(b)(ii)**

F11 S. 98(7) inserted (9.12.2015) by The Payment Card Interchange Fee Regulations 2015 (S.I. 2015/1911), regs. 1, **19(c)**

Commencement Information

I84 S. 98 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

Status: *Point in time view as at 16/12/2015. This version of this Act contains provisions that are not valid for this point in time.*
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99 Memorandum of understanding

(1) The following are regulators for the purposes of this section—

(a) the Payment Systems Regulator;

(b) the Bank of England;

(c) the FCA;

(d) the PRA.

(2) 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 relevant functions which relate to matters of common regulatory interest, and

(b) how the regulators intend to comply with section 98 in relation to the exercise of such functions.

(3) The regulators must review the memorandum at least once in each calendar year.

(4) The regulators must give the Treasury a copy of the memorandum and any revised memorandum.

(5) The Treasury must lay before Parliament a copy of any document received by them under this section.

(6) 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.

(7) The memorandum need not relate to any aspect of compliance with section 98 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.

(8) In this section—

(a) the reference in subsection (2)(a) to matters of common regulatory interest is to be read in accordance with section 98(4), and

(b) references to relevant functions are to be read in accordance with section 98(5).

Commencement Information

I85 S. 99 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

100 Power of Bank to require Regulator to refrain from specified action

(1) Where the first, second and third conditions are met, the Bank of England may give a direction under this section to the Payment Systems Regulator.

(2) The first condition is that the Payment Systems Regulator is proposing to exercise any of its powers under this Part in relation to a participant in a regulated payment system.

(3) The second condition is that the Bank of England is of the opinion that the exercise of the power in the manner proposed may—

(a) threaten the stability of the UK financial system,

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(b) have serious consequences for business or other interests in the United Kingdom, or

(c) have an adverse effect on the Bank's ability to act in its capacity as a monetary authority.

(4) The third condition is that the Bank of England is of the opinion that the giving of the direction is necessary in order to avoid the possible consequence falling within subsection (3).

(5) A direction under this section is a direction requiring the Payment Systems Regulator not to exercise the power or not to exercise it in a specified manner.

(6) The direction may be expressed to have effect during a specified period or until revoked.

(7) The Payment Systems Regulator is not required to comply with a direction under this section if or to the extent that in the opinion of the Payment Systems Regulator compliance would be incompatible with any EU obligation or any other international obligation of the United Kingdom.

Commencement Information

I86 S. 100 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

101 Power of FCA to require Regulator to refrain from specified action

(1) Where the first, second and third conditions are met, the FCA may give a direction under this section to the Payment Systems Regulator.

(2) The first condition is that the Payment Systems Regulator is proposing to exercise any of its powers under this Part in relation to a participant in a regulated payment system.

(3) The second condition is that the FCA is of the opinion that the exercise of the power in the manner proposed may have an adverse effect on the ability of the FCA to comply with its duty under section 1B(1) of FSMA 2000 (FCA's general duties).

(4) The third condition is that the FCA is of the opinion that the giving of the direction is necessary in order to avoid the possible consequence falling within subsection (3).

(5) A direction under this section is a direction requiring the Payment Systems Regulator not to exercise the power or not to exercise it in a specified manner.

(6) The direction may be expressed to have effect during a specified period or until revoked.

(7) The Payment Systems Regulator is not required to comply with a direction under this section if or to the extent that in the opinion of the Payment Systems Regulator compliance would be incompatible with any EU obligation or any other international obligation of the United Kingdom.

Commencement Information

I87 S. 101 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

Status: *Point in time view as at 16/12/2015. This version of this Act contains provisions that are not valid for this point in time.*
***Changes to legislation:** There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

102 Power of PRA to require Regulator 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 Payment Systems Regulator.

(2) The first condition is that the Payment Systems Regulator is proposing to exercise any of its powers under this Part in relation to—

(a) a class of PRA-authorised persons, or

(b) a particular PRA-authorised person.

(3) 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,

(b) result in the failure of a PRA-authorised person in a way that would have an adverse effect on the stability of the UK financial system,

(c) threaten the continuity of core services provided in the United Kingdom, or

(d) have an adverse effect on the ability of the PRA to comply with its duty under section 2B(1) of FSMA 2000 (the PRA's general objective).

(4) 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 (3).

(5) A direction under this section is a direction requiring the Payment Systems Regulator not to exercise the power or not to exercise it in a specified manner.

(6) The direction may be expressed to have effect during a specified period or until revoked.

(7) The Payment Systems Regulator is not required to comply with a direction under this section if or to the extent that in the opinion of the Payment Systems Regulator compliance would be incompatible with any EU obligation or any other international obligation of the United Kingdom.

(8) The reference in subsection (3)(b) to the "failure" of a PRA-authorised person is to be read in accordance with section 2J(3) and (4) of FSMA 2000.

(9) In this section—

"core services" has the same meaning as in FSMA 2000 (see section 142C of that Act), and

"PRA-authorised person" has the same meaning as in FSMA 2000 (see section 2B(5) of that Act).

Commencement Information

I88 S. 102 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

Consultation, accountability and oversight

103 Regulator's general duty to consult

(1) The Payment Systems Regulator must make and maintain effective arrangements for consulting relevant persons on—

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(a) the extent to which its general policies and practices are consistent with its general duties under section 49, and
(b) how its payment systems objectives may best be achieved.

(2) The following are "relevant persons" for the purposes of this section—
(a) participants in regulated payment systems, and
(b) those who use, or are likely to use, services provided by regulated payment systems.

(3) Arrangements under this section must include the establishment and maintenance of one or more panels of persons to represent the interests of relevant persons.

(4) Where the Payment Systems Regulator establishes a panel under subsection (3), it must appoint one of the members of the panel to be its chair.

(5) The Treasury's approval is required for the appointment or dismissal of the chair of a panel established under subsection (3).

(6) The Payment Systems Regulator must—
(a) consider representations that are made to it in accordance with arrangements made under this section, and
(b) from time to time publish, in such manner as it thinks fit, responses to the representations.

Commencement Information
I89 S. 103 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

104 Consultation in relation to generally applicable requirements

(1) In this section references to imposing a generally applicable requirement are to—
(a) giving a general direction under section 54, or
(b) imposing a generally-imposed requirement under section 55,
and references to the requirement are to be read accordingly.

(2) Before imposing a generally applicable requirement, the Payment Systems Regulator must—
(a) consult the Bank of England, the FCA and the PRA, and
(b) after doing so, publish a draft of the proposed requirement in the way appearing to the Payment Systems Regulator to be best calculated to bring it to the attention of the public.

(3) The draft must be accompanied by—
(a) a cost benefit analysis,
(b) an explanation of the purpose of the proposed requirement,
(c) an explanation of the Payment Systems Regulator's reasons for believing that imposing the requirement is compatible with its duties under section 49, and
(d) notice that representations about the proposed requirement may be made to the Payment Systems Regulator within a specified time.

(4) Before imposing the proposed requirement the Payment Systems Regulator must have regard to any representations made to it in accordance with subsection (3)(d).

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(5) If the Payment Systems Regulator proposes to impose the requirement, it must publish an account, in general terms, of—

(a) the representations made to it in accordance with subsection (3)(d), and

(b) its response to them.

(6) If the requirement differs from the draft published under subsection (2)(b) in a way which is, in the opinion of the Payment Systems Regulator, significant the Payment Systems Regulator must (in addition to complying with subsection (5)) publish details of the difference together with a cost benefit analysis.

(7) For the purposes of this section a "cost benefit analysis" is—

(a) an analysis of the costs together with an analysis of the benefits that will arise—

(i) if the proposed requirement is imposed, or

(ii) if subsection (6) applies, from the requirement imposed, and

(b) subject to subsection (8), an estimate of those costs and of those benefits.

(8) If, in the opinion of the Payment Systems Regulator—

(a) the costs or benefits referred to in subsection (7) cannot reasonably be estimated, or

(b) it is not reasonably practicable to produce an estimate,

the cost benefit analysis need not estimate them, but must include a statement of the Payment Systems Regulator's opinion and an explanation of it.

(9) The Payment Systems Regulator may charge a reasonable fee for providing a person with a copy of a draft published under subsection (2)(b).

(10) Subsections (2)(b) and (3) to (6) do not apply if the Payment Systems Regulator considers that the delay involved in complying with them would be prejudicial to the interests of those who use, or are likely to use, services provided by regulated payment systems.

(11) Subsections (3)(a) and (6) do not apply if the Payment Systems Regulator considers that, making the appropriate comparison—

(a) there will be no increase in costs, or

(b) there will be an increase in costs but the increase will be of minimal significance.

(12) In subsection (11) the "appropriate comparison" means—

(a) in relation to subsection (3)(a), a comparison between the overall position if the requirement is imposed and the overall position if it is not imposed;

(b) in relation to subsection (6), a comparison between the overall position after the imposing of the requirement and the overall position before it was imposed.

Modifications etc. (not altering text)

C3 S. 104 applied (with modifications) (9.12.2015) by The Payment Card Interchange Fee Regulations 2015 (S.I. 2015/1911), regs. 1, **15(2)** (as amended (1.1.2024) by The Electronic Money, Payment Card Interchange Fee and Payment Services (Amendment) Regulations 2023 (S.I. 2023/790), **reg. 3(10)**)

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Changes to legislation: *There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

Commencement Information
I90 S. 104 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

105 Independent inquiries

(1) Section 68 of the Financial Services Act 2012 (cases in which Treasury may arrange independent inquiries) is amended as follows.

(2) In subsection (1), for "two" substitute " three ".

(3) After subsection (3) insert—

"(3A) The third case is where it appears to the Treasury that—

(a) events have occurred in relation to a regulated payment system which caused or risked causing significant damage to business or other interests throughout the United Kingdom, and

(b) those events might not have occurred, or the threat or damage might have been reduced, but for a serious failure in—

(i) the system established by Part 5 of the Financial Services (Banking Reform) Act 2013 for the regulation of payment systems, or

(ii) the operation of that system."

(4) In section 83(1) (interpretation), after the definition of "regulated activity" insert—

""regulated payment system" has the same meaning as in Part 5 of the Financial Services (Banking Reform) Act 2013 (see section 110 of that Act);".

Commencement Information
I91 S. 105 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

106 Investigations into regulatory failure

(1) Part 5 of the Financial Services Act 2012 (inquiries and investigations) is amended as follows.

(2) After section 76 insert—

"**76A Duty of Payment Systems Regulator to investigate and report on possible regulatory failure**

(1) Subsection (3) applies where it appears to the Payment Systems Regulator that—

(a) events have occurred in relation to a regulated payment system which had or could have had a significant adverse effect on effective competition in the interests of—

(i) participants in the payment system, or

(ii) those who use, or are likely to use, the services provided by the payment system, and

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(b) those events might not have occurred, or the adverse effect might have been reduced, but for a serious failure in—

(i) the system established by Part 5 of the Financial Services (Banking Reform) Act 2013 for the regulation of payment systems, or

(ii) the operation of that system.

(2) Subsection (3) also applies where the Treasury direct the Payment Systems Regulator that it appears to the Treasury that the conditions in subsection (1) are met in relation to specified events.

(3) The Payment Systems Regulator must carry out an investigation into the events and the circumstances surrounding them and report to the Treasury on the result of the investigation.

(4) Subsection (3) does not apply by virtue of subsection (1) if the Treasury direct the Payment Systems Regulator that it is not required to carry out an investigation into the events concerned.

(5) In this section "participant", in relation to a regulated payment system, has the same meaning as in Part 5 of the Financial Services (Banking Reform) Act 2013 (see section 42 of that Act)."

(3) In section 77 (power of Treasury to require FCA or PRA to undertake investigation)—

(a) in subsection (1)(a), for "either regulator" substitute " a regulator ";

(b) in subsection (3), omit the "or" at the end of paragraph (b) and after paragraph (c) insert ", or

(d) a regulated payment system.";

(c) the heading of that section becomes " **Power of Treasury to require regulator to undertake investigation** ".

(4) In section 78 (conduct of investigation), in subsection (1), for "or 74" substitute " , 74 or 76A ".

(5) In section 79 (conclusion of investigation), for "or 74" substitute " , 74 or 76A ".

(6) In section 80 (statements of policy), in subsection (1)(a), for "or 74" substitute " , 74 or 76A ".

(7) In section 81 (publication of directions), in subsection (1), after paragraph (b) insert—

"(ba) section 76A(4);".

(8) In section 83(1) (interpretation)—

(a) after the definition of "listed securities" insert—

""the Payment Systems Regulator" means the body established under section 40 of the Financial Services (Banking Reform) Act 2013;";

(b) in the definition of "regulator", for "or the PRA" substitute " , the PRA or the Payment Systems Regulator ".

Commencement Information

I92 S. 106 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

Status: *Point in time view as at 16/12/2015. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

107 Competition scrutiny

(1) Chapter 4 of Part 9A of FSMA 2000 (competition scrutiny) applies to the Payment Systems Regulator's practices and regulating provisions in relation to payment systems as it applies to the FCA's practices and regulating provisions within the meaning of that Chapter.

(2) In subsection (1)—

(a) the reference to the Payment Systems Regulator's practices in relation to payment systems is a reference to practices adopted by it in the exercise of functions under this Part, and

(b) the reference to the Payment Systems Regulator's regulating provisions in relation to payment systems is a reference to the following—

(i) any general directions given under section 54;

(ii) any generally-imposed requirements under section 55;

(iii) any guidance given under section 96.

Commencement Information

I93 S. 107 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

Miscellaneous and supplemental

108 Relationship with Part 8 of the Payment Services Regulations 2009

(1) The Payment Systems Regulator may not exercise any power under **[**F12sections 54 to 58**]** for the purposes of enabling a relevant person to **[**F13obtain direct access to**]** a payment system if the payment system is one to which Part 8 of the Payment Services Regulations 2009 (S.I. 2009/209) **[**F14applies**]** .

(2) A person is a "relevant person" for the purposes of subsection (1) if regulation 97 of the Payment Services Regulations 2009 (prohibition on restrictive rules on access to payment systems) applies in relation to access to, or participation in, a payment system by the person.

Textual Amendments

F12 Words in s. 108(1) substituted (26.5.2015) by Small Business, Enterprise and Employment Act 2015 (c. 26), **ss. 14(5)(a)**, 164(3)(a)(v)

F13 Words in s. 108(1) substituted (26.5.2015) by Small Business, Enterprise and Employment Act 2015 (c. 26), **ss. 14(5)(b)**, 164(3)(a)(v)

F14 Word in s. 108(1) substituted (26.5.2015) by Small Business, Enterprise and Employment Act 2015 (c. 26), **ss. 14(5)(c)**, 164(3)(a)(v)

Commencement Information

I94 S. 108 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

Status: *Point in time view as at 16/12/2015. This version of this Act contains provisions that are not valid for this point in time.*
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109 Exemption from liability in damages for FCA and PRA

(1) In paragraph 25 of Schedule 1ZA to FSMA 2000 (FCA's exemption from liability in damages), after sub-paragraph (1) insert—

"(1A) In sub-paragraph (1) the reference to the FCA's functions includes its functions under Part 5 of the Financial Services (Banking Reform) Act 2013 (regulation of payment systems)."

(2) In paragraph 33 of Schedule 1ZB to FSMA 2000 (PRA's exemption from liability in damages), after sub-paragraph (1) insert—

"(1A) In sub-paragraph (1) the reference to the PRA's functions includes its functions under Part 5 of the Financial Services (Banking Reform) Act 2013 (regulation of payment systems)."

(3) For provision conferring immunity from liability in damages on the Bank of England in respect of its functions, see section 244 of the Banking Act 2009.

Commencement Information
I95 S. 109 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

110 Interpretation of Part

(1) In this Part—

"CAT-appealable decision" has the meaning given by section 76(4);

"CMA-appealable decision" has the meaning given by section 76(7);

"compliance failure" has the meaning given by section 71;

"designation order" has the meaning given by section 43;

"direct access", in relation to a payment system, is to be read in accordance with section 42(6);

"document" includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form or in a form from which it can readily be produced in visible and legible form;

"general direction" has the meaning given by section 54(5);

"general guidance" has the meaning given by section 96(3);

"generally-imposed requirement" has the meaning given by section 55(3);

"infrastructure provider", in relation to a payment system, has the meaning given by section 42(4);

"operator", in relation to a payment system, has the meaning given by section 42(3);

"participant", in relation to a payment system, has the meaning given by section 42 (and references to participation in a payment system are to be read in accordance with that section);

"payment service provider", in relation to a payment system, has the meaning given by section 42(5);

"payment system" has the meaning given by section 41;

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"recognised inter-bank payment system" means an inter-bank payment system (within the meaning of Part 5 of the Banking Act 2009) specified as a recognised system for the purposes of that Part;

"regulated payment system" means a payment system designated as a regulated payment system by a designation order;

"the UK financial system" has the meaning given by section 1I of FSMA 2000.

(2) References in this Part to the Payment Systems Regulator's payment systems objectives are to be read in accordance with section 49(2).

(3) References in this Part to the Bank of England's capacity as a monetary authority are to be read in accordance with section 244 of the Banking Act 2009.

Commencement Information
I96 S. 110 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

PART 6

SPECIAL ADMINISTRATION FOR OPERATORS OF CERTAIN INFRASTRUCTURE SYSTEMS

VALID FROM 13/07/2018

Introductory

111 Financial market infrastructure administration

This Part—

(a) provides for a procedure to be known as FMI administration, and

(b) restricts the powers of persons other than the Bank of England in relation to the insolvency of infrastructure companies.

112 Interpretation: infrastructure companies

(1) In this Part "infrastructure company" has the meaning given by this section.

(2) "Infrastructure company" means a company which is—

(a) the operator of a recognised [F15]... payment system, other than an operator excluded by subsection (3),

[[F16](b) a recognised CSD operating a securities settlement system, or**]**

(c) a company designated by the Treasury under subsection (4).

(3) But a company is not an infrastructure company if it is a recognised central counterparty, as defined by section 285 of FSMA 2000.

(4) The Treasury may by order designate a company for the purposes of subsection (2)(c) if—

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(a) the company provides services to a person falling within subsection (2)(a) or (b), and

(b) the Treasury are satisfied that an interruption in the provision of those services would have a serious adverse effect on the effective operation of the recognised F17... payment system or securities settlement system in question.

(5) An order under subsection (4) must specify the recognised F18... payment system or securities settlement system in connection with which the company is designated.

(6) Before designating a company under subsection (4), the Treasury must consult—

(a) the company to be designated,

(b) the person within subsection (2)(a) or (b) to whom the company provides services,

(c) the Bank of England,

(d) if the company is a PRA-authorised person, the PRA and the FCA, and

(e) if the company is an authorised person other than a PRA-authorised person, the FCA.

Textual Amendments

F15 Word in s. 112(2)(a) omitted (27.6.2017) by virtue of Digital Economy Act 2017 (c. 30), s. 118(2), **Sch. 9 para. 41**

F16 S. 112(2)(b) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), reg. 1, **Sch. para. 16(3)** (with regs. 7(3)(b)(4), 9(1))

F17 Word in s. 112(4)(b) omitted (27.6.2017) by virtue of Digital Economy Act 2017 (c. 30), s. 118(2), **Sch. 9 para. 41**

F18 Word in s. 112(5) omitted (27.6.2017) by virtue of Digital Economy Act 2017 (c. 30), s. 118(2), **Sch. 9 para. 41**

113 Interpretation: other expressions

(1) In this Part—

"company" means a company registered under the Companies Act 2006;

"operator", in relation to a recognised F19... payment system, is to be read in accordance with section 183 of the Banking Act 2009;

[F20"recognised CSD" has the meaning given by section 285 of FSMA 2000;**]**

"recognised F21... payment system" means **[**F22a**]** payment system, as defined by section 182 of the Banking Act 2009, in respect of which a recognition order under section 184 of that Act is in force;

"the relevant system" means—

(a) in relation to an infrastructure company falling within subsection (2)(a) of section 112, the recognised F23... payment system,

(b) in relation to an infrastructure company falling within subsection (2)(b) of that section, the securities settlement system,

(c) in relation to a company designated under subsection (4) of that section, the recognised F23... payment system or securities settlement system falling within paragraph (b) of that subsection;

"securities settlement system" means a computer-based system, and procedures, which enable title to units of a security to be evidenced and

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transferred without a written instrument, and which facilitate supplementary and incidental matters.

(2) Expressions used in the definition of "securities settlement system" in subsection (1) are to be read in accordance with section 783 of the Companies Act 2006.

Textual Amendments

F19 Word in s. 113(1) omitted (27.6.2017) by virtue of Digital Economy Act 2017 (c. 30), s. 118(2), **Sch. 9 para. 42(a)**

F20 Words in s. 113(1) inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), reg. 1, **Sch. para. 16(4)** (with regs. 7(3)(b)(4), 9(1))

F21 Word in s. 113(1) omitted (27.6.2017) by virtue of Digital Economy Act 2017 (c. 30), s. 118(2), **Sch. 9 para. 42(b)(i)**

F22 Word in s. 113(1) substituted (27.6.2017) by Digital Economy Act 2017 (c. 30), s. 118(2), **Sch. 9 para. 42(b)(ii)**

F23 Word in s. 113(1) omitted (27.6.2017) by virtue of Digital Economy Act 2017 (c. 30), s. 118(2), **Sch. 9 para. 42(c)**

FMI administration orders

VALID FROM 13/07/2018

114 FMI administration orders

(1) In this Part "FMI administration order" means an order which—

(a) is made by the court in relation to an infrastructure company, and

(b) directs that, while the order is in force, the affairs, business and property of the company are to be managed by a person appointed by the court.

(2) A person appointed as mentioned in subsection (1)(b) is referred to in this Part as an FMI administrator.

(3) The FMI administrator of a company must manage its affairs, business and property, and exercise and perform the FMI administrator's functions, so as to achieve the objective in section 115.

VALID FROM 13/07/2018

115 Objective of FMI administration

(1) Where an FMI administrator is appointed in relation to the operator of a recognised [F24]... payment system [F25]..., the objective of the FMI administration is—

(a) to ensure that the system is and continues to be maintained and operated as an efficient and effective system,

[F26](b) . . . . . , and

(c) to ensure by one or both of the specified means that it becomes unnecessary for the FMI administration order to remain in force for that purpose [F27]....

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***Changes to legislation:** There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

[F28(1A) Where an FMI administrator is appointed in relation to a recognised CSD operating a securities settlement system, the objective of the FMI administration is—

(a) to ensure that the system is and continues to be maintained and operated as an efficient and effective system,

(b) to ensure that the protected activities continue to be carried on, and

(c) to ensure by one or both of the specified means that it becomes unnecessary for the FMI administration order to remain in force for that purpose or those purposes.**]**

(2) Where an FMI administrator is appointed in relation to a company designated under subsection (4) of section 112, the objective of the FMI administration is—

(a) to ensure that services falling within that subsection continue to be provided, and

(b) to ensure by one or both of the specified means that it becomes unnecessary for the FMI administration order to remain in force for that purpose.

(3) The protected activities referred to in subsection **[**F29(1A)(b)**]** are such activities as the Bank of England may from time to time direct, which must be—

(a) regulated activities falling within section **[**F30285(3D)**]** of FSMA 2000, or

(b) related activities which are necessary for the efficient carrying on of any of those regulated activities.

(4) The specified means are—

(a) the rescue as a going concern of the company subject to the FMI administration order, and

(b) transfers falling within subsection (5).

(5) A transfer falls within this subsection if it is a transfer as a going concern—

(a) to another company, or

(b) as respects different parts of the undertaking of the company subject to the FMI administration order, to two or more different companies,

of so much of that undertaking as it is appropriate to transfer for the purpose of achieving the objective of the FMI administration.

(6) The means by which transfers falling within subsection (5) may be effected include, in particular—

(a) a transfer of the undertaking of the company subject to the FMI administration order, or of part of its undertaking, to a wholly-owned subsidiary of that company, and

(b) the transfer to a company of securities of a wholly-owned subsidiary to which there has been a transfer falling within paragraph (a).

(7) The objective of the FMI administration may be achieved by transfers falling within subsection (5) only to the extent that—

(a) the rescue as a going concern of the company subject to the FMI administration order is not reasonably practicable or is not reasonably practicable without such transfers,

(b) the rescue of that company as a going concern will not achieve that objective or will not do so without such transfers, or

(c) such transfers would produce a result for the company's creditors as a whole that is better than the result that would be produced without them.

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Changes to legislation: *There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

Textual Amendments

F24 Word in s. 115(1) omitted (27.6.2017) by virtue of Digital Economy Act 2017 (c. 30), s. 118(2), **Sch. 9 para. 43**

F25 Words in s. 115(1) omitted (28.11.2017) by virtue of The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), reg. 1, **Sch. para. 16(5)(a)(i)** (with regs. 7(3)(b)(4), 9(1))

F26 S. 115(1)(b) omitted (28.11.2017) by virtue of The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), reg. 1, **Sch. para. 16(5)(a)(ii)** (with regs. 7(3)(b)(4), 9(1))

F27 Words in s. 115(1)(c) omitted (28.11.2017) by virtue of The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), reg. 1, **Sch. para. 16(5)(a)(iii)** (with regs. 7(3)(b)(4), 9(1))

F28 S. 115(1A) inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), reg. 1, **Sch. para. 16(5)(b)** (with regs. 7(3)(b)(4), 9(1))

F29 Word in s. 115(3) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), reg. 1, **Sch. para. 16(5)(c)(i)** (with regs. 7(3)(b)(4), 9(1))

F30 Word in s. 115(3)(a) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), reg. 1, **Sch. para. 16(5)(c)(ii)** (with regs. 7(3)(b)(4), 9(1))

VALID FROM 13/07/2018

116 Application for FMI administration order

(1) An application for an FMI administration order may be made to the court by the Bank of England.

(2) An application must nominate a person to be appointed as the FMI administrator.

(3) The infrastructure company must be given notice of an application, in accordance with rules under section 411 of the 1986 Act (as applied in relation to FMI administration).

VALID FROM 13/07/2018

117 Powers of court

(1) The court may make an FMI administration order in relation to an infrastructure company if satisfied—

(a) that the company is unable to pay its debts,

(b) that the company is likely to be unable to pay its debts, or

(c) that, on a petition presented by the Secretary of State under section 124A of the 1986 Act (petition for winding up on grounds of public interest), it would be just and equitable (disregarding the objective of the FMI administration) to wind up the company.

(2) The court may not make an FMI administration order on the ground set out in subsection (1)(c) unless the Secretary of State has certified to the court that the case is one in which the Secretary of State considers (disregarding the objective of the FMI administration) that it would be appropriate to petition under section 124A of the 1986 Act.

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(3) On an application for an FMI administration order, the court may—

(a) grant the application;

(b) dismiss the application;

(c) adjourn the application (generally or to a specified date);

(d) make an interim order;

(e) treat the application as a winding-up petition and make any order which the court could make under section 125 of the 1986 Act;

(f) make any other order which the court thinks appropriate.

