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## STATUTORY INSTRUMENTS

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# 2019 No. 926

## The Proxy Advisors (Shareholders' Rights) Regulations 2019

### PART 4

#### Application of provisions of the Act for the purposes of Part 3

##### General provision

**20.** For the purposes of this Part—

- (a) in a provision of the Act applied by this Part, a reference to a section or other provision of the Act which is also applied by this Part is a reference to that section or other provision as so applied; and
- (b) where a provision of the Act applied by this Part refers to a section or other provision of the Act which is not so applied, that section or other provision is to be read as if it were applied for the purposes only of the provision in which the reference appears.

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##### Commencement Information

**II** Reg. 20 in force at 10.6.2019, see [reg. 1](#)

##### Hearings and appeals

**21.**—(1) Sections 133 (proceedings before Tribunal: general provision), 133A (proceedings before Tribunal: decision notices, etc) and 133B (offences) of the Act <sup>M1</sup> apply with respect to proceedings pursuant to references to the Tribunal under regulation 14(4) as they apply with respect to proceedings pursuant to references to the Tribunal under the Act, and have effect for those purposes with the following modifications.

(2) In section 133—

- (a) in subsection (1) the reference to any other Act includes a reference to regulation 14(4); and
- (b) subsection (7A) <sup>M2</sup> is to be read as if after paragraph (o) <sup>M3</sup> there were inserted—
  - “(p) a decision to publish a statement under regulation 11 of the Proxy Advisors (Shareholders' Rights) Regulations 2019 (public censure) or impose a penalty under regulation 12 of those Regulations (financial penalties).”.

(3) Section 133A is to be read as if—

(a) for subsection (1) there were substituted—

“(1) In determining in accordance with section 133(5) a reference made as a result of a decision by the FCA of a kind specified in section 133(7A)(p), the Tribunal may not direct the FCA to take action which it would not have had power to take under the Proxy Advisors (Shareholders' Rights) Regulations 2019 at the time of making the decision.”;

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(b) in subsection (4)(a) the reference to any other Act included a reference to regulation 14(4); and

(c) for subsection (5) there were substituted—

“(5) The Tribunal may, on determining a reference of a kind specified in subsection (1), make recommendations as to the FCA's regulating provisions or procedures.”.

(4) In section 133B(1)(a) the reference to a decision of the FCA includes a decision by the FCA of a kind specified in paragraph (p) of section 133(7A) <sup>M4</sup>.

#### Commencement Information

**I2** Reg. 21 in force at 10.6.2019, see [reg. 1](#)

#### Marginal Citations

**M1** Section 133, together with sections 133A and 133B, was substituted by [S.I. 2010/22](#).

**M2** Subsection 7A was inserted by the [Financial Services Act 2012 \(c. 21\)](#), [section 23\(1\)](#) and (2)(c).

**M3** Paragraph (o) was inserted by [S.I. 2014/3329](#).

**M4** For paragraph (p) see paragraph (2)(b) of this regulation (modification of section 133(7A) of the Act).

#### Application of Part 11 of the Act

**22.**—(1) Part 11 of the Act (information gathering and investigations) applies with respect to the discharge by the FCA of its functions under Part 3 of these Regulations as it applies with respect to the discharge by the FCA of its functions under the Act, and has effect for those purposes with the following modifications.

(2) A reference to the Act or to Part 11 of the Act includes a reference to these Regulations and to the Act or Part 11 as applied by these Regulations.

(3) Except in section 165(11)(d), a reference to an authorised person includes a reference to a proxy advisor.

(4) Except in section 169 (in the expression “overseas regulator”), a reference to a regulator is a reference to the FCA and a reference to each or either regulator is a reference to the FCA only.

(5) In section 165 (regulators' power to require information: authorised persons etc) ignore subsections (4)(b) and (8A) <sup>M5</sup>.

(6) Ignore sections 165A <sup>M6</sup> (PRA's power to require information: financial stability), 165B (safeguards etc in relation to exercise of power under section 165A) and 165C (orders under section 165A(2)(d)).

