

## SCHEDULES

### SCHEDULE 1

Section 6

#### RING-FENCING TRANSFER SCHEMES

- 1 Part 7 of FSMA 2000 (control of business transfer schemes) is amended as follows.
- 2 For “the authorised person concerned”, wherever occurring in Part 7 (including  
Schedule 12), substitute “the transferor concerned”.
- 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.”
- 4 In section 106 (banking business transfer schemes), at the end of subsection (1)(c)  
insert “or a ring-fencing transfer scheme”.
- 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,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

---

*Status: This is the original version (as it was originally enacted).*

---

- 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.”
- 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”.
- (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.”
- 7 For the heading to section 109 substitute “Scheme reports: insurance business transfer schemes”.
- 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.

---

*Status: This is the original version (as it was originally enacted).*

---

- (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).”
- 9 (1) Section 110 (right to participate in proceedings) is amended as follows.
  - (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.”
- 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);”
- 11 In section 112 (effect of order sanctioning business transfer scheme), in subsection (10), after “transfer scheme” insert “or ring-fencing transfer scheme”.
- 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”.
- 13 In Schedule 12 (transfer schemes: certificates) after Part 2A insert—

---

*Status: This is the original version (as it was originally enacted).*

---

## “PART 2B

### RING-FENCING TRANSFER SCHEMES

#### 9B Appropriate certificates

- (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.

#### 9C Certificate as to financial resources

- (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-authorized 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.

#### 9D Certificate as to consent of home state regulator

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
- (b) the period of 3 months beginning with the notification has elapsed.”

## SCHEDULE 2

Section 17

### BAIL-IN STABILISATION OPTION

#### PART 1

##### AMENDMENTS OF BANKING ACT 2009

1 The Banking Act 2009 is amended as follows.

*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 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-

---

*Status: This is the original version (as it was originally enacted).*

---

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.
- (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.”

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—

---

*Status: This is the original version (as it was originally enacted).*

---

- (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.”

*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;
  - (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.

---

*Status: This is the original version (as it was originally enacted).*

---

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;
  - (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);



---

*Status: This is the original version (as it was originally enacted).*

---

- (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—
- “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));

---

*Status: This is the original version (as it was originally enacted).*

---

“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.
- (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—
  - (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 reorganisation 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.

---

*Status: This is the original version (as it was originally enacted).*

---

- (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—
  - (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
  - (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—

---

*Status: This is the original version (as it was originally enacted).*

---

- (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.
- (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;

---

*Status: This is the original version (as it was originally enacted).*

---

- (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.
- (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.

---

*Status: This is the original version (as it was originally enacted).*

---

- (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.
- (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.
- (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,

---

*Status: This is the original version (as it was originally enacted).*

---

- (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 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

---

*Status: This is the original version (as it was originally enacted).*

---

- (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.

#### **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—

---

*Status: This is the original version (as it was originally enacted).*

---

- (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.”

### *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”).

---

*Status: This is the original version (as it was originally enacted).*

---

- (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.
- (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

---

*Status: This is the original version (as it was originally enacted).*

---

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—
    - (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)”.

#### *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—

---

*Status: This is the original version (as it was originally enacted).*

---

- (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—
    - "(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

---

*Status: This is the original version (as it was originally enacted).*

---

- (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).
- (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.



---

*Status: This is the original version (as it was originally enacted).*

---

- (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  
“*(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”.

### *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—

---

*Status: This is the original version (as it was originally enacted).*

---

**“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

*Status: This is the original version (as it was originally enacted).*

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".

#### *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.
Section 48W	Subsection (9)(a) does not apply unless the bank has as a member of its immediate group a PRA- authorised person."

---

*Status: This is the original version (as it was originally enacted).*

---

““Section 81BA	Subsection (5)(b) does not apply unless the bank has as a member of its immediate group a PRA-authorised person.”
----------------	---

### *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”.

### *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
    - (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)).”

