Status: *Point in time view as at 12/10/2010.*
Changes to legislation: *There are currently no known outstanding effects for the Financial Services Act 2010, Part 1. (See end of Document for details)*

SCHEDULES

SCHEDULE 2

MINOR AND CONSEQUENTIAL AMENDMENTS

PART 1

AMENDMENTS OF FINANCIAL SERVICES AND MARKETS ACT 2000

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

2 (1) Section 3 (market confidence) is amended as follows.

(2) In subsection (1), for "the financial system" substitute " the UK financial system ".

(3) In subsection (2), for " "The financial system"" substitute " In this Act "the UK financial system" .

3 Until the commencement of the repeal of section 4 (public awareness) by section 2(3) of this Act, section 4 has effect as if—

(a) the reference in subsection (1) to the financial system were to the UK financial system, and

(b) subsection (3) were omitted.

4 In section 5 (the protection of consumers), for subsection (3) substitute—

"(3) Sections 425A and 425B (meaning of "consumers") apply for the purposes of this section."

5 In section 10 (the Consumer Panel), for subsection (7) substitute—

"(7) Sections 425A and 425B (meaning of "consumers") apply for the purposes of this section, but the references to consumers in this section do not include consumers who are authorised persons."

6 (1) Section 14 (cases in which the Treasury may arrange independent inquiries) is amended as follows.

(2) In subsection (2)(a), for "the financial system" substitute " the UK financial system ".

(3) For subsection (5) substitute—

"(5) Sections 425A and 425B (meaning of "consumers") apply for the purposes of this section."

(4) Omit subsection (6).

7 In the italic cross-heading before section 64, at the end insert " *of approved persons* ".

8 (1) Section 66 (performance of regulated activities: disciplinary powers) is amended as follows.

(2) After subsection (5) insert—

"(5A) Approval" means an approval given under section 59."

(3) In subsection (7), omit "under section 59".

(4) After that subsection insert—

"(8) In relation to any time while a suspension is in force under subsection (3)(aa) in relation to part of a function, any reference in section 59 or 63A to the performance of a function includes the performance of part of a function.

(9) If at any time a restriction imposed under subsection (3)(ab) is contravened, the approval in relation to the person concerned is to be treated for the purposes of sections 59 and 63A as if it had been withdrawn at that time."

9 (1) Section 67 (disciplinary measures: procedure and right to refer to Tribunal) is amended as follows.

(2) In subsection (1), at the end insert " ; and if it proposes to take action under subsection (3)(aa) or (ab) of that section, it must also give each of the other interested parties a warning notice. "

(3) After subsection (2) insert—

"(2A) A warning notice about a proposal—

(a) to suspend an approval, or

(b) to impose a restriction in relation to the performance of a function,

must state the period for which the suspension or restriction is to have effect."

(4) In subsection (4), at the end insert " ; and if it decides to take action under subsection (3)(aa) or (ab) of that section, it must also give each of the other interested parties a decision notice. "

(5) After subsection (5) insert—

"(5A) A decision notice about—

(a) the suspension of an approval, or

(b) the imposition of a restriction in relation to the performance of a function,

must state the period for which the suspension or restriction is to have effect."

(6) In subsection (7), at the end insert " ; and if the Authority decides to take action under section 66(3)(aa) or (ab), each of the other interested parties may also refer the matter to the Tribunal. "

(7) After that subsection insert—

"(8) Approval" means an approval given under section 59.

(9) "Other interested parties", in relation to an approved person ("A"), are—

(a) the person on whose application the approval was given ("B"); and

(b) the person by whom A's services are retained, if not B.

The reference in this subsection to an approved person has the same meaning as in section 64."

10 (1) Section 69 (statement of policy) is amended as follows.

(2) In subsection (1), for paragraphs (a) and (b) substitute—

"(a) the imposition of penalties, suspensions or restrictions under section 66;

(b) the amount of penalties under that section; and

(c) the period for which suspensions or restrictions under that section are to have effect."

(3) In subsection (2)—

(a) in the opening words, after "should be" insert " , or what the period for which a suspension or restriction is to have effect should be, ", and

(b) in paragraph (c), for "the person on whom the penalty is to be imposed" substitute " the person against whom action is to be taken ".

11 In section 138 (general rule-making power), omit subsections (3) and (7) to (9).

12 In section 150(4) (actions for damages), after paragraph (a) (but before the "or" at the end of it) insert—

"(aa) rules under section 131B (short selling rules);".

