Financial Services Act 2012

2012 CHAPTER 21

PART 1

BANK OF ENGLAND

1 Deputy Governors

(1) In section 1 of the Bank of England Act 1998 (court of directors), for subsections (2) and (2A) substitute—

"(2) The court shall consist of the following directors appointed by Her Majesty—

(a) a Governor,
(b) a Deputy Governor for financial stability,
(c) a Deputy Governor for monetary policy,
(d) a Deputy Governor for prudential regulation, and
(e) not more than 9 non-executive directors."

(2) In section 13 of that Act (Monetary Policy Committee), in subsection (2), for paragraph (a) substitute—

"(a) the Governor of the Bank,
(aa) the Deputy Governor for financial stability,
(ab) the Deputy Governor for monetary policy,".

Commencement Information

I1 S. 1 in force at 19.2.2013 for specified purposes by S.I. 2013/113, art. 2(2), **Sch. Pt. 4**

I2 S. 1 in force at 1.4.2013 in so far as not already in force by S.I. 2013/423, art. 3, **Sch.**

2 The Bank's financial stability objective

(1) Section 2A of the Bank of England Act 1998 (Financial Stability Objective) is amended as follows.

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) In subsection (1)—

(a) for "contribute to protecting and enhancing" substitute " protect and enhance ", and

(b) for "systems" substitute " system ".

(3) In subsection (2), for "and the Financial Services Authority)" substitute " , the Financial Conduct Authority and the Prudential Regulation Authority) ".

(4) Omit subsection (3) (which is superseded by the amendments made by section 4 of this Act).

Commencement Information

I3 S. 2 in force at 1.4.2013 by S.I. 2013/423, art. 3, **Sch.**

3 Oversight Committee

(1) The Bank of England Act 1998 is amended as follows.

(2) For section 3 substitute—

"**3A Oversight Committee**

(1) There is to be a sub-committee of the court of directors of the Bank ("the Oversight Committee") consisting of the non-executive directors of the Bank.

(2) The functions of the Oversight Committee are—

(a) keeping under review the Bank's performance in relation to—

(i) the Bank's objectives (that is, the objectives specified in relation to it in this Act and the other objectives for the time being determined by the court of directors of the Bank),

(ii) the duty of the Financial Policy Committee under section 9C, and

(iii) the Bank's strategy as for the time being determined by the court of directors of the Bank (including its financial stability strategy);

(b) monitoring the extent to which the objectives set by the court of directors of the Bank in relation to the Bank's financial management have been met;

(c) keeping under review the internal financial controls of the Bank with a view to securing the proper conduct of its financial affairs;

(d) the functions conferred on the Oversight Committee by the provisions listed in subsection (4).

(3) The court of directors of the Bank may arrange for specified functions of the Bank to be discharged by the Oversight Committee.

(4) The provisions referred to in subsection (2)(d) are—

(a) section 9B (review of procedures followed by Financial Policy Committee);

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(b) section 16 (review of procedures followed by Monetary Policy Committee);

(c) paragraph 14 of Schedule 1 (remuneration of Governor and Deputy Governors);

(d) paragraph 5 of Schedule 2A (terms and conditions of office of members of Financial Policy Committee appointed under section 9B(1)(e));

(e) paragraph 9 of that Schedule (removal of members of Financial Policy Committee appointed under section 9B(1)(d) or (e));

(f) paragraph 4(2) of Schedule 3 (terms and conditions of office of members of Monetary Policy Committee appointed under section 13(2)(c));

(g) paragraph 9 of that Schedule (removal of members of Monetary Policy Committee appointed under section 13(2)(b) or (c));

(h) paragraph 15 of Schedule 1ZB to the Financial Services and Markets Act 2000 (terms of service and remuneration of members of the governing body of the Prudential Regulation Authority).

3B Oversight Committee: procedure

(1) The chair of the court (designated under paragraph 13 of Schedule 1) is to chair meetings of the Oversight Committee (when present).