### *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.
- (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.”

*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

---

*Status: This is the original version (as it was originally enacted).*

---

- (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”.
- 13 In section 13 (temporary public ownership), in subsection (1), for “third” substitute “fourth”.
- 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”.
- 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.”
- 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**”.
- 17 In section 63 (general continuity obligation: property transfers), in subsection (1)(a), for “or 12(2)” substitute “, 12(2) or 41A(2)”.
- 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

---

*Status: This is the original version (as it was originally enacted).*

---

- securities issued by the bank (and the reference in subsection (1)  
(b) to “the transfer” includes such a cancellation or conversion).”
- 19 In section 67 (special continuity obligation: share transfers), in subsection (4)(c), after “order” insert “or resolution instrument”.
- 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”.
- 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.”
- 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.”
- 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.”
- 24 In section 74 (tax), in subsection (6), for “or 45” substitute “, 45, 48U or 48V”.
- 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.”
- 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**”.
- 27 In section 85 (temporary public ownership), in subsection (1), for “third” substitute “fourth”.

- 28 In section 136 (overview), in the Table in subsection (3), for “152” substitute “152A”.
- 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.”

- 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.”

- 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 resolution	affirmative
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 affirmative resolution”;
- (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),”.
- 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 provision                      bail-in                      | 48B”.

## 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 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

---

*Status: This is the original version (as it was originally enacted).*

---

the notice and the appropriate regulator whether or not it consents to the insolvency procedure to which the notice relates going ahead.”

### SCHEDULE 3

Section 35

#### CONSEQUENTIAL AMENDMENTS RELATING TO PART 4

##### *Financial Services and Markets Act 2000*

- 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.”
- 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.”
- 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).”
- 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.”
- 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”.

---

*Status: This is the original version (as it was originally enacted).*

---

- (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”,
    - (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”.
- 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.”
- 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);”.
- 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);”.
- 10 In section 140A of FSMA 2000 (interpretation), in the definition of “regulating provisions”—

---

*Status: This is the original version (as it was originally enacted).*

---

- (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).
- 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”.
- 12 In section 387 of FSMA 2000 (warning notices), in subsection (1A), for “or 55I(8)” substitute “, 55I(8) or 61(2D)”.
- 13 In section 388 of FSMA 2000 (decision notices), in subsection (1A), for “or 55I(8)” substitute “, 55I(8) or 61(2D)”.
- 14 In section 395 of FSMA 2000 (supervisory notices), in subsection (13), after paragraph (a) insert—  
 “(aa) 63ZC(4), (8) or (9)(b);”.
- 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,”.
- 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,”.

*Financial Services Act 2012*

- 18 In section 14 of the Financial Services Act 2012, omit subsection (4).

---

*Status: This is the original version (as it was originally enacted).*

---

- 19 (1) Section 85 of the Financial Services Act 2012 (relevant functions in relation to complaints scheme) is amended as follows.
- (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,”.

## 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.

#### *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.
- (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.

---

*Status: This is the original version (as it was originally enacted).*

---

### *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.

### *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.

### *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).
- (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.

### *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.

---

*Status: This is the original version (as it was originally enacted).*

---

- (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.

#### *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).

---

*Status: This is the original version (as it was originally enacted).*

---

### *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.

### *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);
    - (b) amounts in respect of its collection costs.
  - (7) In this paragraph “specified” means specified in the rules.



---

*Status: This is the original version (as it was originally enacted).*

---

- (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.

#### *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),
  - (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.
- 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

---

*Status: This is the original version (as it was originally enacted).*

---

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”).
- 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.
  - (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.

### *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.

### *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—

---

*Status: This is the original version (as it was originally enacted).*

---

- (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.

#### *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.”

#### *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.”

## 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.
- 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—

---

*Status: This is the original version (as it was originally enacted).*

---

“(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.”

*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;

---

*Status: This is the original version (as it was originally enacted).*

---

- (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—
- (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.

#### *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.

---

*Status: This is the original version (as it was originally enacted).*

---

- (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.
- (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.

