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D R A F T   S T A T U T O R Y   I N S T R U M E N T S

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**2023 No.**

**FINANCIAL SERVICES AND MARKETS**

**The Data Reporting Services Regulations 2023**

*Made*   -   -   -   -   *\*\*\**

*Coming into force in accordance with regulation 1*

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The Treasury make the following Regulations in exercise of the powers conferred by sections 4(1), 83(1) and (2), 84(2) and 86(5) and (6) of the Financial Services and Markets Act 2023(a).

A draft of these Regulations was laid before Parliament and approved by a resolution of each House of Parliament in accordance with sections 4(9), 83(3) and 84(3) of that Act.

## PART 1

### Introductory Provisions

#### Citation, commencement and extent

1.—(1) These Regulations may be cited as the Data Reporting Services Regulations 2023.

(2) These Regulations come into force on the day on which the revocation of the Data Reporting Services Regulations 2017(b) by section 1(1) of, and Schedule 1 to, the Financial Services and Markets Act 2023 comes into force.

(3) These Regulations extend to England and Wales, Scotland and Northern Ireland.

#### Interpretation

2.—(1) In these Regulations—

“the 2017 Regulations” means the Data Reporting Services Regulations 2017;

“APA” means a person authorised under regulation 9 to provide the service of publishing trade reports on behalf of investment firms pursuant to Article 20 or 21 of the markets in financial instruments regulation;

“ARM” means a person authorised under regulation 9 to provide the service of reporting details to the FCA of transactions for financial instruments listed in Article 26(2) of the markets in financial instruments regulation on behalf of investment firms;

“authorised person” has the meaning given in section 31(2) of FSMA 2000(c);

“credit institution” has the meaning given in Article 2(1)(19) of the markets in financial instruments regulation;

“CTP” means a person authorised under regulation 9 to provide the service of collecting trade reports for financial instruments listed in Article 6, 7, 10, 12, 13, 20 or 21 of the markets in financial instruments regulation from, as applicable, UK regulated markets, UK multilateral trading facilities, UK organised trading facilities and APAs and consolidating them into a continuous electronic live data stream providing price and volume data per financial instrument;

“CTP service” means a service described in the definition of a CTP;

“data reporting service” means—

(a) the service of publishing trade reports on behalf of investment firms pursuant to Article 20 or 21 of the markets in financial instruments regulation;

(b) the service of reporting details to the FCA of transactions for financial instruments listed in Article 26(2) of the markets in financial instruments regulation on behalf of investment firms; or

(c) a CTP service;

“data reporting service provider” means an APA, an ARM or a CTP;

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(a) 2023 c. 29.

(b) S.I. 2017/699.

(c) 2000 c. 8. FSMA 2000 means the Financial Services and Markets Act 2000; see section 80 of the Financial Services and Markets Act 2023.

“data reporting service rules” means any rules made by the FCA under section 300H of FSMA 2000(a) in relation to providing a data reporting service, as those rules have effect from time to time;

“direction to tender” has the meaning given in regulation 6(1);

“established in the United Kingdom” means constituted under the law of a part of the United Kingdom with a head office, and if there is a registered office, that office, in the United Kingdom;

“financial instrument” means an instrument specified in Part 1 of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(b);

“investment firm” has the meaning given in Article 2(1A) of the markets in financial instruments regulation;

“management body” in relation to a relevant person means—

(a) the board of directors, or if there is no such board, the equivalent body responsible for the management of the relevant person; and

(b) any person who effectively directs the business of the relevant person;

“the markets in financial instruments directive” means Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments (recast)(c);

“the markets in financial instruments regulation” means Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments(d);

“UK multilateral trading facility” has the meaning given in Article 2(1)(14A) of the markets in financial instruments regulation;

“UK organised trading facility” has the meaning given in Article 2(1)(15A) of the markets in financial instruments regulation;

“overseas clearing house” and “overseas investment exchange” have the meanings given in section 313(1) of FSMA 2000(e);

“preferred bidder” has the meaning given in regulation 6(3)(b);

“recognised body” has the meaning given in section 313(1) of FSMA 2000, but does not include—

(a) an overseas investment exchange, or

(b) an overseas clearing house;

“recognised clearing house” has the meaning given in section 285(1)(b) of FSMA 2000(f) but does not include an overseas clearing house;

“recognised CSD” means a legal person established in the United Kingdom who is authorised by the Bank of England for the purposes of Article 16 of Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories(g);

“recognised investment exchange” has the meaning given in section 285(1)(a) of FSMA 2000, but does not include an overseas investment exchange;

“recognition order” has the meaning given in section 313(1) of FSMA 2000;

“register” means the register maintained by the FCA under regulation 4;

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(a) Section 300H was inserted by section 11 of the Financial Services and Markets Act 2023.

(b) S.I. 2001/544. Part 1 of Schedule 2 was substituted by S.I. 2006/3884 and amended by S.I. 2017/488, 2018/1403 (as amended by 2019/710) and 2021/494.

(c) EUR 2014/65.

(d) EUR 600/2014, as amended by S.I. 2018/1403 and, in respect of the transitional period provided for by section 2 of the Financial Services and Markets Act 2023, by Part 1 of Schedule 2 to that Act. There are other amendments but none is relevant.

(e) Section 313(1) was amended by S.I. 2013/504, 2017/1064 and 2020/646. There are other amendments but none is relevant.

(f) Section 285(1) was amended by S.I. 2013/504. There are other amendments but none is relevant.

(g) EUR 2014/909. Article 16 was amended by S.I. 2018/1320.

“UK regulated market” has the meaning given in Article 2(1)(13A) of the markets in financial instruments regulation;

“relevant person” means—

- (a) a data reporting service provider,
- (b) an authorised person who is not a data reporting service provider, or
- (c) a recognised body which is not a data reporting service provider;

“senior management” means natural persons who exercise executive functions within an investment firm, a market operator (as defined in Article 2(1)(10) of the markets in financial instruments regulation) or a data reporting service provider and who are responsible, and accountable to the management body, for the day-to-day management of the entity, including for the implementation of the policies concerning the distribution of services and products to clients by the firm and its personnel;

“tender contract” has the meaning given in regulation 6(3)(a);

“the Tribunal” means the Upper Tribunal.

(2) In this regulation, a “person authorised under regulation 9” includes a person whose compliance with these Regulations has been verified by the FCA under regulation 7.

(3) In these Regulations, a reference to an Article of the markets in financial instruments regulations includes a reference to any assimilated law made under that Article.

(4) In Part 3, any reference to a requirement imposed by or under these Regulations includes a reference to a requirement imposed on a person to whom these Regulations apply under—

- (a) any assimilated law made under the markets in financial instruments directive or the markets in financial instruments regulation;
- (b) the markets in financial instruments regulation; or
- (c) data reporting service rules.

## PART 2

### Authorisation of Data Reporting Services

#### **Prohibition on the provision of a data reporting service**

**3.—**(1) A person must not provide a data reporting service in the United Kingdom as a regular occupation or business unless the person is—

- (a) acting in accordance with an authorisation to provide that data reporting service granted under these Regulations;
- (b) an investment firm which is operating a UK multilateral trading facility or a UK organised trading facility where the FCA has verified under these Regulations that the firm complies with these Regulations in respect of the data reporting service concerned;
- (c) a credit institution which is operating a UK multilateral trading facility or a UK organised trading facility where the FCA has verified under these Regulations that the institution complies with these Regulations in respect of the data reporting service concerned; or
- (d) a recognised investment exchange operating a trading venue where the FCA has verified under these Regulations that the exchange complies with these Regulations in respect of the data reporting service concerned.

(2) A person who breaches a prohibition imposed by paragraph (1) is to be taken to have contravened a requirement imposed on it under these Regulations.

(3) In this regulation, “trading venue” has the meaning given in Article 2(1)(16) of the markets in financial instruments regulation.

## **Register of data reporting service providers**

- 4.**—(1) The FCA must maintain a register of all persons—
- (a) it has authorised to provide a data reporting service under these Regulations, or
  - (b) whose compliance with these Regulations it has verified in accordance with regulation 7.
- (2) The FCA must—
- (a) publish the register online; and
  - (b) ensure that the register contains information on the services which persons on the register are authorised to provide including, where a tender contract to provide a CTP service is awarded, details of—
    - (i) the service to which the tender contract applies, and
    - (ii) the term of the tender contract and, where applicable, any extension to that term.

## **Application for authorisation to provide a data reporting service**

- 5.**—(1) An application for authorisation to provide a data reporting service must be made to the FCA.
- (2) An application made under paragraph (1) must be—
- (a) made in such manner as the FCA may direct; and
  - (b) contain, or be accompanied by, all the information required to demonstrate, in respect of the data reporting service the applicant wishes to provide, that the applicant meets the conditions for authorisation to provide a data reporting service under regulation 8.
- (3) At any time after receiving an application and before determining it the FCA may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application.
- (4) The FCA may give different directions, and may impose different requirements, in relation to different applications or categories of application.

