

SCHEDULE 2

Amendments to primary and secondary legislation

PART 1

Amendments to FSMA

1. FSMA is amended as follows.

2. In section 1H(8) (further interpretative provisions for sections 1B to 1G) ^{M1}, in the definition of “credit institution”, for “banking consolidation directive” substitute “ capital requirements directive ”.

Marginal Citations

M1 Section 1H was inserted by the Financial Services Act 2012 c.21, section 6. There are amendments to this section but none is relevant.

3. In section 3M (directions relating to consolidated supervision of groups) ^{M2}, in subsection (3)

- (a) in paragraph (a) for “banking consolidation directive” substitute “ capital requirements directive ” and
- (b) omit paragraph (c).

Marginal Citations

M2 Section 3M was inserted by the Financial Services Act 2012, section 6.

4. In section 39(8) (exemption of appointed representatives) ^{M3} for “banking consolidation directive” substitute “ capital requirements directive ”.

Marginal Citations

M3 Section 39 was amended by the Financial Services Act 2012, sections 10 and 114 and Schedule 18 paragraphs 1 and 5.

5. In section 55J(6A) (variation or cancellation on initiative of regulator) ^{M4}, in paragraph (c), for “Directive 2006/49/EC of the European Parliament and the Council on capital adequacy of investment firms and credit institutions” substitute “ the capital requirements regulation or the capital requirements directive ”.

Marginal Citations

M4 Section 55J(6A) was inserted by S.I. 2013/1773.

6. In section 55R (persons connected with an applicant) ^{M5}, after subsection (3) insert—
“(4) Subsection (5) applies where—

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- (a) a credit institution (“B”) makes an application for permission under section 55A; and
 - (b) B is controlled by a person who also controls a credit institution, insurance undertaking or investment firm authorised in another EEA State.
- (5) Before granting B's application for permission, the regulator concerned must consult the competent authorities of the other EEA State.
- (6) In subsections (4) and (5), “credit institution”, “insurance undertaking” and “investment firm” have the meaning given in Article 4(1) of the capital requirements regulation.”.

Marginal Citations

M5 [Section 55R](#) was substituted by the Financial Services Act 2012, section 11.

7. In section 55Z2 (notification of EBA) ^{M6}—
- (a) at the end of subsection (1)(a) omit “or”;
 - (b) at the end of subsection (1)(b), insert “ and the reasons for the cancellation; or ”;
 - (c) after subsection (1)(b) insert—
 - “(c) the giving by it of a Part 4A permission to a credit institution whose head office is not in an EEA State.”.

Marginal Citations

M6 [Section 55Z2](#) was inserted by the Financial Services Act 2012, section 11.

8. After section 55Z2 insert—

“55Z2A Notification of the European bodies

55Z2A. A regulator must notify the European Commission and the European Banking Committee established by European Commission Decision [2004/10/EC](#) of any authorisation granted for the purposes of the capital requirements directive to a credit institution whose head office is not in an EEA State.”.

9. In section 86(10)(a) (exempt offers to the public) ^{M7} for “banking consolidation directive” substitute “capital requirements directive”.

Marginal Citations

M7 [Section 86](#) was substituted by [S.I. 2005/1433](#) and amended by the Financial Services Act 2012 section 16, and [S.I. 2011/1668](#), [S.I. 2012/1538](#) and [S.I. 2013/1125](#).

10. In section 184 (disregarded holdings) ^{M8}—
- (a) for subsection (8)(a) substitute—
 - “(a) manages holdings for its parent undertaking or a controlled undertaking of the parent undertaking;”;
 - (b) for subsection (8)(c)(ii) substitute—
 - “(ii) a controlled undertaking of the parent undertaking.”;

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(c) after subsection (9) insert—

“(10) For the purposes of this section, an undertaking is a controlled undertaking of the parent undertaking if it is controlled by the parent undertaking; and for this purpose the question of whether one undertaking controls another is to be determined in accordance with section 89J(4) and (5).”.