*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.

*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.

### *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).

### *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.

### *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.

---

*Status: This is the original version (as it was originally enacted).*

---

- (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).

#### *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
  - (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.



---

*Status: This is the original version (as it was originally enacted).*

---

- (8) A notice for the purposes of this paragraph may be issued on the CMA’s behalf by an authorised member of the CMA.

*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.

*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.

*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.

---

*Status: This is the original version (as it was originally enacted).*

---

- 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.

*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.

*Appeal rules*

- 16 (1) The CMA Board may make rules of procedure regulating the conduct and disposal of appeals.

---

*Status: This is the original version (as it was originally enacted).*

---

- (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.
- (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.

### *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.

### *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”—
    - (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,

---

*Status: This is the original version (as it was originally enacted).*

---

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.

## SCHEDULE 6

Section 121

### CONDUCT OF FMI ADMINISTRATION

- 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).
- 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.
- 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,

*Status: This is the original version (as it was originally enacted).*

- (d) a reference to an administration order is a reference to an FMI administration order,
  - (e) 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.
- 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.
- 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.

TABLE 1 OF APPLIED PROVISIONS

SCHEDULE B1 TO THE INSOLVENCY ACT 1986

<i>Provision of Schedule B1</i>	<i>Subject</i>	<i>Modification</i>
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	

---

*Status: This is the original version (as it was originally enacted).*

---

<i>Provision of Schedule B1</i>	<i>Subject</i>	<i>Modification</i>
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 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 administrator's conduct to	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

*Status: This is the original version (as it was originally enacted).*

<i>Provision of Schedule B1</i>	<i>Subject</i>	<i>Modification</i>
		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 administration ending 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 subparagraph (2), the court may 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 subparagraph (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.

*Status: This is the original version (as it was originally enacted).*

<i>Provision of Schedule B1</i>	<i>Subject</i>	<i>Modification</i>
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) and (3).
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	
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

<i>Section</i>	<i>Subject</i>	<i>Modification or comment</i>
Section 233	Utilities	



*Status: This is the original version (as it was originally enacted).*

<i>Section</i>	<i>Subject</i>	<i>Modification or comment</i>
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. (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	
Sections 386 and 387, and Schedule 6 (and Schedule 4 to the Pension Schemes Act 1993)	Preferential debts	

*Status: This is the original version (as it was originally enacted).*

<i>Section</i>	<i>Subject</i>	<i>Modification or comment</i>
Section 389	Offence of acting without being qualified	Treat references to acting as an insolvency practitioner as references to acting as an FMI administrator.
Section 390	Persons not qualified to act	Treat references to acting as an insolvency practitioner as references to acting as an FMI administrator.
Section 391	Recognised professional bodies	An order under section 391 has effect in relation to any provision applied for the purposes of FMI administration.
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	

- 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.

## SCHEDULE 7

Section 121

### FINANCIAL MARKET INFRASTRUCTURE TRANSFER SCHEMES

#### *Application of Schedule*

- 1 This Schedule applies where—
- (a) the court has made an FMI administration order in relation to a company (“the old company”), and
  - (b) it is proposed that a transfer within section 115(5) be made to another company (“the new company”).

#### *Interpretation of Schedule*

- 2 In this Schedule—

---

*Status: This is the original version (as it was originally enacted).*

---

“FMI transfer scheme” has the meaning given by paragraph 4(1);  
“the new company” and “the old company” are to be read in accordance with paragraph 1;  
“third party”, in relation to an FMI transfer scheme or a modification of such a scheme, means a person other than the old company or the new company.

*FMI administrator to act on behalf of old company*

- 3 It is for the FMI administrator, while the FMI administration order is in force, to act on behalf of the old company in the doing of anything that it is authorised or required to do by or under this Schedule.