(4) An interim order under subsection (3)(d) may, in particular—

(a) restrict the exercise of a power of the company or of its directors;

(b) make provision conferring a discretion on the court or on a person qualified to act as an insolvency practitioner in relation to the company.

(5) For the purposes of this section a company is unable to pay its debts if it is treated as being so unable under section 123 of the 1986 Act (definition of inability to pay debts).

VALID FROM 13/07/2018

118 FMI administrators

(1) The FMI administrator of a company—

(a) is an officer of the court, and

(b) in exercising and performing powers and duties in relation to the company, is the company's agent.

(2) The management by the FMI administrator of a company of any of its affairs, business or property must be carried out for the purpose of achieving the objective of the FMI administration as quickly and efficiently as is reasonably practicable.

(3) The FMI administrator of a company must exercise and perform powers and duties in the way which, so far as it is consistent with the objective of the FMI administration to do so, best protects—

(a) the interests of the company's creditors as a whole, and

(b) subject to those interests, the interests of the company's members as a whole.

VALID FROM 13/07/2018

119 Continuity of supply

(1) This section applies where, before the commencement of FMI administration, the infrastructure company had entered into arrangements with a supplier for the provision of a supply to the infrastructure company.

(2) After the commencement of FMI administration, the supplier—

(a) must not terminate a supply unless—

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(i) any charges in respect of the supply which relate to a supply given after the commencement of FMI administration remain unpaid for more than 28 days,

(ii) the FMI administrator consents to the termination, or

(iii) the supplier has the permission of the court, which may be given if the supplier can show that the continued provision of the supply would cause the supplier to suffer hardship,

(b) must not make it a condition of a supply that any charges in respect of the supply which relate to a supply given before the commencement of FMI administration are paid, and

(c) must not do anything which has the effect of making it a condition of the giving of a supply that any charges within paragraph (b) are paid.

(3) Where, before the commencement of FMI administration, a contractual right to terminate a supply has arisen but has not been exercised, then, for the purposes of this section, the commencement of FMI administration causes that right to lapse and the supply is only to be terminated if a ground in subsection (2)(a) applies.

(4) Any provision in a contract between the infrastructure company and the supplier that purports to terminate the agreement if any action is taken to put the infrastructure company in FMI administration is void.

(5) Any expenses incurred by the infrastructure company on the provision of a supply after the commencement of FMI administration are to be treated as necessary disbursements in the course of the FMI administration.

(6) In this section—

"commencement of FMI administration" means the making of the FMI administration order;

"supplier" means the person controlling the provision of a supply to the infrastructure company, and includes a company that is a group undertaking (as defined by section 1161(5) of the Companies Act 2006) in respect of the infrastructure company;

"supply" means a supply of any of the following—

(a) computer hardware or software used by the infrastructure company in connection with the operation of the relevant system;

(b) financial data;

(c) infrastructure permitting electronic communication services;

(d) data processing;

(e) access to secure data networks used by the infrastructure company in connection with the operation of the relevant system;

(f) staff.

VALID FROM 13/07/2018

120 Power to direct FMI administrator

(1) If the Bank of England considers it necessary to do so for the purpose of achieving the objective of an FMI administration, the Bank may direct the FMI administrator to take, or refrain from taking, specified action.

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(2) In deciding whether to give a direction under this section, the Bank of England must have regard to the public interest in—

(a) the protection and enhancement of the stability of the financial system of the United Kingdom, and

(b) the maintenance of public confidence in that system.

(3) A direction under this section must not be incompatible with a direction of the court that is in force under Schedule B1 to the 1986 Act.

(4) The Bank of England must, within a reasonable time of giving the direction, give the FMI administrator a statement of its reasons for giving the direction.

(5) A person listed in subsection (6) has immunity from liability in damages in respect of action or inaction in accordance with a direction under this section.

(6) Those persons are—

(a) the FMI administrator;

(b) the company in FMI administration;

(c) the officers or staff of the company.

(7) Immunity conferred by 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.

(8) This section does not limit the powers conferred on the Bank of England by section 191 of the Banking Act 2009 (directions) in relation to a recognised [F31]...payment system.

Textual Amendments

F31 Word in s. 120(8) omitted (27.6.2017) by virtue of Digital Economy Act 2017 (c. 30), s. 118(2), **Sch. 9 para. 44**

121 Conduct of administration, transfer schemes etc.

(1) Schedule 6 (which applies the provisions of Schedule B1 to the 1986 Act about ordinary administration orders and certain other enactments to FMI administration orders) has effect.

(2) Schedule 7 (which makes provision for transfer schemes to achieve the objective of an FMI administration) has effect.

(3) The power to make rules conferred by section 411(1B) of the 1986 Act (rules relating to bank administration) is to apply for the purpose of giving effect to this Part as it applies for the purposes of giving effect to Part 3 of the Banking Act 2009 (and, accordingly, as if the reference in section 411(1B) to that Part included a reference to this Part).

Commencement Information

I97 S. 121(1) in force at 1.3.2014 for specified purposes by S.I. 2014/377, art. 2(1)(b), **Sch. Pt. 2**

Status: *Point in time view as at 16/12/2015. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

I98 S. 121(3) in force at 1.3.2014 for specified purposes by S.I. 2014/377, art. 2(1)(b), **Sch. Pt. 2**

VALID FROM 13/07/2018

Restrictions on other insolvency procedures

122 Restriction on winding-up orders and voluntary winding up

(1) A petition by a person other than the Bank of England for a winding up order in respect of an infrastructure company may not be determined unless—

(a) the petitioner has notified the Bank of England that the petition has been presented, and

(b) the period of 14 days beginning with the day on which the notice is received by the Bank has ended.

(2) A resolution for the voluntary winding up of an infrastructure company may not be made unless—

(a) the infrastructure company has applied to the court under this section,

(b) the company has notified the Bank of England that the application has been made, and

(c) after the end of the period of 14 days beginning with the day on which the notice is received by the Bank, the court gives permission for the resolution to be made.

123 Restriction on making of ordinary administration orders

(1) This section applies where an ordinary administration application is made in relation to an infrastructure company by a person other than the Bank of England.

(2) The court must dismiss the application if—

(a) an FMI administration order is in force in relation to the company, or

(b) an FMI administration order has been made in relation to the company but is not yet in force.

(3) Where subsection (2) does not apply, the court, on hearing the application, must not exercise its powers under paragraph 13 of Schedule B1 to the 1986 Act (other than its power of adjournment) unless—

(a) the applicant has notified the Bank of England that the application has been made, and

(b) the period of 14 days beginning with the day on which the notice is received by the Bank has ended.

(4) On the making of an FMI administration order in relation to an infrastructure company, the court must dismiss any ordinary administration application made in relation to the company which is outstanding.

(5) "Ordinary administration application" means an application under paragraph 12 of Schedule B1 to the 1986 Act.

Status: *Point in time view as at 16/12/2015. This version of this Act contains provisions that are not valid for this point in time.*
***Changes to legislation:** There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

124 Restriction on enforcement of security

A person may not take any step to enforce a security over property of an infrastructure company unless—

(a) notice of the intention to do so has been given to the Bank of England, and

(b) the period of 14 days beginning with the day on which the notice was received by the Bank has ended.

VALID FROM 13/07/2018

Financial support for companies in FMI administration

125 Loans

(1) This section applies where an FMI administration order has been made in relation to an infrastructure company.

(2) The Treasury may, out of money provided by Parliament, make loans to the company for achieving the objective in section 115.

(3) A loan under this section may be made on such terms as the Treasury think fit.

(4) The Treasury must pay into the Consolidated Fund sums received by them as a result of this section.

126 Indemnities

(1) This section applies where an FMI administration order has been made in relation to an infrastructure company.

(2) The Treasury may agree to indemnify persons in respect of one or both of the following—

(a) liabilities incurred in connection with the exercise of powers and duties by the FMI administrator;

(b) loss or damage sustained in that connection.

(3) The agreement may be made in whatever manner, and on whatever terms, the Treasury think fit.

(4) As soon as practicable after agreeing to indemnify persons under this section, the Treasury must lay before Parliament a statement of the agreement.

(5) If sums are paid by the Treasury in consequence of an indemnity agreed to under this section, the infrastructure company must pay the Treasury—

(a) such amounts in or towards the repayment to them of those sums as the Treasury may direct, and

(b) interest, at such rates as they may direct, on amounts outstanding under this subsection.

(6) Subsection (5) does not apply in the case of a sum paid by the Treasury for indemnifying a person in respect of a liability to the infrastructure company.

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(7) Where a sum has been paid out by the Treasury in consequence of an indemnity agreed to under this section, the Treasury must lay a statement relating to that sum before Parliament—

(a) as soon as practicable after the end of the financial year in which that sum is paid out, and

(b) (except where subsection (5) does not apply in the case of the sum) as soon as practicable after the end of each subsequent relevant financial year.

(8) In relation to a sum paid out in consequence of an indemnity, a financial year is a relevant financial year for the purposes of subsection (7) unless—

(a) before the beginning of that year, the whole of that sum has been repaid to the Treasury under subsection (5), and

(b) the infrastructure company is not at any time during that year subject to liability to pay interest on amounts that became due under that subsection in respect of that sum.

(9) The power of the Treasury to agree to indemnify persons—

(a) is confined to a power to agree to indemnify persons in respect of liabilities, loss and damage incurred or sustained by them as relevant persons, but

(b) includes power to agree to indemnify persons (whether or not they are identified or identifiable at the time of the agreement) who subsequently become relevant persons.

(10) For the purposes of this section each of the following is a relevant person—

(a) the FMI administrator;

(b) an employee of the FMI administrator;

(c) a member or employee of a firm of which the FMI administrator is a member;

(d) a member or employee of a firm of which the FMI administrator is an employee;

(e) a member or employee of a firm of which the FMI administrator was an employee or member at a time when the order was in force;

(f) a body corporate which is the employer of the FMI administrator;

(g) an officer, employee or member of such a body corporate.

(11) For the purposes of subsection (10)—

(a) the references to the FMI administrator are to be read, where two or more persons are appointed to act as the FMI administrator, as references to any one or more of them, and

(b) the references to a firm of which a person was a member or employee at a particular time include references to a firm which holds itself out to be the successor of a firm of which the person was a member or employee at that time.

(12) The Treasury must pay into the Consolidated Fund sums received by them as a result of subsection (5).

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VALID FROM 13/07/2018

Interpretation

127 Interpretation of Part

(1) In this Part—

"the 1986 Act" means the Insolvency Act 1986;

"business", "member", "property" and "security" have the same meaning as in the 1986 Act;

"company" has the meaning given by section 113;

"the court" means—

(a) in England and Wales and Northern Ireland, the High Court;

(b) in Scotland, the Court of Session;

"FMI administration order" and "FMI administrator" are to be read in accordance with section 114;

"infrastructure company" has the meaning given by section 112;

"operator", in relation to a recognised [F32]... payment system, has the meaning given by section 113;

"recognised [F32]... payment system" has the meaning given by section 113;

"regulated activity" has the same meaning as in FSMA 2000;

"the relevant system" has the meaning given by section 113;

"securities settlement system" has the meaning given by section 113.

(2) In this Part references to the FMI administrator of a company include a person appointed under paragraph 91 or 103 of Schedule B1 to the 1986 Act, as applied by Schedule 6 to this Act, to be the FMI administrator of a company.

(3) In this Part references to a person qualified to act as an insolvency practitioner in relation to a company are to be read in accordance with Part 13 of the 1986 Act, but as if references in that Part to a company included a company registered under the Companies Act 2006 in Northern Ireland.

Textual Amendments

F32 Word in s. 127(1) omitted (27.6.2017) by virtue of Digital Economy Act 2017 (c. 30), s. 118(2), **Sch. 9 para. 45**

PROSPECTIVE

Application of Part to Northern Ireland

128 Northern Ireland

(1) This section makes provision about this Part in its application to Northern Ireland.

Status: *Point in time view as at 16/12/2015. This version of this Act contains provisions that are not valid for this point in time.*
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(2) Any reference to any provision of the 1986 Act is to have effect as a reference to the corresponding provision of the Insolvency (Northern Ireland) Order 1989.

(3) Section 127(3) is to have effect as if the reference to Northern Ireland were a reference to England and Wales or Scotland.

PART 7

MISCELLANEOUS

Competition

129 Functions of FCA under competition legislation

Schedule 8 (which contains provision conferring on the FCA functions under competition legislation) has effect.

Commencement Information

I99 S. 129 in force at 1.11.2014 for specified purposes by S.I. 2014/2458, **art. 2(b)**

I100 S. 129 in force at 1.4.2015 in so far as not already in force by S.I. 2014/2458, **art. 3(b)(iv)**

130 Competition as a secondary objective of the PRA

(1) For section 2H of FSMA 2000 substitute—

"**2H Secondary competition objective and duty to have regard to regulatory principles**

(1) When discharging its general functions in a way that advances its objectives (see section 2F), the PRA must so far as is reasonably possible act in a way which, as a secondary objective, facilitates effective competition in the markets for services provided by PRA-authorised persons in carrying on regulated activities.

(2) In discharging its general functions, the PRA must also have regard to the regulatory principles in section 3B."

(2) In section 3B (regulatory principles to be applied by both regulators), in subsection (1), for "2H(1)(a)" substitute " 2H(2) ".

(3) In Schedule 1ZB to FSMA 2000 (the Prudential Regulation Authority)—

(a) in paragraph 19 (annual report), in sub-paragraph (1)—

(i) after paragraph (b) insert—

"(ba) how it has complied with section 2H(1),", and

(ii) in paragraph (c), omit the words from "and of" onwards, and

(b) in paragraph 20 (consultation about annual report), in sub-paragraph (1)(c), for the words from "and the PRA" onwards substitute " and the PRA

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has facilitated effective competition in accordance with section 2H and has considered the regulatory principles in section 3B ".

Commencement Information
I101 S. 130 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

Consumers

131 Duty of FCA to make rules restricting charges for high-cost short-term credit

(1) In section 137C of FSMA 2000 (FCA general rules: cost of credit and duration of credit agreements), after subsection (1) insert—

"(1A) The FCA must make rules by virtue of subsection (1)(a)(ii) and (b) in relation to one or more specified descriptions of regulated credit agreement appearing to the FCA to involve the provision of high-cost short-term credit, with a view to securing an appropriate degree of protection for borrowers against excessive charges.

(1B) Before the FCA publishes a draft of any rules to be made by virtue of subsection (1)(a)(ii) or (b), it must consult the Treasury."

(2) In Schedule 1ZA to FSMA 2000, in paragraph 11 (FCA's annual report), in sub-paragraph (1), after paragraph (h) insert—

"(ha) any rules that it has made as a result of section 137C during the period to which the report relates and the kinds of regulated credit agreement (within the meaning of that section) to which the rules apply,".

(3) The FCA must ensure any rules that it is required to make as a result of the amendment made by subsection (1) are made not later than 2 January 2015 and apply (at least) to agreements entered into on or after that date.

132 Role of FCA Consumer Panel in relation to PRA

In section 1Q of FSMA 2000 (the Consumer Panel), after subsection (5) insert—

"(5A) If it appears to the Consumer Panel that any matter being considered by it is relevant to the extent to which the general policies and practices of the PRA are consistent with the PRA's general duties under sections 2B to 2H, it may communicate to the PRA any views relating to that matter.

(5B) The PRA may arrange to meet any of the FCA's expenditure on the Consumer Panel which is attributable to the Panel's functions under subsection (5A)."

Commencement Information
I102 S. 132 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

Status: *Point in time view as at 16/12/2015. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

Parent undertakings

133 Power of FCA and PRA to make rules applying to parent undertakings

(1) After section 192J of FSMA 2000 insert—

"Rules applying to parent undertakings of ring-fenced bodies

192JA Rules applying to parent undertakings of ring-fenced bodies

(1) The appropriate regulator may make such rules applying to bodies corporate falling within subsection (2) as appear to the regulator to be necessary or expedient for the group ring-fencing purposes.

(2) A body corporate falls within this subsection if—
  (a) it is incorporated in the United Kingdom or has a place of business in the United Kingdom,
  (b) it is a parent undertaking of a ring-fenced body, and
  (c) it is not itself an authorised person.

(3) The "group ring-fencing purposes" are the purposes set out in section 142H(4).

(4) "The appropriate regulator" means—
  (a) in relation to the parent undertaking of a ring-fenced body that is a PRA-authorised person, the PRA;
  (b) in any other case, the FCA.

Rules requiring parent undertakings to facilitate resolution

192JB Rules requiring parent undertakings to facilitate resolution

(1) The appropriate regulator may make rules requiring a qualifying parent undertaking to make arrangements that would in the opinion of the regulator allow or facilitate the exercise of the resolution powers in relation to the qualifying parent undertaking or any of its subsidiary undertakings in the event of a situation arising where all or part of the business of the parent undertaking or the subsidiary undertaking encounters or is likely to encounter financial difficulties.

(2) The "resolution powers" are—
  (a) the powers conferred on the Treasury and the Bank of England by or under Parts 1 to 3 of the Banking Act 2009, and
  (b) any similar powers exercisable by an authority outside the United Kingdom.

(3) The arrangements that may be required include arrangements relating to—
  (a) the issue of debt instruments by the parent undertaking;
  (b) the provision to a subsidiary undertaking ("S") or a transferee by the parent undertaking, or by any other subsidiary undertaking of the parent undertaking, of such services and facilities as would be

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***Changes to legislation:** There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

required to enable S or the transferee to operate the business, or part of the business, effectively.

(4) In subsection (3)(b) "transferee" means a person to whom all or part of the business of the parent undertaking or the subsidiary undertaking could be transferred as a result of the exercise of the resolution powers.

(5) "Debt instrument" has the same meaning as in section 142Y.

(6) "The appropriate regulator" means—

(a) where the subsidiary undertakings of the qualifying parent undertaking include a ring-fenced body that is a PRA-authorised person, the PRA;

(b) where the subsidiary undertakings of the qualifying parent undertaking include one or more PRA-authorised persons but do not include any authorised person that is not a PRA-authorised person, the PRA;

(c) where the subsidiary undertakings of the qualifying parent undertaking do not include any PRA-authorised person, the FCA;

(d) in any other case, the PRA or the FCA."

(2) In section 192K of FSMA 2000 (power to impose penalty or issue censure)—

(a) in subsection (1), after "section 192J" insert " or 192JB ", and

(b) after that subsection insert—

"(1A) This section also applies if a regulator is satisfied that a person ("P") who is or has been a parent undertaking of a ring-fenced body has contravened a provision of rules made by that regulator under section 192JA."

Commencement Information

I103 S. 133(1) in force at 31.12.2014 for specified purposes by S.I. 2014/3160, **art. 2(2)**

I104 S. 133(2)(a) in force at 31.12.2014 by S.I. 2014/3160, **art. 2(1)(c)**

Meetings with auditors

134 Duty to meet auditors of certain institutions

(1) Part 22 of FSMA 2000 (auditors and actuaries) is amended as follows.

(2) After section 339A insert—

"**339B Duty to meet auditors of certain institutions**

(1) The FCA must make arrangements for meetings to take place at least once a year between—

(a) the FCA, and

(b) the auditor of any PRA-authorised person to which section 339C applies.

Status: *Point in time view as at 16/12/2015. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

(2) The PRA must make arrangements for meetings to take place at least once a year between—

(a) the PRA, and

(b) the auditor of any PRA-authorised person to which section 339C applies.

(3) The annual report of each regulator must include the number of meetings that have taken place during the period to which the report relates between the regulator and auditors of PRA-authorised persons to which section 339C applies.

(4) In subsection (3) "the annual report" means—

(a) in relation to the FCA, every report which it is required by paragraph 11 of Schedule 1ZA to make to the Treasury, and

(b) in relation to the PRA, every report which it is required by paragraph 19 of Schedule 1ZB to make to the Treasury.

(5) In this section "auditor" means an auditor appointed under or as a result of a statutory provision.

339C PRA-authorised persons to which this section applies

(1) This section applies to a PRA-authorised person which—

(a) is a UK institution,

(b) meets condition A or B,

(c) is not an insurer or a credit union, and

(d) is, in the opinion of the PRA, important to the stability of the UK financial system.

(2) Condition A is that the person has permission under Part 4A to carry on the regulated activity of accepting deposits.

(3) Condition B is that—

(a) the person is an investment firm that has permission under Part 4A to carry on the regulated activity of dealing in investments as principal, and

(b) when carried on by the person, that activity is a PRA-regulated activity.

(4) In this section—

(a) "UK institution" means an institution which is incorporated in, or formed under the law of any part of, the United Kingdom;

(b) "insurer" means an institution which is authorised under this Act to carry on the regulated activity of effecting or carrying out contracts of insurance as principal;

(c) "credit union" means a credit union as defined by section 31 of the Credit Unions Act 1979 or a credit union as defined by Article 2(2) of the Credit Unions (Northern Ireland) Order 1985.

(5) Subsections (2), (3) and (4)(b) are to be read in accordance with Schedule 2, taken together with any order under section 22."

Status: *Point in time view as at 16/12/2015. This version of this Act contains provisions that are not valid for this point in time.*
***Changes to legislation:** There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

(3) The italic cross-heading before section 339A becomes " *General duties of regulator* ".

Commencement Information
I105 S. 134 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

Fees to meet Treasury expenditure

135 Fees to meet Treasury expenditure relating to international organisations

(1) After section 410 of FSMA 2000 insert—

"Fees to meet Treasury expenses

410A Fees to meet certain expenses of the Treasury

(1) The Treasury may by regulations—

(a) enable the Treasury from time to time by direction to require the FCA, the PRA or the Bank of England (each a "regulator") to require the payment of fees by relevant persons, or such class of relevant person as may be specified in, or determined by the regulator in accordance with, the direction, for the purpose of meeting relevant expenses incurred by the Treasury;

(b) make provision about how the regulator to which a direction is given is to comply with the direction;

(c) require the regulator to pay to the Treasury, by such time or times as may be specified in the direction, the amount of any fees received by the regulator.

(2) "Relevant expenses" are expenses (including any expenses of a capital nature) which are attributable to United Kingdom membership of, or Treasury participation in, a prescribed international organisation so far as those expenses—

(a) represent a contribution (by way of subscription or otherwise) to the resources of the international organisation, and

(b) are in the opinion of the Treasury attributable to functions of the organisation which relate to financial stability or financial services.

(3) The regulations must provide for the charging of fees in pursuance of a direction given under the regulations to the FCA or the PRA to be by rules made by that regulator.

(4) The provisions of Chapter 2 of Part 9A apply to rules of the FCA or the PRA providing for the charging of fees in pursuance of a direction given under the regulations—

(a) in the case of the FCA, as they apply to rules relating to the payment of fees under paragraph 23 of Schedule 1ZA;

(b) in the case of the PRA, as they apply to rules relating to the payment of fees under paragraph 31 of Schedule 1ZB.

Status: *Point in time view as at 16/12/2015. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

(5) Paragraph 36(1) of Schedule 17A applies to the charging of fees by the Bank of England in pursuance of a direction given to the Bank under the regulations.

(6) The regulations may in particular—

(a) make provision about what is, or is not, to be regarded as an expense;

(b) specify requirements that the Treasury must comply with before giving a direction;

(c) enable a direction to be varied or revoked by a subsequent direction;

(d) confer functions on a regulator.

(7) An amount payable to a regulator as a result of—

(a) any provision of rules made by the FCA or the PRA as a result of the regulations, or

(b) the imposition of fees by the Bank of England as a result of a direction given under the regulations to the Bank,

may be recovered as a debt due to the regulator.

(8) "Relevant persons" means—

(a) in the case of a direction given to the PRA, PRA-authorised persons;

(b) in the case of a direction given to the FCA, authorised persons and recognised investment exchanges who (in either case) are not PRA-authorised persons;

(c) in the case of a direction given to the Bank of England, recognised clearing houses, other than those falling within paragraph (a) or (b).

(9) This section is subject to section 410B.

410B Directions in pursuance of section 410A

(1) In this section "a fees direction" means a direction given by the Treasury as a result of regulations under section 410A.

(2) Before giving a fees direction to the FCA, the PRA or the Bank of England (each a "regulator"), the Treasury must consult the regulator concerned.

(3) A fees direction must—

(a) be in writing;

(b) except in the case of a direction that revokes a previous direction or a direction that varies a previous direction without affecting the total amount intended to be raised by the fees, specify the total amount intended to be raised by the fees to be charged by the regulator and explain how that amount is calculated;

(c) contain such other information as may be prescribed.

(4) As soon as practicable after giving a fees direction, the Treasury must lay before Parliament a copy of the direction."

(2) In section 3A of FSMA 2000 (meaning of "regulator"), in subsection (3)—

(a) omit the "or" at the end of paragraph (a), and

(b) after paragraph (b) insert "or

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

Status: *Point in time view as at 16/12/2015. This version of this Act contains provisions that are not valid for this point in time.*
***Changes to legislation:** There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

Commencement Information
I106 S. 135 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

Parliamentary control of statutory instruments under FSMA 2000

136 Amendments of section 429 of FSMA 2000

(1) Section 429 of FSMA 2000 (Parliamentary control of statutory instruments) is amended as follows.

(2) In subsection (1)(a) (orders subject to affirmative procedure)—

(a) after "55C," insert " 71A(4), ", and

(b) for "144(4), 192(b) or (e), 138K(6)(c)" substitute " 138K(6)(c), 144(4), 192(b) or (e) ".

(3) In subsection (2) (regulations subject to affirmative procedure), after "90B," insert " 142W, ".

(4) After subsection (2) insert—

"(2A) Regulations to which subsection (2B) applies are not to be made unless a draft of the regulations has been laid before Parliament and approved by a resolution of each House.

(2B) This subsection applies to regulations which contain provision made under section 410A, other than provision made only by virtue of subsection (2) of that section."

(5) In subsection (8), for "or 23A" substitute " , 23A or 142Z ".

Commencement Information
I107 S. 136 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

Bank of England

137 Accounts of Bank of England and its wholly-owned subsidiaries

(1) The Bank of England Act 1998 is amended as follows.

(2) In section 7 (accounts), in subsection (4), for the words from "appropriate" to the end substitute " necessary to do so having regard to the Financial Stability Objective ".

(3) After section 7 insert—

"**7A Accounts of companies wholly owned by the Bank**

(1) If the Bank considers it necessary to do so having regard to the Financial Stability Objective, the Bank may by direction to a qualifying company exclude the application to the qualifying company of any of the relevant Companies Act requirements.

Status: *Point in time view as at 16/12/2015. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

(2) The relevant Companies Act requirements are the requirements to which the directors of the qualifying company would otherwise be subject under the Companies Act 2006 (except sections 412 and 413 (directors' benefits)) in relation to the preparation of accounts under section 394 of that Act.

(3) A direction under subsection (1) may relate to one or more specified accounting periods of the qualifying company, or to a specified accounting period and all subsequent accounting periods of the qualifying company.

(4) The Bank must consult the Treasury before giving a direction under subsection (1).