(7) Section 166A <sup>M7</sup> (appointment of skilled person to collect and update information) is to be read as if—

(a) for subsection (1) there were substituted—

“(1) This section applies if the FCA considers that a proxy advisor (within the meaning given in regulation 2(1) of the Proxy Advisors (Shareholders' Rights) Regulations 2019 (interpretation)) has contravened regulation 6 of those Regulations (obligation to collect and update information).”; and

(b) subsection (10) were omitted.

(8) Section 167 <sup>M8</sup> (appointment of persons to carry out general investigations) is to be read as if—

(a) for subsection (1) there were substituted—

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“(1) If it appears to the FCA that there is good reason for doing so, the FCA may appoint one or more competent persons to conduct an investigation on its behalf into—

- (a) the nature, conduct or state of the business of a proxy advisor;
- (b) a particular aspect of the business of a proxy advisor; or
- (c) the ownership or control of a proxy advisor.”;

<sup>F1</sup>(b) .....

(c) for subsection (4) there were substituted—

“(4) The power conferred by this section may be exercised in relation to a person (“P”) who has ceased to be a proxy advisor, but only in relation to—

- (a) business carried on by P when P was a proxy advisor;
- (b) the ownership or control of P at any time when P was a proxy advisor.”;

(d) for subsection (5A) <sup>M9</sup> there were substituted—

“(5A) “Proxy advisor” has the meaning given in regulation 2(1) of the Proxy Advisors (Shareholders' Rights) Regulations 2019.”;

(e) subsection (6) were omitted.

(9) Section 168 (appointment of persons to carry out investigations in particular cases) is to be read as if—

(a) for subsection (1) there were substituted—

“(1) Subsection (3) applies if it appears to the FCA that there are circumstances suggesting that—

- (a) a proxy advisor has contravened—
  - (i) a requirement imposed by Part 2 of the Proxy Advisors (Shareholders' Rights) Regulations 2019;
  - (ii) a requirement to give notice under or in accordance with regulation 31 or 32 of those Regulations; or
  - (iii) a requirement imposed by or under this Act as applied by those Regulations;
- (b) a member of the board of management of the proxy advisor is responsible for a contravention of a requirement of a kind referred to in paragraph (a); or
- (c) any person may be guilty of an offence under those Regulations or under this Act as applied by those Regulations.”;

(b) in subsection (3) for “investigating authority” there were substituted “ FCA ”;

(c) subsections (2), (4) and (5) were omitted; and

(d) for subsection (6) there were substituted—

“(6) “Proxy advisor” has the meaning given in regulation 2(1) of the Proxy Advisors (Shareholders' Rights) Regulations 2019.”.

(10) Section 169 (investigations etc in support of overseas regulator) is to be read as if—

(a) subsection (2A) <sup>M10</sup> were omitted; and

(b) for subsection (13) there were substituted—

“(13) “Overseas regulator” means an authority in a country or territory outside the United Kingdom which has functions corresponding to those of the FCA under the Proxy Advisors (Shareholders' Rights) Regulations 2019.”.

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- (11) Ignore section 169A<sup>M11</sup> (support of overseas regulator with respect to financial stability).
- (12) Section 170 (investigations: general) is to be read as if—
- (a) a reference to the investigating authority were a reference to the FCA;
  - (b) in subsection (1) “or (5)” were omitted;
  - (c) in subsection (3)—
    - (i) in paragraph (a) “or (4)” were omitted;
    - (ii) paragraph (b) were omitted; and
  - (d) subsection (10) were omitted.
- (13) In section 172 (additional power of persons appointed as a result of section 168(1) or (4)), in subsection (4) and in the heading ignore the reference to subsection (4) of section 168.
- (14) Section 174 (admissibility of statements made to investigators) is to be read as if—
- (a) in subsection (3) after paragraph (d) there were inserted—
    - “(e) under regulation 18 of the Proxy Advisors (Shareholders' Rights) Regulations 2019 (misleading the FCA).”; and
  - (b) in subsection (4) the words from “or (5)” to the end were omitted.
- (15) In section 175 (information and documents: supplemental provisions), in subsection (8) ignore the reference to subsection (5) of section 168.
- (16) Section 176 (entry of premises under warrant) is to be read as if—
- (a) in subsection (1) “the Secretary of State,” were omitted;
  - (b) in subsection (3)(a) “or an appointed representative” were omitted;
  - (c) in subsection (10) “or (5)” were omitted; and
  - (d) in subsection (11)(a) “87C, 87J,” and “, 165A, 169A”<sup>M12</sup> were omitted.