Marginal Citations

M8 Section 184 was substituted by [S.I. 2009/534](#) and amended by [S.I. 2011/1613](#).

11. In section 186(b) (assessment criteria) ^{M9} after “the reputation”, insert “ , knowledge, skills ”.

Marginal Citations

M9 Section 186 was substituted by [S.I. 2009/534](#).

12. In section 188 (assessment: consultation with EC competent authorities) ^{M10} in subsection (3) for “by a host state regulator in relation to a UK authorised person” substitute “ in relation to a UK authorised person by the home state regulator of an EEA firm ”.

Marginal Citations

M10 Section 188 was substituted by [S.I. 2009/534](#) and amended by section 26 of the [Financial Services Act 2012](#) (c.21).

13. In section 190(4)(b)(v) (requests for further information) ^{M11} for “banking consolidation directive” substitute “ capital requirements directive ”.

Marginal Citations

M11 Section 190 was substituted by [S.I. 2009/534](#) and amended by section 26 of the Financial Services Act 2012 and [S.I. 2011/1043](#).

14. In section 191G(1) (interpretation) ^{M12}, in paragraph (a) of the definition of “credit institution” for “banking consolidation directive” substitute “ capital requirements directive ”.

Marginal Citations

M12 Section 191G was substituted by [S.I. 2009/534](#) and amended by section 26 of the Financial Services Act 2012

15. After section 194A (contravention by relevant EEA firm with UK branch of requirement under markets in financial instruments directive: appropriate regulator primarily responsible for securing compliance) ^{M13} insert ^{M14}—

“194B Contravention by relevant EEA firm of requirement in capital requirements directive or capital requirements regulation

(1) In this section—

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- (a) “relevant EEA firm” means an EEA firm falling within paragraph 5(a) or 5(b) of Schedule 3 which is exercising in the United Kingdom an EEA right deriving from capital requirements directive; and
 - (b) “Article 3” means Article 3 of Directive [2001/24/EC](#) of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions.
- (2) This section applies where—
- (a) a relevant EEA firm has a branch, or is providing services, in the United Kingdom; and
 - (b) the appropriate regulator ascertains on the basis of information received from the home state regulator that the firm is contravening, or is at a material risk of contravening, a requirement of the capital requirements directive or capital requirements regulation.
- (3) The appropriate regulator must, without delay, notify the firm's home state regulator of the need for it to take all appropriate measures to ensure that the firm remedies the contravention or averts the risk of contravention.
- (4) If notice has been given under subsection (3) and the appropriate regulator considers that the home state regulator is failing to comply with its obligations in respect of the contravention or the risk of contravention, the appropriate regulator may refer the matter to EBA (and EBA may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority)).
- (5) The appropriate regulator may exercise its power of intervention in respect of the relevant EEA firm if—
- (a) the requirement to be imposed under section 196 is necessary and appropriate to protect against financial instability that would seriously threaten the collective interests of consumers in the United Kingdom;
 - (b) the situation is an emergency;
 - (c) the home state regulator has not yet taken measures to ensure the contravention or risk of contravention is remedied; and
 - (d) reorganisation measures of the kind referred to in Article 3 have not been commenced.
- (6) Any requirement imposed by virtue of paragraph (5)—
- (a) must not favour creditors in the United Kingdom over creditors in another EEA State;
 - (b) must be rescinded if the administrative or judicial authorities of the home EEA State take reorganisation measures under Article 3;
 - (c) must be rescinded if the appropriate regulator considers that the home state regulator has taken appropriate measures to ensure the firm remedies the contravention or averts the risk of contravention
- (7) The appropriate regulator must give the firm written notice of its reasons for imposing a requirement under subsection (5).
- (8) The appropriate regulator shall inform the Commission, EBA and regulators in affected Member States of the imposition of a requirement by virtue of subsection (5).
- (9) This section is without prejudice to the powers available to the appropriate regulator under section 199.