13 In section 155(9) (consultation: exception to general rule that cost benefit analysis required), after paragraph (d) insert—

"(e) paragraph 12 of Schedule 1A."

14 In section 157 (guidance), after subsection (3) insert—

"(3A) Subsection (3) also applies in relation to guidance which the Authority proposes to give to persons generally, or to a class of person, in relation to rules under section 131B (short selling rules) to which those persons are subject."

15 In section 165 (FSA's power to require information), in the heading, at the end insert " **: authorised persons etc** ".

16 (1) Section 168 (appointment of persons to carry out investigations in particular cases) is amended as follows.

(2) In subsection (4), in paragraph (c), for "an authorised person" substitute " a person ".

(3) In that subsection, after paragraph (h) insert—

"(ha) a person may have performed a controlled function without approval for the purposes of section 63A;".

Commencement Information

I1 Sch. 2 para. 16 wholly in force at 8.6.2010; Sch. 2 para. 16(1)(2) in force at Royal Assent and Sch. 2 para. 16(3) in force at 8.6.2010 see s. 26(1)(l)(2)(e)

17 In section 176(11)(a) (entry of premises under warrant), after "165" insert " , 165A, 169A ".

18 (1) Section 207 (proposal to take disciplinary measures) is amended as follows.

(2) In subsection (1), omit the "or" before paragraph (b) and at the end of that paragraph insert "or

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(c) to suspend a permission of an authorised person or impose a restriction in relation to the carrying on of a regulated activity by an authorised person (under section 206A),".

(3) At the end insert—

"(4) A warning notice about a proposal to suspend a permission or impose a restriction must state the period for which the suspension or restriction is to have effect."

19 (1) Section 208 (decision notice) is amended as follows.

(2) In subsection (1), omit the "or" before paragraph (b) and at the end of that paragraph insert "or

(c) to suspend a permission or impose a restriction under section 206A (whether or not in the manner proposed),".

(3) After subsection (3) insert—

"(3A) In the case of a suspension or restriction, the decision notice must state the period for which the suspension or restriction is to have effect."

(4) In subsection (4), omit the "or" before paragraph (b) and at the end of that paragraph insert "or

(c) suspend a permission of an authorised person, or impose a restriction in relation to the carrying on of a regulated activity by an authorised person, under section 206A,".

20 (1) Section 210 (statements of policy) is amended as follows.

(2) In subsection (1), for paragraphs (a) and (b) substitute—

"(a) the imposition of penalties, suspensions or restrictions under this Part;

(b) the amount of penalties under this Part; and

(c) the period for which suspensions or restrictions under this Part are to have effect."

(3) In subsection (2)—

(a) in the opening words, after "should be" insert " , or what the period for which a suspension or restriction is to have effect should be, ", and

(b) in paragraph (c), for "the person on whom the penalty is to be imposed" substitute " the person against whom action is to be taken ".

(4) In subsection (7), after "206" insert " or 206A ".

21 In section 212(2) (the scheme manager), after "those functions" insert " and the functions conferred on it by or under Part 15A ".

Commencement Information

I2 Sch. 2 para. 21 in force at 12.10.2010 by S.I. 2010/2480, **art. 2(f)**

22 In section 219(3A) (scheme manager's power to require information), for "applying regulations under section 214B(3) above" substitute " determining the matters mentioned in section 214D(2)(a) and (b) above ".

23 In section 221A(3) (delegation of functions of FSCS manager), after "management expenses of the scheme manager" insert " except where the function in question is one under Part 15A ".

Commencement Information

I3 Sch. 2 para. 23 in force at 12.10.2010 by S.I. 2010/2480, **art. 2(f)**

24 (1) Section 223 (FSCS manager's management expenses) is amended as follows.

(2) In subsection (3), in paragraph (c), after "214B" insert " or 214D ".

(3) After that paragraph insert—

"(d) under Part 15A."

Commencement Information

I4 Sch. 2 para. 24 partly in force; Sch. 2 para. 24(1)(2) in force at Royal Assent see s. 26(1)(l)

I5 Sch. 2 para. 24(3) in force at 12.10.2010 by S.I. 2010/2480, **art. 2(f)**

25 (1) Section 224A (functions under the Banking Act 2009) is amended as follows.

(2) The existing provision becomes subsection (1) of that section.

(3) After that subsection insert—

"(2) Any payment required to be made by the scheme manager by virtue of section 61 of that Act (special resolution regime: compensation) is to be treated for the purposes of this Part as an expense under the compensation scheme."

26 In section 348(5)(d) (restrictions on disclosure of confidential information by Authority etc), after "a person appointed" insert " to collect or update information under section 139E or ".