*Making of FMI transfer schemes*

- 4 (1) The old company may—  
(a) with the consent of the new company, and  
(b) for the purpose of giving effect to the proposed transfer,  
make a scheme under this Schedule for the transfer of property, rights and liabilities from the old company to the new company (an “FMI transfer scheme”).
- (2) Such a scheme may be made only at a time when the FMI administration order is in force in relation to the old company.
- (3) An FMI transfer scheme may set out the property, rights and liabilities to be transferred in one or more of the following ways—  
(a) by specifying or describing them in particular,  
(b) by identifying them generally by reference to, or to a specified part of, the undertaking of the old company, or  
(c) by specifying the manner in which they are to be determined.
- (4) An FMI transfer scheme is to take effect in accordance with paragraph 7 at the time appointed by the court.
- (5) But the court must not appoint a time for a scheme to take effect unless that scheme has been approved by the Bank of England.
- (6) The Bank of England may modify an FMI transfer scheme before approving it, but only modifications to which both the old company and the new company have consented may be made.
- (7) In deciding whether to approve an FMI transfer scheme, the Bank of England must have regard, in particular, to—  
(a) the public interest, and  
(b) any effect that the scheme is likely to have on the interests of third parties.
- (8) Before approving an FMI transfer scheme, the Bank of England must consult the Treasury.
- (9) The old company and the new company each have a duty to provide the Bank of England with all information and other assistance that the Bank may reasonably require for the purposes of, or in connection with, the exercise of the powers conferred on it by this paragraph.

---

*Status: This is the original version (as it was originally enacted).*

---

*Provision that may be made by a scheme*

- 5 (1) An FMI transfer scheme may contain provision—
- (a) for the creation, in favour of the old company or the new company, of an interest or right in or in relation to property transferred in accordance with the scheme;
  - (b) for giving effect to a transfer to the new company by the creation, in favour of that company, of an interest or right in or in relation to property retained by the old company;
  - (c) for the creation of new rights and liabilities (including rights of indemnity and duties to indemnify) as between the old company and the new company;
  - (d) in connection with any provision made under this sub-paragraph, provision making incidental provision as to the interests, rights and liabilities of other persons with respect to the property, rights and liabilities to which the scheme relates.
- (2) The property, rights and liabilities of the old company that may be transferred in accordance with an FMI transfer scheme include—
- (a) property, rights and liabilities that would not otherwise be capable of being transferred or assigned by the old company;
  - (b) property acquired, and rights and liabilities arising, in the period after the making of the scheme but before it takes effect;
  - (c) rights and liabilities arising after it takes effect in respect of matters occurring before it takes effect;
  - (d) property situated anywhere in the United Kingdom or elsewhere;
  - (e) rights and liabilities under the law of a part of the United Kingdom or of a place outside the United Kingdom;
  - (f) rights and liabilities under an enactment, EU instrument or subordinate legislation.
- (3) The transfers to which effect may be given by an FMI transfer scheme include transfers of interests and rights that are to take effect in accordance with the scheme as if there were—
- (a) no such requirement to obtain a person's consent or concurrence,
  - (b) no such liability in respect of a contravention of any other requirement, and
  - (c) no such interference with any interest or right,
- as there would be, in the case of a transaction apart from this Act, by reason of a provision falling within sub-paragraph (4).
- (4) A provision falls within this sub-paragraph to the extent that it has effect (whether under an enactment or agreement or otherwise) in relation to the terms on which the old company is entitled, or subject, to anything to which the transfer relates.
- (5) Sub-paragraph (6) applies where (apart from that sub-paragraph) a person would be entitled, in consequence of anything done or likely to be done by or under this Act in connection with an FMI transfer scheme—
- (a) to terminate, modify, acquire or claim an interest or right, or
  - (b) to treat an interest or right as modified or terminated.
- (6) That entitlement—
- (a) is not enforceable in relation to that interest or right until after the transfer of the interest or right by the scheme, and