(5) The Treasury may by notice in writing to the Bank require it to publish in such manner as it thinks fit such information relating to the accounts of a qualifying company as the Treasury may specify in the notice.

(6) The information specified in a notice under subsection (5) may include information which as a result of a direction under subsection (1) was excluded from accounts prepared in accordance with the Companies Act 2006.

(7) The Treasury must consult the Bank before giving a notice under subsection (5).

(8) A direction under subsection (1) or a notice under subsection (5) may be revoked by a subsequent direction or notice (as the case may be).

(9) "Qualifying company" means any company which is wholly owned by the Bank other than—

(a) the Prudential Regulation Authority, or

(b) a company which is a bridge bank for the purposes of section 12(3) of the Banking Act 2009.

(10) For the purposes of subsection (9), a company is wholly owned by the Bank if—

(a) it is a company of which no person other than the Bank or a nominee of the Bank is a member, or

(b) it is a wholly-owned subsidiary of a company within paragraph (a)."

Commencement Information

I108 S. 137 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

Building societies

138 Building societies

Schedule 9 (which contains provision about building societies) has effect.

Status: *Point in time view as at 16/12/2015. This version of this Act contains provisions that are not valid for this point in time.*
***Changes to legislation:** There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

Claims management services

139 Power to impose penalties on persons providing claims management services

(1) The Schedule to the Compensation Act 2006 (claims management regulations) is amended as follows.

(2) In paragraph 8 (rules about conduct of authorised persons), in sub-paragraph (2)(b), after sub-paragraph (i) insert—

"(ia) provision enabling the Regulator to require an authorised person to pay a penalty;".

(3) In paragraph 9 (codes of practice about conduct of authorised persons), in sub-paragraph (2)(b), after sub-paragraph (i) insert—

"(ia) enable the Regulator to require an authorised person to pay a penalty;".

(4) In paragraph 10 (complaints about conduct of authorised persons), after sub-paragraph (2) insert—

"(3) Regulations under sub-paragraph (1) may enable the Regulator to require an authorised person to pay a penalty."

(5) In paragraph 11 (requirement to have indemnity insurance), in sub-paragraph (2)(b), after "Regulator" insert " to require the payment of a penalty by an authorised person or ".

(6) In paragraph 14 (enforcement), in sub-paragraph (4), for the words from "impose" to "authorisation" substitute " require an authorised person to pay a penalty, or to impose conditions on, suspend or cancel a person's authorisation, ".

(7) After paragraph 15 insert—

16 "**Penalties: supplementary provision**

(1) This paragraph applies in any case where regulations include provision enabling the Regulator to require an authorised person to pay a penalty.

(2) The regulations—

(a) shall include provision about how the Regulator is to determine the amount of a penalty, and

(b) may, in particular, include provision specifying a minimum or maximum amount.

(3) The regulations—

(a) shall provide for income from penalties imposed by the Regulator to be paid into the Consolidated Fund, but

(b) may provide that such income is to be paid into the Consolidated Fund after the deduction of costs incurred by the Regulator in collecting, or enforcing the payment of, such penalties.

(4) The regulations may also include, in particular—

(a) provision for a penalty imposed by the Regulator to be enforced as a debt;

Status: *Point in time view as at 16/12/2015. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

(b) provision specifying conditions that must be met before any action to enforce a penalty may be taken."

(8) In section 13 of the Compensation Act 2006 (appeals and references to Tribunal)—

(a) in subsection (1), omit the "or" at the end of paragraph (d) and after paragraph (e) insert ", or

(f) imposes a penalty on the person.";

(b) after subsection (1) insert—

"(1A) A person who is appealing to the Tribunal against a decision to impose a penalty may appeal against—

(a) the imposition of the penalty,

(b) the amount of the penalty, or

(c) any date by which the penalty, or any part of it, is required to be paid.";

(c) in subsection (3), after paragraph (d) insert—

"(da) may require a person to pay a penalty (which may be of a different amount from that of any penalty imposed by the Regulator);

(db) may vary any date by which a penalty, or any part of a penalty, is required to be paid;".

Commencement Information

I109 S. 139 in force at 21.3.2014 by S.I. 2014/772, **art. 2**

140 Recovery of expenditure incurred by Office for Legal Complaints

(1) The Schedule to the Compensation Act 2006 (claims management regulations) is amended as set out in subsections (2) and (3).

(2) The provision in paragraph 7 becomes sub-paragraph (1) of that paragraph.

(3) In paragraph 7, after sub-paragraph (1) insert—

"(2) The fees that may be charged by the Regulator by virtue of sub-paragraph (1) include fees in respect of costs incurred by the Regulator for the purposes of meeting any leviable OLC expenditure."

(4) The Legal Services Act 2007 is amended as set out in subsections (5) and (6).

(5) After section 174 insert—

"OLC expenditure relating to claims management services

174A OLC expenditure relating to claims management services

(1) This section has effect at any time when no person is designated under section 5(1) of the Compensation Act 2006 (the Regulator in relation to claims management services).

Status: *Point in time view as at 16/12/2015. This version of this Act contains provisions that are not valid for this point in time.*
***Changes to legislation:** There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

(2) In determining the leviable OLC expenditure for the purposes of section 173, any expenditure incurred, or income received, by the OLC in connection with the exercise of its functions in relation to claims management services is to be disregarded.

(3) The Lord Chancellor may by regulations charge periodic fees for authorised persons for the purposes of meeting any costs incurred by the Lord Chancellor in respect of relevant OLC expenditure.

(4) "Relevant OLC expenditure" means the difference between—

(a) any expenditure of the OLC incurred in connection with the exercise of its functions in relation to claims management services, and

(b) the aggregate of the amounts which the OLC pays into the Consolidated Fund under section 175(1)(g), (h) or (n), so far as relating to the exercise of its functions in relation to such services.

(5) Regulations made under subsection (3) may, in particular—

(a) permit the charging of different fees for different cases or circumstances (which may, in particular, be defined wholly or partly by reference to turnover or other criteria relating to an authorised person's business);

(b) enable the person exercising functions of the Regulator under section 5(9) of the Compensation Act 2006 to collect fees on behalf of the Lord Chancellor;

(c) specify the consequences of failure to pay fees (which may include anything which could be specified in regulations under section 9 of that Act as a consequence of a failure to pay fees charged under those regulations).

(6) In this section "authorised person" and "claims management services" have the same meaning as in Part 2 of the Compensation Act 2006 (see section 4 of that Act)."

(6) In section 206 (Parliamentary control of orders and regulations), in subsection (4), after paragraph (o) insert—

"(oa) section 174A(3) (power to charge fees on persons providing claims management services);".

Commencement Information

I110 S. 140(1)-(3) in force at 21.3.2014 by S.I. 2014/772, **art. 2**

I111 S. 140(4)-(6) in force at 21.3.2014 by S.I. 2014/785, **art. 2**

Minor amendments

141 Minor amendments

Schedule 10 (which contains amendments of, or connected with, the Financial Services Act 2012 and amendments of provisions amended by that Act) has effect.

Status: *Point in time view as at 16/12/2015. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

Commencement Information

I112 S. 141 in force at 1.3.2014 for specified purposes by S.I. 2014/377, **art. 2(1)(c)**

I113 S. 141 in force at 1.4.2014 for specified purposes by S.I. 2014/377, **art. 2(2)(b)**

PART 8

FINAL PROVISIONS

142 Orders and regulations: general

(1) Any power of the Treasury, the Secretary of State or the Lord Chancellor to make an order or regulations under this Act is exercisable by statutory instrument.

(2) Subsection (1) does not apply to an order under section 43 (payment systems: designation orders).

(3) An order or regulations made by the Treasury, the Secretary of State or the Lord Chancellor under this Act may—

(a) make different provision for different cases, and

(b) contain such incidental or transitional provision as the person making the order or regulations considers appropriate.

143 Orders and regulations: Parliamentary control

(1) A statutory instrument containing an order or regulations under this Act is subject to annulment in pursuance of a resolution of either House of Parliament, unless—

(a) the instrument contains only provision made under section 148 (commencement), or

(b) the instrument is required by subsection (3) or any other enactment to be laid in draft before, and approved by a resolution of, each House.

(2) Subsection (3) applies to a statutory instrument that contains (with or without other provisions)—

(a) regulations under section 7 (building societies: power to make provision about ring-fencing);

(b) an order under section 41(4) (meaning of "payment system");

(c) an order under section 145 (power to make further consequential amendments) that amends or repeals primary legislation;

(d) an order under paragraph 6 of Schedule 6 (conduct of FMI administration).

(3) A statutory instrument to which this subsection applies may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

(4) In subsection (2)(c) "primary legislation" means—

(a) an Act of Parliament,

(b) an Act of the Scottish Parliament,

(c) a Measure or Act of the National Assembly for Wales, or

(d) Northern Ireland legislation.

Status: *Point in time view as at 16/12/2015. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

144 Interpretation

In this Act—

"enactment" includes—

(a) an enactment contained in subordinate legislation,

(b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament,

(c) an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales, and

(d) an enactment contained in, or in an instrument made under, Northern Ireland legislation;

"the FCA" means the Financial Conduct Authority;

"FSMA 2000" means the Financial Services and Markets Act 2000;

"the PRA" means the Prudential Regulation Authority.

145 Power to make further consequential amendments

(1) The Treasury, the Secretary of State or the Lord Chancellor may by order make such provision amending, repealing, revoking or applying with modifications any enactment to which this section applies as the person making the order considers necessary or expedient in consequence of any provision made by or under this Act.

(2) This section applies to—

(a) any enactment passed or made before the passing of this Act, and

(b) any enactment passed or made on or before the last day of the Session in which this Act is passed.

(3) Amendments and repeals made under this section are additional to those made by or under any other provision of this Act.

146 Transitional provisions and savings

(1) The Treasury, the Secretary of State or the Lord Chancellor may by order make such provision as the person making the order considers necessary or expedient for transitory, transitional or saving purposes in connection with the commencement of any provision made by or under this Act.

(2) An order under this section may—

(a) confer functions on the FCA or the PRA;

(b) modify, exclude or apply (with or without modifications) any enactment (including any provision of, or made under, this Act).

147 Extent

(1) The provisions of this Act extend to England and Wales, Scotland and Northern Ireland.

This is subject to subsection (2).

(2) The amendments made by the following sections have the same extent as the enactments amended—

(a) section 13 (preferential debts: Great Britain),

Status: *Point in time view as at 16/12/2015. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

(b) section 139 (power to impose penalties on persons providing claims management services), and

(c) section 140 (recovery of expenditure incurred by Office for Legal Complaints).

148 Commencement and short title

(1) This Part comes into force on the day on which this Act is passed.

(2) The following provisions—

section 131, and

section 138 and Schedule 9, apart from paragraph 4 of that Schedule,

come into force at the end of the period of 2 months beginning with the day on which this Act is passed.

(3) Sections 139 and 140(1) to (3) come into force on such day as the Secretary of State may by order appoint.

(4) Section 140(4) to (6) comes into force on such day as the Lord Chancellor may by order appoint.

(5) The remaining provisions of this Act come into force on such day as the Treasury may by order appoint.

(6) Different days may be appointed for different purposes.

(7) This Act may be cited as the Financial Services (Banking Reform) Act 2013.

Status: *Point in time view as at 16/12/2015. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

SCHEDULES

SCHEDULE 1

Section 6

RING-FENCING TRANSFER SCHEMES

1 Part 7 of FSMA 2000 (control of business transfer schemes) is amended as follows.

Commencement Information
I114 Sch. 1 para. 1 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

2 For "the authorised person concerned", wherever occurring in Part 7 (including Schedule 12), substitute " the transferor concerned ".

Commencement Information
I115 Sch. 1 para. 2 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

3 (1) Section 103A (meaning of "the appropriate regulator") is amended as follows.

(2) In subsection (1), in paragraph (a), for "a scheme" substitute " a ring-fencing transfer scheme or a scheme (other than a ring-fencing transfer scheme) ".

(3) At the end of subsection (2) insert—

"(d) in the case of a ring-fencing transfer scheme, means the body to whose business the scheme relates."

Commencement Information
I116 Sch. 1 para. 3 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

4 In section 106 (banking business transfer schemes), at the end of subsection (1)(c) insert " or a ring-fencing transfer scheme ".

Commencement Information
I117 Sch. 1 para. 4 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

5 After section 106A insert—

"**106B Ring-fencing transfer scheme**

(1) A scheme is a ring-fencing transfer scheme if it—

(a) is one under which the whole or part of the business carried on—

(i) by a UK authorised person, or

(ii) by a qualifying body,

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is to be transferred to another body ("the transferee"),

(b) is to be made for one or more of the purposes mentioned in subsection (3), and

(c) is not an excluded scheme or an insurance business transfer scheme.

(2) "Qualifying body" means a body which—

(a) is incorporated in the United Kingdom,

(b) is a member of the group of a UK authorised person, and

(c) is not itself an authorised person.

(3) The purposes are—

(a) enabling a UK authorised person to carry on core activities as a ring-fenced body in compliance with the ring-fencing provisions;

(b) enabling the transferee to carry on core activities as a ring-fenced body in compliance with the ring-fencing provisions;

(c) making provision in connection with the implementation of proposals that would involve a body corporate whose group includes the body corporate to whose business the scheme relates becoming a ring-fenced body while one or more other members of its group are not ring-fenced bodies;

(d) making provision in connection with the implementation of proposals that would involve a body corporate whose group includes the transferee becoming a ring-fenced body while one or more other members of the transferee's group are not ring-fenced bodies.

(4) A scheme is an excluded scheme for the purposes of this section if—

(a) the body to whose business the scheme relates is a building society or credit union, or

(b) the scheme is a compromise or arrangement to which Part 27 of the Companies Act 2006 (mergers and divisions of public companies) applies.

(5) For the purposes of subsection (1)(a) it is immaterial whether or not the business to be transferred is carried on in the United Kingdom.

(6) "UK authorised person" has the same meaning as in section 105.

(7) "Building society" and "credit union" have the same meanings as in section 106.

(8) "The ring-fencing provisions" means ring-fencing rules and the duty imposed as a result of section 142G."

Commencement Information

I118 Sch. 1 para. 5 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

6 (1) Section 107 (application for order sanctioning transfer scheme) is amended as follows.

(2) In subsection (1), for "or a reclaim fund business transfer scheme" substitute " , a reclaim fund business transfer scheme or a ring-fencing transfer scheme ".

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(3) After subsection (2) insert—

"(2A) An application relating to a ring-fencing transfer scheme may be made only with the consent of the PRA.

(2B) In deciding whether to give consent, the PRA must have regard to the scheme report prepared under section 109A in relation to the ring-fencing transfer scheme."

Commencement Information
I119 Sch. 1 para. 6 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

7 For the heading to section 109 substitute " Scheme reports: insurance business transfer schemes ".

Commencement Information
I120 Sch. 1 para. 7 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

8 After section 109 insert—

"**109A Scheme reports: ring-fencing transfer schemes**

(1) An application under section 106B in respect of a ring-fencing transfer scheme must be accompanied by a report on the terms of the scheme (a "scheme report").

(2) A scheme report may be made only by a person—
(a) appearing to the PRA to have the skills necessary to enable the person to make a proper report, and
(b) nominated or approved for the purpose by the PRA.

(3) A scheme report must be made in a form approved by the PRA.

(4) A scheme report must state—
(a) whether persons other than the transferor concerned are likely to be adversely affected by the scheme, and
(b) if so, whether the adverse effect is likely to be greater than is reasonably necessary in order to achieve whichever of the purposes mentioned in section 106B(3) is relevant.

(5) The PRA must consult the FCA before—
(a) nominating or approving a person under subsection (2)(b), or
(b) approving a form under subsection (3)."

Commencement Information
I121 Sch. 1 para. 8 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

9 (1) Section 110 (right to participate in proceedings) is amended as follows.

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(2) In subsection (1), after "section 107" insert " relating to an insurance business transfer scheme, a banking business transfer scheme or a reclaim fund business transfer scheme ".

(3) After subsection (2) insert—

"(3) Subsections (4) and (5) apply where an application under section 107 relates to a ring-fencing transfer scheme.

(4) The following are also entitled to be heard—

(a) the PRA,

(b) where the transferee is an authorised person, the FCA, and

(c) any person ("P") (including an employee of the transferor concerned or of the transferee) who alleges that P would be adversely affected by the carrying out of the scheme.

(5) P is not entitled to be heard by virtue of subsection (4)(c) unless before the hearing P has—

(a) filed (in Scotland, lodged) with the court a written statement of the representations that P wishes the court to consider, and

(b) served copies of the statement on the PRA and the transferor concerned."

Commencement Information
I122 Sch. 1 para. 9 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

10 (1) Section 111 (sanction of court for business transfer schemes) is amended as follows.

(2) In subsection (1), for "or a reclaim fund business transfer scheme" substitute " , a reclaim fund business transfer scheme or a ring-fencing transfer scheme ".

(3) In subsection (2), after paragraph (aa) insert—

"(ab) in the case of a ring-fencing transfer scheme, the appropriate certificates have been obtained (as to which see Part 2B of that Schedule);"

Commencement Information
I123 Sch. 1 para. 10 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

11 In section 112 (effect of order sanctioning business transfer scheme), in subsection (10), after "transfer scheme" insert " or ring-fencing transfer scheme ".

Commencement Information
I124 Sch. 1 para. 11 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

12 In section 112A (rights to terminate etc.), in subsection (1), for "or a banking business transfer scheme" substitute " , a banking business transfer scheme or a ring-fencing transfer scheme ".

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Commencement Information

I125 Sch. 1 para. 12 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

13 In Schedule 12 (transfer schemes: certificates) after Part 2A insert—

"**PART 2B**

RING-FENCING TRANSFER SCHEMES

Appropriate certificates

9B (1) For the purposes of section 111(2) the appropriate certificates, in relation to a ring-fencing transfer scheme, are—

(a) a certificate given by the PRA certifying its approval of the application,

(b) a certificate under paragraph 9C, and

(c) if sub-paragraph (2) applies, a certificate under paragraph 9D.

(2) This sub-paragraph applies if the transferee is an EEA firm falling within paragraph 5(a) or (b) of Schedule 3.

Certificate as to financial resources

9C (1) A certificate under this paragraph is one given by the relevant authority and certifying that, taking the proposed transfer into account, the transferee possesses, or will possess before the scheme takes effect, adequate financial resources.

(2) "Relevant authority" means—

(a) if the transferee is a PRA-authorised person with a Part 4A permission or with permission under Schedule 4, the PRA;

(b) if the transferee is an EEA firm falling within paragraph 5(a) or (b) of Schedule 3, its home state regulator;

(c) if the transferee does not fall within paragraph (a) or (b) but is subject to regulation in a country or territory outside the United Kingdom, the authority responsible for the supervision of the transferee's business in the place in which the transferee has its head office;

(d) in any other case, the FCA.

(3) In sub-paragraph (2), any reference to a transferee of a particular description includes a reference to a transferee who will be of that description if the proposed ring-fencing transfer scheme takes effect.

Certificate as to consent of home state regulator

9D A certificate under this paragraph is one given by the appropriate regulator and certifying that the home state regulator of the transferee has been notified of the proposed scheme and that—

(a) the home state regulator has responded to the notification, or

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(b) the period of 3 months beginning with the notification has elapsed."

Commencement Information
I126 Sch. 1 para. 13 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

SCHEDULE 2

Section 17

BAIL-IN STABILISATION OPTION

PART 1

AMENDMENTS OF BANKING ACT 2009

1 The Banking Act 2009 is amended as follows.

Commencement Information
I127 Sch. 2 para. 1 in force at 31.12.2014 by S.I. 2014/3160, **art. 2(1)(b)**

New stabilisation option: bail-in

2 After section 12 insert—

"**12A Bail-in option**

(1) The third stabilisation option is exercised by the use of the power in subsection (2).

(2) The Bank of England may make one or more resolution instruments (which may contain provision or proposals of any kind mentioned in subsections (3) to (6)).

(3) A resolution instrument may—

(a) make special bail-in provision with respect to a specified bank;

(b) make other provision for the purposes of, or in connection with, any special bail-in provision made by that or another instrument.

(4) A resolution instrument may—

(a) provide for securities issued by a specified bank to be transferred to a bail-in administrator (see section 12B) or another person;

(b) make other provision for the purposes of, or in connection with, the transfer of securities issued by a specified bank (whether or not the transfer has been or is to be effected by that instrument, by another resolution instrument or otherwise).

(5) A resolution instrument may set out proposals with regard to the future ownership of a specified bank or of the business of a specified bank, and

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any other proposals (for example, proposals about making special bail-in provision) that the Bank of England may think appropriate.

(6) A resolution instrument may make any other provision the Bank of England may think it appropriate to make in exercise of specific powers under this Part.

(7) Provision made in accordance with subsection (4) may relate to—

(a) specified securities, or

(b) securities of a specified description.

(8) Where the Bank of England has exercised the power in subsection (4) to transfer securities to a bail-in administrator, the Bank of England must exercise its functions under this Part (see, in particular, section 48V) with a view to ensuring that any securities held by a person in the capacity of a bail-in administrator are so held only for so long as is, in the Bank of England's opinion, appropriate having regard to the special resolution objectives.

(9) References in this Part to "special bail-in provision" are to provision made in reliance on section 48B.

12B Bail-in administrators

(1) The Bank of England may, in a resolution instrument, appoint an individual or body corporate as a bail-in administrator.

(2) A bail-in administrator is appointed—

(a) to hold any securities that may be transferred or issued to that person in the capacity of bail-in administrator;

(b) to perform any other functions that may be conferred under any provision of this Part.

(3) The Bank of England may appoint more than one bail-in administrator to perform functions in relation to a bank (but no more than one of them may at any one time be authorised to hold securities as mentioned in subsection (2)(a)).

(4) Securities held by a bail-in administrator (in that capacity, and whether as a result of a resolution instrument or otherwise) are to be held in accordance with the terms of a resolution instrument that transfers those, or other, securities to the bail-in administrator.

(5) For example, the following provision may be made by virtue of subsection (4)—

(a) provision that specified rights of a bail-in administrator with respect to all or any of the securities are to be exercisable only as directed by the Bank of England;

(b) provision specifying rights or obligations that the bail-in administrator is, or is not, to have in relation to some or all of the securities.

(6) A bail-in administrator must have regard, in performing any functions of the office, to any objectives that may be specified in a resolution instrument.

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(7) Where one or more objectives are specified in accordance with subsection (6), the objectives are to be taken to have equal status with each other, unless the contrary is stated in the resolution instrument.

(8) See sections 48I to 48K for further provision about bail-in administrators."

Commencement Information
I128 Sch. 2 para. 2 in force at 31.12.2014 by S.I. 2014/3160, **art. 2(1)(b)**

3 After section 8 insert—

"**8A Specific condition: bail-in**

(1) The Bank of England may exercise a stabilisation power in respect of a bank in accordance with section 12A(2) only if satisfied that the condition in subsection (2) is met.

(2) The condition is that the exercise of the power is necessary, having regard to the public interest in—
(a) the stability of the financial systems of the United Kingdom,
(b) the maintenance of public confidence in the stability of those systems,
(c) the protection of depositors, or
(d) the protection of any client assets that may be affected.

(3) Before determining whether that condition is met, and if so how to react, the Bank of England must consult—
(a) the PRA,
(b) the FCA, and
(c) the Treasury.

(4) The condition in this section is in addition to the conditions in section 7."

Commencement Information
I129 Sch. 2 para. 3 in force at 31.12.2014 by S.I. 2014/3160, **art. 2(1)(b)**

Further provision about the bail-in option

4 After section 48A insert—

"Bail-in option

48B Special bail-in provision

(1) "Special bail-in provision", in relation to a bank, means any of the following (or any combination of the following)—
(a) provision cancelling a liability owed by the bank;

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(b) provision modifying, or changing the form of, a liability owed by the bank;

(c) provision that a contract under which the bank has a liability is to have effect as if a specified right had been exercised under it.

(2) "Special bail-in provision", in relation to a bank, also includes any associated provision (see subsection (3)) that the Bank of England may think it appropriate to make in consequence of any provision under subsection (1) that—

(a) is made in the same resolution instrument, or

(b) has been made in another resolution instrument in respect of the bank.

(3) "Associated provision" means provision cancelling or modifying a contract under which a banking group company has a liability.

(4) A power to make special bail-in provision—

(a) may be exercised only for the purpose of, or in connection with, reducing, deferring or cancelling a liability of the bank;

(b) may not be exercised so as to affect any excluded liability.

(5) The following rules apply to the interpretation of subsection (1).

(1) The reference to cancelling a liability owed by the bank includes a reference to cancelling a contract under which the bank has a liability.

(2) The reference to modifying a liability owed by the bank includes a reference to modifying the terms (or the effect of the terms) of a contract under which the bank has a liability.

(3) The reference to changing the form of a liability owed by the bank, includes, for example—

(a) converting an instrument under which the bank owes a liability from one form or class to another,

(b) replacing such an instrument with another instrument of a different form or class, or

(c) creating a new security (of any form or class) in connection with the modification of such an instrument.

(6) Examples of special bail-in provision include—

(a) provision that transactions or events of any specified kind have or do not have (directly or indirectly) specified consequences or are to be treated in a specified manner for specified purposes;

(b) provision discharging persons from further performance of obligations under a contract and dealing with the consequences of persons being so discharged.

(7) The form and class of the instrument ("the resulting instrument") into which an instrument is converted, or with which it is replaced, do not matter for the purposes of paragraphs (a) and (b) of rule 3 in subsection (5); for instance, the resulting instrument may (if it is a security) fall within Class 1 or any other Class in section 14.

(8) The following liabilities of the bank are "excluded liabilities"—

(a) liabilities representing protected deposits;

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(b) any liability, so far as it is secured;

(c) liabilities that the bank has by virtue of holding client assets;

(d) liabilities with an original maturity of less than 7 days owed by the bank to a credit institution or investment firm;

(e) liabilities arising from participation in designated settlement systems and owed to such systems or to operators of, or participants in, such systems;

(f) liabilities owed to central counterparties recognised by the European Securities and Markets Authority in accordance with Article 25 of Regulation (EU) 648/2012 of the European Parliament and the Council;

(g) liabilities owed to an employee or former employee in relation to salary or other remuneration, except variable remuneration;

(h) liabilities owed to an employee or former employee in relation to rights under a pension scheme, except rights to discretionary benefits;

(i) liabilities owed to creditors arising from the provision to the bank of goods or services (other than financial services) that are critical to the daily functioning of the bank's operations.

(9) The following special rules apply in cases involving banking group companies—

(a) a liability mentioned in subsection (8)(d) is not an excluded liability if the credit institution or investment firm to which the liability is owed is a banking group company in relation to the bank (see section 81D);

(b) in subsection (8)(i) the reference to creditors does not include companies which are banking group companies in relation to the bank.

48C Meaning of "protected deposit"

(1) A deposit is "protected" so far as it is covered by the Financial Services Compensation Scheme.