## **Direction to tender**

- 6.**—(1) The FCA may give a direction that a tender is to take place in order to select a person to provide a CTP service (a “direction to tender”).
- (2) A direction to tender must specify—
- (a) the steps to be taken by prospective bidders wishing to participate in the tender, and
  - (b) the nature of the CTP service to which the tender applies, by reference to the description of financial instrument for which trade reports are to be collected and, where applicable, the relevant class of assets within that financial instrument.
- (3) The FCA must make a determination as to whether—
- (a) a bidder is to be awarded a contract to provide the CTP service to which the tender applies (a “tender contract”), or
  - (b) where a bidder is not authorised or verified to provide the CTP service concerned, the bidder is a person to whom the FCA proposes to award a tender contract subject to that person being authorised or verified (a “preferred bidder”).
- (4) The maximum term for which the tender contract may be awarded by the FCA following a direction to tender (“the initial tender term”) is a period of five years beginning on such day as the FCA may determine.
- (5) The initial tender term may be extended by a period of no more than two years where—
- (a) the FCA intends to give a direction to tender in respect of the CTP service concerned and—

- (i) significant changes to the arrangements for the selection of a person to provide the service, or to the obligations associated with the provision of the service, are anticipated by the FCA which would not otherwise be in effect before the commencement of the tender, or
  - (ii) following consultation with prospective bidders, the FCA cannot identify any likely participants in the tender other than the incumbent to whom the tender contract was awarded; or
- (b) following a direction to tender, a preferred bidder is not authorised or verified to provide the CTP service concerned.
- (6) For the duration of the period during which a tender contract is in effect (including any period during which the tender contract is extended) no person other than a person who has been awarded a contract to provide the CTP service concerned may provide that service.
- (7) A person who breaches a prohibition imposed by paragraph (6) is to be taken to have contravened a requirement imposed on it under these Regulations.
- (8) In this regulation, reference to a person “authorised or verified” means a person who is authorised under regulation 9 to provide the CTP service to which the tender applies or a person whose compliance with these Regulations in connection with the provision of that service has been verified by the FCA under regulation 7.

### **Verification of compliance**

7.—(1) Regulations 5, 8 and 9(1) to (5) apply to an application to the FCA for verification of compliance with these Regulations, as those regulations apply to an application for authorisation to provide a data reporting service.

(2) If the FCA verifies that an investment firm, credit institution or recognised investment exchange complies with these Regulations, it must give the applicant notice of its decision specifying—

- (a) the data reporting services to which the verification relates; and
- (b) any restrictions imposed under regulation 9(5) (as applied by this regulation).

(3) The notice must state the date on which the verification takes effect.

(4) The FCA must give the applicant a warning notice if it proposes to—

- (a) impose a restriction on the applicant; or
- (b) refuse an application.

(5) The FCA must, having considered any representations made in response to the warning notice—

- (a) if it grants the verification without imposing restrictions, give the applicant notice of its decision complying with paragraphs (2) and (3);
- (b) if it grants the verification subject to the imposition of restrictions on the applicant, give the applicant a decision notice; or
- (c) if it refuses the application, give the applicant a decision notice.

(6) The applicant may refer the matter to the Tribunal if the FCA—

- (a) grants the application subject to the imposition of restrictions on the applicant; or
- (b) refuses the application.

(7) Regulations 10, 11(1) to (6) and 13 apply to a verification under paragraph (2) as they apply to an authorisation to provide a data reporting service.

### **Conditions for authorisation to provide a data reporting service**

8.—(1) The FCA may only grant an application for authorisation to provide a data reporting service if—

- (a) the applicant has complied with all the directions and requirements under regulation 5;
  - (b) where a direction to tender applies in respect of the data reporting service concerned, the applicant is a preferred bidder;
  - (c) the applicant—
    - (i) is established in the United Kingdom, or
    - (ii) is a person not established in the United Kingdom who—
      - (aa) is applying to provide a service described in the definition of an APA or an ARM, and
      - (bb) has a branch in the United Kingdom;
  - (d) the FCA is satisfied that the applicant complies with all the requirements imposed by or under—
    - (i) these Regulations,
    - (ii) data reporting service rules,
    - (iii) the markets in financial instruments regulation,
    - (iv) the assimilated law made under the markets in financial instruments directive or the markets in financial instruments regulation; and
  - (e) the FCA is satisfied that the persons who effectively direct the business of the applicant are of good repute.
- (2) In this regulation, “branch” means a place of business other than the head office or registered office which—
- (a) is part of the applicant,
  - (b) has no legal personality, and
  - (c) provides a data reporting service.

**Determination of an application for authorisation to provide a data reporting service**

9.—(1) The FCA must determine an application for an authorisation to provide a data reporting service before the end of the period of six months beginning with the date on which it received the completed application.

(2) The FCA may determine an incomplete application if it considers it is appropriate to do so.

(3) An applicant may withdraw its application, by giving the FCA notice, at any time before the FCA determines it.

(4) The FCA may grant authorisation to carry out the data reporting services to which the application relates or such of them as may be specified in the authorisation.

(5) The FCA may grant authorisation subject to the imposition of such restrictions on the applicant as it considers appropriate.

(6) If the FCA grants an application for authorisation, it must give the applicant notice of its decision specifying—

- (a) which data reporting services the applicant has been granted authorisation to provide; and
- (b) any restrictions imposed under paragraph (5).

(7) The notice must state the date on which the authorisation takes effect.

(8) The FCA must give the applicant a warning notice if it proposes to—

- (a) impose a restriction on the applicant, or
- (b) refuse an application.

(9) The FCA must, having considered any representations made in response to the warning notice—

- (a) if it grants authorisation without imposing restrictions, give the applicant notice of its decision complying with paragraphs (6) and (7),



- (b) if it grants authorisation subject to the imposition of restrictions on the applicant, give the applicant a decision notice, or
  - (c) if it refuses the application, give the applicant a decision notice.
- (10) The applicant may refer the matter to the Tribunal if the FCA—
- (a) grants authorisation subject to the imposition of restrictions on the applicant; or
  - (b) refuses the application.

**Cancellation of an authorisation to provide a data reporting service**

**10.**—(1) The FCA may cancel a person’s authorisation to provide a data reporting service where—

- (a) the person requests, or consents to, the cancellation of the authorisation;
- (b) in the case of an authorisation to provide a CTP service in respect of which a direction to tender is given, the person is not awarded the tender contract;
- (c) the person has not provided the data reporting service which the person is authorised to provide for the preceding six months;
- (d) the person has obtained the authorisation through false statements or other irregular means;
- (e) the person no longer meets the conditions under which the authorisation was granted;
- (f) the FCA is not satisfied the persons who effectively direct the business of the person are of good repute;
- (g) the person has seriously and systematically infringed requirements imposed by or under—
  - (i) these Regulations,
  - (ii) data reporting service rules,
  - (iii) the markets in financial instruments regulation, or
  - (iv) any assimilated law made under the markets in financial instruments directive or the markets in financial instruments regulation.

(2) A request made under paragraph (1)(a) must be made in such manner as the FCA may direct.

(3) The FCA may refuse a request under paragraph (1)(a).

(4) The FCA must give a person a warning notice where it proposes to—

- (a) cancel a person’s authorisation, other than at the person’s request; or
- (b) refuse a request under paragraph (1)(a).

(5) The FCA must, having considered any representations made in response to the warning notice—

- (a) give the person notice of its decision if it decides—
  - (i) not to cancel the authorisation, or
  - (ii) to approve the request under paragraph (1)(a); or
- (b) give the person a decision notice if it decides—
  - (i) to cancel the authorisation, or
  - (ii) to refuse the request under paragraph (1)(a).

(6) The person may refer the matter to the Tribunal if the FCA decides—

- (a) to cancel the authorisation, other than at the person’s request, or
- (b) to refuse the request under paragraph (1)(a).

(7) Where the period for a reference to the Tribunal has expired without such reference being made, the FCA must as soon as practicable update the register accordingly.

## Variation of an authorisation to provide data reporting services

- 11.**—(1) A data reporting service provider may apply to the FCA to—
- (a) vary its authorisation to enable it to provide one or more additional data reporting services,
  - (b) remove one or more data reporting services, or
  - (c) remove a restriction imposed on an applicant under regulation 9.
- (2) An application under paragraph (1) (“an application for a variation”) must be made in such manner as the FCA may direct.
- (3) If the FCA proposes to refuse a person’s application for a variation it must give the person a warning notice.
- (4) The FCA must, having considered any representations made in response to the warning notice—
- (a) if it grants the person’s application for a variation, give the person notice of its decision; or
  - (b) if it refuses the person’s application for a variation, give the person a decision notice.
- (5) If the FCA refuses a person’s application for a variation the person may refer the matter to the Tribunal.
- (6) Where the period for a reference to the Tribunal has expired without a reference being made, the FCA must as soon as practicable update the register accordingly.
- (7) In this regulation, “authorisation” means an authorisation under regulation 9.

