



# Bank of England and Financial Services Act 2016

## 2016 CHAPTER 14

### PART 2

#### FINANCIAL SERVICES

##### *The regulators*

#### **18 Appointment of Financial Conduct Authority chief executive**

In Schedule 1ZA to the Financial Services and Markets Act 2000 (the Financial Conduct Authority), after paragraph 2 insert—

- “2A (1) The term of office of a person appointed as chief executive under paragraph 2(2)(b) must not begin before—
- (a) the person has, in connection with the appointment, appeared before the Treasury Committee of the House of Commons, or
  - (b) (if earlier) the end of the period of 3 months beginning with the day on which the appointment is made.
- (2) Sub-paragraph (1) does not apply if the person is appointed as chief executive on an acting basis, pending a further appointment being made.
- (3) The reference to the Treasury Committee of the House of Commons—
- (a) if the name of that Committee is changed, is a reference to that Committee by its new name, and
  - (b) if the functions of that Committee (or substantially corresponding functions) become functions of a different Committee of the House of Commons, is to be treated as a reference to the Committee by which the functions are exercisable.

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(4) Any question arising under sub-paragraph (3) is to be determined by the Speaker of the House of Commons.”

**Commencement Information**

**I1** S. 18 in force at 6.7.2016 by [S.I. 2016/627](#), [reg. 2\(1\)\(m\)](#)

**19 Treasury recommendations to Financial Conduct Authority**

In Chapter 1 of Part 1A of the Financial Services and Markets Act 2000 (the Financial Conduct Authority), after section 1J insert—

*“Recommendations*

**1JA Recommendations by Treasury in connection with general duties**

- (1) The Treasury may at any time by notice in writing to the FCA make recommendations to the FCA about aspects of the economic policy of Her Majesty’s Government to which the FCA should have regard when considering—
- (a) how to act in a way which is compatible with its strategic objective,
  - (b) how to advance one or more of its operational objectives,
  - (c) how to discharge the duty in section 1B(4) (duty to promote effective competition in the interests of consumers),
  - (d) the application of the regulatory principles in section 3B, and
  - (e) the matter mentioned in section 1B(5)(b) (importance of taking action to minimise the extent to which it is possible for a business to be used for a purpose connected with financial crime).
- (2) The Treasury must make recommendations under subsection (1) at least once in each Parliament.
- (3) The Treasury must—
- (a) publish in such manner as they think fit any notice given under subsection (1), and
  - (b) lay a copy of it before Parliament.”

**Commencement Information**

**I2** S. 19 in force at 6.7.2016 by [S.I. 2016/627](#), [reg. 2\(1\)\(n\)](#)

**20 Regulatory principles: diversity**

- (1) Section 3B of the Financial Services and Markets Act 2000 (regulatory principles to be applied by both regulators) is amended as follows.
- (2) In subsection (1)(f) after “persons” insert “(including different kinds of person such as mutual societies and other kinds of business organisation)”.
- (3) After subsection (3) insert—

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“(3A) Mutual society” has the same meaning as in section 138K.”

#### Commencement Information

**I3** S. 20 in force at 6.7.2016 by [S.I. 2016/627](#), [reg. 2\(1\)\(o\)](#)

### *Conduct of persons working in financial services sector*

## **21 Extension of relevant authorised persons regime to all authorised persons**

Schedule 4 makes provision extending to authorised persons provisions of Part 5 of the Financial Services and Markets Act 2000 (performance of regulated activities) which now apply only to relevant authorised persons.

#### Commencement Information

**I4** [S. 21](#) in force at 13.9.2018 for specified purposes by [S.I. 2018/990](#), [reg. 2\(1\)\(2\)](#) (with [regs. 3-6](#))

**I5** [S. 21](#) in force at 10.12.2018 for specified purposes by [S.I. 2018/990](#), [reg. 2\(1\)\(3\)](#) (with [regs. 3-6](#))

## **22 Rules about controlled functions: power to make transitional provision**

(1) The Financial Services and Markets Act 2000 is amended as follows.

(2) After section 59A insert—

### **“59AB Specifying functions as controlled functions: transitional provision**

(1) In relation to rules made by the FCA or the PRA under section 59, the power conferred by section 137T(c) to make transitional provision includes in particular power—

- (a) to provide for anything done under this Part in relation to controlled functions of a particular description to be treated as having been done in relation to controlled functions of a different description;
- (b) to provide for anything done under this Part (including any application or order made, any requirement imposed and any approval or notice given) to cease to have effect, to continue to have effect, or to continue to have effect with modifications, or subject to time limits or conditions;
- (c) to provide for rules made by the regulator making the rules under section 59 to apply with modifications;
- (d) to make saving provision.

(2) The Treasury may by regulations make whatever incidental, consequential, transitional, supplemental or saving provision the Treasury consider appropriate in connection with the making of rules by the FCA or the PRA under section 59.

(3) Regulations under subsection (2) may—

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- (a) confer functions on the FCA or the PRA (including the function of making rules);
  - (b) modify, exclude or apply (with or without modifications) any primary or subordinate legislation (including any provision of, or made under, this Act).”
- (3) In section 429(2B) (regulations subject to affirmative procedure) for “contain” substitute “contain—
- (a) provision made under section 59AB(2) which modifies, excludes or applies with modifications any provision of primary legislation;”.