(2) A deposit is "protected" so far as it is covered by a scheme which—

(a) operates outside the United Kingdom, and

(b) is comparable to the Financial Services Compensation Scheme.

(3) If one or both of subsections (1) and (2) apply to a deposit, the amount of the deposit "protected" is the highest amount which results from either of those subsections.

(4) In subsections (1) and (2) and section 48B(8)(a), "deposit" has the meaning given by article 5(2) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544), but ignoring the exclusions in article 6.

48D General interpretation of section 48B

(1) In section 48B—

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"client assets" means assets which the bank has undertaken to hold on trust for, or on behalf of, a client;

"contract" includes any instrument;

"credit institution" means any credit institution as defined in Article 4.1(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council, other than an entity mentioned in Article 2.5(2) to (23) of Directive 2013/36/EU of the European Parliament and of the Council;

"designated settlement system" means a system designated in accordance with Directive 98/26/EC of the European Parliament and of the Council (as amended by Directives 2009/44/EC and 2010/78/EU);

"employee" includes the holder of an office;

"investment firm" means an investment firm as defined in Article 4.1(2) of Regulation (EU) No 575/2013 of the European Parliament and of the Council that is subject to the initial capital requirement specified in Article 28(2) of Directive 2013/36/EU of the European Parliament and of the Council;

"pension scheme" includes any arrangement for the payment of pensions, allowances and gratuities;

"secured" means secured against property or rights, or otherwise covered by collateral arrangements.

(2) In subsection (1)—

"assets" has the same meaning as in section 232(4) (ignoring for these purposes section 232(5A)(b));

"collateral arrangements" includes arrangements which are title transfer collateral arrangements for the purposes of section 48.

(3) For the purposes of section 48B(8)(h), a benefit under a pension scheme is discretionary so far as the employee's right to the benefit resulted from the exercise of a discretion.

48E Report on special bail-in provision

(1) This section applies where the Bank of England makes a resolution instrument containing special bail-in provision (see section 48B).

(2) The Bank of England must report to the Chancellor of the Exchequer stating the reasons why that provision has been made in the case of the liabilities concerned.

(3) If the provision departs from the insolvency treatment principles, the report must state the reasons why it does so.

(4) The insolvency treatment principles are that where an instrument includes special bail-in provision—

(a) the provision made by the instrument must be consistent with treating all the liabilities of the bank in accordance with the priority they would enjoy on a liquidation, and

(b) any creditors who would have equal priority on a liquidation are to bear losses on an equal footing with each other.

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(5) A report must comply with any other requirements as to content that may be specified by the Treasury.

(6) A report must be made as soon as reasonably practicable after the making of the resolution instrument to which it relates.

(7) The Chancellor of the Exchequer must lay a copy of each report under subsection (2) before Parliament.

48F Power to amend definition of "excluded liabilities"

(1) The Treasury may by order amend section 48B(8) by—

(a) adding to the list of excluded liabilities;

(b) amending or omitting any paragraph of that subsection, other than paragraphs (a) to (c).

(2) The Treasury may by order amend section 48C or 48D.

(3) The powers conferred by subsections (1) and (2) include power to make consequential and transitional provision.

(4) An order under this section—

(a) is to be made by statutory instrument, and

(b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

(5) The Treasury must consult before laying a draft order under this section before Parliament.

48G Priority between creditors

(1) The Treasury may, for the purpose of ensuring that the treatment of liabilities in any instrument that contains special bail-in provision is aligned to an appropriate degree with the treatment of liabilities on an insolvency, by order specify matters or principles to which the Bank of England is to be required to have regard in making any such instrument.

(2) An order may, for example, specify the insolvency treatment principles (as defined in section 48E(4)) or alternative principles.

(3) An order may specify the meaning of "insolvency" for one or more purposes of the order.

(4) An order may amend sections 44C(4) and 48E(4).

(5) An order—

(a) is to be made by statutory instrument, and

(b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

48H Business reorganisation plans

(1) A resolution instrument may require a bail-in administrator, or one or more directors of the bank, to—

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(a) draw up a business reorganisation plan with respect to the bank, and

(b) submit it to the Bank of England within the period allowed by (or under) the instrument.

(2) "Business reorganisation plan" means a plan that includes—

(a) an assessment of the factors that caused Condition 1 in section 7 to be met in the case of the bank,

(b) a description of the measures to be adopted with a view to restoring the viability of the bank, and

(c) a timetable for the implementation of those measures.

(3) Where a person has submitted a business reorganisation plan to the Bank of England under subsection (1) (or has re-submitted a plan under subsection (4)), the Bank of England—

(a) must approve the plan if satisfied that the plan is appropriately designed for meeting the objective mentioned in subsection (2)(b);

(b) must otherwise require the person to amend the plan in a specified manner.

(4) Where the Bank of England has required a person to amend a business re-organisation plan, the person must re-submit the amended plan within the period allowed by (or under) the resolution instrument.

(5) Before deciding what action to take under subsection (3) the Bank of England must (for each submission or re-submission of a plan) consult—

(a) the PRA, and

(b) the FCA.

(6) A business reorganisation plan may include recommendations by the person submitting the plan as to the exercise by the Bank of England of any of its powers under this Part in relation to the bank.

(7) Where a resolution instrument contains provision under subsection (1), the instrument may—

(a) specify further matters (in addition to those mentioned in subsection (2)) that must be dealt with in the business reorganisation plan;

(b) make provision about the timing of actions to be taken in connection with the making and approval of the plan;

(c) enable any provision that the Bank of England has power under paragraph (a) or (b) to make in the instrument to be made instead in an agreement between the Bank of England and the person required to draw up the business reorganisation plan.

(8) For the purposes of subsection (2)(b) the viability of a bank is to be assessed by reference to whether the bank satisfies, and (if so) for how long it may be expected to continue to satisfy, the threshold conditions (as defined in section 55B of the Financial Services and Markets Act 2000).

48I Bail-in administrator: further functions

(1) A resolution instrument may—

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(a) authorise a bail-in administrator to manage the bank's business (or confer on a bail-in administrator any other power with respect to the management of the bank's business);

(b) authorise a bail-in administrator to exercise any other powers of the bank;

(c) confer on a bail-in administrator any other power the Bank of England may consider appropriate;

(d) provide that the exercise of any power conferred by the instrument in accordance with this section is to be subject to conditions specified in the instrument.

(2) A resolution instrument may require a bail-in administrator to make reports to the Bank of England—

(a) on any matter specified in the instrument, and

(b) at the times or intervals specified in the instrument.

(3) If a resolution instrument specifies a matter in accordance with subsection (2)(a), it may provide for further requirements as to the contents of the report on that matter to be specified in an agreement between the Bank of England and the bail-in administrator.

(4) A resolution instrument may—

(a) require a bail-in administrator to consult specified persons before exercising specified functions (and may specify particular matters on which the specified person must be consulted);

(b) provide that a bail-in administrator is not to exercise specified functions without the consent of a specified person.

48J Bail-in administrator: supplementary

(1) A bail-in administrator may do anything necessary or desirable for the purposes of or in connection with the performance of the functions of the office.

(2) A bail-in administrator is not a servant or agent of the Crown (and, in particular, is not a civil servant).

(3) Where a bail-in administrator is appointed under this Part, the Bank of England—

(a) must make provision in a resolution instrument for resignation and replacement of the bail-in administrator;

(b) may remove the bail-in administrator from office only (i) on the ground of incapacity or misconduct, or (ii) on the ground that there is no further need for a person to perform the functions conferred on the bail-in administrator.

48K Bail-in administrator: money

(1) A resolution instrument may provide for the payment of remuneration and allowances to a bail-in administrator.

(2) Provision made under subsection (1) may provide that the amounts are—

(a) to be paid by the Bank of England, or

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***Changes to legislation:** There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

(b) to be determined by the Bank of England and paid by the bank.

(3) A bail-in administrator is not liable for damages in respect of anything done in good faith for the purposes of or in connection with the functions of the office (subject to section 8 of the Human Rights Act 1998).

48L Powers in relation to securities

(1) A resolution instrument may—

(a) cancel or modify any securities to which this subsection applies;

(b) convert any such securities from one form or class into another.

(2) Subsection (1) applies to securities issued by the bank that fall within Class 1 in section 14.

(3) A resolution instrument may—

(a) make provision with respect to rights attaching to securities issued by the bank;

(b) provide for the listing of securities issued by the bank to be discontinued.

(4) The reference in subsection (1)(b) to converting securities from one form or class into another includes creating a new security in connection with the modification of an existing security.

(5) The provision that may be made under subsection (3)(a) includes, for example—

(a) provision that specified rights attaching to securities are to be treated as having been exercised;

(b) provision that the Bank of England, or a bail-in administrator, is to be treated as authorised to exercise specified rights attaching to securities;

(c) provision that specified rights attaching to securities may not be exercised for a period specified in the instrument.

(6) In subsection (3)(b) the reference to "listing" is to listing under section 74 of the Financial Services and Markets Act 2000.

(7) The provision that may be made under this section in relation to any securities is in addition to any provision that the Bank of England may have power to make in relation to them under section 48B.

48M Termination rights, etc

(1) In this section "default event provision" has the same meaning as in section 22.

(2) A resolution instrument may provide for subsection (3) or (4) to apply (but need not apply either).

(3) If this subsection applies, the resolution instrument is to be disregarded in determining whether a default event provision applies.

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(4) If this subsection applies, the resolution instrument is to be disregarded in determining whether a default event provision applies except so far as the instrument provides otherwise.

(5) In subsections (3) and (4) a reference to the resolution instrument is a reference to—

(a) the making of the instrument,

(b) anything that is done by the instrument or is to be, or may be, done under or by virtue of the instrument, and

(c) any action or decision taken or made under this or another enactment in so far as it resulted in, or was connected to, the making of the instrument.

(6) Provision under subsection (2) may apply subsection (3) or (4)—

(a) generally or only for specified purposes, cases or circumstances, or

(b) differently for different purposes, cases or circumstances.

(7) A thing is not done by virtue of a resolution instrument for the purposes of subsection (5)(b) merely by virtue of being done under a contract or other agreement rights or obligations under which have been affected by the instrument.

48N Directors

(1) A resolution instrument may enable the Bank of England—

(a) to remove a director of a specified bank;

(b) to vary the service contract of a director of a specified bank;

(c) to terminate the service contract of a director of a specified bank;

(d) to appoint a director of a specified bank.

(2) Subsection (1) also applies to a director of any undertaking which is a banking group company in respect of a specified bank.

(3) Appointments under subsection (1)(d) are to be on terms and conditions agreed with the Bank of England.

48O Directions in or under resolution instrument

(1) A resolution instrument may—

(a) require one or more directors of the bank to comply with any general or specific directions that may be set out in the instrument;

(b) enable the Bank of England to give written directions (whether general or specific) to one or more directors of the bank.

(2) A director—

(a) is not to be regarded as failing to comply with any duty owed to any person (for example, a shareholder, creditor or employee of the bank) by virtue of any action or inaction in compliance with a direction given under subsection (1)(a) or (b);

(b) is to be immune from liability in damages in respect of action or inaction in accordance with a direction.

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(3) A director must comply with a direction within the period of time specified in the direction, or if no period of time is specified, as soon as reasonably practicable.

(4) A direction under subsection (1)(a) or (b) is enforceable on an application made by the Bank of England, by injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.

48P Orders for safeguarding certain financial arrangements

(1) In this section "protected arrangements" means security interests, title transfer collateral arrangements, set-off arrangements and netting arrangements.

(2) In subsection (1)—

"netting arrangements" means arrangements under which a number of claims or obligations can be converted into a net claim or obligation, and includes, in particular, "close-out" netting arrangements, under which actual or theoretical debts are calculated during the course of a contract for the purpose of enabling them to be set off against each other or to be converted into a net debt;

"security interests" means arrangements under which one person acquires, by way of security, an actual or contingent interest in the property of another;

"set-off arrangements" means arrangements under which two or more debts, claims or obligations can be set off against each other;

"title transfer collateral arrangements" means arrangements under which Person 1 transfers assets to Person 2 on terms providing for Person 2 to transfer assets if specified obligations are discharged.

(3) The Treasury may by order—

(a) restrict the exercise of any power within the scope of this paragraph in cases that involve, or where the exercise of the power might affect, protected arrangements;

(b) impose conditions on the exercise of any power within the scope of this paragraph in cases that involve, or where the exercise of the power might affect, protected arrangements;

(c) require any instrument that makes special bail-in provision to include specified provision, or provision to a specified effect, in respect of or for purposes connected with protected arrangements;

(d) provide for an instrument to be void or voidable, or for other consequences to arise, if or in so far as the instrument is made or purported to be made in contravention of a provision of the order (or of another order under this section);

(e) specify principles to which the Bank of England is to be required to have regard in exercising specified powers—

(i) that involve protected arrangements, or

(ii) where the exercise of the powers might affect protected arrangements.

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(4) References to exercising a power within the scope of paragraph (a) or (b) of subsection (3) are to making an instrument containing provision made in reliance on section 12A(3)(a) or 44B (special bail-in provision).

(5) An order may apply to protected arrangements generally or only to arrangements—

(a) of a specified kind, or

(b) made or applying in specified circumstances.

(6) An order may include provision for determining which arrangements are to be, or not to be, treated as protected arrangements; in particular, an order may provide for arrangements to be classified not according to their description by the parties but according to one or more indications of how they are treated, or are intended to be treated, in commercial practice.

(7) In this section "arrangements" includes arrangements which—

(a) are formed wholly or partly by one or more contracts or trusts;

(b) arise under or are wholly or partly governed by the law of a country or territory outside the United Kingdom;

(c) wholly or partly arise automatically as a matter of law;

(d) involve any number of parties;

(e) operate partly by reference to other arrangements between parties.

(8) An order—

(a) is to be made by statutory instrument, and

(b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

48Q Continuity

(1) A resolution instrument may provide for anything (including legal proceedings) that relates to anything affected by the instrument and is in the process of being done immediately before the instrument takes effect to be continued from the time the instrument takes effect.

(2) A resolution instrument may modify references (express or implied) in an instrument or document.

(3) A resolution instrument may require or permit any person to provide information and assistance to the Bank of England or another person, for the purposes of or in connection with provision made or to be made in that or another resolution instrument.

48R Execution and registration of instruments etc

(1) A resolution instrument may permit or require the execution, issue or delivery of an instrument.

(2) A resolution instrument may provide for any provision in the instrument to have effect irrespective of—

(a) whether an instrument has been produced, delivered, transferred or otherwise dealt with;

(b) registration.

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(3) A resolution instrument may provide for the effect of an instrument executed, issued or delivered in accordance with the resolution instrument.

(4) A resolution instrument may—

(a) entitle a person to be registered in respect of a security;

(b) require a person to effect registration.

48S Resolution instruments: general matters

(1) Provision made in a resolution instrument takes effect despite any restriction arising by virtue of contract or legislation or in any other way.

(2) A resolution instrument may include incidental, consequential or transitional provision.

(3) In relying on subsection (2) a resolution instrument—

(a) may make provision generally or only for specified purposes, cases or circumstances, and

(b) may make different provision for different purposes, cases or circumstances.

48T Procedure

(1) As soon as is reasonably practicable after making a resolution instrument in respect of a bank the Bank of England must send a copy to—

(a) the bank,

(b) the Treasury,

(c) the PRA,

(d) the FCA, and

(e) any other person specified in the code of practice under section 5.

(2) As soon as is reasonably practicable after making a resolution instrument the Bank of England must publish a copy—

(a) on the Bank's internet website, and

(b) in two newspapers, chosen by the Bank of England to maximise the likelihood of the instrument coming to the attention of persons likely to be affected.

(3) Where the Treasury receive a copy of a resolution instrument under subsection (1) they must lay a copy before Parliament.

48U Supplemental resolution instruments

(1) This section applies where the Bank of England has made a resolution instrument ("the original instrument") with respect to a bank.

(2) The Bank of England may make, with respect to the bank, one or more resolution instruments designated by the Bank of England as supplemental resolution instruments.

(3) Sections 7 and 8A do not apply to a supplemental resolution instrument (but it is to be treated in the same way as a resolution instrument for all other

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purposes, including for the purposes of the application of a power under this Part).

(4) Before making a supplemental resolution instrument the Bank of England must consult—

(a) the PRA,

(b) the FCA, and

(c) the Treasury.

(5) The possibility of making a supplemental resolution instrument in reliance on subsection (2) is without prejudice to the possibility of making a new instrument in accordance with section 12A(2) (and not in reliance on subsection (2) above).

48V Onward transfer

(1) This section applies where the Bank of England has made a resolution instrument ("the original instrument") providing for securities issued by a specified bank to be transferred to any person.

(2) The Bank of England may make one or more onward transfer resolution instruments.

(3) An onward transfer resolution instrument is a resolution instrument which—

(a) provides for the transfer of—

(i) securities which were issued by the bank before the original instrument and have been transferred by the original instrument or a supplemental resolution instrument, or

(ii) securities which were issued by the bank after the original instrument;

(b) makes other provision for the purposes of, or in connection with, the transfer of securities issued by the bank (whether the transfer has been or is to be effected by that instrument, by another instrument or otherwise).

(4) An onward transfer resolution instrument may not transfer securities to the transferor under the original instrument.

(5) Sections 7 and 8A do not apply to an onward transfer resolution instrument (but it is to be treated in the same way as any other resolution instrument for all other purposes, including for the purposes of the application of a power under this Part).

(6) Before making an onward transfer resolution instrument the Bank of England must consult—

(a) the PRA,

(b) the FCA, and

(c) the Treasury.

(7) Section 48U applies where the Bank of England has made an onward transfer resolution instrument.

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48W Reverse transfer

(1) This section applies where the Bank of England has made an instrument ("the original instrument") that is either—

(a) a resolution instrument providing for the transfer of securities issued by a bank to a person ("the transferee"), or

(b) an onward transfer resolution instrument (see section 48V) providing for the transfer of securities issued by a bank to a person ("the onward transferee").

(2) In a case falling within subsection (1)(a) the Bank of England may make one or more reverse transfer resolution instruments in respect of securities issued by the bank and held by the transferee (whether or not they were transferred by the original instrument).

(3) In a case falling within subsection (1)(b), the Bank of England may make one or more reverse transfer resolution instruments in respect of securities issued by the bank and held by the onward transferee.

(4) A reverse transfer resolution instrument is a resolution instrument which—

(a) provides for transfer to the transferor under the original instrument;

(b) makes other provision for the purposes of, or in connection with, the transfer of securities which are, or could be or could have been, transferred under paragraph (a).

(5) Except where subsection (6) applies, the Bank of England may make a reverse transfer resolution instrument under subsection (2) only with the written consent of the transferee.

(6) This subsection applies where the transferee is—

(a) a bail-in administrator, or

(b) a person who is not to be authorised to exercise any rights attaching to the securities except on the Bank of England's instructions.

(7) The Bank of England may make a reverse transfer resolution instrument under subsection (3) only with the written consent of the onward transferee.

(8) Sections 7 and 8A do not apply to a reverse transfer resolution instrument (but it is to be treated in the same way as any other resolution instrument for all other purposes including for the purposes of an application of a power under this Part).

(9) Before making a reverse transfer resolution instrument the Bank of England must consult—

(a) the PRA,

(b) the FCA, and

(c) the Treasury.

(10) Section 48U applies where the Bank of England has made a reverse transfer resolution instrument."

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Commencement Information

I130 Sch. 2 para. 4 in force at 1.3.2014 for specified purposes by S.I. 2014/377, art. 2(1)(b), **Sch. Pt. 2**

I131 Sch. 2 para. 4 in force at 31.12.2014 in so far as not already in force by S.I. 2014/3160, **art. 2(1)(b)**

Transfers of property

5 (1) After section 41 insert—

"**41A Transfer of property subsequent to resolution instrument**

(1) This section applies where the Bank of England has made a resolution instrument.

(2) The Bank of England may make one or more property transfer instruments in respect of property, rights or liabilities of the bank.

(3) Sections 7 and 8A do not apply to a property transfer instrument under subsection (2).

(4) Before making a property transfer instrument under subsection (2) the Bank of England must consult—

(a) the PRA,

(b) the FCA, and

(c) the Treasury."

(2) In section 42 (supplemental property transfer instruments)—

(a) in subsection (1) for "12(2)" substitute " 12(2) or 41A(2) ";

(b) in subsection (4) for "and 8" substitute " , 8 and 8A ";

(c) in subsection (6) for "or 12(2)" substitute " , 12(2) or 41A(2) ".

(3) After section 44 insert—

"**44A Bail in: reverse property transfer**

(1) This section applies where the Bank of England has made a property transfer instrument in accordance with section 41A(2) ("the original instrument").

(2) The Bank of England may make one or more bail-in reverse property transfer instruments in respect of property, rights or liabilities of the transferee under the original instrument.

(3) A bail-in reverse property transfer instrument is a property transfer instrument which—

(a) provides for a transfer to the transferor under the original instrument;

(b) makes other provision for the purposes of, or in connection with, the transfer of property, rights or liabilities which are, or could be or could have been, transferred under paragraph (a) (whether the transfer has been or is to be effected by that instrument or otherwise).

(4) The Bank of England may make a bail-in reverse property transfer instrument only with the written consent of the transferee under the original instrument.

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(5) Sections 7 and 8A do not apply to a bail-in reverse property transfer instrument (but it is to be treated in the same way as any other property transfer instrument for all other purposes, including for the purposes of the application of a power under this Part).

(6) Before making a bail-in reverse property transfer instrument the Bank of England must consult—

(a) the PRA,

(b) the FCA, and

(c) the Treasury.

(7) Section 42 (supplemental instruments) applies where the Bank of England has made a bail-in reverse property transfer instrument.

44B Property transfer instruments: special bail-in provision

(1) A property transfer instrument under section 12(2) or 41A(2), or an associated supplemental property transfer instrument, may make special bail-in provision with respect to the bank (see section 48B).

(2) The reference in subsection (1) to an "associated" supplemental property transfer instrument is to a supplemental property transfer instrument in relation to which the original instrument (as defined in section 42(1)) is a property transfer instrument under section 12(2) or 41A(2).

(3) In the case of a property transfer instrument under section 12(2), or a supplemental property transfer instrument in relation to which the original instrument is a property transfer instrument under section 12(2), the power under subsection (1) to make the provision described in section 48B(1)(b) (see also rule 3(a) and (b) of section 48B(5)) includes power to make provision replacing a liability (of any form) of the bank mentioned in subsection (1) with a security (of any form or class) of the bridge bank mentioned in section 12(1).

(4) Where securities of the bridge bank ("B") are, as a result of subsection (3), held by a person other than the Bank of England, that does not prevent B from being regarded for the purposes of this Part (see particularly section 12(1)) as being wholly owned by the Bank of England, as long as the Bank of England continues to hold all the ordinary shares issued by B.

44C Report on special bail-in provision

(1) This section applies where the Bank of England makes a property transfer instrument containing provision made in reliance on section 44B.

(2) The Bank of England must report to the Chancellor of the Exchequer stating the reasons why that provision was made in the case of the liabilities concerned.

(3) If the provision departs from the insolvency treatment principles, the report must state the reasons why it does so.

(4) The insolvency treatment principles are that where an instrument includes special bail-in provision—

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(a) the provision made by the instrument must be consistent with treating all the liabilities of the bank in accordance with the priority they would enjoy on a liquidation, and

(b) any creditors who would have equal priority on a liquidation are to bear losses on an equal footing with each other.

(5) A report must comply with any other requirements as to content that may be specified by the Treasury.

(6) A report must be made as soon as reasonably practicable after the making of the property transfer instrument to which it relates.

(7) The Chancellor of the Exchequer must lay a copy of each report under subsection (2) before Parliament."

(4) In section 48A (creation of liabilities), in subsection (1), after "44(4)(c)" insert " , 44A(3)(b) ".

Commencement Information

I132 Sch. 2 para. 5 in force at 31.12.2014 by S.I. 2014/3160, **art. 2(1)(b)**

Compensation

6 (1) In section 49 (orders)—

(a) in subsection (1), for "three" substitute " four " and for "and property transfer instruments" substitute " , property transfer instruments and orders and resolution instruments ";

(b) after subsection (2) insert—

"(2A) A "bail-in compensation order" is an order establishing a scheme for determining, in accordance with section 52A, whether any transferors or others should be paid compensation."

(2) In section 52 (transfer to bridge bank), in subsection (3)(b), for "specified classes of creditor," substitute " persons of a specified description, ".

(3) After section 52 insert—

"**52A Bail-in option**

(1) Subsection (2) applies if the Bank of England makes—

(a) a resolution instrument under section 12A(2), or

(b) a property transfer instrument under section 41A(2).

(2) The Treasury must make a bail-in compensation order (see section 49(2A)).

(3) A bail-in compensation order may include provision for—

(a) an independent valuer (in which case sections 54 to 56 are to apply);

(b) valuation principles (in which case section 57(2) to (5) is to apply)."

(4) In section 53 (onward and reverse transfers), in subsection (1)—

(a) before paragraph (za) insert—

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"(zza) the Bank of England makes a supplemental share transfer instrument under section 26,";

(b) after paragraph (za) insert—

"(zb) the Treasury makes a supplemental share transfer order under section 27,";

(c) after paragraph (d) insert—

"(dza) the Bank of England makes a supplemental property transfer instrument under section 42,";

(d) after paragraph (f) insert—

"(fa) the Bank of England makes a reverse property transfer instrument under section 44A(2),";

(e) omit the "or" after paragraph (g);

(f) after paragraph (h) insert—

"(i) the Bank of England makes a supplemental resolution instrument under section 48U,

(j) the Bank of England makes an onward transfer resolution instrument under section 48V(2), or

(k) the Bank of England makes a reverse transfer resolution instrument under section 48W(2) or (3).";

(g) in the heading, after "**transfers**" insert " **etc** ".

(5) In section 54 (independent valuer)—

(a) in subsection (1), after "compensation scheme order" insert " or bail-in compensation order ";

(b) in subsection (4)(b), after "order" insert " or bail-in compensation order ".

(6) In section 56 (independent valuer: money), in subsection (2)(b) for "or third party compensation order" substitute " , third party compensation order or bail-in compensation order ".

(7) In section 57 (valuation principles), in subsection (1), after "order" insert " or bail-in compensation order ".

(8) After section 60 insert—

"**60A Further mandatory provision: bail-in provision**

(1) The Treasury may make regulations about compensation arrangements in the case of—

(a) resolution instruments under section 12A(2) and supplemental resolution instruments under section 48U(2), and

(b) instruments (made under any provision) that include special bail-in provision.

(2) Regulations may—

(a) require a resolution fund order, a compensation scheme order, a third party compensation order or a bail-in compensation order to include provision of a specified kind or to specified effect;

(b) make provision that is to be treated as forming part of any such order (whether (i) generally, (ii) only if applied, (iii) unless disapplied, or (iv) subject to express modification).