## PART 3

### Administration and enforcement

#### CHAPTER 1

##### The FCA

##### *Functions of the FCA*

## Consulting the Bank of England

- 12.** The FCA must consult the Bank of England before—
- (a) authorising a recognised clearing house or a recognised CSD to provide a data reporting service;
  - (b) varying or cancelling a recognised clearing house’s or a recognised CSD’s authorisation to provide a data reporting service;
  - (c) imposing, varying or withdrawing a restriction on a recognised clearing house’s or a recognised CSD’s authorisation to provide a data reporting service under regulation 13;
  - (d) publishing a statement under section 312E FSMA 2000(a) (public censure) as applied by regulation 19 in relation to a contravention by a recognised clearing house or a recognised CSD;
  - (e) imposing a penalty under section 312F FSMA 2000(b) (financial penalties) as applied by regulation 19 in relation to a contravention by a recognised clearing house or a recognised CSD;

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(a) Section 312E was inserted by section 33 of the Financial Services Act 2012 (c. 21) and amended by section 11(5) of the Financial Services and Markets Act 2023 and S.I. 2017/1064 and 2019/622 (as amended by 2020/646).

(b) Section 312F was inserted by section 33 of the Financial Services Act 2012 and amended by section 11(6) of the Financial Services and Markets Act 2023 and S.I. 2019/662.

- (f) appointing a person to prepare a report under section 166(3)(b) of FSMA 2000 (reports by skilled persons) as applied by regulation 18 in relation to a recognised clearing house or a recognised CSD;
- (g) exercising a power under section 166A(2) of FSMA 2000(a) (appointment of skilled person to collect and update information) as applied by regulation 18 in relation to a recognised clearing house or a recognised CSD;
- (h) appointing a person to carry out an investigation under section 167(1) of FSMA 2000(b) (appointment of persons to carry out general investigations) as applied by regulation 18 in relation to a recognised clearing house or a recognised CSD;
- (i) appointing a person to carry out an investigation under section 168(3) of FSMA 2000 (appointment of persons to carry out investigations in particular cases) as applied by regulation 18 in relation to a recognised clearing house or a recognised CSD;
- (j) appointing a person to carry out an investigation under section 169(1)(b) of FSMA 2000(c) (investigations etc. in support of overseas regulator) as applied by regulation 18 in relation to a recognised clearing house or a recognised CSD.

### **Restrictions on authorisation to carry on data reporting services**

**13.—**(1) If the FCA considers that a data reporting service provider (“P”) has contravened a requirement imposed by or under these Regulations, it may impose, for such period as it considers appropriate, such restrictions in relation to the carrying on of data reporting services by P as it considers appropriate.

(2) If the FCA considers that there are objective and demonstrable grounds for believing that a change or proposed change to the management of P poses a threat to—

- (a) the sound and prudent management of P,
- (b) the adequate consideration of the interests of P’s clients, or
- (c) the integrity of the market,

it may impose, for such period as it considers appropriate, such restrictions in relation to the carrying on of data reporting services by P as it considers appropriate.

(3) A restriction may, in particular, be imposed so as to require P to take, or refrain from taking, specified action.

(4) The FCA may—

- (a) withdraw a restriction; or
- (b) vary a restriction so as to reduce the period for which it has effect or otherwise to limit its effect.

(5) The power under this regulation may (but need not) be exercised so as to have effect in relation to all the data reporting services that P carries on.

(6) Where the FCA proposes to impose a restriction under this regulation, section 55Y of FSMA 2000(d) (exercise of own-initiative power: procedure) applies as if—

- (a) subsections (1A) and (1B) (applying section 55Y to an exercise of the FCA’s power under section 55NA) were omitted;
- (b) each reference to either regulator’s own-initiative variation power or own-initiative requirement power were a reference to the FCA’s power to impose a restriction under this regulation;

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(a) Section 166A was inserted by paragraph 6 of Schedule 12 to the Financial Services Act 2012 and was amended by section 11(3) of the Financial Services and Markets Act 2023.

(b) Section 167(1) was amended by paragraph 7 of Schedule 12 to the Financial Services Act 2012, paragraph 7 of Schedule 2 to the Financial Services Act 2021 and S.I. 2013/423.

(c) Section 169(1) was amended by paragraph 9 of Schedule 12 to the Financial Services Act 2012.

(d) Section 55Y was inserted by section 11 of the Financial Services Act 2012 and was amended by paragraph 10 of Schedule 5 to the Financial Services and Markets Act 2023.

- (c) each reference to the regulator were a reference to the FCA, and each reference to either regulator were a reference to the FCA only;
- (d) each reference to an authorised person were a reference to P;
- (e) each reference to a variation of permission, or the imposition or variation of a requirement, were a reference to a restriction imposed on an authorisation granted under these Regulations to P; and
- (f) the reference in subsection (12) to section 391(8) were a reference to section 391(8) as applied by these Regulations.

**Breach of the prohibition on the provision of a data reporting service**

**14.**—(1) Unless paragraph (2) applies, a person who breaches a prohibition imposed by regulation 3(1) is guilty of an offence.

(2) This regulation does not apply to—

- (a) an authorised person;
- (b) a recognised body.

(3) A person guilty of an offence under this regulation is liable—

- (a) on summary conviction—
  - (i) in England and Wales, to a fine;
  - (ii) in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine.

**CHAPTER 2**

**Application of FSMA 2000 for the purposes of the Regulations**

**FCA’s general duties**

**15.**—(1) Section 1B of FSMA 2000(a) (FCA’s general duties)—

- (a) applies with respect to the FCA’s discharging of its functions in relation to persons on whom requirements are imposed by or under these Regulations, as it applies to arrangements for the discharge of the FCA’s general functions under that Act, with the modifications specified in paragraph (2);
- (b) in its application to the discharging by the FCA of its functions under section 1B(6)(a) of that Act, has effect with the modifications specified in paragraph (2).

(2) For the purposes of the interpretation of section 1B(2) of FSMA 2000—

- (a) section 1F applies as if “relevant markets” included the market for data reporting services;
- (b) section 1H(2) applies as if “regulated financial services” (for the purposes of the interpretation of that term in section 1F) included services provided by data reporting service providers.

**Supervision, monitoring and enforcement**

**16.** Section 1L of FSMA 2000(b) (supervision, monitoring and enforcement) applies with respect to the supervision, monitoring and enforcement of persons on whom requirements are imposed by or under these Regulations, as it applies to arrangements for supervision, monitoring and enforcement of persons under that Act as if—

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(a) Section 1B was inserted by section 6 of the Financial Services Act 2012 and amended by section 25 of the Financial Services and Markets Act 2023 and S.I. 2018/1115 and 1330.  
 (b) Section 1L was inserted by section 6 of the Financial Services Act 2012 and amended by S.I. 2013/1773 and 2019/632.

- (a) subsection (1) were omitted;
- (b) for subsection (2) there were substituted—
  - “(2) The FCA must maintain arrangements designed to enable it to determine whether persons in respect of whom requirements are imposed by or under the Data Reporting Services Regulations 2023, within the meaning of regulation 2(4) of those Regulations, are complying with them.”;
- (c) for subsection (3) there were substituted—
  - “(3) The FCA must also maintain arrangements for enforcing compliance with the provisions of the Data Reporting Services Regulations 2023.”.

**Application of Part 9 of FSMA 2000 (hearings and appeals)**

**17.—**(1) Part 9 of FSMA 2000(a) (hearings and appeals) applies with respect to proceedings pursuant to references to the Tribunal under these Regulations and under FSMA 2000 as applied by these Regulations (“relevant proceedings”) as it applies with respect to proceedings pursuant to references to the Tribunal under that Act, with the following modifications.

(2) Section 133 of FSMA 2000 (proceedings before the Tribunal: general provision) applies as if—

- (a) in subsection (1)—
  - (i) “(whether made under this or any other Act)” were omitted;
  - (ii) in paragraph (a) “or the PRA” were omitted;
  - (iii) paragraphs (b) and (c) were omitted;
- (b) subsection 1A were omitted;
- (c) in subsection (2) “, (b) or (c)” were omitted;
- (d) in subsection (5) the reference to section 393(11) were a reference to section 393(11) as applied by these Regulations;
- (e) subsection (5A) were omitted;
- (f) for subsection (7A) there were substituted—
  - “(7A) A reference is a “disciplinary reference” for the purposes of this section if it is in respect of either of the following decisions—
    - (a) a decision to publish a statement under section 312E as applied by regulation 19 of the Data Reporting Services Regulations 2023;
    - (b) a decision to impose a penalty under section 312F as applied by regulation 19 of the Data Reporting Services Regulations 2023.”.