**F1** [Reg. 22\(8\)\(b\)](#) omitted (31.12.2020) by virtue of [The Financial Services \(Miscellaneous Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/628\)](#), regs. 1(4), **15(5)**

#### Commencement Information

**I3** [Reg. 22](#) in force at 10.6.2019, see [reg. 1](#)

#### Marginal Citations

- M5** Subsections (4)(b) and (8A) were inserted by the [Bank of England and Financial Services Act 2016](#) (c. 14), [section 16](#) and Schedule 2, paragraphs 26 and 36.
- M6** [Sections 165A, 165B](#) and [165C](#) were inserted by the [Financial Services Act 2010](#) (c. 28), [section 18\(1\)](#) and (2).
- M7** [Section 166A](#) was inserted by the [Financial Services Act 2012](#), section 41 and Schedule 12, paragraph 6.
- M8** [Section 167](#) was amended by the [Financial Services Act 2012](#), section 41 and Schedule 12, paragraph 7, and by [S.I. 2007/126](#) and [2015/575](#). There are other amendments, but they are not relevant.
- M9** Subsection (5A) was inserted by the [Financial Services Act 2012](#), section 41 and Schedule 12, paragraph 7(1) and (3).
- M10** Subsection (2A) was inserted by [S.I. 2016/680](#).
- M11** [Section 169A](#) was inserted by the [Financial Services Act 2010](#), section 18(1) and (3).
- M12** A reference to sections 87C and 87J was inserted by [S.I. 2005/1433](#) and a reference to sections 165A and 169A was inserted by the [Financial Services Act 2010](#), section 24(1) and (2) and Schedule 2, paragraphs 1 and 17.

### Information given by an auditor

**23.**—(1) Sections 342 (information given by auditor or actuary to a regulator), 343 (information given by auditor or actuary to a regulator: persons with close links) and 344 (duty of auditor or actuary resigning etc to give notice) of the Act apply with respect to the auditor of a proxy advisor, and have effect for those purposes with the following modifications.

- (2) A reference to an authorised person is a reference to a proxy advisor.
- (3) A reference to a regulator or to the appropriate regulator is a reference to the FCA.
- (4) Ignore references to an actuary.
- (5) Section 342 is to be read as if—
  - (a) subsection (2) were omitted; and
  - (b) after subsection (3) there were inserted—

“(3A) Subsection (3B) applies in the case of an auditor (“A”) to whom this section applies by virtue of regulation 23(1) of the Proxy Advisors (Shareholders' Rights) Regulations 2019 (“the 2019 Regulations”).

(3B) For the purposes of subsection (3) a matter on which any information or opinion is to be given by A must arise from, or be connected with, non-compliance or the manner of compliance by the person for whom A is, or has been, the auditor with a requirement imposed by Part 2 of the 2019 Regulations.”.

- (6) Section 343 is to be read as if—
  - (a) subsection (2) were omitted; and
  - (b) after subsection (3) there were inserted—

“(3A) Subsection (3B) applies in the case of an auditor (“A”) to whom this section applies by virtue of regulation 23(1) of the Proxy Advisors (Shareholders' Rights) Regulations 2019 (“the 2019 Regulations”).

(3B) For the purposes of subsection (3) a matter on which any information or opinion is to be given by A must arise from, or be connected with, non-compliance or the manner of compliance by the person with whom CL has close links with a requirement imposed by Part 2 of the 2019 Regulations.”.

- (7) In section 344 ignore subsection (4).