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(3) Regulations may provide for whether compensation is to be paid, and if so what amount is to be paid, to be determined by reference to any factors or combination of factors; in particular, the regulations may provide for entitlement—

(a) to depend in part upon the amounts which are or may be payable under a resolution fund order;

(b) to be contingent upon the occurrence or non-occurrence of specified events;

(c) to be determined wholly or partly by an independent valuer (within the meaning of sections 54 to 56) appointed in accordance with a compensation scheme order or bail-in compensation order.

(4) Regulations may make provision about payment including, in particular, provision for payments—

(a) on account subject to terms and conditions;

(b) by instalment.

(5) Regulations—

(a) are to be made by statutory instrument, and

(b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

60B Principle of no less favourable treatment

(1) In making regulations under section 60A the Treasury must, in particular, have regard to the desirability of ensuring that pre-resolution shareholders and creditors of a bank do not receive less favourable treatment than they would have received had the bank entered insolvency immediately before the coming into effect of the initial instrument.

(2) References in this section to the initial instrument are—

(a) in relation to compensation arrangements in the case of property transfer instruments under section 12(2), to the first instrument to be made under that provision with respect to the bank;

(b) in relation to compensation arrangements in other cases, to the first resolution instrument to be made under section 12A with respect to the bank.

(3) The "pre-resolution shareholders and creditors" of a bank are the persons who held securities issued by the bank, or were creditors of the bank, immediately before the coming into effect of the initial instrument.

(4) References in this section to insolvency include a reference to (i) liquidation, (ii) bank insolvency, (iii) administration, (iv) bank administration, (v) receivership, (vi) composition with creditors, and (vii) a scheme of arrangement."

(9) In section 61(1) (sources of compensation),—

(a) omit the "and" at the end of paragraph (c);

(b) after paragraph (c) insert—

"(ca) bail-in compensation orders,";

(c) after paragraph (d) insert, ", and

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"(e) regulations under section 60A."

(10) In section 62(1) (procedure), omit the "and" at the end of paragraph (b), and after that paragraph insert—

"(ba) bail-in compensation orders, and".

Commencement Information

I133 Sch. 2 para. 6(1)-(7)(9)(10) in force at 31.12.2014 by S.I. 2014/3160, **art. 2(1)(b)**

I134 Sch. 2 para. 6(8) in force at 1.3.2014 for specified purposes by S.I. 2014/377, art. 2(1)(b), **Sch. Pt. 2**

I135 Sch. 2 para. 6(8) in force at 31.12.2014 in so far as not already in force by S.I. 2014/3160, **art. 2(1)(b)**

Groups

7 (1) After section 81B insert—

"**81BA Bail-in option**

(1) The Bank of England may exercise a stabilisation power in respect of a banking group company in accordance with section 12A(2) if the following conditions are met.

(2) Condition 1 is that the PRA is satisfied that the general conditions for the exercise of a stabilisation power set out in section 7 are met in respect of a bank in the same group.

(3) Condition 2 is that the Bank of England is satisfied that the exercise of the power in respect of the banking group company is necessary, having regard to the public interest in—

(a) the stability of the financial systems of the United Kingdom,

(b) the maintenance of public confidence in the stability of those systems,

(c) the protection of depositors, or

(d) the protection of any client assets that may be affected.

(4) Condition 3 is that the banking group company is an undertaking incorporated in, or formed under the law of any part of, the United Kingdom.

(5) Before determining whether Condition 2 is met, and if so how to react, the Bank of England must consult—

(a) the Treasury,

(b) the PRA, and

(c) the FCA.

(6) In exercising a stabilisation power in reliance on this section the Bank of England must have regard to the need to minimise the effect of the exercise of the power on other undertakings in the same group."

(2) After section 81C insert—

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"**81CA Section 81BA: supplemental**

(1) This section applies where the Bank of England has power under section 81BA to exercise a stabilisation power in respect of a banking group company.

(2) The provisions relating to the stabilisation powers and the bank administration procedure contained in this Act (except sections 7 and 8A) and any other enactment apply (with any necessary modifications) as if the banking group company were a bank.

(3) Where the banking group company mentioned in subsection (1) is a parent undertaking of the bank mentioned in section 81BA(2) ("the bank")—

(a) the provisions in this Act relating to resolution instruments are to be read in accordance with the general rule in subsection (4), but

(b) that is subject to the modifications in subsection (5);

and provisions in this Act and any other enactment are to be read with any modifications that may be necessary as a result of paragraphs (a) and (b).

(4) The general rule is that the provisions in this Act relating to resolution instruments (including supplemental resolution instruments) are to be read (so far as the context permits)—

(a) as applying in relation to the bank as they apply in relation to the parent undertaking, and

(b) so, in particular, as allowing any provision that may be made in a resolution instrument in relation to the parent undertaking to be made (also or instead) in relation to the bank.

(5) Where the banking group company mentioned in subsection (1) is a parent undertaking of the bank mentioned in section 81BA(2) ("the bank")—

(a) section 41A (transfer of property subsequent to resolution instrument) applies as if the reference in subsection (2) to the bank were to the parent undertaking, the bank and any other bank which is or was in the same group;

(b) section 48V (onward transfer)—

(i) applies as if the references in subsection (3) to "the bank" included the bank, the parent undertaking and any other bank which is or was in the same group, and with the omission of subsection (4) of that section, and

(ii) is to be read as permitting the transfer of securities only if they are held by (or for the benefit of) the parent undertaking or a subsidiary company of the parent undertaking;

(c) section 48W (reverse transfer) applies as if the references in subsections (2) and (3) to "the bank" included the bank, the parent undertaking and any other bank which is or was in the same group.

(6) Where section 48B (special bail-in provision) applies in accordance with subsection (4) (so that section 48B applies in relation to the bank mentioned in section 81BA(2) as it applies in relation to the parent undertaking mentioned in subsection (3)), the provision that may be made in accordance with section 48B(1)(b) (see also rule 3(a) and (b) of section 48B(5)) includes

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provision replacing a liability (of any form) of that bank with a security (of any form or class) of the parent undertaking.

(7) Where the banking group company mentioned in subsection (1) is a parent undertaking of the bank mentioned in section 81BA(2)—

(a) section 214B of the Financial Services and Markets Act 2000 (contribution to costs of special resolution regime) applies, and

(b) the reference in subsection (1)(b) of that section to the bank, and later references in that section, are treated as including references to any other bank which is a subsidiary undertaking of the parent undertaking (but not the parent undertaking itself).”

(3) In section 81D (interpretation: “banking group company” etc)—

(a) in subsection (6), for “, 81C” substitute “ to 81CA ”;

(b) in subsection (7) for “section 81B” substitute “ sections 81B to 81CA ”.

Commencement Information

I136 Sch. 2 para. 7 in force at 31.12.2014 by S.I. 2014/3160, **art. 2(1)(b)**

Banks regulated by the Financial Conduct Authority

8 In section 83A (modifications of Part 1 as it applies to banks not regulated by the Prudential Regulation Authority), in the table in subsection (2) insert the following entries at the appropriate places—

“Section 8A	Subsection (3)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorised person.””
““Section 41A	Subsection (4)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorised person.””
““Section 44A	Subsection (6)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorised person.””
““Section 48H	Subsection (5)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorised person.
Section 48U	Subsection (4)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorised person.
Section 48V	Subsection (6)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorised person.

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Section 48W	Subsection (9)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorised person.””
““Section 81BA	Subsection (5)(b) does not apply unless the bank has as a member of its immediate group a PRA-authorised person.”

Commencement Information
I137 Sch. 2 para. 8 in force at 31.12.2014 by S.I. 2014/3160, **art. 2(1)(b)**

Recognised central counterparties

9 In section 89B (application of Part 1 of the Act to recognised central counterparties) —

(a) in subsection (1), before paragraph (a) insert—
“(za) subsection (1A),”;

(b) after subsection (1) insert—

“(1A) The provisions relating to the third stabilisation option (bail-in) are to be disregarded in the application of this Part to recognised central counterparties.”;

(c) in subsection (2), in the substituted section 13(1), for “ third ” substitute “fourth”.

Commencement Information
I138 Sch. 2 para. 9 in force at 31.12.2014 by S.I. 2014/3160, **art. 2(1)(b)**

Insolvency proceedings

10 In section 120 (notice to Prudential Regulation Authority of preliminary steps to certain insolvency proceedings)—

(a) in subsection (7)(b)(ii), after “Part 1” insert “ (and Condition 5 has been met, if applicable) ”;

(b) after subsection (8) insert—

“(8A) Condition 5—

(a) applies only if a resolution instrument has been made under section 12A with respect to the bank in the 3 months ending with the date on which the PRA receives the notification under Condition 1, and

(b) is that the Bank of England has informed the person who gave the notice that it consents to the insolvency procedure to which the notice relates going ahead.”;

(c) in subsection (10), omit the “and” at the end of paragraph (b), and after paragraph (c) insert “, and

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(d) if Condition 5 applies, the Bank of England must, within the period in Condition 3(a), inform the person who gave the notice whether or not it consents to the insolvency procedure to which the notice relates going ahead.";

(d) after subsection (10) insert—

"(11) References in this section to the insolvency procedure to which the notice relates are to the procedure for the determination, resolution or appointment in question (see subsections (1) to (4))."

Commencement Information

I139 Sch. 2 para. 10 in force at 31.12.2014 by S.I. 2014/3160, **art. 2(1)(b)**

State aid

11 After section 256 insert—

"State aid

256A State aid

(1) This section applies where—

(a) the Treasury are of the opinion that anything done, or proposed to be done, in connection with the exercise in relation to an institution of one or more of the stabilisation powers may constitute the granting of aid to which any of the provisions of Article 107 or 108 of the Treaty on the Functioning of the European Union applies ("State aid"), and

(b) section 145A (power to direct bank administrator) does not apply.

(2) The Treasury may, in writing, direct any bail-in administrator, or any director of the institution, to take specified action to enable the United Kingdom to pursue any of the purposes specified in subsection (3) of section 145A (read with subsection (9) of that section).

(3) Before giving a direction under this section the Treasury must consult the person to whom the direction is to be given.

(4) The person must comply with the direction within the period of time specified in the direction, or, if no period of time is specified, as soon as is reasonably practicable.

(5) A direction under this section is enforceable on an application made by the Treasury, by injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.

(6) A direction under this section may specify circumstances in which the person given the direction is immune from liability in damages.

(7) Immunity by virtue of subsection (6) does not extend to action—

(a) in bad faith, or

(b) in contravention of section 6(1) of the Human Rights Act 1998.

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(8) Where a direction under this section is given to a director of the institution, the director is not to be regarded as failing to comply with any duty owed to any person (for example, a shareholder, creditor or employee of the institution) by virtue of any action in compliance with the direction."

Commencement Information
I140 Sch. 2 para. 11 in force at 31.12.2014 by S.I. 2014/3160, **art. 2(1)(b)**

Other amendments of the Act

12 (1) Section 1 (overview) is amended as follows.

(2) In subsection (2)(a), for "three" substitute " four ".

(3) For subsection (3) substitute—

"(3) The four "stabilisation options" are—
(a) transfer to a private sector purchaser (section 11),
(b) transfer to a bridge bank (section 12),
(c) the bail-in option (section 12A), and
(d) transfer to temporary public ownership (section 13)."

(4) In subsection (4)—
(a) for "three" substitute " four ";
(b) before paragraph (a) insert—
"(za) the resolution instrument powers (sections 12A(2) and 48U to 48W),";
(c) in paragraph (b), after "33" insert " , 41A ".

Commencement Information
I141 Sch. 2 para. 12 in force at 31.12.2014 by S.I. 2014/3160, **art. 2(1)(b)**

13 In section 13 (temporary public ownership), in subsection (1), for "third" substitute " fourth ".

Commencement Information
I142 Sch. 2 para. 13 in force at 31.12.2014 by S.I. 2014/3160, **art. 2(1)(b)**

14 In section 17 (share transfers: effect)—
(a) in subsection (1), after "order" insert, " or by a resolution instrument ";
(b) in subsection (5), after "order" insert " or a resolution instrument ";
(c) in subsection (6), after "order" insert " or a resolution instrument ".

Commencement Information
I143 Sch. 2 para. 14 in force at 31.12.2014 by S.I. 2014/3160, **art. 2(1)(b)**

Status: *Point in time view as at 16/12/2015. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

15 In section 18 (share transfers: continuity), after subsection (5) insert—

"(6) This section applies to a resolution instrument as it applies to a share transfer instrument; and in relation to a resolution instrument references in this section to a "transfer" are to a transfer of securities (whether made by that or another resolution instrument) and "transferor" and "transferee" are to be read accordingly."

Commencement Information
I144 Sch. 2 para. 15 in force at 31.12.2014 by S.I. 2014/3160, **art. 2(1)(b)**

16 In section 44 (reverse property transfer)—

(a) in subsection (2), after "more" insert " bridge bank ";
(b) in subsection (3), after "more" insert " bridge bank ";
(c) in subsection (4), for "A reverse" substitute " A bridge bank reverse ";
(d) in subsection (4A)—
(i) after "make a" insert " bridge bank ", and
(ii) in paragraph (b), for "the reverse" substitute " the bridge bank reverse ";
(e) in subsection (5), for "a reverse" substitute " a bridge bank reverse ";
(f) in subsection (6), for "a reverse" substitute " a bridge bank reverse ";
(g) in subsection (7), for "a reverse" substitute " a bridge bank reverse ";
(h) in the heading, for "**Reverse**" substitute " **Bridge bank: reverse** ".

Commencement Information
I145 Sch. 2 para. 16 in force at 31.12.2014 by S.I. 2014/3160, **art. 2(1)(b)**

17 In section 63 (general continuity obligation: property transfers), in subsection (1)(a), for "or 12(2)" substitute " , 12(2) or 41A(2) ".

Commencement Information
I146 Sch. 2 para. 17 in force at 31.12.2014 by S.I. 2014/3160, **art. 2(1)(b)**

18 In section 66 (general continuity obligation: share transfers)—

(a) in subsection (1)(a), after "13(2)" insert " , or which falls within subsection (1A) ";
(b) in subsection (1)(d)(i), after "11(2)(a)" insert " , or in a case falling within subsection (1A) ";
(c) after subsection (1) insert—

"(1A) A bank falls within this subsection if a resolution instrument (or supplemental resolution instrument) has changed the ownership of the bank (wholly or partly) by providing for the transfer, cancellation or conversion from one form or class to another of securities issued by the bank (and the reference in subsection (1)(b) to "the transfer" includes such a cancellation or conversion)."

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Changes to legislation: *There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

Commencement Information
I147 Sch. 2 para. 18 in force at 31.12.2014 by S.I. 2014/3160, **art. 2(1)(b)**

19 In section 67 (special continuity obligation: share transfers), in subsection (4)(c), after "order" insert " or resolution instrument ".

Commencement Information
I148 Sch. 2 para. 19 in force at 31.12.2014 by S.I. 2014/3160, **art. 2(1)(b)**

20 In section 68 (continuity obligations: onward share transfers), in subsection (1)(a), after "transferred by" insert " a resolution instrument under section 12A(2) or supplemental resolution instrument under section 48U(2) or a ".

Commencement Information
I149 Sch. 2 para. 20 in force at 31.12.2014 by S.I. 2014/3160, **art. 2(1)(b)**

21 In section 71 (pensions), in subsection (1)—

(a) omit the "and" at the end of paragraph (b);

(b) after paragraph (c) insert ", and

(d) resolution instruments."

Commencement Information
I150 Sch. 2 para. 21 in force at 31.12.2014 by S.I. 2014/3160, **art. 2(1)(b)**

22 In section 72 (enforcement), in subsection (1)—

(a) omit the "or" at the end of paragraph (b);

(b) after paragraph (c) insert ", or

(d) a resolution instrument."

Commencement Information
I151 Sch. 2 para. 22 in force at 31.12.2014 by S.I. 2014/3160, **art. 2(1)(b)**

23 In section 73 (disputes), in subsection (1)—

(a) omit the "and" at the end of paragraph (b);

(b) after paragraph (c) insert ", and

(d) resolution instruments."

Commencement Information
I152 Sch. 2 para. 23 in force at 31.12.2014 by S.I. 2014/3160, **art. 2(1)(b)**

24 In section 74 (tax), in subsection (6), for "or 45" substitute " , 45, 48U or 48V ".

Status: *Point in time view as at 16/12/2015. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

Commencement Information
I153 Sch. 2 para. 24 in force at 31.12.2014 by S.I. 2014/3160, **art. 2(1)(b)**

25 After section 80 insert—

"**80A Transfer for bail-in purposes: report**

(1) This section applies where the Bank of England makes one or more resolution instruments under section 12A(2) in respect of a bank.

(2) The Bank of England must, on request by the Treasury, report to the Chancellor of the Exchequer about—

(a) the exercise of the power to make a resolution instrument under section 12A(2),

(b) the activities of the bank, and

(c) any other matters in relation to the bank that the Treasury may specify.

(3) In relation to the matters in subsection (2)(a) and (b), the report must comply with any requirements that the Treasury may specify.

(4) The Chancellor of the Exchequer must lay a copy of each report under subsection (2) before Parliament."

Commencement Information
I154 Sch. 2 para. 25 in force at 31.12.2014 by S.I. 2014/3160, **art. 2(1)(b)**

26 In section 81A (accounting information to be included in reports under sections 80 and 81)—

(a) in subsection (1), for "or 81" substitute " , 80A(2)(b) or 81 ";

(b) in the heading, for "**and 81**" substitute " **, 80A(2)(b) and 81** ".

Commencement Information
I155 Sch. 2 para. 26 in force at 31.12.2014 by S.I. 2014/3160, **art. 2(1)(b)**

27 In section 85 (temporary public ownership), in subsection (1), for "third" substitute " fourth ".

Commencement Information
I156 Sch. 2 para. 27 in force at 31.12.2014 by S.I. 2014/3160, **art. 2(1)(b)**

28 In section 136 (overview), in the Table in subsection (3), for "152" substitute " 152A ".

Status: *Point in time view as at 16/12/2015. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

Commencement Information
I157 Sch. 2 para. 28 in force at 31.12.2014 by S.I. 2014/3160, **art. 2(1)(b)**

29 After section 152 insert—

"**152A Property transfer from transferred institution**

(1) This section applies where the Bank of England—

(a) makes a resolution instrument that transfers securities issued by a bank (or a bank's parent undertaking), in accordance with section 12A(2), and

(b) later makes a property transfer instrument from the bank or from another bank which is or was in the same group as the bank, in accordance with section 41A(2).

(2) This Part applies to the transferor under the property transfer instrument made in accordance with section 41A(2) as to the transferor under a property transfer instrument made in accordance with section 12(2).

(3) For that purpose this Part applies with any modifications specified by the Treasury in regulations; and any regulations—

(a) are to be made by statutory instrument, and

(b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament."

Commencement Information
I158 Sch. 2 para. 29 in force at 31.12.2014 by S.I. 2014/3160, **art. 2(1)(b)**

30 In section 220 (insolvency etc), after subsection (4) insert—

"(4A) The fact that ownership of an authorised bank is transferred or otherwise changed as a result of a resolution instrument (or an instrument treated as a resolution instrument) does not itself prevent the bank from relying on section 213."

Commencement Information
I159 Sch. 2 para. 30 in force at 31.12.2014 by S.I. 2014/3160, **art. 2(1)(b)**

31 In section 259 (statutory instruments)—

(a) in the Table in subsection (3), in Part 1, in the entry relating to section 60 for "Third party compensation" substitute " Third party compensation: partial property transfers ";

(b) in the Table in subsection (3), in Part 1, at the appropriate places insert—

"48F(1) and (2)	Power to amend definition of "excluded liabilities"	Draft affirmative resolution

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48G	Insolvency treatment principles	Draft resolution	affirmative
48P	Safeguarding of certain financial arrangements	Draft resolution	affirmative
52A	Bail-in compensation orders	Draft resolution””	affirmative

““60A	Third party compensation: instruments containing special bail-in provision	Draft resolution”;	affirmative

(c) in the Table in subsection (3), in Part 3, at the appropriate place insert—

“152A	Property transfer from transferred institution	Draft resolution”;	affirmative

(d) in subsection (5), after paragraph (d) insert—

“(da) section 60A (special resolution regime: instruments containing special bail-in provision),”;

(e) in subsection (5), after paragraph (k) insert—

“(ka) section 152A (bank administration: property transfer from transferred institution),”.

Commencement Information

I160 Sch. 2 para. 31 in force at 31.12.2014 by S.I. 2014/3160, **art. 2(1)(b)**

32 In section 261 (index of defined terms), in the Table, at the appropriate places insert—

“Bail-in compensation order	49””
““Resolution instrument	12A””
““Special bail-in provision	48B”.

Commencement Information

I161 Sch. 2 para. 32 in force at 31.12.2014 by S.I. 2014/3160, **art. 2(1)(b)**

PART 2

MODIFICATION OF INVESTMENT BANK SPECIAL ADMINISTRATION REGULATIONS 2011

33 (1) This paragraph modifies the application of the Investment Bank Special Administration Regulations 2011 (S.I. 2011/245) (“the regulations”) in cases where

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a resolution instrument has been made under section 12A of the Banking Act 2009 with respect to the investment bank in the relevant 3-month period.

(2) In sub-paragraph (1) "the relevant 3-month period" means the 3 months ending with the date on which the FCA receives the notification under Condition 1 in regulation 8 of the regulations.

(3) In their application to those cases, the regulations have effect with the modifications in sub-paragraph (4); and any enactment that refers to the regulations is to be read accordingly.

(4) In regulation 8 (in its application to those cases)—

(a) in paragraph (5)(c)(ii), for "appropriate regulator" substitute " Bank of England " and after "notice" insert " and the appropriate regulator ";

(b) in paragraph (6), omit sub-paragraph (a) (but continue to read "that" in sub-paragraph (b) as a reference to the insolvency procedure to which the notice relates);

(c) after paragraph (6) insert—

"(6A) Where the FCA receives notice under Condition 1, it must also inform the Bank of England of the contents of the notice.

(6B) Where the Bank of England receives notice under paragraph (6A), it must, within the period in Condition 3, inform the person who gave the notice and the appropriate regulator whether or not it consents to the insolvency procedure to which the notice relates going ahead."

Commencement Information

I162 Sch. 2 para. 33 in force at 31.12.2014 by S.I. 2014/3160, **art. 2(1)(b)**

SCHEDULE 3

Section 35

CONSEQUENTIAL AMENDMENTS RELATING TO PART 4

Financial Services and Markets Act 2000

VALID FROM 07/03/2016

1 (1) Section 59 of FSMA 2000 (approval for particular arrangements) is amended as follows.

(2) In subsection (1), for the words from "the appropriate regulator" to the end substitute " that person is acting in accordance with an approval given by the appropriate regulator under this section. "

(3) In subsection (2), for the words from "the appropriate regulator" to the end substitute " that person is acting in accordance with an approval given by the appropriate regulator under this section. "

Status: *Point in time view as at 16/12/2015. This version of this Act contains provisions that are not valid for this point in time.*
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2 (1) Section 59A of FSMA 2000 (specifying functions as controlled functions: supplementary) is amended as follows.

(2) In subsection (1)(a) and (b), for "significant-influence" substitute " senior management ".

(3) After subsection (3) insert—

"(3A) Senior management function" has the meaning given by section 59ZA."

Commencement Information

I163 Sch. 3 para. 2 in force at 25.7.2014 for specified purposes by S.I. 2014/1819, **art. 2(4)(a)**

VALID FROM 07/03/2016

3 (1) Section 63 of FSMA 2000 (withdrawal of approval) is amended as follows.

(2) In subsection (1A)(a), for "significant-influence function" substitute " relevant senior management function ".

(3) For subsection (1B) substitute—

"(1B) In subsection (1A) "relevant senior management function" means a function which the PRA is satisfied is a senior management function as defined in section 59ZA (whether or not the function has been designated as such by the FCA)."

VALID FROM 07/03/2016

4 In section 63A of FSMA 2000 (power to impose penalties), in subsection (2), for paragraph (b) substitute—

"(b) P, when performing the function, is not acting in accordance with an approval given under section 59."

VALID FROM 07/03/2016

5 (1) Section 66 of FSMA 2000 (disciplinary powers) is amended as follows.

(2) In subsection (3), for paragraph (ab) (and the "or" following it) substitute—

"(ab) impose, for such period as it considers appropriate, any conditions in relation to any such approval which it considers appropriate;

(ac) limit the period for which any such approval is to have effect;".

(3) In subsection (3A), for "restriction" substitute " condition ".

(4) In subsection (3B), for "or restriction" substitute " , condition or limitation ".

(5) In subsection (3C), for "restriction" substitute " condition ".

(6) In subsection (3D)—

(a) in paragraph (a), for "or restriction" substitute " , condition or limitation ",

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Changes to legislation: *There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

(b) omit the "or" at the end of paragraph (a),

(c) in paragraph (b), for "restriction" substitute " condition ", and

(d) after that paragraph insert—

"(c) vary a limitation so as to increase the period for which the approval is to have effect."

(7) In subsection (9), for "restriction" substitute " condition ".

VALID FROM 07/03/2016

6 (1) Section 67 of FSMA 2000 (disciplinary measures: procedure and right to refer to Tribunal) is amended as follows.

(2) In subsection (1), for "or (ab)" substitute " , (ab) or (ac) ".

(3) In subsection (2A), for "restriction" (in both places) substitute " condition ".

(4) After subsection (2A) insert—

"(2B) A warning notice about a proposal to limit the period for which an approval is to have effect must state the length of that period."

(5) In subsection (4), for "or (ab)" substitute " , (ab) or (ac) ".

(6) In subsection (5A), for "restriction" (in both places) substitute " condition ".

(7) After subsection (5A) insert—

"(5B) A decision notice about limiting the period for which an approval is to have effect must state the length of that period."

(8) In subsection (7), for "or (ab)" substitute " , (ab) or (ac) ".

7 In section 69 of FSMA 2000 (statement of policy), in subsection (1)—

(a) in paragraph (a), for "or restrictions" substitute " , conditions or limitations ";

(b) omit the "and" at the end of paragraph (b);

(c) in paragraph (c), for "restrictions" substitute " conditions ";

(d) at the end of paragraph (c) insert "; and

(d) the period for which approvals under section 59 are to have effect as a result of a limitation under section 66."

Commencement Information

I164 Sch. 3 para. 7 in force at 25.7.2014 by S.I. 2014/1819, **art. 2(4)(b)**

8 In section 138A of FSMA 2000 (modification or waiver of rules), in subsection (2), before paragraph (a) insert—

"(za) rules made by either regulator under section 64A (rules of conduct);".

Status: *Point in time view as at 16/12/2015. This version of this Act contains provisions that are not valid for this point in time.*
***Changes to legislation:** There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

Commencement Information
I165 Sch. 3 para. 8 in force at 25.7.2014 by S.I. 2014/1819, **art. 2(4)(b)**

9 In section 138D of FSMA 2000 (actions for damages), in subsection (5), before paragraph (a) insert—

"(za) rules under section 64A (rules of conduct);".