(3) Section 133A of FSMA 2000 (proceedings before Tribunal: decision and supervisory notices, etc.) applies as if—

- (a) for subsection (1) there were substituted—
  - “(1) In determining in accordance with section 133(5) (as applied by the Data Reporting Services Regulations 2023) a reference made as a result of a decision notice given by the FCA, the Tribunal may not direct the FCA to take action which it would not, under the Data Reporting Services Regulations 2023 or this Act as applied by those Regulations, have had power to take when giving the notice.”;
- (b) in subsections (4) and (5) “(whether made under this or any other Act)” were omitted;
- (c) in subsection (5) “or the PRA” were omitted.

(4) Section 133B of FSMA 2000 (offences) applies as if in subsection (1)—

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(a) Part 9 was amended by section 23 of the Financial Services Act 2012, section 4 of the Financial Services (Banking Reform) Act 2013 (c. 33), paragraph 83 of Schedule 9 to the Crime and Courts Act 2013 (c. 22), section 49 of the Financial Services Act 2021 (c. 22), S.I. 2010/22, 2013/1388, 2014/3329, 2016/680, 2017/1064 and 2021/739.

- (a) in paragraph (a) “or the PRA” were omitted;
- (b) paragraphs (b) and (c) were omitted.

**Application of Part 11 of FSMA 2000 (information gathering and investigations)**

**18.—**(1) Part 11 of FSMA 2000(a) (information gathering and investigations)—

- (a) applies with respect to the discharge by the FCA of its functions under these Regulations, as it applies with respect to the discharge by the FCA of its functions under FSMA 2000, with the modifications specified in paragraphs (2) to (18);
- (b) in its application to the discharge by the FCA of its functions under sections 165, 166 to 167 and 176, as those functions apply in respect of data reporting service rules, has effect with the modifications specified in paragraphs (2)(c) to (e), (3), (5) to (7) and (17).

(2) Part 11 of FSMA 2000 applies as if—

- (a) each reference to that Act included a reference to these Regulations;
- (b) each reference to a section or Part of, or Schedule to, that Act were a reference to that section, Part or Schedule as applied by these Regulations;
- (c) each reference to an authorised person were a reference to a data reporting service provider;
- (d) each reference to the PRA were omitted;
- (e) each reference to a regulator were a reference to the FCA, and each reference to either regulator, the regulator in question, the regulator exercising the power, or each regulator were a reference to the FCA only.

(3) Section 165 of FSMA 2000 (regulators’ power to require information: authorised persons etc.) applies as if—

- (a) subsection (4)(b) were omitted;
- (b) in subsection (7)(a), after “a person”, there were inserted “who provides, or has provided, a service to an authorised person or to a relevant parent undertaking of an authorised person, or”;
- (c) subsections (7)(b) to (d), (8A) (11)(e), (12) and (13) were omitted.

(4) Sections 165A (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)) of FSMA 2000 do not apply.

(5) Section 166 of FSMA 2000 (reports by skilled persons) applies as if—

- (a) in subsection (10) for “subsection (11), (12) or (13)” there were substituted “subsection (12)”;
- (b) subsection (11) were omitted;
- (c) in subsection (12) from “an FCA investment firm” to the end there were substituted “a data reporting service provider or to a relevant parent undertaking of that service provider”;
- (d) subsections (13) and (14) were omitted.

(6) Section 166A of FSMA 2000 (appointment of skilled person to collect and update information) applies as if—

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(a) Part 11 was amended by paragraph 54 of Schedule 26 to the Criminal Justice Act 2003 (c. 44), paragraph 33 of Schedule 7 to the Counter Terrorism Act 2008 (c. 28), section 18 of and Schedule 2 to the Financial Services Act 2010 (c. 28), Schedule 12 to and paragraph 8 of Schedule 18 to the Financial Services Act 2012, paragraphs 36 and 37 of Schedule 2 to the Bank of England and Financial Services Act 2016 (c. 14), paragraph 9 of Schedule 2 to the Investigatory Powers Act 2016 (c. 25), paragraphs 5 to 9 of Schedule 2 and paragraph 4 of Schedule 9 to the Financial Services Act 2021, paragraph 8 of Schedule 10 to the Financial Services and Markets Act 2023, S.I. 2001/1090, 2005/1433, 2007/126, 2011/1043, 2012/2554, 2013/1773, 2015/575, 2016/680, 2019/632 (as amended by 2020/1301), 2021/671, 2022/163 and 466. There are other amendments but none is relevant.

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

“(1) This section applies if the FCA considers that a person has contravened a requirement imposed by or under the Data Reporting Services Regulations 2023, within the meaning given in regulation 2(4) of those Regulations, to collect, and keep up to date, information of a description specified in those Regulations.”;

(b) subsections (9A) and (10) were omitted.

(7) Section 167 of FSMA 2000 (appointment of persons to carry out general investigations) applies as if—

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

“(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 person in respect of whom a requirement is imposed by or under the Data Reporting Services Regulations 2023 within the meaning given in regulation 2(4) of these Regulations (“a person subject to the 2023 Regulations”) or a person who provides a service to that person or to a relevant parent undertaking of that person;

(b) a particular aspect of that business;

(c) the ownership or control of a person subject to the 2023 Regulations.”;

(b) subsection (1A) and (2)(c) were omitted;

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

“(4A) The power conferred by this section may be exercised in relation to a person who has at any time been a person in respect of whom a requirement was imposed by or under the 2017 Regulations or a person who has at any time been a person described in subsection (1)(a) but only in relation to—

(a) business carried on when the person was a person in respect of whom a requirement was imposed by or under the 2017 Regulations or a person described in subsection (1)(a); or

(b) the ownership or control of the person at such a time.”;

(d) subsections (4B), (5A) and (6) were omitted.

(8) Section 168 of FSMA 2000 (appointment of persons to carry out investigations in particular cases) applies 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 relevant person may have contravened a requirement imposed by or under the Data Reporting Services Regulations 2023, within the meaning given in regulation 2(4) of those Regulations;

(b) a member of the management body of a relevant person or another member of the senior management of a relevant person may be responsible for the contravention of a requirement imposed by or under those Regulations; or

(c) a person may be guilty of an offence under those Regulations or under this Act as applied by those Regulations.”;

(b) subsection (2) were omitted;

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

(d) subsections (4) and (5) were omitted;

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

“(6) “Management body” “relevant person” and “senior management” have the meanings given in regulation 2(1) of the Data Reporting Services Regulations 2023. ”.

(9) Section 169 of FSMA 2000 (investigations etc. in support of overseas regulator) applies as if—

- (a) subsection (2A) were omitted;
- (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 Data Reporting Services Regulations 2023.”.

(10) Section 169A of FSMA 2000 (support of overseas regulator with respect to financial stability) does not apply.

(11) Section 170 of FSMA 2000 (investigations: general) applies as if—

- (a) each reference to the investigating authority were a reference to the FCA;
- (b) in subsection (1) “or (5)” were omitted;
- (c) for subsection (3) there were substituted—

“(3) Subsections (2) and (9) do not apply if the investigator is appointed as a result of section 168(1) and the FCA believes that the notice required by subsection (2) or (9) would be likely to result in the investigation being frustrated.”;

- (d) subsection (10) were omitted.

(12) Section 171 of FSMA 2000 (powers of persons appointed under section 167) applies as if—

- (a) for subsection (1A)(c) and (d) there were substituted—

“(c) where the person under investigation is a data reporting service provider, a person who provides, or has provided, a service to that person or to a relevant parent undertaking of that person;

(d) where the person under investigation is a relevant parent undertaking of a data reporting service provider, a person who provides, or has provided, a service to the parent undertaking or to that person;”;

- (b) subsections (3A) and (7) were omitted.

(13) Section 172 of FSMA 2000 (additional power of persons appointed as a result of section 168(1) or (4)) applies as if in the heading and in subsection (4) “or (4)” were omitted.

(14) Section 173 of FSMA 2000 (powers of persons appointed as a result of section 168(2)) does not apply.

(15) Section 174 of FSMA 2000 (admissibility of statements made to investigators) applies as if—

- (a) in subsection (2) “or in proceedings in relation to action to be taken against that person under section 123 to which this subsection applies” were omitted;
- (b) subsection (3A) were omitted;
- (c) in subsection (4) the words from “or (5),” to the end were omitted;
- (d) in subsection (5) “, 173” were omitted.