#### Commencement Information

**I6** S. 22 in force at 6.7.2016 by [S.I. 2016/627](#), [reg. 2\(1\)\(p\)](#)

### 23 Administration of senior managers regime

- (1) The Financial Services and Markets Act 2000 is amended as follows.
- (2) In section 62A(4) (changes in responsibilities of senior managers), at the end of the definition of “the appropriate regulator” insert “, except that the reference in section 60(9)(b) to subsection (3) is to be treated as a reference to subsection (2) of this section”.
- (3) In section 63ZA (variation of senior manager's approval at request of authorised person)—
- (a) in subsection (1), for “application for approval under section 59 is granted” substitute “approval under section 59 has effect”;
  - (b) after subsection (1) insert—
    - “(1A) Where an approval under section 59 has effect for a limited period, the authorised person concerned may apply to the appropriate regulator to vary the approval by—
    - (a) varying the period for which the approval is to have effect, or
    - (b) removing the limit on the period for which the approval is to have effect.”;
  - (c) in subsection (2)(a) the words from “whichever” to the end become sub-paragraph (i), and at the end of that sub-paragraph insert “, or
  - (ii) if the condition has been varied before (under this section or section 63ZB), whichever of the FCA or the PRA last varied it;”;
  - (d) after subsection (2)(b) insert—
    - “(c) in the case of an application for variation of an approval in a way described in subsection (1A), means—
    - (i) whichever of the FCA or the PRA imposed the limit on the period for which the approval has effect, or
    - (ii) if the limit has been varied before (under this section or section 63ZB), whichever of the FCA or the PRA last varied it.”;
  - (e) in subsection (3) for “which was imposed” substitute “, or a limit on the period for which an approval has effect, which was imposed (or last varied)”;

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- (f) after subsection (7) insert—
    - “(7A) An application may not be made under this section for the variation or removal of a condition, or a limit on the period for which an approval has effect, where the condition or limit has effect by virtue of section 66.”;
  - (g) in subsection (8), after “section 62” insert “, but as if in subsections (2), (3) and (4) the words “, or to grant the application subject to conditions or for a limited period (or both)” were omitted”.
- (4) In section 63ZB (variation of senior manager's approval on initiative of regulator)—
- (a) omit the “or” at the end of subsection (3)(c);
  - (b) at the beginning of subsection (3)(d) insert “where the approval has effect for an unlimited period.”;
  - (c) at the end of subsection (3)(d) insert “, or
    - (e) where the approval has effect for a limited period, varying that period or removing the limit on the period for which the approval is to have effect.”;
  - (d) after subsection (4) insert—
    - “(4A) Before one regulator varies an approval which was last varied by the other regulator, it must consult the other regulator.”
- (5) In section 204A (meaning of appropriate regulator)—
- (a) in subsection (3)(d) for the words from “the authorised person” to the end substitute “the revised statement of responsibilities is to be provided to the PRA only.”;
  - (b) in subsection (3A), after paragraph (b) insert—
    - “(ba) a requirement under section 62A(2) where the revised statement of responsibilities is to be provided to the FCA and the PRA.”.

#### Commencement Information

I7 S. 23 in force at 6.7.2016 by S.I. 2016/627, reg. 2(1)(g)

## 24 Rules of conduct

- (1) The Financial Services and Markets Act 2000 is amended as follows.
- (2) In section 64A (power of FCA and PRA to make rules of conduct)—
- (a) in subsection (1) after paragraph (b) insert—
    - “(c) persons who are directors of authorised persons.”;
  - (b) in subsection (2) after paragraph (c) insert—
    - “(d) persons who are directors of PRA-authorised persons.”;
  - (c) omit the “and” at the end of subsection (5)(a);
  - (d) after subsection (5)(a) insert—
    - “(ab) in the case of a person who is a director of an authorised person but is not an approved person, that authorised person, and”;

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(e) after subsection (6) insert—

“(7) In this section “director”, in relation to an authorised person, means a member of the board of directors, or if there is no such board, the equivalent body responsible for the management of the authorised person concerned.”

(3) In section 64B (responsibilities of authorised persons in relation to rules of conduct)—

- (a) omit the “and” at the end of subsection (4)(a);
- (b) at the end of subsection (4)(b) insert “, and
  - (c) any person who is a director of the authorised person.”;
- (c) omit subsection (5);
- (d) after subsection (6) insert—

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

#### Commencement Information

**18** S. 24 in force at 6.7.2016 by [S.I. 2016/627](#), [reg. 2\(1\)\(r\)](#)

## 25 Misconduct

(1) The Financial Services and Markets Act 2000 is amended as follows.

(2) In section 66A (misconduct: action by FCA)—

- (a) omit the “or” at the end of subsection (2)(b)(i);
- (b) at the end of subsection (2)(b)(ii) insert “, or
  - (iii) a director of an authorised person.”;
- (c) omit the “or” at the end of subsection (3)(b)(i);
- (d) at the end of subsection (3)(b)(ii) insert “, or
  - (iii) a director of the authorised person.”;
- (e) omit the “and” at the end of subsection (5)(b);
- (f) at the end of subsection (5)(c) insert “, and
  - (d) the senior manager did not take such steps as a person in the senior manager’s position could reasonably be expected to take to avoid the contravention occurring (or continuing).”;
- (g) omit subsection (6);
- (h) in subsection (8) after the definition of “approved person” insert—

““director”, in relation to an authorised person, has the same meaning as in section 64A;”.