---

*Status: This is the original version (as it was originally enacted).*

---

- (b) is then enforceable in relation to the interest or right only in so far as the scheme contains provision for the interest or right to be transferred subject to whatever confers that entitlement.
- (7) Sub-paragraphs (3) to (6) have effect where shares in a subsidiary of the old company are transferred—
- (a) as if the reference in sub-paragraph (4) to the terms on which the old company is entitled or subject to anything to which the transfer relates included a reference to the terms on which the subsidiary is entitled or subject to anything immediately before the transfer takes effect, and
  - (b) in relation to an interest or right of the subsidiary, as if the references in sub-paragraph (6) to the transfer of the interest or right included a reference to the transfer of the shares.
- (8) Sub-paragraphs (3) and (4) apply to the creation of an interest or right by an FMI transfer scheme as they apply to the transfer of an interest or right.

*Further provision about transfers*

- 6 (1) An FMI transfer scheme may make incidental, supplemental, consequential and transitional provision in connection with the other provisions of the scheme.
- (2) An FMI transfer scheme may in particular make provision, in relation to a provision of the scheme—
- (a) for the new company to be treated as the same person in law as the old company;
  - (b) for agreements made, transactions effected or other things done by or in relation to the old company to be treated, so far as may be necessary for the purposes of or in connection with a transfer in accordance with the scheme, as made, effected or done by or in relation to the new company;
  - (c) for references in an agreement, instrument or other document to the old company or to an employee or office holder with the old company to have effect, so far as may be necessary for the purposes of or in connection with a transfer in accordance with the scheme, with such modifications as are specified in the scheme;
  - (d) that the effect of any transfer in accordance with the scheme in relation to contracts of employment with the old company is not to terminate any of those contracts but is to be that periods of employment with that company are to count for all purposes as periods of employment with the new company;
  - (e) for proceedings commenced by or against the old company to be continued by or against the new company.
- (3) Sub-paragraph (2)(c) does not apply to references in an enactment or in subordinate legislation.
- (4) An FMI transfer scheme may make provision for disputes between the old company and the new company as to the effect of the scheme to be referred to such arbitration as may be specified in or determined under the scheme.
- (5) Where a person is entitled, in consequence of an FMI transfer scheme, to possession of a document relating in part to the title to land or other property in England and Wales, or to the management of such land or other property—

---

*Status: This is the original version (as it was originally enacted).*

---

- (a) the scheme may provide for that person to be treated as having given another person an acknowledgement in writing of the right of that other person to production of the document and to delivery of copies of it, and
  - (b) section 64 of the Law of Property Act 1925 (production and safe custody of documents) is to have effect accordingly, and on the basis that the acknowledgement did not contain an expression of contrary intention.
- (6) Where a person is entitled, in consequence of an FMI transfer scheme, to possession of a document relating in part to the title to land or other property in Scotland or to the management of such land or other property, subsections (1) and (2) of section 16 of the Land Registration (Scotland) Act 1979 (omission of certain clauses in deeds) is to have effect in relation to the transfer—
- (a) as if the transfer had been effected by deed, and
  - (b) as if the words “unless specially qualified” were omitted from each of those subsections.
- (7) Where a person is entitled, in consequence of an FMI transfer scheme, to possession of a document relating in part to the title to land or other property in Northern Ireland or to the management of such land or other property—
- (a) the scheme may provide for that person to be treated as having given another person an acknowledgement in writing of the right of that other person to production of the document and to delivery of copies of it, and
  - (b) section 9 of the Conveyancing Act 1881 is to have effect accordingly, and on the basis that the acknowledgement does not contain an expression of contrary intention.
- (8) In this paragraph references to a transfer in accordance with an FMI transfer scheme include references to the creation in accordance with such a scheme of an interest, right or liability.

#### *Effect of scheme*

- 7 (1) In relation to each provision of an FMI transfer scheme for the transfer of property, rights or liabilities, or for the creation of interests, rights or liabilities—
- (a) the property, interests, rights or liabilities become by virtue of this Schedule the property, interests, rights or liabilities of the transferee at the time appointed by the court for the purposes of paragraph 4(4), and
  - (b) the provisions of that scheme in relation to that property, or those interests, rights or liabilities, have effect from that time.
- (2) In this paragraph “the transferee” means—
- (a) in relation to property, rights or liabilities transferred by an FMI transfer scheme, the new company;
  - (b) in relation to interests, rights or liabilities created by such a scheme, the person in whose favour, or in relation to whom, they are created.