(16) Section 175 of FSMA 2000 (information and documents: supplemental provisions) applies as if —

- (a) in subsection (5)(d) for “investigating authority” there were substituted “FCA”;
- (b) subsection (8) were omitted.

(17) Section 176 of FSMA 2000 (entry of premises under warrant) applies as if—

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

“(1) A justice of the peace may issue a warrant under this section if satisfied on information on oath given by or on behalf of the FCA or an investigator that there are reasonable grounds for believing that the first, second or third set of conditions is satisfied.”

- (b) in subsection (3A)—



- (i) paragraph (b) were omitted;
- (ii) for paragraphs (c) and (d) there were substituted—
  - “(c) a relevant parent undertaking of a data reporting service provider;
  - (d) a person who provides a service to such a data reporting service provider or to a relevant parent undertaking of that service provider.”;
- (c) in subsection (10) “or (5)” were omitted;
- (d) in subsection (11)—
  - (i) in paragraph (a) “87C, 87J,” and “165A, 169A” were omitted;
  - (ii) in paragraph (b) “, 173” were omitted.
- (18) Section 177A of FSMA 2000 (interpretation of part 11) applies as if—
  - (a) for the definition of “FCA investment firm” there were substituted—
    - ““data reporting service provider” has the meaning given in regulation 2(1) of the Data Reporting Services Regulations 2023;”;
  - (b) in the definition of “relevant parent undertaking”, for “an FCA investment firm” there were substituted “a data reporting service provider”.

### **Disciplinary measures**

**19.—**(1) Chapter 3B of Part 18 of FSMA 2000(a) (disciplinary measures in respect of recognised bodies)—

- (a) applies with respect to the discharge by the FCA of its functions under these Regulations, as it applies with respect to the discharge by the FCA of its functions under FSMA 2000, with the modifications specified in paragraphs (2) to (9);
- (b) in its application to the discharge by the FCA of its functions under section 312E to 312H of FSMA 2000, as those functions apply in relation to data reporting service rules, has effect with the modifications specified in paragraphs (3) to (9).
- (2) Chapter 3B of Part 18 of FSMA 2000 applies as if—
  - (a) each reference to a section or Part of FSMA 2000 were a reference to that section or Part as applied by these Regulations;
  - (b) each reference to an appropriate regulator or each appropriate regulator were a reference to the FCA;
  - (c) references to a recognised investment exchange were omitted;
  - (d) each reference to a relevant requirement were a reference to a requirement which is imposed by or under these Regulations, or FSMA 2000 as applied by these Regulations.
- (3) Section 312E of FSMA 2000 (public censure) applies as if—
  - (a) for subsection (1) there were substituted—
    - “(1) If the FCA considers that—
      - (a) a relevant person has contravened a relevant requirement, or
      - (b) a member of the management body, or another member of the senior management, of a relevant person is responsible for the contravention of a relevant requirement by the relevant person,
 it may publish a statement to that effect.”;
  - (b) in subsection (2) paragraphs (b) to (d) were omitted;
  - (c) subsection (3) were omitted;

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(a) Chapter 3B of Part 18 was inserted by section 33 of the Financial Services Act 2012 and amended by section 11(5) of the Financial Services and Markets Act 2023 and S.I. 2017/1064 and 2019/622 (as amended by 2020/646).

(d) in subsection (4) from “has the meaning” to the end, there were substituted “, “management body”, “relevant person” and “senior management” have the meanings given by regulation 2(1) of the Data Reporting Services Regulations 2023.”.

(4) Section 312F of FSMA 2000 (financial penalties) applies as though for subsection (1) there were substituted—

“(1) If the FCA considers that a relevant person has contravened a relevant requirement, it may impose a penalty of such amount as it considers appropriate on—

- (a) the relevant person;
- (b) a member of the management body of the relevant person if the FCA considers the member is responsible for the contravention;
- (c) another member of the senior management of the relevant person if the FCA considers the member is responsible for the contravention.”.

(5) Section 312G of FSMA 2000 (proposal to take disciplinary measures) applies as if for subsection (1) there were substituted—

“(1) If the FCA proposes to impose a sanction in respect of any person under section 312E or 312F (as applied by the Data Reporting Services Regulations 2023) it must give the person a warning notice.”.

(6) Section 312H of FSMA 2000 (decision notice) applies as if—

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

“(1) If the FCA decides to impose a sanction in respect of any person under section 312E or 312F (as applied by the Data Reporting Services Regulations 2023) it must give the person a decision notice.”;

(b) subsection (3A) were omitted;

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

“(4) If the FCA decides to impose a sanction in respect of any person under section 312E or 312F (as applied by the Data Reporting Services Regulations 2023) the person may refer the matter to the Tribunal.”.

(7) Section 312J of FSMA 2000 (statement of policy) applies as if—

(a) in subsection (1)—

(i) the references to section 312FA were omitted from paragraph (a);

(ii) paragraph (c) were omitted;

(b) in subsection (5) the reference to section 312FA were omitted.

### **Information given by an auditor**

**20.** Sections 342 (information given by auditor or actuary to a regulator), 343 (information given by auditor or actuary to a regulator: person with close links) and 344 (duty of auditor or actuary resigning etc. to give notice) of FSMA 2000(a) apply with respect to the auditor of a data reporting service provider as if—

- (a) each reference to an authorised person were a reference to a data reporting service provider;
- (b) each reference to a regulator or to “the appropriate regulator” were a reference to the FCA;
- (c) references to a recognised investment exchange and to an actuary were omitted;
- (d) sections 342(2), 343(2) and 344(4) were omitted.

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(a) Section 342 was amended by paragraph 4 of Schedule 13 to the Financial Services Act 2012 and S.I. 2013/3115 and 2019/632. Section 343 was amended by paragraph 5 of Schedule to the Financial Services Act 2012 and S.I. 2013/3115 and S.I. 2019/632. Section 344 was amended by paragraph 6 of Schedule 13 to the Financial Services Act 2012.

## **Restrictions on disclosure of information**

**21.** Sections 348 (restrictions on disclosure of confidential information by FCA, PRA etc.), 349 (exceptions from section 348) and 352 (offences) of FSMA 2000(a) apply with respect to information received under these Regulations and under FSMA 2000 as applied by these Regulations as they apply with respect to information received under FSMA 2000 as if—

- (a) each reference to that Act included a reference to these Regulations;
- (b) each reference to a section or Part of that Act were a reference to that section or Part as applied by these Regulations;
- (c) each reference to the PRA were omitted;
- (d) in section 348, each reference to the Secretary of State were omitted;
- (e) in section 348, subsections (2A),(5)(aa), (da), (6)(a) and (8) were omitted;
- (f) in section 352—
  - (i) in subsection (1) “or 350(5)” were omitted;
  - (ii) subsection (4) were omitted;
  - (iii) in subsection (5) “or (4)” were omitted;
  - (iv) in subsection (6)(a) “or that it had been disclosed in accordance with section 350” were omitted.

## **Application of Part 25 of FSMA 2000 (injunctions and restitution)**

**22.—(1)** Part 25 of FSMA 2000(b) (injunctions and restitution) applies for the purposes of these Regulations and FSMA 2000 as applied by these Regulations, with the following modifications.

- (2) Part 25 FSMA 2000 applies as if—
  - (a) each reference to that Act included a reference to these Regulations;
  - (b) each reference to a section of that Act were a reference to that section as applied by these Regulations;
  - (c) each reference to a regulator, the regulator concerned or the appropriate regulator were a reference to the FCA;
  - (d) references to the Secretary of State were omitted;
  - (e) each reference to a relevant requirement were a reference to a requirement which is imposed by or under these Regulations, or that Act as applied by these Regulations.
- (3) Section 380 of FSMA 2000 applies as if subsections (6) to (12) were omitted.
- (4) Section 381 of FSMA 2000 (injunctions in case of market abuse) does not apply.
- (5) Section 382 of FSMA 2000 (restitution orders) applies as if subsections (9) to (15) were omitted.
- (6) Section 383 of FSMA 2000 (restitution orders in case of market abuse) does not apply.
- (7) Section 384 of FSMA 2000 (power of FCA or PRA to require restitution) applies as if—
  - (a) in subsection (1)—

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(a) Section 348 was amended by paragraph 26 of Schedule 2 to the Financial Services Act 2010 (c. 28), paragraph 18 of Schedule 12 to the Financial Services Act 2012, paragraph 5 of Schedule 8 to the Financial Services (Banking Reform) Act 2013, paragraph 45 of Schedule 2 to the Bank of England and Financial Services Act 2016, paragraph 9 of Schedule 12 to the Financial Services and Markets Act 2023 and S.I. 2016/1239. Section 349 was amended by section 964 of the Companies Act 2006 (c. 46), paragraph 19 of Schedule 12 to the Financial Services Act 2012, S.I. 2006/1183, 2007/1093, 2011/1043 and 2019/681. Section 352 was amended by paragraph 54 of Schedule 26 to the Criminal Justice Act 2003 (c. 44).