#### Commencement Information

**I4** Reg. 23 in force at 10.6.2019, see [reg. 1](#)

### Restrictions on disclosure of information

**24.** Sections 348 (restrictions on disclosure of confidential information) FCA, PRA etc), 349 (exceptions from section 348) and 352 (offences) of the Act apply with respect to information received under these Regulations or under the Act as applied by these Regulations, and have effect for those purposes with the following modifications—

- (a) a reference to the Act includes a reference to these Regulations and to the Act as applied by these Regulations;
- (b) in section 348—
  - (i) in subsection (2) the reference to this Part of the Act (public record, disclosure of information and co-operation) is a reference to sections 348, 349 and 352 as applied by these Regulations;

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- (ii) in subsection (6)(b) the reference to Part 11 of the Act is a reference to that Part as applied by these Regulations; and
- (c) section 352 is to be read as if—
  - (i) in subsection (1) “or 350(5)” were omitted;
  - (ii) subsection (4) were omitted;
  - (iii) in subsection (5) “or (4)” were omitted; and
  - (iv) in subsection (6)(a) “or that it had been disclosed in accordance with section 350” were omitted.

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**Commencement Information**

**I5** Reg. 24 in force at 10.6.2019, see [reg. 1](#)

**Application of Part 25 of the Act**

**25.**—(1) Part 25 of the Act (injunctions and restitution) applies for the purposes of these Regulations and of the Act as applied by these Regulations, and has effect for those purposes with the following modifications.

(2) A reference to a regulator, to the regulator concerned or to the appropriate regulator is a reference to the FCA.

(3) Ignore any reference to the Secretary of State.

(4) A reference to a relevant requirement is a reference to—

- (a) a requirement imposed by Part 2 of these Regulations;
- (b) a requirement to give notice under or in accordance with regulation 31 or 32; or
- (c) a requirement imposed by or under the Act as applied by these Regulations.

(5) In section 380 (injunctions) ignore subsections (6) to (12).

(6) Ignore sections 381 (injunctions in cases of market abuse) and 383 (restitution orders in cases of market abuse).

(7) In section 382 (restitution orders) ignore subsections (9) to (15).

(8) Section 384 (power of FCA or PRA to require restitution) is to be read as if—

(a) in subsection (1)—

- (i) the reference to an authorised person were a reference to a proxy advisor;
- (ii) “or recognised investment exchange” were omitted;

(b) subsections (2) and (3) were omitted;

(c) in subsection (5) for “regulator exercising the power (“the regulator concerned”)” there were substituted “FCA”;

(d) in subsections (5) and (6) each reference to subsection (2) and to subsection (3) were omitted; and

(e) subsections (7) to (13) were omitted.

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**Commencement Information**

**I6** Reg. 25 in force at 10.6.2019, see [reg. 1](#)

## Application of Part 26 of the Act

**26.**—(1) Part 26 of the Act (notices) applies with respect to the giving of notices under these Regulations, or under the Act as applied by these Regulations, as it applies with respect to the giving of notices under the Act, and has effect for those purposes with the following modifications.

(2) A reference to a regulator, to the regulator concerned or to the regulator giving a notice is a reference to the FCA.

(3) Section 387 (warning notices) is to be read as if—

- (a) in subsection (1)(a) “(“the regulator concerned”)” were omitted; and
- (b) subsections (1A) and (3A) <sup>M13</sup> were omitted.

(4) Section 388 (decision notices) is to be read as if—

- (a) in subsection (1)—
  - (i) in paragraph (b) “(“the regulator concerned”)” were omitted; and
  - (ii) in paragraph (e)(i) the reference to the Act included a reference to these Regulations and to the Act as applied by these Regulations; and
- (b) subsections (1A) <sup>M14</sup> and (2) were omitted.

(5) Section 391 (publication) is to be read as if—

- (a) in subsection (1) for “falling within subsection (1ZB)” there were substituted “given under regulation 13 of the Proxy Advisors (Shareholders' Rights) Regulations 2019”; and
- (b) subsections (1ZA), (1ZB) <sup>M15</sup>, (4A) <sup>M16</sup>, (5), (5A) <sup>M17</sup>, (6A) <sup>M18</sup> and [F<sup>2</sup>(8) to (8E)] <sup>M19</sup> were omitted.

(6) Section 392 (application of sections 393 and 394) is to be read as if for paragraphs (a) and (b) there were substituted—

- “(a) a warning notice given in accordance with—
  - (i) regulation 13 of the Proxy Advisors (Shareholders' Rights) Regulations 2019; or
  - (ii) section 385 as applied by those Regulations; and
- (b) a decision notice given in accordance with—
  - (i) regulation 14 of the Proxy Advisors (Shareholders' Rights) Regulations 2019; or
  - (ii) section 386 as applied by those Regulations.”.