(3) In section 66B (misconduct: action by PRA)—

- (a) omit the “or” at the end of subsection (2)(b)(i);
- (b) at the end of subsection (2)(b)(ii) insert “, or
  - (iii) a director of a PRA-authorised person.”;
- (c) omit the “or” at the end of subsection (3)(b)(i);
- (d) at the end of subsection (3)(b)(ii) insert “, or
  - (iii) a director of the PRA-authorised person.”;

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- (e) omit the “and” at the end of subsection (5)(b);
- (f) at the end of subsection (5)(c) insert “, and
  - (d) the senior manager did not take such steps as a person in the senior manager's position could reasonably be expected to take to avoid the contravention occurring (or continuing).”;
- (g) omit subsection (6);
- (h) in subsection (8) after the definition of “approved person” insert—
  - ““director”, in relation to an authorised person, has the same meaning as in section 64A;”.

#### Commencement Information

**I9** S. 25(1)(2)(e)(f)(g)(3)(e)(f)(g) in force at 10.5.2016 by [S.I. 2016/569](#), [reg. 2](#)

**I10** S. 25(2)(a)-(d)(h)(3)(a)-(d)(h) in force at 6.7.2016 by [S.I. 2016/627](#), [reg. 2\(1\)\(s\)](#)

## 26 Decisions causing a financial institution to fail: meaning of insolvency

(1) Section 37 of the Financial Services (Banking Reform) Act 2013 (interpretation of section 36) is amended as follows.

(2) In subsection (10)—

(a) after paragraph (c) insert—

“(ca) building society insolvency,  
(cb) investment bank insolvency.”;

(b) after paragraph (e) insert—

“(ea) building society special administration.”.

(3) After subsection (10) insert—

“(11) For the purposes of subsection (10)—

“bank administration” has the same meaning as in the Banking Act 2009 (see section 136 of that Act);

“bank insolvency” has the same meaning as in that Act (see section 90 of that Act);

“building society insolvency” and “building society special administration” have the same meaning as in the Building Societies Act 1986 (see section 119 of that Act);

“investment bank insolvency” means any procedure established by regulations under section 233 of the Banking Act 2009.”

#### Commencement Information

**I11** S. 26 in force at 6.7.2016 by [S.I. 2016/627](#), [reg. 2\(1\)\(t\)](#)

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### *Enforceability of agreements*

#### **27 Enforceability of agreements relating to credit**

- (1) Section 26A of the Financial Services and Markets Act 2000 (agreements relating to credit) is amended as follows.
- (2) In subsection (4)—
- (a) the words from “has” to the end become paragraph (a);
  - (b) after that paragraph insert—
    - “(b) is an appointed representative in relation to that activity,
    - (c) is an exempt person in relation to that activity, or
    - (d) is a person to whom, as a result of Part 20, the general prohibition does not apply in relation to that activity.”
- (3) In subsection (5)—
- (a) the words from “the agreement” (in the third place they occur) to the end become paragraph (a) (and the existing paragraphs (a) and (b) become subparagraphs (i) and (ii) of that paragraph);
  - (b) after that paragraph insert—
    - “(b) that person is an appointed representative in relation to that activity,
    - (c) that person is an exempt person in relation to that activity, or
    - (d) that person is a person to whom, as a result of Part 20, the general prohibition does not apply in relation to that activity.”

#### **Commencement Information**

**I12** S. 27 in force at 6.7.2016 by [S.I. 2016/627](#), [reg. 2\(1\)\(u\)](#)

#### **28 Enforceability of agreements made through unauthorised persons**

- (1) Section 27 of the Financial Services and Markets Act 2000 (agreements made through unauthorised persons) is amended as follows.
- (2) After subsection (1) insert—
- “(1ZA) But this section does not apply to a regulated credit agreement or a regulated consumer hire agreement unless the provider knows before the agreement is made that the third party had some involvement in the making of the agreement or matters preparatory to its making.”
- (3) In subsection (1A) for “The agreement” substitute “An agreement to which this section applies”.
- (4) After subsection (4) insert—
- “(5) For the purposes of subsection (1ZA)—
- “regulated consumer hire agreement” has the meaning given by article 60N of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544);



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“regulated credit agreement” has the meaning given by article 60B of that Order.”

**Commencement Information**

**I13** S. 28 in force at 6.7.2016 by [S.I. 2016/627](#), [reg. 2\(1\)\(v\)](#)

*Illegal money lending*

**29 Illegal money lending**

- (1) The Financial Services and Markets Act 2000 is amended as follows.
- (2) After Part 20A insert—

**“PART 20B**

**ILLEGAL MONEY LENDING**

**333S Financial assistance for action against illegal money lending**

- (1) The Treasury may make grants or loans, or give any other form of financial assistance, to any person for the purpose of taking action against illegal money lending.
- (2) Taking action against illegal money lending includes—
  - (a) investigating illegal money lending and offences connected with illegal money lending;
  - (b) prosecuting, or taking other enforcement action in respect of, illegal money lending and offences connected with illegal money lending;
  - (c) providing education, information and advice about illegal money lending, and providing support to victims of illegal money lending;
  - (d) undertaking or commissioning research into the effectiveness of activities of the kind described in paragraphs (a) to (c);
  - (e) providing advice, assistance and support (including financial support) to, and oversight of, persons engaged in activities of the kind described in paragraphs (a) to (c).
- (3) A grant, loan or other form of financial assistance under subsection (1) may be made or given on such terms as the Treasury consider appropriate.
- (4) “Illegal money lending” means carrying on a regulated activity within article 60B of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) (regulated credit agreements) in circumstances which constitute an authorisation offence.