(b) Part 25 was amended by paragraphs 19, 21, 23, 24 and 25 of Schedule 9 to the Financial Services Act 2012, paragraph 3 of Schedule 10 to the Financial Services (Banking Reform) Act 2013 and S.I. 2007/126, 2013/1773, 2015/1775, 2016/225 and 680 and 2019/632. There are other amendments but none is relevant.

- (i) the reference to an authorised person were a reference to a data reporting service provider; and
- (ii) the reference to a recognised investment exchange were omitted;
- (b) subsections (2) and (3) and references to those subsections were omitted;
- (c) subsections (7) to (13) were omitted.

**Application of Part 26 of FSMA 2000 (notices)**

**23.—**(1) Part 26 of FSMA 2000(a) (notices) applies with respect to the giving of notices under these Regulations and under FSMA 2000 as applied by these Regulations as it applies with respect to the giving of notices under FSMA 2000, with the following modifications.

(2) Part 26 of FSMA 2000 applies as if—

- (a) each reference to that Act included a reference to these Regulations;
- (b) each reference to a section of that Act were a reference to that section as applied by these Regulations;
- (c) each reference to a regulator or to the regulator concerned were a reference to the FCA;
- (d) references to the PRA were omitted.

(3) Section 387 of FSMA 2000 (warning notices) applies as if subsections (1A) and (3A) were omitted.

(4) Section 388 of FSMA 2000 (decision notices) applies as if subsections (1A) and (2) were omitted.

(5) Section 391 of FSMA 2000 (publication) applies as if—

- (a) in subsection (1) the reference to a warning notice falling within subsection (1ZB) were to a warning notice given under section 312G as applied by these Regulations;
- (b) in subsection (1ZA) the reference to a warning notice not falling within subsection (1ZB) were to a warning notice given under any other provision of these Regulations or under FSMA 2000 as applied by these Regulations;
- (c) subsection (1ZB) were omitted;
- (d) in subsection (4A) the reference to sections 391A, 391B, 391C, 391E and 391F were omitted;
- (e) subsection (5A) were omitted;
- (f) in subsection (6) for “consumers” there were substituted “persons to whom data reporting services are provided”;
- (g) subsections (6A), (8A), (8AA), (8B), (8BA) and (8C), (8D), (8E) and (8G) were omitted;
- (h) for subsection (11) there were substituted—

“(11) Section 425A(b) (Consumers regulated activities etc carried on by authorised persons) applies for the purposes of this section as if—

- (a) subsection (2)(c) and (d) were omitted;
- (b) for subsection (3) there were substituted—

(3) “The services within this subsection are data reporting services within the meaning of the Data Reporting Services Regulations 2023.”;

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(a) Part 26 was amended by paragraph 11 of Schedule 4 to the Regulation of Investigatory Powers Act 2000 (c. 23), sections 13 and 24 of and paragraphs 28 and 29 of Schedule 2 to the Financial Services Act 2010, sections 17, 18, 19 and 24 of and paragraph 37 of Schedule 8, Schedule 9 and paragraph 8 of Schedule 13 to the Financial Services Act 2012, section 4 of and Schedule 3 to the Financial Services (Banking Reform) Act 2013, paragraph 43 of Schedule 10 to the Investigatory Powers Act 2016, section 212 of the Data Protection Act 2018 (c. 12), S.I. 2005/381, 2005/1433, 2007/126, 2007/1973, 2009/534, 2010/22 and 747, 2012/916, 2013/1388, 2014/2879, 2015/1755, 2016/225, 2016/680, 715 and 1239, 2017/701, 2018/135 and 546, 2019/632 (as amended by 2020/1301) and 1043. There are other amendments but none is relevant.

(b) Section 425A was inserted by paragraph 32 of Schedule 2 to the Financial Services Act 2010 and amended by S.I. 2013/655, 2013/3115 and 2019/632. There are other amendments but none is relevant.

(c) subsection (7) were omitted.”.

(6) Sections 391A (publication: special provisions relating to capital requirements), 391B (publication: special provisions relating to transparency obligations), 391C (publication: special provision relating to UCITS), 391E (publication: special provision relating to insurance distribution) and 391F (publication: special provisions relating to the prospectus regulation) of FSMA 2000 do not apply.

(7) Section 391D (publication: special provisions relating to markets in financial instruments) applies as if, in subsections (4)(c) and (8)(a), for “financial markets” there were substituted “market for data reporting services”.

(8) Section 392 of FSMA 2000 (application of sections 393 and 394) applies as if for paragraphs (a) and (b) there were substituted—

“(a) a warning notice given in accordance with—

- (i) regulation 10(4)(a) of the Data Reporting Services Regulations 2023 (including that provision as applied by regulation 7 of those Regulations);
- (ii) section 312G as applied by those Regulations; or
- (iii) section 385 as applied by those Regulations;

(b) a decision notice given in accordance with—

- (i) regulation 10(5)(b)(i) of those Regulations (including that provision as applied by regulation 7);
- (ii) section 312G as applied by those Regulations; or
- (iii) section 386 as applied by those Regulations;”.

(9) Section 395 of FSMA 2000 (the FCA’s and PRA’s procedures) applies 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 decision which gives rise to an obligation for it to give—

- (a) a supervisory notice, warning notice or decision notice; or
- (b) a decision under section 391(1)(c) to publish information about the matter to which a warning notice relates.”;

(b) in subsection (2)(a) for “any of the paragraphs (a) to (c)” there were substituted “paragraph (a)”;

(c) in subsection (2)(b) for “(d)” there were substituted “(b)”;

(d) in subsection 2(c)—

- (i) for “(d)” there were substituted “(b)”;
- (ii) for “(b) or (c)” there were substituted “(a)”;

(e) subsection 3(b) and (4) were omitted;

(f) in subsection (9) “other than a warning notice or decision notice relating to a decision of the PRA that is required by a decision of the FCA of the kind mentioned in subsection (1)(b)(ii)” were omitted;

(g) subsection (9A) were omitted;

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

“(13) “Supervisory notice” means a notice given in accordance with section 55Y of FSMA 2000 as applied by regulation 13 of the Data Reporting Services Regulations 2023.”.

(10) In paragraph (1), “notices under these Regulations” does not include a notice under—

(a) regulation 7(2) or (5)(a);

(b) regulation 9(6)(a) or (9)(a);

(c) regulation 10(5)(a) (including that provision as applied by regulation 7).

### **Application of Part 27 of FSMA 2000 (offences)**

**24.**—(1) Part 27 of FSMA 2000(a) (offences) applies with respect to offences under these Regulations and FSMA 2000 as applied by these Regulations as it applies with respect to offences under FSMA 2000, with the following modifications.

(2) Part 27 of FSMA 2000 applies as if—

- (a) each reference to that Act included a reference to these Regulations;
- (b) each reference to a section of that Act were a reference to that section as applied by these Regulations;
- (c) references to the Secretary of State were omitted;
- (d) references to a regulator or the appropriate regulator were references to the FCA.

(3) Section 398 of FSMA 2000 (misleading FCA or PRA: residual cases) applies as if —

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

“(1) A person who, in purported compliance with any requirement imposed by or under the Data Reporting Services Regulations 2023 within the meaning of regulation 2(4) of those Regulations, knowingly or recklessly gives information which is false or misleading in a material particular to—

- (a) the FCA, or
- (b) another person, knowing that the information is to be provided to, or to be used for the purposes of providing information to the FCA,

is guilty of an offence.”;

(b) subsection (1A) were omitted;

(c) in subsection (2) for “this Act” there were substituted “FSMA 2000 as applied by the Data Reporting Services Regulations 2023”.

(4) Section 399 of FSMA 2000 of FSMA 2000 (misleading the CMA) does not apply.

(5) Section 400 of FSMA 2000 (offences by bodies corporate) applies as if subsection (6A) were omitted.

(6) Section 401 of FSMA 2000 (proceedings for offences) applies as if—

- (a) subsection 1(c) were omitted;
- (b) subsections (3A) to (3B) were omitted.

(7) Section 402 of FSMA 2000 (power of FCA to institute proceedings for certain other offences) does not apply.

(8) Section 403(7) of FSMA 2000 (jurisdiction and procedure in respect of offences) applies as if the words from “or an offence” to the end were omitted.

### **Application of section 413 of FSMA 2000 (protected items)**

**25.** Section 413 of FSMA 2000 (protected items) applies for the purposes of these Regulations as it applies for the purposes of that Act.