(7) Section 395 (the FCA's and PRA's procedures) is to be read as if—

- (a) for subsection (1) there were substituted—
  - “(1) The FCA must determine the procedure that it proposes to follow in relation to—
    - (a) a decision which gives rise to an obligation for it to give a warning notice or decision notice to a proxy advisor; or
    - (b) a decision under section 391(1)(c) to publish information about the matter to which a warning notice given to a proxy advisor relates.”;
- (b) in subsection (2)—
  - (i) in paragraph (a) for “any of paragraphs (a) to (c)” there were substituted “ paragraph (a) ”;
  - (ii) in paragraph (b) for “(d)” there were substituted “ (b) ”;
  - (iii) in paragraph (c) for “(d)” there were substituted “(b)” and for “(b) or (c)” there were substituted “ (a) ”;

(c) subsections (3) and (4) were omitted;

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- (d) in subsection (5) for “Each regulator” there were substituted “ The FCA ”;
- (e) in subsection (9) for the words from “supervisory notice” to “subsection (1)(b)(ii)” there were substituted “ warning notice or decision notice ”; and
- (f) subsection (9A)<sup>M20</sup> were omitted.

**F2** Words in [reg. 26\(5\)\(b\)](#) substituted (31.12.2020) by [The Financial Services \(Miscellaneous Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/628\)](#), regs. 1(4), **15(6)**

#### Commencement Information

**I7** Reg. 26 in force at 10.6.2019, see [reg. 1](#)

#### Marginal Citations

- M13** Subsections (1A) and (3A) were inserted by the Financial Services Act 2012, section 37(1) and Schedule 9, paragraphs 1 and 26.
- M14** Subsection (1A) was inserted by the Financial Services Act 2012, section 37(1) and Schedule 9, paragraphs 1 and 27.
- M15** Subsections (1ZA) and (1ZB) were substituted by the Financial Services Act 2012, section 37(1) and Schedule 9, paragraphs 1 and 30(1) and (2).
- M16** Subsection (4A) was inserted by [S.I. 2013/3115](#).
- M17** Subsection (5A) was inserted by the Financial Services Act 2012, section 24(2).
- M18** Subsection (6A) was substituted (with subsection (6) by the Financial Services Act 2012, section 37(1) and Schedule 9, paragraphs 1 and 30(1) and (6).
- M19** Subsections (7A) and (7B) were inserted by [S.I. 2012/916](#). Subsection (8A) was inserted by [S.I. 2014/2879](#). Subsection (8B) was inserted by [S.I. 2016/680](#). Subsection (8C) was inserted by [S.I. 2016/715](#). Subsection (8D) was inserted by [S.I. 2017/1127](#). Subsection (8E) was inserted by [S.I. 2018/135](#). Subsection (8F) was inserted by [S.I. 2018/1288](#).
- M20** Subsection (9A) was inserted by the Financial Services Act 2012, section 37(1) and Schedule 9, paragraphs 1 and 34(1) and (10).

#### Application of Part 27 of the Act

**27.—(1)** Part 27 of the Act (offences) applies with respect to offences under these Regulations, or under the Act as applied by these Regulations, as it applies with respect to offences under the Act, and has effect for those purposes with the following modifications.

(2) A reference to an offence under the Act includes a reference to an offence under these Regulations or under the Act as applied by these Regulations.

(3) In section 398 (misleading FCA or PRA: residual cases)—

- (a) in subsection (1), in relation to a requirement falling within subsection (1A)(a)<sup>M21</sup> (as read with the modification in sub-paragraph (b)), the reference to a regulator is a reference to the FCA; and
- (b) in subsections (1A)(a) and (2) the reference to the Act includes a reference to these Regulations and to the Act as applied by these Regulations.

(4) In section 400 (offences by bodies corporate etc) ignore subsection (6A)<sup>M22</sup>.

(5) In section 401 (proceedings for offences) is to be read as if—

- (a) in subsection (1) paragraphs (b) and (c) were omitted; and
- (b) in subsections (2)(a) and (3)(a) the reference to the Secretary of State were omitted.