Commencement Information
I166 Sch. 3 para. 9 in force at 25.7.2014 by S.I. 2014/1819, **art. 2(4)(b)**

VALID FROM 07/03/2016

10 In section 140A of FSMA 2000 (interpretation), in the definition of "regulating provisions"—

(a) in paragraph (a)—

(i) omit sub-paragraph (iii), and

(ii) in sub-paragraph (iv), omit "64 or";

(b) in paragraph (b), omit sub-paragraphs (ii) and (iii).

VALID FROM 07/03/2016

11 In section 347 of FSMA 2000 (the record of authorised persons etc.), in subsection (2)(g), in sub-paragraphs (ii) and (iii), for "relevant authorised person" substitute " authorised person concerned ".

VALID FROM 07/03/2016

12 In section 387 of FSMA 2000 (warning notices), in subsection (1A), for "or 55I(8)" substitute " , 55I(8) or 61(2D) ".

VALID FROM 07/03/2016

13 In section 388 of FSMA 2000 (decision notices), in subsection (1A), for "or 55I(8)" substitute " , 55I(8) or 61(2D) ".

VALID FROM 07/03/2016

14 In section 395 of FSMA 2000 (supervisory notices), in subsection (13), after paragraph (a) insert—

"(aa) 63ZC(4), (8) or (9)(b);".

Status: *Point in time view as at 16/12/2015. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

VALID FROM 07/03/2016

15 (1) Section 415B of FSMA 2000 (consultation in relation to taking certain enforcement action) is amended as follows.

(2) In subsection (4)—

(a) in paragraph (b), for "significant-influence" substitute " relevant senior management ", and

(b) omit the definitions appearing after that paragraph.

(3) After subsection (4) insert—

"(5) In subsection (4)—

"arrangement" has the same meaning as in section 59;

"relevant senior management function" means a function which the FCA is satisfied is a senior management function as defined in section 59ZA (whether or not it has been designated as such under section 59(6A) or (6B))."

16 In Schedule 1ZA to FSMA 2000 (the Financial Conduct Authority), in paragraph 8(3)—

(a) in paragraph (b), omit "64 or";

(b) in paragraph (c)(i)—

(i) after "section" insert " 63ZD, ", and

(ii) omit "64,".

Commencement Information

I167 Sch. 3 para. 16(b)(i) in force at 25.7.2014 by S.I. 2014/1819, **art. 2(4)(b)**

17 In Schedule 1ZB to FSMA 2000 (the Prudential Regulation Authority), in paragraph 16(3)—

(a) omit paragraph (b);

(b) in paragraph (c)(i)—

(i) after "section" insert " 63ZD, ", and

(ii) omit "64,".

Commencement Information

I168 Sch. 3 para. 17(b)(i) in force at 25.7.2014 by S.I. 2014/1819, **art. 2(4)(b)**

Financial Services Act 2012

VALID FROM 07/03/2016

18 In section 14 of the Financial Services Act 2012, omit subsection (4).

19 (1) Section 85 of the Financial Services Act 2012 (relevant functions in relation to complaints scheme) is amended as follows.

Status: *Point in time view as at 16/12/2015. This version of this Act contains provisions that are not valid for this point in time.*
***Changes to legislation:** There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

(2) In subsection (4)—

(a) in paragraph (b), omit "64 or";

(b) in paragraph (c)(i)—

(i) after "section" insert " 63ZD, ", and

(ii) omit "64,".

(3) In subsection (5)—

(a) omit paragraph (b);

(b) in paragraph (c)(i)—

(i) after "section" insert " 63ZD, ", and

(ii) omit "64,".

Commencement Information

I169 Sch. 3 para. 19(2)(b)(i)(3)(b)(i) in force at 25.7.2014 by S.I. 2014/1819, **art. 2(4)(b)**

SCHEDULE 4

Section 40

THE PAYMENT SYSTEMS REGULATOR

Introductory

1 In this Schedule—

(a) "the Regulator" means the Payment Systems Regulator;

(b) references to the functions of the Regulator are to functions conferred on it by or under this Part.

Commencement Information

I170 Sch. 4 para. 1 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

Constitution

2 (1) The constitution of the Regulator must provide for it to have a board whose members are the directors of the Regulator.

(2) The board is to consist of the following members—

(a) a member to chair it, appointed by the FCA with the approval of the Treasury;

(b) a member to be the Managing Director, appointed by the FCA with the approval of the Treasury;

(c) one or more other members appointed by the FCA.

(3) The persons who may be appointed under sub-paragraph (2) include persons who are members of the FCA's governing body.

(4) A person may be appointed under sub-paragraph (2) only if the person has knowledge or experience which is likely to be relevant to the exercise by the Regulator of its functions.

Status: *Point in time view as at 16/12/2015. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

(5) A person appointed under sub-paragraph (2)(a) or (b) is liable to removal from office by the FCA (acting with the approval of the Treasury).

(6) A person appointed under sub-paragraph (2)(c) is liable to removal from office by the FCA.

Commencement Information
I171 Sch. 4 para. 2 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

Status

3 (1) The Regulator is not to be regarded as exercising functions on behalf of the Crown.

(2) The officers and staff of the Regulator are not to be regarded as Crown servants.

Commencement Information
I172 Sch. 4 para. 3 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

Budget

4 (1) The Regulator must adopt an annual budget which has been approved by the FCA.

(2) The budget must be adopted—

(a) in the case of the Regulator's first financial year, as soon as reasonably practicable after it is established, and

(b) in the case of each subsequent financial year, before the start of the financial year.

(3) The Regulator may, with the approval of the FCA, vary the budget for a financial year at any time after its adoption.

(4) Before adopting or varying a budget, the Regulator must consult—

(a) the Treasury, and

(b) such other persons (if any) as the Regulator considers appropriate.

(5) The Regulator must publish each budget, and each variation of a budget, in the way it considers appropriate.

Commencement Information
I173 Sch. 4 para. 4 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

Arrangements for discharging functions

5 (1) The Regulator may make arrangements for any of its functions to be discharged by—

(a) a committee, sub-committee, officer or member of staff of the Regulator;

(b) an officer or member of staff of the FCA.

This is subject to sub-paragraphs (2) to (4).

Status: *Point in time view as at 16/12/2015. This version of this Act contains provisions that are not valid for this point in time.*
***Changes to legislation:** There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

(2) In exercising any functions within sub-paragraph (3), the Regulator must act through its board.

(3) The functions referred to in sub-paragraph (2) are—

(a) giving general directions under section 54;

(b) imposing generally-imposed requirements under section 55.

(4) The function of issuing general guidance may not be discharged by an officer or member of staff of the Regulator or of the FCA.

Modifications etc. (not altering text)

C4 Sch. 4 paras. 5, 7, 9-14 applied (with modifications) (9.12.2015) by The Payment Card Interchange Fee Regulations 2015 (S.I. 2015/1911), regs. 1, **15(3)** (as amended (1.1.2024) by The Electronic Money, Payment Card Interchange Fee and Payment Services (Amendment) Regulations 2023 (S.I. 2023/790), **reg. 3(10)**)

Commencement Information

I174 Sch. 4 para. 5 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

Annual plan

6 (1) The Regulator must in respect of each of its financial years prepare an annual plan which has been approved by the FCA.

(2) The plan must be prepared—

(a) in the case of the Regulator's first financial year, as soon as reasonably practicable after it is established, and

(b) in the case of each subsequent financial year, before the start of the financial year.

(3) The Regulator may, with the approval of the FCA, vary the plan in respect of a financial year at any time after its preparation.

(4) An annual plan in respect of a financial year must set out—

(a) the aims of the Regulator for the year,

(b) how the extent to which each of those aims is met is to be determined,

(c) the relative priorities of each of those aims, and

(d) how its resources are to be allocated among the activities to be carried on in connection with the discharge of its functions.

(5) In sub-paragraph (4) references to aims for a financial year include aims for a longer period that includes that year.

(6) Before preparing or varying an annual plan, the Regulator must consult—

(a) the Treasury, and

(b) such other persons (if any) as the Regulator considers appropriate.

(7) The Regulator must publish each annual plan, and each variation of an annual plan, in the way it considers appropriate.

Status: *Point in time view as at 16/12/2015. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

Commencement Information

I175 Sch. 4 para. 6 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

Annual report

7 (1) At least once a year, the Regulator must make a report to the FCA in relation to the discharge of its functions.

(2) The report must—

(a) set out the extent to which the Regulator has met its aims and priorities for the period covered by the report,

(b) set out the extent to which the Regulator has advanced its payment systems objectives,

(c) include a copy of its latest accounts, and

(d) comply with any requirement specified in rules made by the FCA.

(3) The Regulator must publish each report in the way it considers appropriate.

(4) Nothing in this paragraph requires the Regulator to make a report at any time in the period of 12 months beginning with its establishment.

(5) The Treasury may—

(a) require the Regulator to comply with any provision of the Companies Act 2006 about accounts and their audit which would not otherwise apply to it, or

(b) direct that any provision of that Act about accounts and their audit is to apply to the Regulator with such modifications as are specified in the direction, whether or not the provision would otherwise apply to it.

(6) Compliance with any requirement under sub-paragraph (5)(a) or (b) is enforceable by injunction or, in Scotland, an order for specific performance under section 45 of the Court of Session Act 1988.

(7) Proceedings under sub-paragraph (6) may be brought only by the Treasury.

(8) The FCA's power to make rules under sub-paragraph (2)(d) is to be treated as if it were a power of the FCA to make rules under FSMA 2000 (and rules made under sub-paragraph (2)(d) are to be treated accordingly).

Modifications etc. (not altering text)

C4 Sch. 4 paras. 5, 7, 9-14 applied (with modifications) (9.12.2015) by The Payment Card Interchange Fee Regulations 2015 (S.I. 2015/1911), regs. 1, **15(3)** (as amended (1.1.2024) by The Electronic Money, Payment Card Interchange Fee and Payment Services (Amendment) Regulations 2023 (S.I. 2023/790), **reg. 3(10)**)

Commencement Information

I176 Sch. 4 para. 7 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

Status: *Point in time view as at 16/12/2015. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

Audit of accounts

8 (1) The Regulator must send a copy of its annual accounts to the Comptroller and Auditor General and the Treasury as soon as is reasonably practicable.

(2) The Comptroller and Auditor General must—

(a) examine, certify and report on accounts received under this paragraph, and

(b) send a copy of the certified accounts and the report to the Treasury.

(3) The Treasury must lay the copy of the certified accounts and the report before Parliament.

(4) The Regulator must send a copy of the certified accounts and the report to the FCA.

(5) Except as provided for by paragraph 7(5), the Regulator is exempt from the requirements of Part 16 of the Companies Act 2006 (audit) and its balance sheet must contain a statement to that effect.

(6) In this paragraph "annual accounts" has the meaning given by section 471 of the Companies Act 2006.

Commencement Information

I177 Sch. 4 para. 8 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

Funding

9 (1) For the purposes mentioned in sub-paragraph (2) the FCA may make rules requiring participants in regulated payment systems to pay to the FCA specified amounts or amounts calculated in a specified way.

(2) The purposes are—

(a) meeting the relevant costs (see sub-paragraph (3)), and

(b) enabling the Regulator to maintain adequate reserves.

(3) In this paragraph "the relevant costs" means—

(a) the expenses incurred, or expected to be incurred, by the Regulator in connection with the discharge of its functions,

(b) the expenses incurred by the FCA in establishing the Regulator,

(c) any other expenses incurred by the FCA in connection with the discharge of its functions under this Part, and

(d) any expenses incurred, or expected to be incurred, by the FCA in connection with the discharge of the Regulator's functions by an officer or member of staff of the FCA under arrangements made under paragraph 5.

For the purposes of paragraph (b) it does not matter when the expenses were incurred.

(4) Before making any rules under sub-paragraph (1) the FCA must consult the Treasury.

(5) The amounts to be paid under the rules may include a component to cover the expenses of the FCA in collecting the payments ("collection costs").

(6) The FCA must pay to the Regulator the amounts that it receives under the rules, apart from the following amounts (which it may keep)—

(a) amounts in respect of expenses falling within sub-paragraph (3)(b) to (d);

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Changes to legislation: *There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

(b) amounts in respect of its collection costs.

(7) In this paragraph "specified" means specified in the rules.

(8) The FCA's power to make rules under this paragraph is to be treated as if it were a power of the FCA to make rules under FSMA 2000 (and rules made under this paragraph are to be treated accordingly).

(9) But the requirements to carry out a cost benefit analysis under section 138I of FSMA 2000 do not apply in relation to rules made under this paragraph.

Modifications etc. (not altering text)

C4 Sch. 4 paras. 5, 7, 9-14 applied (with modifications) (9.12.2015) by The Payment Card Interchange Fee Regulations 2015 (S.I. 2015/1911), regs. 1, **15(3)** (as amended (1.1.2024) by The Electronic Money, Payment Card Interchange Fee and Payment Services (Amendment) Regulations 2023 (S.I. 2023/790), **reg. 3(10)**)

Commencement Information

I178 Sch. 4 para. 9 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

Penalty receipts

10 (1) The Regulator must in respect of each of its financial years pay to the Treasury its penalty receipts after deducting its enforcement costs.

(2) The Regulator's "penalty receipts" in respect of a financial year are any amounts received by it during the year by way of penalties imposed under section 73.

(3) The Regulator's "enforcement costs" in respect of a financial year are the expenses incurred by it during the year in connection with—

(a) the exercise, or consideration of the possible exercise, of any of its enforcement powers in particular cases, or

(b) the recovery of penalties imposed under section 73.

(4) For the purposes of sub-paragraph (3) the Regulator's enforcement powers are—

(a) its powers under sections 72 to 75;

(b) its powers under any other enactment specified by the Treasury by order;

(c) its powers in relation to the investigation of relevant offences;

(d) its powers in England and Wales or Northern Ireland in relation to the prosecution of relevant offences.

(5) In sub-paragraph (4) "relevant offences" means—

(a) offences under this Part;

(b) any other offences specified by the Treasury by order.

(6) The Treasury may give directions to the Regulator as to how it is to comply with its duty under sub-paragraph (1).

(7) The directions may in particular—

(a) specify descriptions of expenditure that are, or are not, to be regarded as incurred in connection with either of the matters mentioned in sub-paragraph (3),

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***Changes to legislation:** There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

(b) relate to the calculation and timing of the deduction in respect of the Regulator's enforcement costs, and

(c) specify the time when any payment is required to be made to the Treasury.

(8) The directions may also require the Regulator to provide the Treasury at specified times with specified information relating to—

(a) penalties that the Regulator has imposed under section 73, or

(b) the Regulator's enforcement costs.

(9) The Treasury must pay into the Consolidated Fund any sums received by them under this paragraph.

Modifications etc. (not altering text)

C4 Sch. 4 paras. 5, 7, 9-14 applied (with modifications) (9.12.2015) by The Payment Card Interchange Fee Regulations 2015 (S.I. 2015/1911), regs. 1, **15(3)** (as amended (1.1.2024) by The Electronic Money, Payment Card Interchange Fee and Payment Services (Amendment) Regulations 2023 (S.I. 2023/790), **reg. 3(10)**)

Commencement Information

I179 Sch. 4 para. 10 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

11 (1) The Regulator must prepare and operate a scheme ("the financial penalty scheme") for ensuring that the amounts that, as a result of the deduction for which paragraph 10(1) provides, are retained by the Regulator in respect of amounts paid to it by way of penalties imposed under section 73 are applied for the benefit of participants in regulated payment systems.

(2) The financial penalty scheme may, in particular, make different provision with respect to different classes of participant.

(3) The financial penalty scheme must ensure that those who have become liable to pay a penalty to the Regulator in any financial year do not receive any benefit under the scheme in the following financial year.

(4) Up-to-date details of the financial penalty scheme must be set out in a document (the "scheme details").

Modifications etc. (not altering text)

C4 Sch. 4 paras. 5, 7, 9-14 applied (with modifications) (9.12.2015) by The Payment Card Interchange Fee Regulations 2015 (S.I. 2015/1911), regs. 1, **15(3)** (as amended (1.1.2024) by The Electronic Money, Payment Card Interchange Fee and Payment Services (Amendment) Regulations 2023 (S.I. 2023/790), **reg. 3(10)**)

Commencement Information

I180 Sch. 4 para. 11 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

12 (1) The scheme details must be published by the Regulator in the way appearing to it to be best calculated to bring them to the attention of the public.

Status: *Point in time view as at 16/12/2015. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

(2) Before making the financial penalty scheme, the Regulator must publish a draft of the proposed scheme in the way appearing to the Regulator to be best calculated to bring it to the attention of the public.

(3) The draft must be accompanied by notice that representations about the proposals may be made to the Regulator within a specified time.

(4) Before making the scheme, the Regulator must have regard to any representations made to it in accordance with sub-paragraph (3).

(5) If the Regulator makes the proposed scheme, it must publish an account, in general terms, of—

(a) the representations made to it in accordance with sub-paragraph (3), and

(b) its response to them.

(6) If the scheme differs from the draft published under sub-paragraph (2) in a way which is, in the opinion of the Regulator, significant, the Regulator must (in addition to complying with sub-paragraph (5)) publish details of the difference.

(7) The Regulator must, without delay, give the Treasury a copy of any scheme details published by it.

(8) The Regulator may charge a reasonable fee for providing a person with a copy of—

(a) a draft published under sub-paragraph (2);

(b) scheme details.

(9) Sub-paragraphs (2) to (6) and (8)(a) also apply to a proposal to alter or replace the financial penalty scheme.

Modifications etc. (not altering text)

C4 Sch. 4 paras. 5, 7, 9-14 applied (with modifications) (9.12.2015) by The Payment Card Interchange Fee Regulations 2015 (S.I. 2015/1911), regs. 1, **15(3)** (as amended (1.1.2024) by The Electronic Money, Payment Card Interchange Fee and Payment Services (Amendment) Regulations 2023 (S.I. 2023/790), **reg. 3(10)**)

Commencement Information

I181 Sch. 4 para. 12 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

Records

13 The Regulator must maintain satisfactory arrangements for—

(a) recording decisions made in the exercise of its functions, and

(b) the safe-keeping of those records which it considers ought to be preserved.

Modifications etc. (not altering text)

C4 Sch. 4 paras. 5, 7, 9-14 applied (with modifications) (9.12.2015) by The Payment Card Interchange Fee Regulations 2015 (S.I. 2015/1911), regs. 1, **15(3)** (as amended (1.1.2024) by The Electronic Money, Payment Card Interchange Fee and Payment Services (Amendment) Regulations 2023 (S.I. 2023/790), **reg. 3(10)**)

Status: *Point in time view as at 16/12/2015. This version of this Act contains provisions that are not valid for this point in time.*
***Changes to legislation:** There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

Commencement Information
I182 Sch. 4 para. 13 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

Exemption from liability in damages

14 (1) None of the following is to be liable in damages for anything done or omitted in the discharge, or purported discharge, of the Regulator's functions—

(a) the Regulator;

(b) any person ("P") who is, or is acting as, an officer or member of staff of the Regulator;

(c) any person who could be held vicariously liable for things done or omitted by P, but only in so far as the liability relates to P's conduct.

(2) If the Regulator has made arrangements under paragraph 5 for any of its functions to be discharged by an officer or member of staff of the FCA, references in sub-paragraph (1) to a person who is an officer or member of staff of the Regulator include references to the officer or member of staff of the FCA.

(3) Anything done or omitted by a person mentioned in sub-paragraph (1)(b) or (c) while acting, or purporting to act, as a result of an appointment under section 82 or 83 is to be taken for the purposes of sub-paragraph (1) to have been done or omitted in the discharge or (as the case may be) purported discharge of the Regulator's functions.

(4) Sub-paragraph (1) does not apply—

(a) if the act or omission is shown to have been in bad faith, or

(b) so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful as a result of section 6(1) of the Human Rights Act 1998.

Modifications etc. (not altering text)
C4 Sch. 4 paras. 5, 7, 9-14 applied (with modifications) (9.12.2015) by The Payment Card Interchange Fee Regulations 2015 (S.I. 2015/1911), regs. 1, **15(3)** (as amended (1.1.2024) by The Electronic Money, Payment Card Interchange Fee and Payment Services (Amendment) Regulations 2023 (S.I. 2023/790), **reg. 3(10)**)

Commencement Information
I183 Sch. 4 para. 14 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

Freedom of information

15 In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (public authorities to which Act applies), at the appropriate place insert— " The Payment Systems Regulator established under section 40 of the Financial Services (Banking Reform) Act 2013. "

Commencement Information
I184 Sch. 4 para. 15 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

Status: *Point in time view as at 16/12/2015. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

Equality

16 In Part 1 of Schedule 19 to the Equality Act 2010 (public authorities: general), under the heading "*Industry, business, finance etc.*", at the appropriate place insert — " The Payment Systems Regulator established under section 40 of the Financial Services (Banking Reform) Act 2013. "

Commencement Information
I185 Sch. 4 para. 16 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

SCHEDULE 5

Section 79

PROCEDURE FOR APPEALS TO THE CMA

Functions of CMA to be discharged by group

1 Except where specified otherwise in this Schedule, the functions of the CMA with respect to an appeal are to be carried out on behalf of the CMA by a group constituted for the purpose by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013.

Commencement Information
I186 Sch. 5 para. 1 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

2 (1) Schedule 4 to the Enterprise and Regulatory Reform Act 2013 is amended as follows.

(2) In paragraph 35(1) (membership of CMA panel), after paragraph (c) insert—

"(ca) at least one person (a "payment systems panel member") appointed to the CMA panel under paragraph 1(1)(b) for the purpose of being available for selection as a member of a group constituted to carry out functions on behalf of the CMA with respect to an appeal made in accordance with section 79 of the Financial Services (Banking Reform) Act 2013 (a "specialist payment systems group");".

(3) In paragraph 38 (membership of CMA groups), after sub-paragraph (5) insert—

"(5A) In the case of a specialist payment systems group, the group must include at least one payment systems member."

(4) In paragraph 48 (performance of functions of chair with respect to constitution etc of CMA group), in sub-paragraph (4)(c), at the end insert—

"(v) Schedule 5 to the Financial Services (Banking Reform) Act 2013."

Commencement Information
I187 Sch. 5 para. 2 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

Status: *Point in time view as at 16/12/2015. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

Application for permission to bring appeal

3 (1) An application for permission to bring an appeal may be made only by sending a notice to the CMA requesting the permission.

(2) An application for permission to appeal must be accompanied by all such information as may be required by appeal rules.

(3) Appeal rules may require information contained in an application for permission to appeal to be verified by a statement of truth.

(4) A person who applies for permission to bring an appeal in accordance with this paragraph is referred to in this Schedule as the appellant.

(5) The appellant must send the Payment Systems Regulator—

(a) a copy of the application for permission to appeal at the same time as it is sent to the CMA, and

(b) such other information as may be required by appeal rules.

(6) The CMA's decision whether to grant permission to appeal is to be taken by an authorised member of the CMA.

(7) Before the authorised member decides whether to grant permission under this paragraph, the Payment Systems Regulator must be given an opportunity of making representations or observations, in accordance with paragraph 5(2).

(8) The CMA's decision on an application for permission must be made—

(a) where the Payment Systems Regulator makes representations or observations in accordance with paragraph 5(2), before the end of 10 working days beginning with the first working day after the day on which those representations or observations are received;

(b) in any other case, before the end of 14 working days beginning with the first working day after the day on which the application for permission was received.

(9) The grant of permission may be made subject to conditions, which may include—

(a) conditions which limit the matters that are to be considered on the appeal in question;

(b) conditions for the purpose of expediting the determination of the appeal;

(c) conditions requiring the appeal to be considered together with other appeals (including appeals relating to different matters or decisions and appeals brought by different persons).

(10) Where a decision is made to grant or to refuse an application for permission, an authorised member of the CMA must notify the decision, giving reasons, to the following persons—

(a) the appellant, and

(b) the Payment Systems Regulator.

(11) A decision of the CMA under this paragraph must be published, in such manner as an authorised member of the CMA considers appropriate, as soon as reasonably practicable after it is made.

(12) The CMA may exclude from publication under sub-paragraph (11) any information which it is satisfied is—

Status: *Point in time view as at 16/12/2015. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

(a) commercial information, the disclosure of which would, or might in the CMA's opinion, significantly harm the legitimate business interests of an undertaking to which it relates, or

(b) information relating to the private affairs of an individual, the disclosure of which would, or might in the CMA's opinion, significantly harm the individual's interests.

Commencement Information

I188 Sch. 5 para. 3 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

Suspension of decision

4 (1) The CMA may direct that, pending the determination of an appeal against a decision of the Payment Systems Regulator—

(a) the decision is not to have effect, or

(b) the decision is not to have effect to such extent as may be specified in the direction.

(2) The power to give a direction under this paragraph is exercisable only where—

(a) an application for its exercise has been made by the appellant at the same time as the appellant made an application in accordance with paragraph 3 for permission to bring an appeal against a decision of the Payment Systems Regulator,

(b) the Payment Systems Regulator has been given an opportunity of making representations or observations, in accordance with paragraph 5(2), and

(c) the balance of convenience does not otherwise require effect to be given to the decision pending that determination.

(3) The CMA's decision on an application for a direction under this paragraph must be made—

(a) where the Payment Systems Regulator makes representations or observations in accordance with paragraph 5(2), before the end of 10 working days beginning with the first working day after the day on which those representations or observations are received;

(b) in any other case, before the end of 14 working days beginning with the first working day following the day on which the application under sub-paragraph (2)(a) is received.

(4) The appellant must send the Payment Systems Regulator a copy of the application for a direction under this paragraph at the same time as it is sent to the CMA.

(5) The CMA's decision whether to give a direction is to be taken by an authorised member of the CMA.

(6) A direction under this paragraph must be—

(a) given by an authorised member of the CMA, and

(b) published, in such manner as an authorised member of the CMA considers appropriate, as soon as reasonably practicable after it is given.

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(7) Sub-paragraph (12) of paragraph 3 applies to the publication of a direction under sub-paragraph (6) of this paragraph as it applies to the publication of a decision under sub-paragraph (11) of that paragraph.

Commencement Information
I189 Sch. 5 para. 4 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

Time limit for representations and observations by the Regulator

5 (1) Sub-paragraph (2) applies where the Payment Systems Regulator wishes to make representations or observations to the CMA in relation to—

(a) an application for permission to bring an appeal under paragraph 3;

(b) an application for a direction under paragraph 4.

(2) The Payment Systems Regulator must make the representations or observations in writing before the end of 10 working days beginning with the first working day after the day on which it received a copy of the application under paragraph 3(5) or 4(4) (as the case may be).

(3) Sub-paragraph (4) applies where an application for permission to bring an appeal has been granted and the Payment Systems Regulator wishes to make representations or observations to the CMA in relation to—

(a) the Payment Systems Regulator's reasons for the decision in relation to which the appeal is being brought;

(b) any grounds on which that appeal is being brought against that decision.