**333T Funding of action against illegal money lending**

- (1) The Treasury must, from time to time, notify the FCA of the amount of the Treasury's illegal money lending costs.

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- (2) The FCA must make rules requiring authorised persons, or any specified class of authorised person, to pay to the FCA specified amounts, or amounts calculated in a specified way, with a view to recovering the amount notified under subsection (1).
  - (3) The amounts to be paid under the rules may include a component to recover the expenses of the FCA in collecting the payments (“collection costs”).
  - (4) Before the FCA publishes a draft of the rules it must consult the Treasury.
  - (5) The rules may be made only with the consent of the Treasury.
  - (6) The Treasury may notify the FCA of matters that they will take into account when deciding whether or not to give consent for the purposes of subsection (5).
  - (7) The FCA must have regard to any matters notified under subsection (6) before publishing a draft of rules to be made under this section.
  - (8) The FCA must pay to the Treasury the amounts that it receives under rules made under this section apart from amounts in respect of its collection costs (which it may keep).
  - (9) The Treasury must pay into the Consolidated Fund the amounts received by them under subsection (8).
  - (10) In this section the “Treasury’s illegal money lending costs” means the expenses incurred, or expected to be incurred, by the Treasury—
    - (a) in connection with providing grants, loans, or other financial assistance to any person (under section 333S or otherwise) for the purpose of taking action against illegal money lending;
    - (b) in undertaking or commissioning research relating to taking action against illegal money lending.
  - (11) The Treasury may by regulations amend the definition of the “Treasury’s illegal money lending costs”.
  - (12) In this section “illegal money lending” and “taking action against illegal money lending” have the same meaning as in section 333S.”
- (3) In section 138F (notification of rules), for “or 333R” substitute “, 333R or 333T”.
  - (4) In section 138I (consultation by FCA)—
    - (a) in subsection (6), after paragraph (cb) insert—
 

“(cc) section 333T.”;
    - (b) in subsection (10)(a), for “or 333R” substitute “, 333R or 333T”.
  - (5) In section 429(2) (regulations subject to affirmative procedure), for “or 333R” substitute “, 333R or 333T”.
  - (6) In paragraph 23 of Schedule 1ZA (FCA fees rules)—
    - (a) in sub-paragraph (1) for “and 333R” substitute “, 333R and 333T”;
    - (b) in sub-paragraph (2ZA)(b) for “section 333R” substitute “sections 333R and 333T”.

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### Commencement Information

**I14** S. 29 in force at 6.7.2016 by S.I. 2016/627, reg. 2(1)(w)

PROSPECTIVE

## Money laundering [<sup>F1</sup>and terrorist financing]

### Textual Amendments

**F1** Words in s. 30 cross-heading inserted (26.6.2017) by [The Money Laundering, Terrorist Financing and Transfer of Funds \(Information on the Payer\) Regulations 2017 \(S.I. 2017/692\)](#), reg. 1(2), [Sch. 7 para. 11\(a\)](#) (with regs. 8, 15)

### 30 Money laundering [<sup>F2</sup>and terrorist financing]

- (1) In any regulations or orders transposing money laundering measures contained within [Directive \(EU\) 2015/849](#) of the European Parliament and of the Council of 20 May 2015 (or in relation to any subsequent EU amending or successor measure) the [<sup>F3</sup>Treasury] shall have a duty to ensure, insofar as such regulations or orders relate to institutions regulated by the Financial Conduct Authority—
- (a) reasonable regard and due prominence is given to—
    - (i) recital 33,
    - (ii) Article 13(2),
    - (iii) Article 15, and
    - (iv) Article 16 and Annex II;
  - (b) clarity is achieved with respect to the meaning and interpretation of “prominent public function” in the context of money laundering;
  - (c) reasonable regard and due prominence is given to Article 22 which recognises that a politically exposed person may have no prominent public function; and
  - (d) any interpretation of “adequate” in Article 20(b)(ii), and “enhanced” in Article 20(b)(iii) takes account of, and gives due prominence to, the provisions in Article 13 on risk sensitivity.
- (2) The Financial Services and Markets Act 2000 is amended as follows.
- (3) After Part 20B insert—

## “PART 20C

### MONEY LAUNDERING

#### 333U Money laundering: guidance

- (1) The FCA must, prior to relevant regulations coming into force, issue guidance to regulated entities on the definition of one or more categories of politically exposed persons (“PEPs”).