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(10) For the purposes of this section “appropriate regulator” means the PRA in relation to a PRA-authorised person and the FCA in relation to any other person.”.

Marginal Citations

M13 Section 194A was inserted by S.I. 2007/126 and amended by the Financial Services Act 2012, section 12 and schedule 4 paragraph 29 and 33 and S.I. 2012/916.

M14 Paragraph 15 comes into force on a date specified in a Commission delegated act. See Schedule 1.

16. In section 199 ^{M15}—

(a) for subsection (7) ^{M16} substitute—

“(7) In such case, the regulator must at the earliest opportunity—

(a) where the single market directive or directly applicable Community regulation in question is the capital requirements directive or the capital requirements regulation, inform the firm's home state regulator, the Commission, EBA and any other affected regulators of other EEA States;

(b) in the case of any other single market directive or directly applicable Community regulation, inform the firm's home state regulator, ESMA and the Commission.

(7A) Where the single market directive or directly applicable Community regulation in question is the capital requirements directive or the capital requirements regulation the regulator must rescind any requirement imposed on the firm where the home state regulator has taken appropriate measures in accordance with section 199B(4).”.

Marginal Citations

M15 Paragraph 16 comes into force on a date specified in a Commission delegated act. See Schedule 1.

M16 Section 199(7) was amended by the Financial Services Act 2012, section 12 and Schedule 4 paragraphs 29 and 39 and amended by S.I. 2012/916. There are other amendments to section 199 not relevant to these Regulations.

17. In section 301E (disregarded holdings) ^{M17}—

(a) for subsection (8)(a) substitute—

“(a) manages holdings for its parent undertaking or a controlled undertaking of the parent undertaking;”;

(b) for subsection (8)(c)(ii) substitute—

“(ii) a controlled undertaking of the parent undertaking.”;

(c) after subsection (9) insert—

“(10) For the purposes of this section, an undertaking is a controlled undertaking of the parent undertaking if it is controlled by the parent undertaking; and for this purpose the question of whether one undertaking controls another is to be determined in accordance with section 89J(4) and (5).”.

Marginal Citations

M17 Section 301E was inserted by S.I. 2007/126, substituted by S.I. 2009/534 and amended by S.I. 2011/1613.

18. In section 301M(1) (interpretation) ^{M18} in paragraph (a) of the definition of “credit institution” for “banking consolidation directive” substitute “ capital requirements directive ”.

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Marginal Citations

M18 Section 301M was inserted by S.I. 2007/126, and substituted by S.I. 2009/543.

19. In section 313D (interpretation of part 18A) ^{M19} in paragraph (c) of the the definition of “institution” for “banking consolidation directive” substitute “ capital requirements directive ”.

Marginal Citations

M19 Section 313D was inserted by S.I. 2007/126 and amended by section 36 of the Financial Services Act 2012 and S.I. 2010/1193.

20.—(1) Section 342 (information given by auditor or actuary to a regulator) ^{M20} is amended as follows.

(2) After subsection (6) insert—

“(6A) If the authorised person concerned is a credit institution or an investment firm, and an auditor or actuary communicates a matter to a regulator in accordance with the regulations, the matter must be disclosed simultaneously to the management body of the authorised person, unless there are compelling reasons not to do so.”.

(3) After subsection (7) insert—

“(8) In subsection (6A) “credit institution” and “investment firm” have the same meaning as in Article 4(1) of the capital requirements regulation.”.

Marginal Citations

M20 Section 342 was amended by Schedule 13, paragraphs 1, 4 to the Financial Services Act 2012 (c.21).

21.—(1) Section 343 (information given by auditor or actuary to a regulator: persons with close links) ^{M21} is amended as follows.

(2) After subsection (6) insert—

“(6A) If the authorised person concerned is a credit institution or an investment firm, and an auditor or actuary communicates a matter to a regulator in accordance with the regulations, the matter must be disclosed simultaneously to the management body of the authorised person, unless there are compelling reasons not to do so.”.