(4) The Payment Systems Regulator must make the representations or observations in writing before the end of 15 working days beginning with the first working day after the day on which permission to bring the appeal was granted.

(5) The Payment Systems Regulator must send a copy of the representations and observations it makes under this paragraph to the appellant.

Commencement Information
I190 Sch. 5 para. 5 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

Consideration and determination of appeal by group

6 (1) A group constituted by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 for the purpose of carrying out functions of the CMA with respect to an appeal must consist of three members of the CMA panel.

(2) A decision of the group is effective if, and only if—

(a) all the members of the group are present when it is made, and

(b) at least two members of the group are in favour of the decision.

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Commencement Information
I191 Sch. 5 para. 6 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

Time limits for determining appeal

7 (1) The CMA must determine an appeal within the period of 6 months beginning with the permission date.

(2) If—

(a) the CMA has received representations on the timing of the determination from a party to the appeal, and

(b) it is satisfied that there are special reasons why the determination cannot be made within the period specified in sub-paragraph (1),

the CMA must determine the appeal within the period specified by it, which must not be longer than the period of 7 months beginning with the permission date.

(3) In a case where sub-paragraph (2) applies, the CMA must also—

(a) inform the parties to the appeal of the time limit for determining the appeal, and

(b) publish that time limit in such manner as it considers appropriate for the purpose of bringing it to the attention of any other persons likely to be affected by the determination.

(4) In this paragraph the "permission date" is the date on which the CMA gave permission to bring the appeal in accordance with section 76(8).

Commencement Information
I192 Sch. 5 para. 7 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

Matters to be considered on appeal

8 (1) The CMA, if it thinks it necessary to do so for the purpose of securing the determination of an appeal within the period provided for by paragraph 7, may disregard—

(a) any or all matters raised by an appellant that were not raised by that appellant at the time of the relevant application, and

(b) any or all matters raised by the Payment Systems Regulator that were not contained in representations or observations made for the purposes of the appeal in accordance with paragraph 5.

(2) In this paragraph "relevant application" means an application under paragraph 3 or 4.

Commencement Information
I193 Sch. 5 para. 8 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

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Production of documents etc

9 (1) For the purposes of this Schedule, the CMA may by notice—

(a) require a person to produce to the CMA the documents specified or otherwise identified in the notice;

(b) require any person who carries on a business to supply to the CMA such estimates, forecasts, returns or other information as may be specified or described in the notice in relation to that business.

(2) The power to require the production of a document, or the supply of any estimate, forecast, return or other information, is a power to require its production or, as the case may be, supply—

(a) at the time and place specified in the notice, and

(b) in a legible form.

(3) No person is to be compelled under this paragraph to produce a document or supply an estimate, forecast, return or other information which the person could not be compelled to produce in civil proceedings in the High Court or Court of Session.

(4) An authorised member of the CMA may, for the purpose of the exercise of the functions of the CMA, make arrangements for copies to be taken of a document produced or an estimate, forecast, return or other information supplied to it under this paragraph.

(5) A notice for the purposes of this paragraph—

(a) may be issued on the CMA's behalf by an authorised member of the CMA;

(b) must include information about the possible consequences of not complying with the notice (as set out in paragraph 13).

Commencement Information

I194 Sch. 5 para. 9 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

Oral hearings

10 (1) For the purposes of this Schedule an oral hearing may be held, and evidence may be taken on oath—

(a) by a person considering an application for permission to bring an appeal under paragraph 3,

(b) by a person considering an application for a direction under paragraph 4, or

(c) by a group with the function of determining an appeal;

and, for that purpose, such a person or group may administer oaths.

(2) The CMA may by notice require a person—

(a) to attend at a time and place specified in the notice, and

(b) at that time and place, to give evidence to a person or group mentioned in sub-paragraph (1).

(3) At any oral hearing the person or group conducting the hearing may—

(a) require the appellant or the Payment Systems Regulator, if present at the hearing, to give evidence or to make representations or observations, or

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(b) require a person attending the hearing as a representative of the appellant or of the Payment Systems Regulator to make representations or observations.

(4) A person who gives oral evidence at the hearing may be cross-examined by or on behalf of any party to the appeal.

(5) If the appellant, the Payment Systems Regulator, or the appellant's or Payment Systems Regulator's representative is not present at a hearing—

(a) there is no requirement to give notice to that person under sub-paragraph (2), and

(b) the person or group conducting the hearing may determine the application or appeal without hearing that person's evidence, representations or observations.

(6) No person is to be compelled under this paragraph to give evidence which the person could not be compelled to give in civil proceedings in the High Court or Court of Session.

(7) Where a person is required under this paragraph to attend at a place more than 10 miles from the person's place of residence, an authorised member of the CMA must arrange for the person to be paid the necessary expenses of attendance.

(8) A notice for the purposes of this paragraph may be issued on the CMA's behalf by an authorised member of the CMA.

Commencement Information

I195 Sch. 5 para. 10 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

Written statements

11 (1) The CMA may by notice require a person to produce a written statement with respect to a matter specified in the notice to—

(a) a person who is considering, or is to consider, an application for a direction under paragraph 4, or

(b) a group with the function of determining an appeal.

(2) The power to require the production of a written statement includes power—

(a) to specify the time and place at which it is to be produced, and

(b) to require it to be verified by a statement of truth;

and a statement required to be so verified must be disregarded unless it is so verified.

(3) No person is to be compelled under this paragraph to produce a written statement with respect to any matter about which the person could not be compelled to give evidence in civil proceedings in the High Court or Court of Session.

(4) A notice for the purposes of this paragraph may be issued on the CMA's behalf by an authorised member of the CMA.

Commencement Information

I196 Sch. 5 para. 11 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

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Expert advice

12 Where permission to bring an appeal is granted under paragraph 3, the CMA may commission expert advice with respect to any matter raised by a party to the appeal.

Commencement Information
I197 Sch. 5 para. 12 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

Defaults in relation to evidence

13 (1) If a person ("the defaulter")—

(a) fails to comply with a notice issued or other requirement imposed under paragraph 9, 10 or 11,

(b) in complying with a notice under paragraph 11, makes a statement that is false in any material particular, or

(c) in providing information verified in accordance with a statement of truth required by appeal rules, provides information that is false in a material particular,

an authorised member of the CMA may certify that fact to the court.

(2) If the court is satisfied that the defaulter failed without reasonable excuse to comply with the notice or other requirement, or made the false statement, or provided the false information, it may deal with the defaulter (and in the case of a body corporate, any director or other officer of the body) as if that person were in contempt.

(3) In sub-paragraph (2) "officer", in relation to a limited liability partnership, means a member of the limited liability partnership.

(4) In this paragraph "court" means—

(a) the High Court, or

(b) in Scotland, the Court of Session.

Commencement Information
I198 Sch. 5 para. 13 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

14 (1) A person who wilfully alters, suppresses or destroys a document which the person has been required to produce under paragraph 9 is guilty of an offence.

(2) A person guilty of an offence under this paragraph is liable—

(a) on summary conviction—

(i) in England and Wales, to imprisonment for a term not exceeding 12 months (or 6 months, if the offence was committed before the commencement of section 154(1) of the Criminal Justice Act 2003) or a fine, or both;

(ii) in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum, or both;

(iii) in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum, or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine, or both.

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Commencement Information
I199 Sch. 5 para. 14 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

Determination of appeal by CMA

15 (1) A determination by the CMA on an appeal—
(a) must be contained in an order made by the CMA;
(b) must set out the reasons for the determination;
(c) takes effect at the time specified in the order or determined in accordance with provision made in the order;
(d) must be notified by the CMA to the parties to the appeal;
(e) must be published by the CMA—
(i) as soon as reasonably practicable after the determination is made;
(ii) in such manner as the CMA considers appropriate for the purpose of bringing the determination to the attention of any person likely to be affected by it (other than a party to the appeal).

(2) The CMA may exclude from publication under sub-paragraph (1)(e) any information which it is satisfied is—
(a) commercial information, the disclosure of which would, or might in the CMA's opinion, significantly harm the legitimate business interests of an undertaking to which it relates, or
(b) information relating to the private affairs of an individual, the disclosure of which would, or might in the CMA's opinion, significantly harm the individual's interests.

(3) The Payment Systems Regulator must take such steps as it considers necessary for it to comply with an order of the CMA made by virtue of sub-paragraph (1)(a).

(4) The steps must be taken—
(a) if a time is specified in (or is to be determined in accordance with) the order, within that time;
(b) in any other case, within a reasonable time.

Commencement Information
I200 Sch. 5 para. 15 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

Appeal rules

16 (1) The CMA Board may make rules of procedure regulating the conduct and disposal of appeals.

(2) Those rules may include provision supplementing the provisions of this Schedule in relation to any application, notice, hearing, power or requirement for which this Schedule provides; and that provision may, in particular, impose time limits or other restrictions on—
(a) the taking of evidence at an oral hearing, or
(b) the making of representations or observations at such a hearing.

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(3) The CMA Board must publish rules made under this paragraph in such manner as it considers appropriate for the purpose of bringing them to the attention of those likely to be affected by them.

(4) Before making rules under this paragraph, the CMA Board must consult such persons as it considers appropriate.

(5) Rules under this paragraph may make different provision for different cases.

Commencement Information
I201 Sch. 5 para. 16 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

Costs

17 (1) A group that determines an appeal must make an order requiring the payment to the CMA of the costs incurred by the CMA in connection with the appeal.

(2) An order under sub-paragraph (1) must require those costs to be paid—

(a) where the appeal is allowed in full, by the Payment Systems Regulator;

(b) where the appeal is dismissed in full, by the appellant;

(c) where the appeal is partially allowed, by one or more parties in such proportions as the CMA considers appropriate in all the circumstances.

(3) The group that determines an appeal may also make such order as it thinks fit for requiring a party to the appeal to make payments to another party in respect of costs reasonably incurred by that other party in connection with the appeal.

(4) A person who is required by an order under this paragraph to pay a sum to another person must comply with the order before the end of the period of 28 days beginning with the day after the making of the order.

(5) Sums required to be paid by an order under this paragraph but not paid within the period mentioned in sub-paragraph (4) are to bear interest at such rate as may be determined in accordance with provision contained in the order.

(6) Any costs payable by virtue of an order under this paragraph and any interest that has not been paid may be recovered as a civil debt by the person in whose favour the order is made.

Commencement Information
I202 Sch. 5 para. 17 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

Interpretation

18 (1) In this Schedule—

"appeal" means an appeal made in accordance with section 79;

"appeal rules" means rules of procedure under paragraph 16;

"appellant" has the meaning given by paragraph 3(4);

"authorised member of the CMA"—

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(a) in relation to a power exercisable in connection with an appeal in respect of which a group has been constituted by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013, means a member of that group who has been authorised by the chair of the CMA to exercise that power;

(b) in relation to a power exercisable in connection with an application for permission to bring an appeal, or otherwise in connection with an appeal in respect of which a group has not been so constituted by the chair of the CMA, means—

(i) any member of the CMA Board who is also a member of the CMA panel, or

(ii) any member of the CMA panel authorised by the Treasury (whether generally or specifically) to exercise the power in question;

"CMA" means the Competition and Markets Authority;

"CMA Board" and "CMA panel" have the same meaning as in Schedule 4 to the Enterprise and Regulatory Reform Act 2013;

"group" means a group selected in accordance with paragraph 6;

"statement of truth", in relation to the production of a statement or provision of information by a person, means a statement that the person believes the facts stated in the statement or information to be true;

"working day" means any day other than—

(a) Saturday or Sunday;

(b) Christmas Day or Good Friday;

(c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.

(2) References in this Schedule to a party to an appeal are references to—

(a) the appellant, or

(b) the Payment Systems Regulator.

Commencement Information

I203 Sch. 5 para. 18 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

SCHEDULE 6

Section 121

CONDUCT OF FMI ADMINISTRATION

VALID FROM 13/07/2018

1 The following provisions of this Schedule provide for—

(a) the general powers and duties of FMI administrators (by application of provisions about administrators), and

(b) the general process and effects of FMI administration (by application of provisions about administration).

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VALID FROM 13/07/2018

2 The provisions set out in the Tables apply in relation to FMI administration as in relation to administration, with—

(a) the modifications set out in paragraph 3,

(b) any other modification specified in the Tables, and

(c) any other necessary modification.

VALID FROM 13/07/2018

3 The modifications are that—

(a) a reference to the administrator is a reference to the FMI administrator,

(b) a reference to administration is a reference to FMI administration,

(c) a reference to an administration application is a reference to an FMI administration application,

(d) a reference to an administration order is a reference to an FMI administration order,

(e) **[**[F33]except where otherwise specified in Table 2,**]** a reference to a company is a reference to the infrastructure company, and

(f) a reference to the purpose of administration (other than the reference in paragraph 111(1) of Schedule B1) is a reference to the objective in section 115.

Textual Amendments

F33 Words in Sch. 6 para. 3(e) inserted (7.4.2017) by The Deregulation Act 2015, the Small Business, Enterprise and Employment Act 2015 and the Insolvency (Amendment) Act (Northern Ireland) 2016 (Consequential Amendments and Transitional Provisions) Regulations 2017 (S.I. 2017/400), regs. 1(2), **6(a)**

VALID FROM 13/07/2018

4 Powers conferred by this Part of this Act and by the 1986 Act (as applied) are in addition to, and not in restriction of, any existing powers of instituting proceedings against any contributory or debtor of an infrastructure company, or the estate of any contributory or debtor, for the recovery of any call or other sum.

VALID FROM 13/07/2018

5 A reference in an enactment or other document to anything done under a provision applied by this Part of this Act includes a reference to the provision as applied.

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TABLE 1 OF APPLIED PROVISIONS

SCHEDULE B1 TO THE INSOLVENCY ACT 1986

Provision of Schedule B1	***Subject***	***Modification***
Para. 40(1)(a)	Dismissal of pending winding-up petition	
Para. 41	Dismissal of administrative or other receiver	
Para. 42	Moratorium on insolvency proceedings	Ignore sub-paras. (4) and (5).
Para. 43	Moratorium on other legal process	
Para. 44(1)(a) and (5)	Interim moratorium	
Para. 46	Announcement of appointment	Ignore sub-para. (6)(b) and (c).
Paras. 47 and 48	Statement of affairs	
Para. 49	Administrator's proposals	(a) The administrator must obtain the approval of the Bank of England to any proposals under sub-para. (1). (b) Treat the reference in sub-para. (2)(b) to the objective mentioned in para. 3(1)(a) or (b) as a reference to the objective in section 115 of this Act. (c) Ignore sub-para. (3)(b).
Para. 59	General powers	
Para. 60 and Schedule 1	General powers	The exercise of powers under Schedule 1 is subject to section 115 of this Act.
Para. 61	Directors	
Para. 62	Power to call meetings of creditors	
Para. 63	Application to court for directions	(a) Before making an application in reliance on this paragraph the FMI administrator must

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		give notice to the Bank of England, which is to be entitled to participate in the proceedings. (b) In making directions the court must have regard to the objective in section 115 of this Act.
Para. 64	Management powers	
Para. 65	Distribution to creditors	
Para. 66	Payments	
Para. 67	Taking custody of property	
Para. 68	Management	(a) Ignore sub-paras. (1) and (3). (b) The Bank of England may apply to the court for the variation or revocation of any directions given by the court.
Para. 69	Agency	
Para. 70	Floating charges	
Para. 71	Fixed charges	
Para. 72	Hire-purchase property	
Para. 73	Protection for secured and preferential creditors	
Para. 74	Challenge to administrator's conduct	For sub-para. (2) there is to be taken to be substituted— "(2) Where a company is in FMI administration, a creditor or member of the company may apply to the court claiming that the FMI administrator is conducting himself or herself in a manner preventing the achievement of the objective of the FMI administration as quickly and efficiently as is reasonably practicable."
Para. 75	Misfeasance	In addition to applications that may anyway be made under para. 75, an application may be made by the FMI administrator or the Bank of England.
Para. 79	Court ending administration on application of administrator	For sub-paras. (1) to (3) there are to be taken to be substituted— "(1) On an application made by a person mentioned in sub-paragraph (2), the court may

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		provide for the appointment of an FMI administrator of a company to cease to have effect from a specified time. (2) The persons who may apply to the court under sub-paragraph (1) are— (a) the Bank of England; (b) with the consent of the Bank, the FMI administrator.”
Para. 84	Termination: no more assets for distribution	
Para. 85	Discharge of administration order	
Para. 86	Notice to Companies Registrar of end of administration	
Para. 87	Resignation	An FMI administrator may not resign under para. 87 without giving 28 days' notice of the intention to do so to the Bank of England.
Para. 88	Removal	An application for an order removing an FMI administrator from office may be made only by or with the consent of the Bank of England.
Para. 89	Disqualification	The notice under sub-para. (2) must be given to the Bank of England.
Paras. 90 and 91	Replacement	(a) Para. 91(1) applies as if the only person who could make an application were the Bank of England. (b) Ignore para. 91(2).
Para. 98	Discharge	Ignore sub-paras. (2)(b) **[**F34and (ba)**][**F35, (3) and (3A)**]** .
Para. 99	Vacation of office: charges and liabilities	In the application of sub-para. (3), payments may be made only— (a) in accordance with directions of the Bank of England, and (b) if the Bank is satisfied that they will not prejudice the objective in section 115 of this Act.
Paras. 100 to 103	Joint administrators	An application under para. 103 may be made only by the Bank of England.
Para. 104	Validity	

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Para. 106 (and section 430 and Schedule 10)	Fines	
Paras. 107 to 109	Extension of time limits	
Para. 110	Amendment of provisions about time	An order under para. 110 may amend a provision of the Schedule as it applies by virtue of this Act (whether or not in the same way as it amends the provision as it applies otherwise).
Para. 111	Interpretation	
Paras. 112 to 116	Scotland	

TABLE 2 OF APPLIED PROVISIONS

OTHER PROVISIONS OF THE INSOLVENCY ACT 1986

Section	***Subject***	***Modification or comment***
[[F36]Section 176ZB	Application of proceeds of office-holder claims**]**	
Section 233	Utilities	
Section 234	Getting in company's property	
Section 235	Duty to co-operate with office-holder	
Section 236	Inquiry into company's dealings	
Section 237	Section 236: enforcement by court	
Section 238	Transactions at an undervalue (England and Wales)	
Section 239	Preferences (England and Wales)	
Section 240	Ss. 238 and 239: relevant time	
Section 241	Orders under ss. 238 and 239	(a) In considering making an order in reliance on section 241 the court must have regard to the objective in section 115 of this Act.

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		(b) Ignore subsections (2A)(a) and (3) to (3C).
Section 242	Gratuitous alienations (Scotland)	
Section 243	Unfair preferences (Scotland)	In considering the grant of a decree under subsection (5) the court must have regard to the objective in section 115 of this Act.
Section 244	Extortionate credit transactions	
Section 245	Avoidance of floating charges	
Section 246	Unenforceability of liens	
[[F37]Sections 246ZA to 246ZC	Administration: penalisation of directors etc**]**	
[[F37]Section 246ZD	Power to assign certain causes of action**]**	
[[F38]Sections 246ZE and 246ZF**]**	**[**[F38]Decisions by creditors (company insolvency)**]**	
[[F38]Section 246C**]**	**[**[F38]Creditors' ability to opt out of receiving certain notices**]**	
[[F38]Section 248A**]**	**[**[F38]Meaning of "opted-out creditor"**]**	
Sections 386 and 387, and Schedule 6 (and Schedule 4 to the Pension Schemes Act 1993)	Preferential debts	
Section 389	Offence of acting without being qualified	Treat references to acting as an insolvency practitioner as references to acting as an FMI administrator.
[[F39]Sections 390 to 391T	Authorisation and regulation of insolvency practitioners	(a) In section 390 treat references to acting as an insolvency practitioner as references to acting as an FMI administrator.

Status: *Point in time view as at 16/12/2015. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

		(b) For subsection (2) of that section there is to be taken to be substituted— "(2) A person is not qualified to act as an FMI administrator at any time unless at that time the person is fully authorised to act as an insolvency practitioner or partially authorised to act as an insolvency practitioner only in relation to companies.". (c) An order under section 391 has effect in relation to any provision applied for the purposes of FMI administration. (d) In sections 390A, 390B(1) and (3), 391O(1)(b) and 391R(3)(b), in a reference to authorisation or permission to act as an insolvency practitioner in relation to (or only in relation to) companies the reference to companies has effect without the modification in paragraph 3(e) of this Schedule. (e) In sections 391Q(2)(b) and 391S(3)(e) the reference to a company has effect without the modification in paragraph 3(e) of this Schedule.**]**
Sections 423 to 425	Transactions defrauding creditors	In considering granting leave under section 424(1) or making an order in reliance on section 425, the court must have regard to the objective in section 115 of this Act.
Sections 430 to 432 and Schedule 10	Offences	

Textual Amendments

F34 Words in Sch. 6 para. 5 inserted (7.4.2017) by The Deregulation Act 2015, the Small Business, Enterprise and Employment Act 2015 and the Insolvency (Amendment) Act (Northern Ireland) 2016 (Consequential Amendments and Transitional Provisions) Regulations 2017 (S.I. 2017/400), regs. 1(2), **6(b)**

F35 Words in Sch. 6 para. 5 Table 1 substituted (13.3.2018) by The Small Business, Enterprise and Employment Act 2015 (Consequential Amendments, Savings and Transitional Provisions) Regulations 2018 (S.I. 2018/208), regs. 1(3), **6(a)**

F36 Words in Sch. 6 para. 5 inserted (7.4.2017) by The Deregulation Act 2015, the Small Business, Enterprise and Employment Act 2015 and the Insolvency (Amendment) Act (Northern Ireland) 2016 (Consequential Amendments and Transitional Provisions) Regulations 2017 (S.I. 2017/400), regs. 1(2), **6(c)(i)**

F37 Words in Sch. 6 para. 5 inserted (7.4.2017) by The Deregulation Act 2015, the Small Business, Enterprise and Employment Act 2015 and the Insolvency (Amendment) Act (Northern Ireland) 2016 (Consequential Amendments and Transitional Provisions) Regulations 2017 (S.I. 2017/400), regs. 1(2), **6(c)(ii)**

F38 Words in Sch. 6 para. 5 Table 2 inserted (13.3.2018) by The Small Business, Enterprise and Employment Act 2015 (Consequential Amendments, Savings and Transitional Provisions) Regulations 2018 (S.I. 2018/208), regs. 1(3), **6(b)**

F39 Words in Sch. 6 para. 5 substituted (7.4.2017) by The Deregulation Act 2015, the Small Business, Enterprise and Employment Act 2015 and the Insolvency (Amendment) Act (Northern Ireland) 2016 (Consequential Amendments and Transitional Provisions) Regulations 2017 (S.I. 2017/400), regs. 1(2), **6(c)(iii)**

6 (1) The Treasury may by order amend this Schedule so as to make further modifications.

(2) The further modifications that may be made are confined to such modifications of—

(a) the 1986 Act, or

(b) other enactments passed or made before this Act that relate to insolvency or make provision by reference to anything that is or may be done under the 1986 Act,

as the Treasury consider appropriate in relation to any provision made by or under this Part of this Act.

(3) An order under this paragraph may also make modifications of the provisions of this Schedule.

Commencement Information

I204 Sch. 6 para. 6 in force at 1.3.2014 for specified purposes by S.I. 2014/377, art. 2(1)(b), **Sch. Pt. 2**

VALID FROM 13/07/2018

SCHEDULE 7

Section 121

FINANCIAL MARKET INFRASTRUCTURE TRANSFER SCHEMES

. . . . . .

SCHEDULE 8

Section 129

FUNCTIONS OF FCA UNDER COMPETITION LEGISLATION

PART 1

AMENDMENTS OF FINANCIAL SERVICES AND MARKETS ACT 2000

1 Part 16A of FSMA 2000 (consumer protection and competition) is amended as follows.

Status: *Point in time view as at 16/12/2015. This version of this Act contains provisions that are not valid for this point in time.*
***Changes to legislation:** There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

Commencement Information
I205 Sch. 8 para. 1 in force at 1.4.2015 by S.I. 2014/2458, **art. 3(b)(v)**

2 Omit section 234H (power of FCA to make request to Office of Fair Trading).

Commencement Information
I206 Sch. 8 para. 2 in force at 1.4.2015 by S.I. 2014/2458, **art. 3(b)(v)**

3 After section 234H insert—

"**234I The FCA's functions under Part 4 of the Enterprise Act 2002**

(1) The functions to which this subsection applies ("the concurrent functions") are to be concurrent functions of the FCA and the Competition and Markets Authority (referred to in this Part as "the CMA").

(2) Subsection (1) applies to the functions of the CMA under Part 4 of the Enterprise Act 2002 (market investigations), so far as those functions—

(a) are exercisable by the CMA Board (within the meaning of Schedule 4 to the Enterprise and Regulatory Reform Act 2013), and

(b) relate to the provision of financial services.

(3) But subsection (1) does not apply to functions under the following sections of the Enterprise Act 2002—

section 166 (duty to maintain register of undertakings and orders);

section 171 (duty to publish guidance).

(4) So far as is necessary for the purposes of, or in connection with, subsections (1) and (2)—

(a) references in Part 4 of the Enterprise Act 2002 to the CMA (including references in provisions of that Act applied by that Part) are to be read as including references to the FCA, and

(b) references in that Part to section 5 of that Act are to be read as including references to section 234M of this Act.

(5) But subsection (4) does not apply—

(a) in relation to section 166 or 171 of that Act, or

(b) where the context otherwise requires.

(6) Section 130A of the Enterprise Act 2002 has effect in relation to the FCA by virtue of subsections (1) and (2) as if—

(a) in subsection (2)(a) of that section, the reference to the acquisition or supply of goods or services of one or more than one description in the United Kingdom were a reference to the acquisition or provision in the United Kingdom of financial services, and

(b) in subsection (2)(b) of that section, the reference to the extent to which steps can and should be taken were a reference to the extent to which steps that might include steps under Part 4 of that Act can and should be taken.

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Changes to legislation: *There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

(7) Before the CMA or the FCA first exercises any of the concurrent functions in relation to any matter, it must consult the other.

(8) Neither the CMA nor the FCA may exercise any of the concurrent functions in relation to any matter if any of those functions have been exercised in relation to that matter by the other.

234J The FCA's functions under the Competition Act 1998

(1) The functions to which this subsection applies are to be concurrent functions of the FCA and the CMA.

(2) Subsection (1) applies to the functions of the CMA under the provisions of Part 1 of the Competition Act 1998, so far as relating to any of the following that relate to the provision of financial services—

(a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act,

(b) conduct of the kind mentioned in section 18(1) of that Act,

(c) agreements, decisions or concerted practices of the kind mentioned in Article 101(1) of the Treaty on the Functioning of the European Union, and

(d) conduct which amounts to abuse of the kind mentioned in Article 102 of the Treaty on the Functioning of the European Union.