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- (2) Guidance under subsection (1) must include, but need not be limited to—
- (a) a requirement to take a proportional, risk-based and differentiated approach to conducting transactions or business relationships with each category of PEP that may be defined; and
  - (b) specified categories of persons to be—
    - (i) included in, and
    - (ii) excluded from,
 any definitions of PEPs.
- (3) The Secretary of State may, by regulations, make provision about—
- (a) the guidance issued, amended or reissued under subsection (1);
  - (b) arrangements for complaints about the treatment of individuals by regulated entities to be received, assessed and adjudicated by the FCA, where—
    - (i) a person was treated as though he or she was a PEP (and he or she was not),
    - (ii) a person who is a PEP was treated unreasonably in disregard of guidance under subsection (1), particularly in regard to specific elements required under subsection (2)(a), or
    - (iii) a person was refused a business relationship solely on the basis that he or she is a PEP,
  - (c) circumstances in which—
    - (i) compensation payments are to be required from, or
    - (ii) financial penalties are to be imposed on,
 regulated entities where complaints under paragraph (b) are upheld.
- (4) For the purposes of subsection (1), “relevant regulations” means regulations transposing into United Kingdom law measures that EU Member States are required to implement to combat money laundering (or subsequent regulations amending those regulations) that contain references to PEPs.
- (5) The power to make regulations under subsection (3) is exercisable by statutory instrument which may only be made after a draft of any such instrument has been laid before, and approved by a resolution of, each House of Parliament.”

#### Textual Amendments

- F2** Words in s. 30 heading inserted (26.6.2017) by [The Money Laundering, Terrorist Financing and Transfer of Funds \(Information on the Payer\) Regulations 2017 \(S.I. 2017/692\)](#), reg. 1(2), [Sch. 7 para. 11\(b\)\(i\)](#) (with regs. 8, 15)
- F3** Word in s. 30(1) substituted (26.6.2017) by [The Money Laundering, Terrorist Financing and Transfer of Funds \(Information on the Payer\) Regulations 2017 \(S.I. 2017/692\)](#), reg. 1(2), [Sch. 7 para. 11\(b\)\(ii\)](#) (with regs. 8, 15)

#### Modifications etc. (not altering text)

- C1** S. 30(1) excluded (26.6.2017) by [The Money Laundering, Terrorist Financing and Transfer of Funds \(Information on the Payer\) Regulations 2017 \(S.I. 2017/692\)](#), reg. 1(2), [36\(1\)](#) (with regs. 8, 15)

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## *Transformer vehicles*

### **31 Transformer vehicles**

- (1) The Financial Services and Markets Act 2000 is amended as follows.
- (2) After Part 17 insert—

#### **“PART 17A**

#### **TRANSFORMER VEHICLES**

##### **284A Transformer vehicles**

- (1) In this section “transformer vehicle” means an undertaking (“A”) which—
  - (a) is established for the purposes of carrying on the activities mentioned in subsection (2), or
  - (b) carries on those activities.
- (2) The activities referred to in subsection (1) are—
  - (a) assuming risk from another undertaking (“B”), and
  - (b) fully funding A's exposure to that risk by issuing investments where the repayment rights of the investors are subordinated to A's obligations to B in respect of the risk.
- (3) The Treasury may by regulations make provision for facilitating, and provision for regulating—
  - (a) the establishment and operation of transformer vehicles;
  - (b) the activities mentioned in subsection (2);
  - (c) the trading of investments issued by transformer vehicles.
- (4) Regulations under subsection (3) may (amongst other things) make provision—
  - (a) for the incorporation and registration in the United Kingdom of bodies corporate;
  - (b) for a body incorporated by virtue of the regulations to take such form and name as may be determined in accordance with the regulations;
  - (c) as to the purposes for which such a body may exist and the investments which it may issue;
  - (d) as to the constitution, ownership, management and operation of such a body;
  - (e) for such a body to comprise different parts;
  - (f) for such parts to have legal personality distinct from that of the body;
  - (g) as to the holding and management of the assets and liabilities of such a body, including provision for the segregation of assets and liabilities relating to different risks;
  - (h) as to the powers, duties, rights and liabilities of such a body and of other persons, including—
    - (i) its directors and other officers;

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- (ii) its shareholders, and persons who hold the beneficial title to shares in it without holding the legal title;
  - (iii) its auditor;
  - (iv) any persons holding assets for it;
  - (v) any persons who act or purport to act on its behalf;
  - (i) as to the merger of one or more such bodies and the division of such a body;
  - (j) for the appointment and removal of an auditor for such a body;
  - (k) as to the winding up and dissolution of such a body;
  - (l) enabling the FCA or the PRA to apply to a court for an order removing or replacing any director of, or person holding assets for, such a body;
  - (m) for the carrying out of investigations by persons appointed by the FCA or the PRA.
- (5) If regulations under subsection (3) make the provision mentioned in subsection (4)(e) references in subsection (4) to a body include its constituent parts.
- (6) Regulations under subsection (3) may—
- (a) impose criminal liability;
  - (b) confer functions on the FCA or the PRA (including the functions of making rules and giving directions);
  - (c) authorise the FCA or the PRA to require the Council of Lloyd's to exercise functions on its behalf (including functions conferred otherwise than by the regulations);
  - (d) confer jurisdiction on any court or on the Tribunal;
  - (e) provide for fees to be charged by the FCA or the PRA in connection with the carrying out of any of their functions under the regulations (including fees payable on a periodical basis);
  - (f) modify, exclude or apply (with or without modifications) any primary or subordinate legislation (including any provision of, or made under, this Act);
  - (g) make consequential amendments, repeals and revocations of any such legislation;
  - (h) modify or exclude any rule of law.
- (7) Regulations under subsection (3) may make the provision mentioned in subsection (6)(c) only with the consent of the Council of Lloyd's.
- (8) The provision that may be made by virtue of subsection (6)(f) includes provision extending or adapting any power to make subordinate legislation.
- (9) Regulations under subsection (3) may provide that a reference in the regulations to, or to any provision of, legislation (including an EU instrument and legislation of a country or territory outside the United Kingdom) is to be construed as a reference to that legislation or that provision as amended from time to time.
- (10) In this section—
- “investment” includes any asset, right or interest;