(6) Ignore section 402 (power of FCA to institute proceedings for certain other offences).



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(7) In section 403 (jurisdiction and procedure in respect of offences) subsection (7) is to be read as if the words from “or an offence” to the end were omitted.

#### Commencement Information

**I8** Reg. 27 in force at 10.6.2019, see [reg. 1](#)

#### Marginal Citations

**M21** Subsection (1A) was inserted by [S.I. 2013/1773](#).

**M22** Subsection (6A) was inserted by the Financial Services Act 2012, section 37(1) and Schedule 9, paragraphs 1 and 37.

### Application of Schedule 1ZA to the Act: penalties, fees and exemption from liability in damages

**28.**—(1) Paragraphs 19 to 22 (penalties), paragraph 23 (fees) and paragraph 25 (exemption from liability in damages) of Schedule 1ZA to the Act <sup>M23</sup> (the FCA) apply with respect to the discharge by the FCA of its functions under these Regulations or under the Act as applied by these Regulations, and have effect for those purposes with the following modifications.

(2) A reference to penalties imposed, or to be imposed, under the Act includes a reference to penalties imposed, or to be imposed, under these Regulations or under the Act as applied by these Regulations.

(3) In paragraph 19 the reference to the FCA's functions <sup>M24</sup> includes a reference to the functions of the FCA under these Regulations or under the Act as applied by these Regulations.

(4) Paragraph 20 is to be read as if—

(a) in sub-paragraph (4) after paragraph (f) there were inserted—

“(g) its powers under the Proxy Advisors (Shareholders' Rights) Regulations 2019 and under this Act as applied by those Regulations.”; and

(b) in sub-paragraph (5)(a) the reference to offences under the Act included a reference to offences under these Regulations or under the Act as applied by these Regulations.

(5) In paragraph 21(2)(a) the reference to authorised persons includes a reference to proxy advisors.

(6) Paragraph 23 is to be read as if—

(a) in sub-paragraph (1)(a) for “functions, other than its excepted functions” there were substituted “qualifying functions”; and

(b) for sub-paragraph (2) there were substituted—

“(2) The “qualifying functions” of the FCA are its functions under the Proxy Advisors (Shareholders' Rights) Regulations 2019 or under this Act as applied by those Regulations.”;

(c) sub-paragraphs (2ZA) and (2A) <sup>M25</sup> were omitted;

(d) in sub-paragraph (3)—

(i) in the definition of “relevant borrowing” for “its assumption of functions under this Act” there were substituted “the assumption of its qualifying functions”;

(ii) in the definition of “relevant commencement expenses” for “functions by the FCA under this Act” there were substituted “its qualifying functions”;

(e) sub-paragraph (4) were omitted;

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- (f) in sub-paragraph (5)—
    - (i) for “money,” there were substituted “ money or ”;
    - (ii) the words from “or the assumption of functions” to the end were omitted; and
  - (g) in sub-paragraph (8) for “any provision made by or under the Act” there were substituted “ rules made under sub-paragraph (1) ”.
- (7) In paragraph 25—
- (a) in sub-paragraphs (1) and (2) the reference to the FCA's functions includes a reference to the functions of the FCA under these Regulations or under the Act as applied by these Regulations; and
  - (b) in sub-paragraph (2) the reference to sections 166 to 169 of the Act includes a reference to those sections as applied by regulation 22.

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#### Commencement Information

**I9** Reg. 28 in force at 10.6.2019, see [reg. 1](#)

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#### Marginal Citations

- M23** [Schedule 1ZA](#) was substituted by the Financial Services Act 2012, section 6(2) and Schedule 3.
- M24** “Functions”, in relation to the FCA, means functions conferred on the FCA by or under any provision of the Act (see [paragraph 1](#) of Schedule 1ZA).
- M25** Sub-paragraph (2ZA) was inserted by the [Pension Schemes Act 2015 \(c. 8\)](#), [section 47](#) and Schedule 3, paragraphs 1 and 16; and sub-paragraph (2A) was inserted by the [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), [section 129](#) and Schedule 8, paragraph 7(1) and (3).

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**Changes and effects yet to be applied to :**

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