#### *Subsequent modification of scheme*

- 8 (1) The Bank of England may by notice to the old company and the new company modify an FMI transfer scheme after it has taken effect, but only modifications to which both the old company and the new company have consented may be made.
- (2) The notice must specify the time at which it is to take effect (the “modification time”).

---

*Status: This is the original version (as it was originally enacted).*

---

- (3) Where a notice is issued under this paragraph in relation to an FMI transfer scheme, as from the modification time, the scheme is for all purposes to be treated as having taken effect, at the time appointed for the purposes of paragraph 4(4), with the modifications made by the notice.
- (4) Those modifications may make—
  - (a) any provision that could have been included in the scheme when it took effect at the time appointed for the purposes of paragraph 4(4), and
  - (aa) transitional provision in connection with provision falling within paragraph (a).
- (5) In deciding whether to modify an FMI transfer scheme, the Bank of England must have regard, in particular, to—
  - (a) the public interest, and
  - (b) any effect that the modification is likely to have on the interests of third parties.
- (6) Before modifying an FMI transfer scheme that has taken effect, the Bank of England must consult the Treasury.
- (7) The old company and the new company each have a duty to provide the Bank of England with all information and other assistance that the Bank may reasonably require for the purposes of, or in connection with, the exercise of the powers conferred on it by this paragraph.

*Provision relating to foreign property*

- 9 (1) An FMI transfer scheme may contain provision about—
  - (a) the transfer of foreign property, right and liabilities, and
  - (b) the creation of foreign property, rights and liabilities.
- (2) For this purpose property, or a right, interest or liability, is “foreign” if an issue relating to it arising in any proceedings would (in accordance with the rules of private international law) be determined under the law of a country or territory outside the United Kingdom.

*Application of Schedule to transfers to subsidiaries*

- 10 Where a proposed transfer falling within subsection (5) of section 115 is a transfer of the kind mentioned in subsection (6)(a) of that section, this Schedule has effect in relation to the transfer as if—
  - (a) paragraph 4(1)(a) were omitted, and
  - (b) in paragraph 4(6), for the words from “both” onwards there were substituted “the old company has consented may be made”.

## 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.
- 2 Omit section 234H (power of FCA to make request to Office of Fair Trading).
- 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



---

*Status: This is the original version (as it was originally enacted).*

---

to which steps that might include steps under Part 4 of that Act can and should be taken.

- (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—

---

*Status: This is the original version (as it was originally enacted).*

---

- (a) the power under section 55J(2) to vary or cancel a Part 4A permission;
- (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.
- (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.”
- 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”.
- 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.)”
- 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).”
- 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—



## 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—

“(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).

---

*Status: This is the original version (as it was originally enacted).*

---

- (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).
- (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.

#### *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

---

*Status: This is the original version (as it was originally enacted).*

---

- (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 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—

---

*Status: This is the original version (as it was originally enacted).*

---

### **“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, 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.



---

*Status: This is the original version (as it was originally enacted).*

---

- (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.
- (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”.

---

*Status: This is the original version (as it was originally enacted).*

---

- 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”.
- (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

---

*Status: This is the original version (as it was originally enacted).*

---

(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).”

(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.

*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”.
- 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.”
- 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);  
(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,”.

- 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)”.

*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”.

*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””.

- 8 In section 191 of the Banking Act 2009 (directions), in subsection (1), after “inter-bank” insert “payment”.

*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,”.
- 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—

---

*Status: This is the original version (as it was originally enacted).*

---

“(8) For the purposes of subsection (2), sections 1A(6) and 2A(6) of FSMA 2000 do not apply.”