### **Application of section 415AA of FSMA 2000 (application of powers to formerly authorised persons)**

**26.**—(1) Section 415AA of FSMA 2000(b) (application of powers to formerly authorised persons) applies for the purposes of these Regulations and FSMA 2000 as applied by these Regulations as if—

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- (a) Part 27 was amended by section 95 of and paragraphs 37, 38 and 40 of Schedule 9 to the Financial Services Act 2012 and S.I. 2013/1881 and 2016/1239. There are other amendments but none is relevant.
  - (b) Section 415AA was inserted by section 60 of the Financial Services and Markets Act 2023.

- (a) each reference to an authorised person were a reference to a data reporting service provider;
- (b) each reference to a section of that Act were a reference to that section as applied by these Regulations;
- (c) for subsections (1)(b) and (c) there were substituted—
  - “(b) section 312E (public censure);
  - (c) section 312F (financial penalties)”;
- (d) in subsection (2) “, and in sections 207 to 209,” were omitted.

**FCA: penalties, fees and exemption from liability in damages**

**27.**—(1) Paragraphs 19 to 23 (penalties and fees) and 25 (exemption from liability in damages) of Schedule 1ZA to FSMA 2000(a) apply with respect to the discharge by the FCA of its functions under these Regulations as they apply with respect to the discharge by it of its functions under FSMA 2000, with the following modifications.

- (2) Those paragraphs apply as if—
  - (a) each reference to penalties imposed under that Act included a reference to penalties imposed under these Regulations;
  - (b) each reference to a section or Part of that Act included a reference to that section or Part as applied by these Regulations;
  - (c) each reference to the functions of the FCA included a reference to its functions under these Regulations.
- (3) Paragraph 20 applies as if references to the FCA’s enforcement powers included—
  - (a) its powers under these Regulations and under Part 25 of FSMA 2000 as applied by these Regulations;
  - (b) its powers in relation to investigation of offences under these Regulations or under FSMA 2000 as applied by these Regulations;
  - (c) its powers in England and Wales or Northern Ireland in relation to the prosecution of offences under these Regulations or under FSMA 2000 as applied by these Regulations.
- (4) Paragraph 21 applies as if regulated persons included data reporting service providers.
- (5) Paragraph 23 applies as if references to qualifying functions included references to the functions of the FCA under these Regulations and under FSMA 2000 as applied by these Regulations.
- (6) Paragraph 25 applies as if sub-paragraph (1A) were omitted.

CHAPTER 3

Application of secondary legislation for the purposes of the Regulations

**Service of notices**

**28.** The Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001(b) (“Notice Regulations”) apply in respect of any notice or document to be given by the FCA under these Regulations, or under FSMA 2000 as applied by these Regulations, as if—

- (a) that notice or document were “a relevant document” under the Notice Regulations;

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(a) Schedule 1ZA was inserted by Schedule 3 to the Financial Services Act 2012 and is amended by section 109 of, paragraph 7 of Schedule 8 to and paragraph 4 of Schedule 10 to the Financial Services (Banking Reform) Act 2013, section 29 of the Bank of England and Financial Services Act 2016, Schedule 3 of the Financial Guidance and Claims Act 2018 (c. 10) and S.I. 2013/1773, 2018/1115. There are other amendments but none is relevant.

(b) S.I. 2001/1420. There are amendments but none is relevant.

- (b) each reference to that Act included a reference to these Regulations and to that Act as applied by these Regulations;
- (c) each reference to a section of that Act were a reference to that section as applied by these Regulations.

#### **Disclosure of confidential information**

**29.** The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001(a) apply for the purposes of section 349 of FSMA 2000 (exceptions from section 348) as applied by regulation 21.

#### **Communications by auditors**

**30.** The Financial Services and Markets Act 2000 (Communications by Auditors) Regulations 2001(b) apply with respect to the auditor of a data reporting service provider as if—

- (a) each reference to an authorised person were a reference to a data reporting service provider;
- (b) each reference to a recognised body were omitted;
- (c) each reference to the PRA were omitted;
- (d) each reference to the Bank of England were omitted;
- (e) in regulation 1(2) (citation, commencement and interpretation) “relevant requirement” means a requirement which is imposed by or under these Regulations;
- (f) in regulation 2(2)(a)(ii) (circumstances in which an auditor is to communicate) the reference to functions were a reference to the FCA’s functions under these Regulations and under FSMA 2000 as applied by these Regulations;
- (g) in regulation 2(2)(b) the reference to threshold conditions were a reference to the conditions in regulation 8 of these Regulations.

## **PART 4**

### **Amendment of primary and secondary legislation**

#### **Amendment of FSMA 2000**

**31.** In sections 300H(5) (rules relating to investment exchanges and data reporting service providers) and 312E(4) (public censure) of FSMA 2000, for “Data Reporting Services Regulations 2017 (S.I. 2017/699)” substitute “Data Reporting Services Regulations 2023”.

#### **Amendment of the Financial Services and Markets Act 2000 (Recognition requirements for Investment Exchanges, Clearing Houses and Central Securities Depositories) Regulations 2001**

**32.** Omit paragraph 9I(a) and (c) of the Schedule to the Financial Services and Markets Act 2000 (Recognition requirements for Investment Exchanges, Clearing Houses and Central Securities Depositories) Regulations 2001(c) (provision of data reporting services).

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(a) S.I. 2001/2188, amended by S.I. 2019/681 (as amended by 2020/1385). There are amendments but none is relevant.  
 (b) S.I. 2001/2587, amended by S.I. 2013/472 and 2017/1064.  
 (c) S.I. 2001/995. Paragraph 9I was inserted by S.I. 2017/701 and amended by S.I. 2019/662.



### **Amendment of the Financial Services Act 2012 (Relevant Functions in relation to Complaints Scheme) Order 2014**

**33.** For article 2(f) of the Financial Services Act 2012 (Relevant Functions in relation to Complaints Scheme) Order 2014(a) (relevant functions of the FCA), substitute—

“(f) its functions under the Data Reporting Services Regulations 2023.”.

### **Amendment of the Public Interest Disclosure (Prescribed Persons) Order 2014**

**34.** In the Schedule to the Public Interest Disclosure (Prescribed Persons) Order 2014(b) (prescribed persons), in the entry for the “Financial Conduct Authority”, for paragraph (m)(ii) substitute—

“(ii) the Data Reporting Services Regulations 2023”.

### **Amendment of the Public Interest Disclosure (Prescribed Persons) Order (Northern Ireland) 1999**

**35.** In the Schedule to the Public Interest Disclosure (Prescribed Persons) Order (Northern Ireland) 1999(c) (prescribed persons), in the entry for the “Financial Conduct Authority”, for paragraph (m)(ii) substitute—

“(ii) the Data Reporting Services Regulations 2023”.

## **PART 5**

### **Amendment of assimilated legislation**

#### **Amendment of the markets in financial instruments regulation**

**36.** In the markets in financial instruments regulation—

- (a) in Article 2(1) of Title 1 (definitions)—
  - (i) in sub-paragraph (18), for “, or by regulation 17 of the Data Reporting Services Regulations 2017” substitute “or, for the purposes of the Data Reporting Services Regulations 2023, the FCA”;
  - (ii) in sub-paragraphs (34) to (36), for “under regulation 10 or 12A of the Data Reporting Services Regulations 2017” in each place it occurs, substitute “under regulation 9 of the Data Reporting Services Regulations 2023”;
- (b) in Chapter 1 of Title 2, in Article 7(2) (authorisation of deferred publication), for “regulation 14 of the Data Reporting Services Regulations 2017” substitute “data reporting service rules (within the meaning of regulation 2(1) of the Data Reporting Services Regulations 2023)”;
- (c) in Chapter 2 of Title 2, in Article 11(4) (authorisation of deferred publication), for “regulation 14 of the Data Reporting Services Regulations 2017” substitute “data reporting service rules (within the meaning of regulation 2(1) of the Data Reporting Services Regulations 2023)”;
- (d) in Article 21(5) of Title 3 (post-trade disclosure by investment firms, including systematic internalisers, in respect of bonds, structured finance products, emission allowances and derivatives), for “regulation 14 of the Data Reporting Services Regulations 2017”

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(a) S.I. 2014/1195. Article 2(f) was inserted by S.I. 2017/701.

(b) S.I. 2014/2418. Paragraph (m) of the Schedule was inserted by S.I. 2017/701. There are other amendments but none is relevant.

(c) S.R. 1999 No. 401. Paragraph (m) of the Schedule was inserted by S.R. 2022 No. 290. There are other amendments but none is relevant.

substitute “data reporting service rules (within the meaning of regulation 2(1) of the Data Reporting Services Regulations 2023)”;

- (e) in Article 26(7) of Title 4 (obligation to report transactions), for “regulation 16(3)(d) of the Data Reporting Services Regulations 2017” substitute “data reporting service rules (within the meaning of regulation 2(1) of the Data Reporting Services Regulations 2023)”.