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“primary legislation” means an Act, an Act of the Scottish Parliament, a Measure or Act of the National Assembly for Wales, or Northern Ireland legislation;

“subordinate legislation” means an instrument made under primary legislation.

(11) If a statutory instrument containing regulations under this section would, apart from this subsection, be treated as a hybrid instrument for the purposes of the Standing Orders of either House of Parliament, it is to proceed in that House as if it were not a hybrid instrument.”

(3) In section 429(2) (regulations subject to the affirmative procedure), after “262,” insert “284A,”.

### *Pensions*

#### **F<sup>4</sup>32 Pensions guidance**

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#### **Textual Amendments**

**F4** S. 32 omitted (I.1.2019) by virtue of [Financial Guidance and Claims Act 2018 \(c. 10\)](#), s. 37(5), [Sch. 3 para. 32](#); S.I. 2018/1330, [reg. 2\(g\)\(vii\)](#)

#### **33 Advice about transferring or otherwise dealing with annuity payments**

- (1) The Financial Services and Markets Act 2000 is amended as follows.
- (2) After section 137FB insert—

##### **“137FBA FCA general rules: advice about transferring or otherwise dealing with annuity payments**

- (1) The FCA must make general rules requiring specified authorised persons to check that an individual—
  - (a) who has a right to payments under a relevant annuity, and
  - (b) if the Treasury make regulations under subsection (3), who is not an exempt person by virtue of those regulations,has received appropriate advice before transferring or otherwise dealing with the right to those payments.
- (2) The reference in subsection (1) to a right to payments under a relevant annuity does not include a contingent right to such payments.
- (3) The Treasury may by regulations provide that an individual whose financial circumstances meet criteria specified in the regulations is an exempt person for the purposes of subsection (1)(b).
- (4) Regulations made under subsection (3) may (amongst other things) specify criteria based on the proportion of the individual's financial resources that is

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represented by the payments under the relevant annuity or the value of that annuity.

- (5) The rules made by virtue of subsection (1) may include provision—
- (a) about what specified authorised persons must do to check that an individual has received appropriate advice for the purposes of those rules;
  - (b) about when the check must be carried out.
- (6) For the purposes of this section—
- (a) “relevant annuity” means an annuity specified (by type, value or otherwise) as a relevant annuity in regulations made by the Treasury;
  - (b) “appropriate advice” means advice specified (by reference to the person giving the advice or otherwise) as appropriate advice in regulations made by the Treasury;
  - (c) “specified authorised person” means an authorised person of a description specified in rules made by virtue of subsection (1).
- (7) If regulations under subsection (3) or (6)(a) make provision about the value of an annuity, the regulations may also make provision about the basis on which the value of an annuity is to be calculated.”
- (3) In section 138F(2) (notification of rules) after “137FB,” insert “137FBA,”.
- (4) In section 138I (consultation by the FCA)—
- (a) in subsection (6), after paragraph (aa) insert—  
“(ab) section 137FBA;”;
  - (b) in subsection (10)(a) after “137FB,” insert “137FBA,”.
- (5) In section 429(2B) (regulations subject to affirmative procedure)—
- (a) after paragraph (a) (inserted by section 22) insert—  
“(b) provision made under section 137FBA(3);”;
  - (b) the words from “provision made under section 410A,” to the end become paragraph (c).

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**Commencement Information**

**I15** S. 33 in force at 6.7.2016 by [S.I. 2016/627](#), [reg. 2\(1\)\(x\)](#)

**34 Independent advice on conversions and transfers of pension benefits: appointed representatives**

- (1) The Pension Schemes Act 2015 is amended as follows.
- (2) In section 48(8) (independent advice in respect of conversions and transfers: Great Britain), in paragraph (a) of the definition of “authorised independent adviser”, after “Secretary of State,” insert “or is acting as an appointed representative (within the meaning given by section 39(2) of that Act) in relation to a regulated activity so specified,”.
- (3) In section 51(8) (independent advice in respect of conversions and transfers: Northern Ireland), in paragraph (a) of the definition of “authorised independent adviser”, after “Northern Ireland,” insert “or is acting as an appointed representative (within the



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meaning given by section 39(2) of that Act) in relation to a regulated activity so specified.”.