(3) After subsection (9) insert—

“(10) In subsection (6A) “credit institution” and “investment firm” have the same meaning as in Article 4(1) of the capital requirements regulation.”.

Marginal Citations

M21 Section 343 was amended by Schedule 13, paragraphs 1, 5 to the Financial Services Act 2012.

22. In section 391 (publication) ^{M22}, after subsection (4) insert—

“(4A) Subsection (4) is subject to section 391A.”

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M22 Section 391 was amended by the Financial Services Act 2012, section 37 and Schedule 9 paragraphs 1 and 30. There are other amendments not relevant to these Regulations.

23. After section 391 insert—

“391A Publication: special provisions relating to certain penalties

(1) This section applies where a decision notice or final notice relates to the imposition of a penalty to which Article 68(1) of the capital requirements directive applies.

(2) Where a regulator publishes information under section 391(4) about a matter to which a decision notice relates and the person to whom the notice is given refers the matter to the Tribunal, the regulator must, without undue delay, publish on its official website information about the status of the appeal and its outcome.

(3) Subject to subsection (4), where a regulator gives a final notice, the regulator must publish information on the type and nature of the breach and the identity of the person on whom the penalty is imposed.

(4) Information about a matter to which a final notice relates must be published anonymously where—

- (a) the penalty is imposed on an individual and, following an obligatory prior assessment, publication of personal data is found to be disproportionate;
- (b) publication would jeopardise the stability of financial markets or an ongoing criminal investigation; or
- (c) publication would cause, insofar as it can be determined, disproportionate damage to the persons involved.

(5) Where subsection (4) applies, the regulator may make such arrangements as to the publication of information (including as to the timing of publication) as are necessary to preserve the anonymity of the person on whom the penalty is imposed.

(6) Where a regulator publishes information in accordance with subsections (2) to (5), the regulator must—

- (a) publish the information on its official website;
- (b) ensure the information remains on its official website for at least five years, unless the information is personal data and the Data Protection Act 1998 requires the information to be retained for a different period; and
- (c) disclose to EBA any penalty imposed, any appeal against such a penalty and the outcome of the appeal, unless such a disclosure is not permitted by section 348.”.

24. In section 417(1) (definitions) ^{M23}, at the appropriate places, insert—

““capital requirements directive” means Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.”

““capital requirements regulation” means Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012.”.

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Marginal Citations

M23 [Section 417](#). There are amendments to this section but none are relevant.

25. In section 422 (controller) ^{M24}—

- (a) in subsection (5)(a)(v) for “subsidiary undertaking” substitute “ controlled undertaking ”;
- (b) after subsection (5) insert—

“(6) For the purposes of this section, an undertaking “B” is a controlled undertaking of H if any of the conditions in section 89J(4)(a) to (d) (read with section 89J(5)) is met (reading references in those provisions to A as references to H).”.

Marginal Citations

M24 [Section 422](#) was substituted by [S.I. 2009/534](#).

26. In section 422A (disregarded holdings) ^{M25}—

- (a) for subsection (8)(a) substitute—
 - “(a) manages holdings for its parent undertaking or a controlled undertaking of its parent undertaking;”;
- (b) for subsection (8)(c)(ii) substitute—
 - “(ii) a controlled undertaking of the parent undertaking.”;
- (c) in subsection (10)(a) for “banking consolidation directive” substitute “ capital requirements directive ”;
- (d) after subsection (10) insert—

“(11) For the purposes of this section, an undertaking is a controlled undertaking of the parent undertaking if it is controlled by the parent undertaking; and for this purpose the question of whether one undertaking controls another is to be determined in accordance with section 89J(4) and (5).”.

Marginal Citations

M25 [Section 422A](#) was inserted by [S.I. 2009/534](#) and amended by [S.I. 2011/1613](#).

27. In section 425(1)(a) (expressions relating to authorisation elsewhere in the single market) ^{M26} for “banking consolidation directive” substitute “ capital requirements directive ”.