#### **Amendment of Commission Delegated Regulation (EU) 2017/565**

**37.** In Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive(a)—

- (a) in Article A1(1)(b) (application) for “Data Reporting Services Regulations 2017” substitute “Data Reporting Services Regulations 2023”;
- (b) in Article 2(17)(c) (definitions), for “Data Reporting Services Regulations 2017” substitute “Data Reporting Services Regulations 2023”;
- (c) in Article 70(1) (prompt fair and expeditious execution of client orders and publication of unexecuted client limit orders for shares traded on a trading venue) for “Data Reporting Services Regulations 2017” substitute “Data Reporting Services Regulations 2023”.

## **PART 6**

### **Transitional and saving provision**

#### **The register**

**38.—**(1) The existing entries made on the register maintained by the FCA in accordance with regulation 6 of the 2017 Regulations are to be treated on the coming into force of these Regulations as having been entered on the register maintained in accordance with regulation 4 of these Regulations and have effect as if entered under these Regulations.

(2) Any information concerning anything done in respect of the 2017 Regulations, or anything to be done as though those Regulations remained in force, which—

- (a) would have been entered on the register maintained by the FCA in accordance with the 2017 Regulations had those Regulations remained in force, and
- (b) has not been so entered on the coming into force of these Regulations

must be entered on the register in accordance with these Regulations.

#### **Authorisation and verification under the 2017 Regulations**

**39.—**(1) This regulation applies to an authorisation or verification which, immediately before the coming into force of these Regulations, was—

- (a) an authorisation by the FCA to provide a data reporting service which had effect by virtue of Part 2 the 2017 Regulations (“an authorisation to which this regulation applies”), or
- (b) a verification by the FCA of a person’s compliance with the 2017 Regulations which had effect by virtue of Part 2 of the 2017 Regulations (“a verification to which this regulation applies”).

(2) An authorisation to which this regulation applies has effect, from the coming into force of these Regulations, as though it had been granted by the FCA under regulation 9 of these Regulations.

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(a) EUR 2017/565, to which there are amendments that are not relevant.

(3) A verification to which this regulation applies has effect, from the coming into force of these Regulations, as though it were a verification made by the FCA under regulation 7 of these Regulations.

(4) Any restriction that was—

- (a) imposed by the FCA on an authorisation to which this regulation applies in accordance with regulation 10 of the 2017 Regulations, and
- (b) in effect immediately before the coming into force of these Regulations

has effect, from the coming into force of these Regulations, as though it had been imposed under regulation 9 of these Regulations.

(5) Where, before the coming into force of these Regulations, the FCA had proposed in accordance with regulation 11 of the 2017 Regulations to cancel an authorisation or verification to which this regulation applies, or to refuse a request for such a cancellation—

- (a) the 2017 Regulations continue to have effect for the purposes of anything remaining to be done in respect of that proposal; and
- (b) paragraphs (2) and (3) do not have effect unless, following a final determination made in accordance with the 2017 Regulations, the authorisation or verification is not cancelled.

(6) Where, immediately before the coming into force of these Regulations, the FCA had grounds under regulation 11(1)(h) of the 2017 Regulations to believe that a person had seriously and systematically infringed the requirements imposed by or under the 2017 Regulations but had not issued a warning notice under regulation 11(4)(a) of those Regulations, regulation 10(1)(g) of these Regulations applies as though it included a reference to the 2017 Regulations.

### **Undetermined applications**

**40.**—(1) Where an application referred to in paragraph (2) was made under the 2017 Regulations and had not been determined before the coming into force of these Regulations, the 2017 Regulations continue to have effect for the purposes of anything remaining to be done to determine that application.

(2) The applications are—

- (a) an application for authorisation to provide a data reporting service under regulation 7 of the 2017 Regulations;
- (b) an application for verification of compliance with the 2017 Regulations under regulation 8 of the 2017 Regulations;
- (c) an application for a variation of an authorisation to provide a data reporting service or for a variation of verification of compliance with the 2017 Regulations under regulation 12 of the 2017 Regulations (including that regulation as applied by regulation 8(10) of those Regulations).

(3) Following the final determination of—

- (a) an application referred to in paragraph (2)(a), any authorisation granted by the FCA is to be treated as though it had been granted under regulation 9 of these Regulations;
- (b) an application referred to in paragraph (2)(b), any verification of compliance made by the FCA is to be treated as though it had been made under regulation 7 of these Regulations;
- (c) an application referred to in paragraph (2)(c), any variation of an authorisation or verification of compliance is to be treated as though it had been granted under regulation 11 of these Regulations (including that regulation as applied by regulation 7(7)).

### **References to the Tribunal**

**41.**—(1) This Regulation applies where, immediately before the coming into force of these Regulations a person has—

- (a) a right to make a reference to the Tribunal in respect of any decision of the FCA—

- (i) to refuse an application referred to in regulation 40(2),
- (ii) in the case of an authorisation to provide a data reporting service, to grant the authorisation subject to restrictions under regulation 10 of the 2017 Regulations,
- (iii) to cancel that person’s authorisation or verification of compliance with the 2017 Regulations under regulation 11 of the 2017 Regulations or to refuse a request to cancel that authorisation or verification under those Regulations; or

(b) a reference to the Tribunal has been made but not determined.

(2) These Regulations do not affect the reference to the Tribunal or the right to make a reference to the Tribunal.

(3) In this regulation, reference to a right to make a reference to the Tribunal includes a prospective right to make such a reference, where the decision concerned remains to be determined by the FCA immediately before the coming into force of these Regulations.

**Administration and determinations**

42. Any restriction imposed by the FCA in accordance with regulation 22 of the 2017 Regulations that was in effect immediately before the coming into force of these Regulations has effect from the coming into force of these Regulations as though it had been imposed under regulation 13 of these Regulations.

43. In this Part, reference to a final determination made in accordance with the 2017 Regulations includes the determination of any reference made to the Tribunal, where applicable.

	<i>Name</i>
	<i>Name</i>
Date	Two of the Lords Commissioners of His Majesty’s Treasury

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations restate with modifications the provisions of the Data Reporting Services Regulations 2017 (“the 2017 Regulations”) (S.I. 2017/699), with the broad exception of Part 3 of the 2017 Regulations referred to below. The 2017 Regulations made arrangements for the registration and supervision by the FCA of data reporting service providers. They are retained EU law and are revoked by section 1(1) of, and Schedule 1 to, the Financial Services and Markets Act 2023 (c. 29).

Certain of the revoked provisions are being replaced in rules made by the Financial Conduct Authority under section 300H of FSMA 2000 (“data reporting service rules” as defined in regulation 2). These relate principally to operating requirements for authorised or verified persons, for which Part 3 of the 2017 Regulations had made provision. Corresponding modifications to these Regulations include—

- in Part 3, references to a requirement imposed by or under these Regulations includes data reporting service rules (regulation 2(4));
- applicants for authorisation to provide a data reporting service or for verification of compliance with these Regulations must demonstrate compliance with the data reporting service rules (regulations 5, 7 and 8);
- an authorisation or verification may be cancelled where data reporting service rules have been contravened (regulations 7 and 10);
- an authorisation or verification may be subject to the imposition of restrictions where data reporting service rules are contravened (regulation 13).

- Chapter 2 of Part 3 (Application of FSMA 2000 for the purposes of the Regulations) and Part 5 (amendment of assimilated legislation) now include modifications and amendments relating to data reporting service rules.

Other modifications include—

- arrangements for the provision of a CTP service to be put out to tender by the FCA, following which the service concerned may not be provided by anyone other than a person to whom the tender contract is awarded (regulation 6). The FCA has discretion to cancel an existing authorisation or verification where a person providing the service concerned is not awarded the tender contract (regulation 7(7) and 10(1)(b));
- some administrative and enforcement arrangements for which Part 4 of the 2017 Regulations had made provision are now restated by applying equivalent provisions under FSMA 2000 with appropriate modifications; these include the FCA's general duties (regulation 15), provision for supervision, monitoring and enforcement (regulation 16), disciplinary measures (regulation 19), the offence of misleading the FCA (regulation 24(3)) and the application of powers to formerly authorised persons (regulation 26).

A de minimis impact assessment of the effect of this instrument is available from HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ and is published with the Explanatory Memorandum alongside this instrument at [www.legislation.gov.uk](http://www.legislation.gov.uk).

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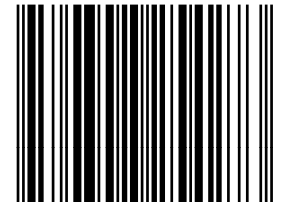




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