- (4) The Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001 (S.I. 2001/1217) are amended as follows.
- (5) In regulation 2(1) (descriptions of business for which appointed representatives are exempt) after sub-paragraph (cca) insert—
  - “(ccb) an activity of the kind specified by article 53E of that Order (advising on conversion or transfer of pension benefits);”.
- (6) In regulation 3 (requirements applying to contracts between authorised persons and appointed representatives) after paragraph (3G) insert—
  - “(3GA) A representative is also to be treated as representing other counterparties for the purposes of paragraph (1) where the representative gives advice (in circumstances constituting the carrying on of an activity of the kind specified by article 53E of that Order) on behalf of other counterparties.”
- (7) The amendments made by subsections (4) to (6) do not affect the power to make further subordinate legislation amending or revoking the amended regulations.

#### Commencement Information

**I16** S. 34 in force at 6.7.2016 by [S.I. 2016/627](#), [reg. 2\(1\)\(y\)](#)

### 35 Early exit pension charges

- (1) The Financial Services and Markets Act 2000 is amended as follows.
- (2) After section 137FBA (as inserted by section 33) insert—

#### “137FBB FCA general rules: early exit pension charges

- (1) The FCA must make general rules prohibiting authorised persons from—
  - (a) imposing specified early exit charges on members of relevant pension schemes, and
  - (b) including in relevant pension schemes provision for the imposition of specified early exit charges on members of such schemes.
- (2) The rules must be made with a view to securing, so far as is reasonably possible, an appropriate degree of protection for members of relevant pension schemes against early exit charges being a deterrent on taking, converting or transferring benefits under the schemes.
- (3) The rules may specify early exit charges by reference to charges of a specified class or description, or by reference to charges which exceed a specified amount.
- (4) The rules made by virtue of subsection (1)(a) must prohibit the imposition of the charges after those rules come into force, whether the relevant pension scheme was established before or after those rules (or this section) came into force.

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- (5) In relation to a charge which is imposed, or provision for the imposition of a charge which is included in a pension scheme, in contravention of the rules, the rules may (amongst other things)—
- (a) provide for the obligation to pay the charge to be unenforceable or unenforceable to a specified extent;
  - (b) provide for the recovery of amounts paid in respect of the charge;
  - (c) provide for the payment of compensation for any losses incurred as a result of paying amounts in respect of the charge.
- (6) Subject to subsection (8) an early exit charge, in relation to a member of a pension scheme, is a charge which—
- (a) is imposed under the scheme when a member who has reached normal minimum pension age takes the action mentioned in subsection (7), but
  - (b) is only imposed, or only imposed to that extent, if the member takes that action before the member's expected retirement date.
- (7) The action is the member taking benefits under the scheme, converting benefits under the scheme into different benefits or transferring benefits under the scheme to another pension scheme.
- (8) The Treasury may by regulations specify matters that are not to be treated as early exit charges for the purposes of this section.
- (9) For the purposes of this section—
- “charge”, in relation to a member of a pension scheme, includes a reduction in the value of the member's benefits under the scheme;
- “expected retirement date”, in relation to a member of a pension scheme, means the date determined by, or in accordance with, the scheme as the date on which the member's benefits under the scheme are expected to be taken;
- “normal minimum pension age” has the same meaning as in section 279(1) of the Finance Act 2004;
- “relevant pension scheme” has the same meaning as in section 137FB;
- and a reference to benefits includes all or any part of those benefits.”
- (3) In section 138E(3) (contravention of rules which may make transaction void or unenforceable)—
- (a) omit the “or” at the end of paragraph (a);
  - (b) at the end of paragraph (b) insert “or
  - (c) rules made by the FCA under section 137FBB.”

#### **Commencement Information**

**I17** S. 35 in force at 6.7.2016 by [S.I. 2016/627](#), [reg. 2\(1\)\(z\)](#)

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### *Information about resolution planning*

## **36 Duty of Bank to provide information to Treasury**

- (1) The Financial Services Act 2012 is amended as follows.
- (2) Before section 58 insert—

### **“57A Duty of Bank to provide information required by Treasury**

- (1) The Treasury may by notice in writing require the Bank of England to provide it with information specified, or of a description specified, in the notice.
- (2) The information must be information which the Treasury consider is material to the Bank's assessment of the implications for public funds of a bank, building society, credit union or investment firm failing.
- (3) The information must be provided before the end of such reasonable period as may be specified in the notice.
- (4) The Bank's duty to provide information under this section does not apply to information which the Bank does not have in its possession.
- (5) For the purposes of this section, the cases in which a bank, building society, credit union or investment firm (“the institution”) is to be regarded as failing include those where—
  - (a) the institution enters insolvency,
  - (b) any of the stabilisation options in Part 1 of the Banking Act 2009 is achieved in relation to the institution, or
  - (c) the institution falls to be taken for the purposes of the Financial Services Compensation Scheme (within the meaning given by section 213 of FSMA 2000) to be unable, or likely to be unable, to satisfy claims against the institution.
- (6) In subsection (5)(a) “insolvency” includes—
  - (a) bankruptcy;
  - (b) liquidation;
  - (c) bank insolvency;
  - (d) building society insolvency;
  - (e) investment bank insolvency;
  - (f) administration;
  - (g) bank administration;
  - (h) building society special administration;
  - (i) receivership;
  - (j) a composition between the institution and the institution's creditors;
  - (k) a scheme of arrangement of the institution's affairs.
- (7) For the purposes of this section—