Marginal Citations

M26 [Section 425](#) was amended by [S.I. 2003/2066](#), [S.I. 2004/3379](#), [S.I. 2006/2975](#), [S.I. 2007/126](#), [S.I. 2007/3252](#) and [S.I. 2012/1906](#).

28. In section 425A(7) (consumers: regulated activities etc carried on by authorised persons) ^{M27} in paragraph (a) of the definition of “credit institution” for “banking consolidation directive” substitute “ capital requirements directive ”.

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Marginal Citations

M27 [Section 425A](#) was inserted by section 24 of the Financial Services Act 2012 and amended by [S.I. 2013/655](#).

29.—(1) Schedule 3 (EEA passport rights) is amended as follows.

(2) In paragraph 1(a) (the single market directives) ^{M28}, for “the banking consolidation directive” substitute “ capital requirements directive ”.

(3) Omit paragraph 2 (the banking consolidation directive) ^{M29}.

(4) For paragraph 5(b) (EEA firm) ^{M30} substitute—

“(b) a credit institution (as defined in Article 4(1)(1) of the capital requirements regulation) which is authorised (within the meaning of Article 8 of the capital requirements directive) by its home state regulator;”.

(5) For paragraph 5(c) substitute—

“(c) a financial institution (as defined in Article 4(1)(26) of the capital requirements regulation) which is a subsidiary of the kind mentioned in Article 34 of the capital requirements directive and which fulfils the conditions of that Article;”.

(6) In paragraph 19(6) (establishment) ^{M31} for “banking consolidation directive” in both places substitute “ capital requirements directive ”.

(7) In paragraph 19(12)—

(a) at the end of paragraph (a) omit “and”;

(b) after subparagraph (a) insert—

“(aa) the appropriate UK regulator must in the case of a credit institution notify EBA and the Commission; and”.

(8) In paragraph 20(3) (services) ^{M32} for “banking consolidation directive” substitute “ capital requirements directive ”.

(9) At the end of paragraph 20ZA (information for host state regulator) ^{M33} insert—

“(3) The appropriate UK regulator must inform the host state regulator whenever it withdraws the authorisation of a credit institution in respect of which a notice under paragraph 19(6) or paragraph 20(3) has been given.”.

(10) In paragraph 24(1)(b) (continuing regulation of UK firms) ^{M34} for “Article 24 of the banking consolidation directive” substitute “ Article 34 of the capital requirements directive ”.

Marginal Citations

M28 [Paragraph 1\(a\)](#) was substituted by [S.I. 2000/2952](#).

M29 [Paragraph 2](#) was substituted by [S.I. 2006/3221](#) and amended by [S.I. 2010/2628](#) and [S.I. 2012/917](#).

M30 [Paragraph 5](#) was amended by [S.I.2003/1473](#) and [S.I. 2006/3221](#). There are other amendments but none is relevant.

M31 [Paragraph 19](#) was amended by [S.I. 2003/2066](#) and [S.I. 2011/1613](#) and the Financial Services Act 2012 section 12 and Schedule 4 paragraphs 1 and 10. There are other amendments but none is relevant.

M32 [Paragraph 20\(3\)](#) was amended by [S.I. 2003/2066](#) and [S.I. 2007/126](#).

M33 [Paragraph 20ZA](#) was inserted by [S.I. 2011/1613](#) and amended by the Financial Services Act 2012 section 12 and Schedule 4 paragraphs 1, 12 and 13.

M34 [Paragraph 24\(1\)\(b\)](#) was amended by [S.I. 2000/2952](#) and [S.I. 2006/3221](#).

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30. In paragraph 8(6) of Schedule 11A (transferrable securities) ^{M35} for “Article 4(1) of the banking consolidation directive” substitute “ Article 4(1)(1) of the capital requirements regulation ”.

Marginal Citations

M35 Paragraph 8(6) was amended by [S.I. 2006/3221](#) and [S.I.2011/99](#).

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Changes and effects yet to be applied to :

- Regulations revoked by [2023 c. 29 Sch. 1 Pt. 2](#)