27 In section 354 (FSA's duty to co-operate with others), after subsection (1A) insert—

"(1B) In pursuing its financial stability objective, the Authority must take such steps as it considers appropriate to co-operate with other relevant bodies (including the Treasury and the Bank of England)."

28 In section 391 (publication), for subsection (11) substitute—

"(11) Section 425A (meaning of "consumers") applies for the purposes of this section."

29 (1) Section 392 (warning and decision notices: third party rights and access to evidence) is amended as follows.

(2) In paragraph (a)—

(a) after "63(3)," insert " 63B(1), ", and

(b) after "126(1)," insert " 131H(1), ".

(3) In paragraph (b)—

(a) after "63(4)," insert " 63B(3), ", and

(b) after "127(1)," insert " 131H(4), ".

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30 After section 415 insert—

"Powers of the Authority

415A Powers of the Authority

Any power which the Authority has under any provision of this Act is not limited in any way by any other power which it has under any other provision of this Act."

31 In section 417(1) (definitions), after the definition of "UK authorised person" (but before the "and" at the end of it) insert—

""the UK financial system"has the meaning given in section 3;".

32 After section 425 insert—

"**425A Consumers: regulated activities etc carried on by authorised persons**

(1) This section has effect for the purposes of the provisions of this Act which apply this section.

(2) "Consumers" means persons who—
  (a) use, have used or may use any of the services within subsection (3); or
  (b) have relevant rights or interests in relation to any of those services.

(3) The services within this subsection are services provided by—
  (a) authorised persons in carrying on regulated activities;
  (b) authorised persons who are investment firms, or credit institutions, in providing relevant ancillary services; or
  (c) persons acting as appointed representatives.

(4) A person ("P") has a "relevant right or interest" in relation to any services within subsection (3) if P has a right or interest—
  (a) which is derived from, or is otherwise attributable to, the use of the services by others; or
  (b) which may be adversely affected by the use of the services by persons acting on P's behalf or in a fiduciary capacity in relation to P.

(5) If a person is providing a service within subsection (3) as a trustee, the persons who are, have been or may be beneficiaries of the trust are to be treated as persons who use, have used or may use the service.

(6) A person who deals with another person ("A") in the course of A providing a service within subsection (3) is to be treated as using the service.

(7) In this section—

"credit institution" means—
  (a) a credit institution authorised under the banking consolidation directive; or
  (b) an institution which would satisfy the requirements for authorisation as a credit institution under that directive if it had

its registered office (or if does not have one, its head office) in an EEA State;

"relevant ancillary service" means any service of a kind mentioned in Section B of Annex I to the markets in financial instruments directive the provision of which does not involve the carrying on of a regulated activity.

425B Consumers: regulated activities carried on by others

(1) This section has effect for the purposes of the provisions of this Act which apply this section.

(2) "Consumers" means persons who, in relation to regulated activities carried on otherwise than by authorised persons, would be consumers as defined by section 425A if the activities were carried on by authorised persons."

33 (1) Section 429 (Parliamentary control of statutory instruments) is amended as follows.

(2) In subsection (1)(a)—

(a) omit "404", and

(b) after "236(5)," insert " 404G ".

(3) In subsection (2), after "214B" insert " , 214D ".

(4) In subsection (8), after "one made under section" insert " 165A(2)(d) or ".

Commencement Information

I6 Sch. 2 para. 33 partly in force; Sch. 2 para. 33(1)(3) in force at Royal Assent and Sch. 2 para. 33(4) in force at 8.6.2010 see s. 26(1)(l)(2)(e)

I7 Sch. 2 para. 33(2) in force at 12.10.2010 by S.I. 2010/2480, **art. 2(f)**

34 (1) Schedule 1 (general provision about the FSA) is amended as follows.

(2) In paragraph 5(2)(a), after "paragraph 1(2)(a) to (d)" insert " or in determining or reviewing its strategy in relation to the financial stability objective ".

(3) After paragraph 19A insert—

"Amounts required by rules to be paid to the Authority

19B Any amount (other than a fee) which is required by rules to be paid to the Authority may be recovered as a debt due to the Authority."

35 (1) In Schedule 4 (treaty rights), paragraph 1 is amended as follows.

(2) The existing provision becomes sub-paragraph (1) of that paragraph.

(3) In that sub-paragraph, omit the definition of "consumers".

(4) After that sub-paragraph insert—

"(2) Section 425A (meaning of "consumers") applies for the purposes of this Schedule."

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