“bank” has the meaning given by section 2 of the Banking Act 2009,

“bank administration” has the same meaning as in that Act (see section 136 of that Act),

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“bank insolvency” has the same meaning as in that Act (see section 90 of that Act),

“building society”, “building society insolvency” and “building society special administration” have the same meaning as in the Building Societies Act 1986 (see section 119 of that Act),

“credit union” means a credit union as defined by section 31 of the Credit Unions Act 1979 or a credit union as defined by Article 2(2) of the Credit Unions (Northern Ireland) Order 1985,

“investment bank insolvency” means any procedure established by regulations under section 233 of the Banking Act 2009,

“investment firm” has the same meaning as in that Act (see section 258A of that Act),

“public funds” means the Consolidated Fund and any other account or source of money which cannot be drawn or spent other than by, or with the authority of, the Treasury,

and an event has implications for public funds if it would or might involve or lead to a need for the application of public funds.

#### **57B Duty of Bank to inform Treasury about resolution plans**

- (1) This section applies in relation to—
  - (a) a resolution plan which includes one or more options for the exercise of a stabilisation power by the Bank of England in relation to an institution (“the institution”), and
  - (b) a group resolution plan which includes one or more options for the exercise of a stabilisation power by the Bank of England in relation to a group entity (“the entity”).
- (2) Unless otherwise directed under subsection (5), before adopting the plan the Bank must provide the Treasury with—
  - (a) a copy of the plan,
  - (b) the Bank's assessment of the systemic risk of the institution or the entity failing,
  - (c) the Bank's assessment of the implications for public funds—
    - (i) of the exercise by the Bank of a stabilisation power in relation to the institution or the entity in accordance with the option (or each of the options) for the exercise of such a power included in the plan, and
    - (ii) if the plan includes one or more options for the use of an insolvency or administration procedure in relation to the institution or the entity, of the use of such a procedure in accordance with that option (or each of those options), and
  - (d) any analysis considered by the Bank (whether or not prepared by the Bank) to be material in making the assessments mentioned in paragraph (c).
- (3) Unless otherwise directed under subsection (5), the Bank must provide the Treasury with details of—
  - (a) any material changes to the plan, before those changes are adopted,

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- (b) any material changes to the Bank's assessments of the matters mentioned in subsection (2)(b) or (c), and
    - (c) any further analysis considered by the Bank (whether or not prepared by the Bank) to be material to revising the assessments mentioned in subsection (2)(c).
  - (4) Where reasonably practicable the Bank must comply with subsections (2) and (3) before the Bank exercises any of its powers under section 3A of the Banking Act 2009 in relation to the institution or the entity.
  - (5) The Treasury may by notice in writing—
    - (a) direct the Bank not to provide it under this section with information in relation to institutions or entities specified, or of a description specified, in the notice;
    - (b) revoke a direction given under paragraph (a).
  - (6) Where a direction given under subsection (5)(a) is revoked—
    - (a) the Bank must provide the Treasury with the matters listed in subsection (2)(a) to (d) in relation to the institutions or entities to which the direction related as soon as reasonably practicable after the date of the revocation, and
    - (b) subsection (3) applies in relation to those institutions or entities, but this is subject to any further direction under subsection (5)(a).
  - (7) For the purposes of this section—
    - “failing” has the same meaning as in section 57A,
    - “insolvency or administration procedure” means—
      - (a) bank insolvency,
      - (b) building society insolvency,
      - (c) investment bank insolvency,
      - (d) bank administration, or
      - (e) building society special administration,
    - (and those terms have the same meaning as in section 57A);
    - “public funds” has the same meaning as in section 57A,
    - “systemic risk” means risk to the stability of the financial system in the United Kingdom or in other EEA states, and action has implications for public funds if it would or might involve or lead to a need for the application of public funds.”
- (3) In section 65 (memorandum of understanding)—
  - (a) in subsection (1), after “in relation to” insert—
    - “(a) the sharing of information by the Bank about any proposals to include in a resolution plan or a group resolution plan an option for the exercise of a stabilisation power by the Bank in relation to an institution or group entity;
    - (b)”;
  - (b) in subsection (2), at the beginning insert “For the purposes of subsection (1) (b),”;
  - (c) in the heading, after “understanding:” insert “resolution planning and”.

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(4) In section 67 (interpretation), after subsection (5) insert—

“(6) Group entity” has the same meaning as in the Bank Recovery and Resolution (No. 2) Order 2014 (S.I. 2014/3348).

(7) “Group resolution plan” means a group resolution plan drawn up by the Bank under Part 5 of that Order.

(8) “Resolution plan” means a resolution plan drawn up by the Bank under Part 5 of that Order.

(9) “Stabilisation power” has the same meaning as in section 1(4) of the Banking Act 2009.”

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**Commencement Information**

**I18** S. 36 in force at 6.7.2016 by [S.I. 2016/627](#), [reg. 2\(1\)\(aa\)](#)

*Financial Services and Markets Act 2000 consequential amendments*

**37 Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001**

(1) The revocation of the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001 (S.I. 2001/3649) by the National Savings Regulations 2015 (S.I. 2015/623) is to be treated as never having had effect.

(2) Accordingly, in the Schedule to those regulations, omit the entry for that order.

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