(3) But subsection (1) does not apply to functions under the following provisions of that Act—

section 31D(1) to (6) (duty to publish guidance);

section 38(1) to (6) (duty to publish guidance about penalties);

section 40B(1) to (4) (duty to publish statement of policy on penalties);

section 51 (rules).

(4) So far as necessary for the purposes of, or in connection with, the provisions of subsections (1) and (2), references to the CMA in Part 1 of the Competition Act 1998 are to be read as including references to the FCA.

(5) But subsection (4) does not apply—

(a) in relation to sections 31D(1) to (6), 38(1) to (6), 40B(1) to (4), 51, 52(6) and (8) and 54 of that Act, or

(b) where the context otherwise requires.

234K Duty to consider exercise of powers under Competition Act 1998

(1) Before exercising a power listed in subsection (3), the FCA must consider whether it would be more appropriate to proceed under the Competition Act 1998.

(2) The FCA must not exercise such a power if it considers that it would be more appropriate to proceed under the Competition Act 1998.

(3) Those powers are—

(a) the power under section 55J(2) to vary or cancel a Part 4A permission;

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(b) the power under section 55L to impose a requirement on an authorised person with a Part 4A permission, or to vary a requirement imposed under that section;
(c) the power to take action under section 88E;
(d) the power to take action under section 89U;
(e) the power to give a direction under section 192C;
(f) the power to impose a requirement under section 196.

234L Provision of information and assistance to a CMA group

(1) For the purpose of assisting a CMA group in carrying out a relevant investigation, the FCA must give the CMA group—
(a) any relevant information which the FCA has in its possession, and
(b) any other assistance which the CMA group may reasonably require in relation to any matters falling within the scope of the investigation.

(2) A "relevant investigation" is an investigation carried out on a reference made by the FCA under section 131 of the Enterprise Act 2002 by virtue of section 234I.

(3) "Relevant information", in relation to a relevant investigation, is information—
(a) which relates to matters falling within the scope of the investigation, and
(b) which—
(i) is requested by the CMA group for the purpose of the investigation, or
(ii) in the FCA's opinion, it would be appropriate to give to the CMA group for that purpose.

(4) A CMA group, in carrying out a relevant investigation, must take into account any information given to it under this section.

(5) In this section "CMA group" has the same meaning as in Schedule 4 to the Enterprise and Regulatory Reform Act 2013.

234M Function of keeping market under review

(1) For the purpose of the functions conferred on it by sections 234I to 234L the FCA is to have the function of keeping under review the market for financial services.

(2) The function conferred by subsection (1) is to be carried out with a view to (among other things) ensuring that the FCA has sufficient information to take informed decisions and to carry out its other functions effectively.

234N Exclusion of general duties

(1) Section 1B (the FCA's general duties) does not apply in relation to anything done by the FCA in the carrying out of its functions by virtue of sections 234I to 234L.

Status: *Point in time view as at 16/12/2015. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

(2) But in the carrying out of any functions by virtue of sections 234I to 234L, the FCA may have regard to any of the matters in respect of which a duty is imposed by section 1B if it is a matter to which the CMA is entitled to have regard in the carrying out of those functions.

234O Supplementary provision

(1) If any question arises as to whether, by virtue of section 234I or 234J, any functions fall to be, or are capable of being, carried out by the FCA in relation to any particular case, that question is to be referred to, and determined by, the Treasury.

(2) No objection is to be taken to anything done under the Competition Act 1998 or Part 4 of the Enterprise Act 2002 by or in relation to the FCA on the ground that it should have been done by or in relation to the CMA."

Commencement Information

I207 Sch. 8 para. 3 in force at 1.11.2014 for specified purposes by S.I. 2014/2458, art. 2(b)(aa)**(i)**

I208 Sch. 8 para. 3 in force at 1.11.2014 for specified purposes by S.I. 2014/2458, art. 2(b)(aa)**(ii)**

I209 Sch. 8 para. 3 in force at 1.4.2015 in so far as not already in force by S.I. 2014/2458, **art. 3(b)(v)**

4 In section 3I of FSMA 2000 (power of PRA to require FCA to refrain from specified action), in subsection (3)(a), after "55I" insert " , a power conferred on it by sections 234I to 234M ".

Commencement Information

I210 Sch. 8 para. 4 in force at 1.11.2014 by S.I. 2014/2458, art. 2(b)(bb)**(ii)**

5 In section 348 of FSMA 2000 (restrictions on disclosure of confidential information by FCA, PRA etc), after subsection (6) insert—

"(7) Nothing in this section applies to information received by a primary recipient for the purposes of, or in the discharge of, any functions of the FCA under the Competition Act 1998 or the Enterprise Act 2002 by virtue of Part 16A of this Act.

(For provision about the disclosure of such information, see Part 9 of the Enterprise Act 2002.)"

Commencement Information

I211 Sch. 8 para. 5 in force at 1.11.2014 by S.I. 2014/2458, art. 2(b)(bb)**(ii)**

6 In section 354A of FSMA 2000 (FCA's duty to co-operate with others), after subsection (2) insert—

"(2A) Subsection (1) does not apply in relation to the Competition and Markets Authority in a case where the FCA has made a reference under section 131 of the Enterprise Act 2002 as a result of section 234I (but see section 234L)."

Status: *Point in time view as at 16/12/2015. This version of this Act contains provisions that are not valid for this point in time.*
***Changes to legislation:** There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

Commencement Information
I212 Sch. 8 para. 6 in force at 1.4.2015 by S.I. 2014/2458, **art. 3(b)(v)**

7 (1) Schedule 1ZA to FSMA 2000 (the Financial Conduct Authority) is amended as follows.

(2) In paragraph 8 (arrangements for discharging functions), after sub-paragraph (4) insert—

"(5) In respect of the exercise of a function under Part 1 of the Competition Act 1998, the power in sub-paragraph (1) is subject to provision in rules made under section 51 of that Act by virtue of paragraph 1A of Schedule 9 to that Act."

(3) In paragraph 23 (fees), after sub-paragraph (2) insert—

"(2A) The functions referred to in sub-paragraph (1)(a) include functions of the FCA under the Competition Act 1998 or the Enterprise Act 2002 as a result of Part 16A of this Act; but this sub-paragraph is not to be regarded as limiting the effect of the definition of "functions" in paragraph 1."

Commencement Information
I213 Sch. 8 para. 7 in force at 1.11.2014 by S.I. 2014/2458, art. 2(b)(bb)**(ii)**

PART 2

AMENDMENTS OF OTHER LEGISLATION

Company Directors Disqualification Act 1986

8 In section 9E of the Company Directors Disqualification Act 1986 (interpretation of sections 9A to 9D), in subsection (2), after paragraph (g) insert—

"(h) the Financial Conduct Authority."

Commencement Information
I214 Sch. 8 para. 8 in force at 1.4.2015 by S.I. 2014/2458, **art. 3(b)(v)**

Competition Act 1998

9 In section 54 of the Competition Act 1998 (regulators), in subsection (1), after paragraph (i) insert—

"(j) the Financial Conduct Authority."

Commencement Information
I215 Sch. 8 para. 9 in force at 1.11.2014 for specified purposes by S.I. 2014/2458, art. 2(b)(bb)**(i)**
I216 Sch. 8 para. 9 in force at 1.4.2015 in so far as not already in force by S.I. 2014/2458, **art. 3(b)(v)**

Status: *Point in time view as at 16/12/2015. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

Enterprise Act 2002

10 (1) Section 136 of the Enterprise Act 2002 (investigations and reports on market investigation references) is amended as follows.

(2) In subsection (7), after paragraph (e) insert—

"(ea) in relation to the Financial Conduct Authority, section 234I of the Financial Services and Markets Act 2000;".

(3) In subsection (8), after "the Office of Rail Regulation," insert " the Financial Conduct Authority, ".

Commencement Information
I217 Sch. 8 para. 10 in force at 1.4.2015 by S.I. 2014/2458, **art. 3(b)(v)**

Enterprise and Regulatory Reform Act 2013

11 In section 52(4) of the Enterprise and Regulatory Reform Act 2013 (power to remove concurrent competition functions of sectoral regulators), after paragraph (g) insert—

"(h) the Financial Conduct Authority."

Commencement Information
I218 Sch. 8 para. 11 in force at 1.4.2015 by S.I. 2014/2458, **art. 3(b)(v)**

12 In Schedule 4 to the Enterprise and Regulatory Reform Act 2013 (the Competition and Markets Authority), in paragraph 16 (concurrency report), at the end of sub-paragraph (7) insert—

"(i) the Financial Conduct Authority."

Commencement Information
I219 Sch. 8 para. 12 in force at 1.4.2015 by S.I. 2014/2458, **art. 3(b)(v)**

SCHEDULE 9

Section 138

BUILDING SOCIETIES

Introductory

1 The Building Societies Act 1986 is amended as follows.

Exclusion of small business deposits from funding limit

2 (1) Section 7 (the funding limit) is amended as follows.

(2) In subsection (3), omit the "and" at the end of paragraph (a) and after that paragraph insert—

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"(aa) subject to subsection (3A), the principal of, and interest accrued on, sums deposited with the society or any subsidiary undertaking of the society by a small business (see subsection (10));".

(3) After subsection (3) insert—

"(3A) In respect of any day by reference to which the value of X falls to be calculated for the purposes of subsection (1) in relation to the society, the total amount to be disregarded under subsection (3)(aa) may not exceed 10% of the amount that would, in the absence of subsection (3)(aa), be the value of X on that day."

(4) After subsection (6) insert—

"(6ZA) Where a person declares that the person is a small business, the person shall, unless the contrary is shown, be conclusively presumed for the purposes of this section to be a small business."

(5) After subsection (9) insert—

"(10) In this section "small business" means any person (other than an individual acting as a sole trader) carrying on a business which had a turnover in the relevant financial year of less than £1,000,000.

(11) For the purposes of subsection (10)—

(a) the "relevant financial year", in relation to any day by reference to which the value of X falls to be calculated for the purposes of subsection (1) in relation to a building society, means the last financial year ending before that day;

(b) "turnover", in relation to a small business, means the amount derived from the provision of goods and services falling within the business's ordinary activities, after deduction of trade discounts, value added tax and any other taxes based on the amounts so derived;

(c) in respect of any relevant financial year, the reference to £1,000,000 includes the equivalent amount in any other currency, calculated as at the last day of that year.

(12) The Treasury may, by order made by statutory instrument, amend the figure for the time being specified in subsections (10) and (11)(c).

(13) A statutory instrument containing an order under subsection (12) is subject to annulment in pursuance of a resolution of either House of Parliament."

3 (1) In article 3 of the Building Societies Act 1986 (Substitution of Specified Amounts and Modification of the Funding Limits Calculation) Order 2007 (S.I. 2007/860), in paragraph 3, for "the modification required by this article" substitute " the modifications required by this article and by section 7(3)(aa) ".

(2) The amendment by this paragraph of a provision contained in subordinate legislation is without prejudice to any power to amend that provision by subordinate legislation.

Ability to create floating charges

4 (1) Omit section 9B (restriction on creation of floating charges).

Status: *Point in time view as at 16/12/2015. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

(2) In Schedule 15A (application of other companies insolvency legislation to building societies), omit the following paragraphs—

(a) paragraph 18 (which modifies section 15 of the Insolvency Act 1986);

(b) paragraph 20 (which modifies section 19 of that Act);

(c) paragraph 40 (which modifies Article 28 of the Insolvency (Northern Ireland) Order 1989);

(d) paragraph 42 (which modifies Article 31 of that Order).

(3) In consequence of the amendment made by sub-paragraph (1)—

(a) in section 1(1A)(b), for ", 9A and 9B" substitute " and 9A ";

(b) in the Building Societies Act 1997, omit section 11;

(c) in section 11(3) of the Banking (Special Provisions) Act 2008, for paragraph (c) substitute—

"(c) sections 8 and 9A of the Building Societies Act 1986 (restrictions on raising funds and borrowing and on transactions involving derivative instruments etc);";

(d) in section 251 of the Banking Act 2009, omit subsection (7);

(e) in the Financial Services Act 2012, omit section 55.

Commencement Information

I220 Sch. 9 para. 4 in force at 26.3.2015 by S.I. 2015/428, **art. 2**

Annual business statements

5 (1) Section 74 (duty of directors to prepare annual business statement) is amended as follows.

(2) In subsection (4), omit the words from "and other officers" to "them".

(3) In subsection (8), omit "or other officer".

Summary financial statements

6 (1) Section 76 (summary financial statement for members and depositors) is amended as follows.

(2) After subsection (8A) insert—

"(8AA) The society shall also—

(a) publish the summary financial statement and (where applicable) the auditor's report on a web site, and

(b) ensure that the statement and (where applicable) the report may be accessed on the web site until the publication of the next summary financial statement."

(3) After subsection (8D) insert—

"(8E) If, at any time during the period beginning with the publication of the summary financial statement and ending with the publication of the next summary financial statement, an individual for the first time subscribes for

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shares in the society, the society shall at that time notify the individual of the information in subsection (8C)(c)(i) to (iii).

(8F) In a case where subsection (8E) applies, the society is not required under section 115B (right to hard copy version) to send the individual a version of the summary financial statement or (where applicable) the auditor's report in hard copy form (within the meaning of that section).”

(4) Omit subsections (9) to (9E).

(5) In subsection (11), for “subsection (9)” substitute “ subsection (8AA) or (8E) ”.

7 In consequence of the amendments made by paragraph 6—

(a) in section 78(6), for “subsections (8) and (9) of section 76 extend” substitute “ subsection (8) of section 76 extends ”;

(b) in paragraphs 7(3) and 8(3) of Schedule 2, omit “the summary financial statement,”.

Transfers of business: distributions and share rights

8 (1) Section 100 (regulated terms etc: distributions and share rights) is amended as follows.

(2) For subsection (8) substitute—

“(8) The terms of a transfer of a society's business may confer a right to acquire shares in the successor on a member of the society only if the member—

(a) held shares in the society throughout the period of two years ending with the qualifying day, or

(b) on that day, holds deferred shares in the society that are of a class described in the transfer agreement;

and it is unlawful for any right in relation to shares to be conferred in contravention of this subsection.”

(3) In subsection (9), for the words from “who” to “and” substitute

“who—

(a) held shares in the society throughout the period of two years ending with the qualifying day, or

(b) on that day, hold deferred shares in the society that are of a class described in the transfer agreement;

and”.

Methods of communicating with members etc

9 After section 115 insert—

“**115A Deemed agreement to use of web site**

(1) For the purposes of this Act, a person is to be taken to have agreed with a building society to access a document, information or facility on a web site if—

(a) the person has been asked individually by the society to agree to access documents, information or facilities generally, or documents,

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information or facilities of the description in question, on a web site, and

(b) the society has not received a response within the period of 28 days beginning with the date on which the society's request was received.

This is subject to subsections (2) to (4).

(2) A person is not to be taken to have so agreed if the society's request—

(a) did not state clearly what the effect of a failure to respond would be, or

(b) was sent less than 12 months after a previous request made to the person for the purposes of this section in respect of the same or a similar description of document, information or facility.

(3) A person who is taken to have made an agreement by virtue of subsection (1) may revoke the agreement.

(4) Subsection (1) does not apply in relation to the following documents—

(a) a statement required to be sent to members by paragraph 1(1) of Schedule 16 (statements in connection with proposed mergers);

(b) a merger statement (within the meaning of Part 2 of that Schedule) required to be sent to members by paragraph 3 of that Schedule;

(c) a transfer statement or transfer summary (within the meaning of Part 1 of Schedule 17) required to be sent to members by paragraph 4(1) or (2) of that Schedule;

(d) a transfer proposal notification (within the meaning of Part 1A of Schedule 17) required to be sent to members by paragraph 5B(1) of that Schedule.

115B Right to hard copy version

(1) Where a person has received a document or information from a building society otherwise than in hard copy form, the person is entitled to require the society to send the person a version of the document or information in hard copy form.

(2) The society must send the document or information in hard copy form within 21 days of receipt of the request from the person.

(3) The society may not make a charge for providing the document or information in that form.

(4) Subsection (1) does not apply if the recipient of the document or information is the FCA or the PRA.

(5) A building society that fails to comply with this section is to be treated as having contravened rules made under section 137A of the Financial Services and Markets Act 2000.

(6) For the purposes of this section a person is treated as receiving a document or information from a building society if—

(a) the society is required by this Act to send the document or information to the person, and

(b) the requirement to send it is treated as satisfied.

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***Changes to legislation:** There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

(7) For the purposes of this section—

(a) a document or information is sent or supplied in hard copy form if it is sent or supplied in a paper copy or similar form capable of being read, and

(b) a document or information can be read only if it can be read with the naked eye, or (to the extent that it consists of images) it can be seen with the naked eye.

115C Other agreed forms of communication

(1) A document or information that is sent or supplied by a building society otherwise than in hard copy form or electronically or by means of a web site is validly sent or supplied if it is sent or supplied in a form or manner that has been agreed by the intended recipient.

(2) For the purposes of this section "hard copy form" is to be read in accordance with section 115B(7)."

10 In the following provisions, omit ", in a manner agreed between him and the society,"—

section 60(7B)(c),
section 61(7D)(c),
section 68(6B)(c),
section 69(15B)(c),
section 76(8C)(c).

11 In section 81(3B)(c), omit ", in a manner agreed for the purpose between him and the society,".

12 (1) Schedule 2 is amended as follows.

(2) In paragraph 20A(1B)(c), omit ", in a manner agreed between him and the society,".

(3) In paragraphs 22B(2)(c) and 33(5C)(c), omit ", in a manner agreed between him and the society for that purpose,".

(4) In paragraph 24(1B)(b), omit "in a manner agreed between the society and that member,".

(5) In paragraph 32(2D)(c), omit ", in a manner agreed between the society and the member,".

(6) In paragraph 33A(9)(c), omit ", in a manner agreed for the purpose between him and the society".

13 In paragraphs 3(2B)(c) and 9(2B)(c) of Schedule 8A, omit "in a manner agreed between the society and that person,".

14 (1) Schedule 11 is amended as follows.

(2) In paragraph 4(9C)(c), omit ", in a manner agreed between him and the society,".

(3) In paragraph 7(7C)(c), for "in a manner agreed between the society and that person, he" substitute " the person ".

Status: *Point in time view as at 16/12/2015. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

(4) In paragraph 8(3B)(c), omit ", in a manner agreed between him and the society for the purpose,".

Financial year

15 (1) Section 117 (financial year of building societies) is amended as follows.

(2) For subsection (1) substitute—

"(1) A building society's financial years (apart from its final financial year) are determined according to its year-end date in each calendar year.

For provision about a building society's final financial year, see subsection (1G).

(1A) The year-end date of a building society established before 25th August 1894 is—

(a) the date up to which, as at 1st January 1987, the accounts of the society were annually made up, or

(b) if the society has, at any time before the day on which subsection (1) comes into force ("the relevant day"), altered its financial year in exercise of a power within subsection (1B), 31st December.

(1B) The powers referred to in subsection (1A)(b) are—

(a) the power conferred by section 70(2) of the Building Societies Act 1960,

(b) the power conferred by section 128(2) of the Building Societies Act 1962, and

(c) the power conferred by subsection (3) of this section (as it had effect immediately before the relevant day).

(1C) The year-end date of a building society established on or after 25th August 1894 and before the relevant day is 31st December.

(1D) The year-end date of a building society established on or after the relevant day is the last day of the month in which the anniversary of its establishment falls.

(1E) The financial year of a building society established before the relevant day is the period of 12 months ending with the year-end date of the society (but see subsection (1G)).

(1F) In the case of a building society established on or after the relevant day—

(a) the initial financial year of the society shall be the period of more than 6 months, but not more than 18 months, beginning with the date of its establishment and ending with its year-end date, and

(b) its subsequent financial years are successive periods of 12 months beginning immediately after the end of the previous financial year and ending with its year-end date (but see subsection (1G)).

(1G) The final financial year of a building society is a period of less than 12 months that begins immediately after the end of the previous financial year and ends with the date as at which the society makes up its final accounts.

(1H) This section has effect subject to section 117A (alteration of financial year)."

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***Changes to legislation:** There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

(3) Omit subsections (2) and (3).

16 After section 117 insert—

"**117A Alteration of financial year**

(1) A building society may by notice given to the FCA specify a new year-end date.

(2) A notice given under subsection (1) has effect in relation to—

(a) the financial year in which the notice is given ("the current financial year"), and

(b) subsequent financial years.

(3) The notice must state whether the current financial year—

(a) is to be shortened, so as to come to an end on the first occasion on which the new year-end date falls or fell after the beginning of the current financial year, or

(b) is to be extended, so as to come to an end on the second occasion on which that date falls or fell after the beginning of the current financial year.

(4) A notice extending a building society's financial year is not effective if given less than 5 years after the end of an earlier financial year of the society that was extended under this section.

(5) A financial year of a building society may not be extended so as to exceed 18 months and a notice under subsection (1) is ineffective if the current financial year as extended in accordance with the notice would exceed that limit."

17 In Schedule 20 (transitional and saving provisions), omit paragraph 16 (existing financial years).

18 The amendments made by paragraphs 15 to 17 have effect in relation to financial years beginning on or after the day on which those amendments come into force.

SCHEDULE 10

Section 141

MINOR AMENDMENTS

Companies Act 1985

1 In Schedule 15D to the Companies Act 1985 (disclosures), omit paragraph 29.

Commencement Information

I221 Sch. 10 para. 1 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

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Changes to legislation: *There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

Financial Services and Markets Act 2000

2 In section 376 of FSMA 2000 (continuation of contracts of long-term insurance where insurer in liquidation), in subsection (11B), for "PRA-authorised" substitute " PRA-regulated ".

Commencement Information
I222 Sch. 10 para. 2 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

3 (1) Part 25 of FSMA 2000 (injunctions and restitution) is amended as follows.

(2) In section 380 (injunctions), in subsection (6)(a), omit the "or" at the end of sub-paragraph (ii) and after sub-paragraph (iii) insert "or

(iv) which is imposed by Part 7 of the Financial Services Act 2012 (offences relating to financial services) and whose contravention constitutes an offence under that Part;".

(3) In section 382 (restitution orders), in subsection (9)(a), omit the "or" at the end of sub-paragraph (ii) and after sub-paragraph (iii) insert "or

(iv) which is imposed by Part 7 of the Financial Services Act 2012 (offences relating to financial services) and whose contravention constitutes an offence under that Part;".

(4) In section 384 (power of FCA or PRA to require restitution), in subsection (7), omit the "and" at the end of paragraph (b) and after paragraph (c) insert "or

(d) a requirement which is imposed by Part 7 of the Financial Services Act 2012 (offences relating to financial services) and whose contravention constitutes an offence under that Part."

Commencement Information
I223 Sch. 10 para. 3 in force at 1.4.2014 by S.I. 2014/377, **art. 2(2)(c)**

4 (1) In Schedule 1ZA to FSMA 2000 (the Financial Conduct Authority), paragraph 20 (penalties) is amended as follows.

(2) In sub-paragraph (3)(b), after "this Act" insert " or under a provision mentioned in sub-paragraph (4A) ".

(3) In sub-paragraph (4), after paragraph (c) insert—

"(ca) its powers under the relevant competition provisions (as applied by Part 16A of this Act),".

(4) After sub-paragraph (4) insert—

"(4A) The relevant competition provisions" are—

(a) section 31E of the Competition Act 1998 (enforcement of commitments);

(b) section 34 of that Act (enforcement of directions);

(c) section 36 of that Act (penalties);

(d) section 40A of that Act (penalties: failure to comply with requirements);

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(e) section 174A of the Enterprise Act 2002 (penalties).”

(5) In sub-paragraph (5)—

(a) in paragraph (a), for “FSMA 2000” substitute “ this Act ”,

(b) in paragraph (b), for “that Act” substitute “ this Act ”,

(c) in paragraph (c), omit “of that Act”, and

(d) after paragraph (c) insert—

“(ca) offences under Part 1 of the Competition Act 1998,

(cb) offences under Part 4 of the Enterprise Act 2002,”.

Commencement Information

I224 Sch. 10 para. 4 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

5 In Schedule 17A to FSMA 2000 (further provision in relation to exercise of Part 18 functions by Bank of England), in paragraph 10(1)(j), for “subsections (1) and (3)” substitute “ subsection (1) ”.

Commencement Information

I225 Sch. 10 para. 5 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

Income Tax Act 2007

6 In section 991 of the Income Tax Act 2007 (meaning of “bank”), in subsections (2)(b) and (3), for “Part 4” substitute “ Part 4A ”.

Commencement Information

I226 Sch. 10 para. 6 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

Banking Act 2009

7 In section 89B of the Banking Act 2009 (application to recognised central counterparties), in the Table in subsection (6), in the entry relating to section 81B, in the second column, after the modification of subsection (1) of that section insert—

	“In subsection (2), for “PRA” substitute “ Bank of England ””.

Commencement Information

I227 Sch. 10 para. 7 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

8 In section 191 of the Banking Act 2009 (directions), in subsection (1), after “inter-bank” insert “ payment ”.

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Changes to legislation: *There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013. (See end of Document for details)*

Commencement Information
I228 Sch. 10 para. 8 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

Financial Services Act 2012

9 In section 73 of the Financial Services Act 2012 (duty of FCA to investigate and report on possible regulatory failure), in subsection (1)(b)(i)—

(a) for "their activities," substitute " of the carrying on of regulated activities, ", and

(b) for "or for the regulation of collective investment schemes" substitute " , for the regulation of collective investment schemes or for the regulation of recognised investment exchanges, ".

Commencement Information
I229 Sch. 10 para. 9 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

10 (1) Section 85 of the Financial Services Act 2012 (relevant functions in relation to complaints scheme) is amended as follows.

(2) For subsection (2) substitute—

"(2) The relevant functions of the FCA or the PRA are—

(a) its functions conferred by or under FSMA 2000, other than its legislative functions, and

(b) such other functions as the Treasury may by order provide."

(3) For subsection (3) substitute—

"(3) The relevant functions of the Bank of England are—

(a) its functions under Part 18 of FSMA 2000 (recognised clearing houses) or under Part 5 of the Banking Act 2009 (inter-bank payment systems), other than its legislative functions, and

(b) such other functions as the Treasury may by order provide."

(4) In subsections (4) and (5), for "subsection (2)" substitute " subsection (2)(a) ".

(5) In subsections (6) and (7), for "subsection (3)" substitute " subsection (3)(a) ".

(6) After subsection (7) insert—

"(8) For the purposes of subsection (2), sections 1A(6) and 2A(6) of FSMA 2000 do not apply."

Commencement Information
I230 Sch. 10 para. 10 in force at 1.3.2014 for specified purposes by S.I. 2014/377, art. 2(1)(b), **Sch. Pt. 2**
I231 Sch. 10 para. 10 in force at 1.6.2014 in so far as not already in force by S.I. 2014/377, **art. 2(3)**

Status:
Point in time view as at 16/12/2015. This version of this Act contains provisions that are not valid for this point in time.

Changes to legislation:
There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013.