(2) The Committee is to determine its own procedure, but this is subject to subsection (1) and subsection (5).

(3) The Committee may invite other persons to attend, or to attend and speak at, any meeting of the Committee.

(4) The Committee may delegate any of its functions to two or more of its members.

(5) If a member of the Committee ("M") has any direct or indirect interest (including any reasonably likely future interest) in any dealing or business which falls to be considered by the Committee—

(a) M must disclose that interest to the Committee when it considers that dealing or business, and

(b) the Committee must decide whether M is to be permitted to participate in any proceedings of the Committee relating to any question arising from its consideration of the dealing or business, and if so to what extent and subject to what conditions (if any).

3C Reviews

(1) In the discharge of any of its functions, the Oversight Committee may arrange—

(a) for a review to be conducted under this section in relation to any matter by a person appointed by the Committee, and

(b) for the person conducting the review to make one or more reports to the Committee.

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(2) The persons who may be appointed to conduct a review include an officer or employee of the Bank.

(3) A review under this section is a "performance review" if it—
  (a) is arranged by the Committee in the discharge of any of its functions under section 3A(2)(a) and (b), and
  (b) relates to past events.

(4) If the person to be appointed to conduct a performance review is an officer or employee of the Bank, the appointment requires the consent of the Governor of the Bank.

(5) In the case of a performance review, the Committee must have regard to the desirability of ensuring that sufficient time has elapsed—
  (a) for the review to be effective, and
  (b) to avoid the review having a material adverse effect on the exercise by the Bank of its functions.

3D Publication of reports of performance reviews

(1) The Bank must give the Treasury a copy of any report made to the Oversight Committee by a person appointed under section 3C to conduct a performance review (as defined by subsection (3) of that section).

(2) Subject to subsection (3), the Bank must also publish the report.

(3) Subsection (2) does not require the publication of information whose publication at the time when the report is made would in the opinion of the court of directors of the Bank be against the public interest.

(4) Where the court of directors decides under subsection (3) that publication of information at the time when the report is made would be against the public interest, it must keep under consideration the question of whether publication of the information would still be against the public interest.

(5) Where the court of directors decides that publication of any information is no longer against the public interest, the Bank must publish the information.

(6) The Treasury must lay before Parliament a copy of any report or other information published by the Bank under this section.

3E Recommendations resulting from review

(1) This section applies where a report made by a person appointed under section 3C to conduct a review makes recommendations to the Bank as to steps to be taken by it.

(2) The Oversight Committee must—
  (a) monitor the Bank's response to the report, and
  (b) if or to the extent that the Bank accepts the recommendations, monitor the implementation of the recommendations.

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3F Oversight Committee: further provisions

(1) The documents to which the Oversight Committee is to have access in the discharge of its functions include documents considered, or to be considered, by the Financial Policy Committee or the Monetary Policy Committee.

(2) One or two members of the Oversight Committee may attend any meeting of the Financial Policy Committee or the Monetary Policy Committee, but a person attending by virtue of this subsection may not speak unless invited to do so by the person chairing the meeting.

(3) Subsection (2) does not affect—

(a) anything done in relation to the Financial Policy Committee by a member of that Committee who is also a member of the Oversight Committee,

(b) the powers of the Financial Policy Committee under paragraph 13 of Schedule 2A, or

(c) the powers of the Monetary Policy Committee under paragraph 13A of Schedule 3.”

(3) In section 4 (annual report by the Bank), in subsection (2), for paragraph (a) substitute—

“(a) a report by the Oversight Committee on the matters for which it is responsible, and”.

(4) In section 16 (functions of court of directors)—

(a) in subsection (1), for “court of directors of the Bank” substitute “ Oversight Committee ”,

(b) in subsection (2)—

(i) for “the court's function” substitute “ the function of the Oversight Committee ”, and

(ii) for “the Committee” substitute “ the Monetary Policy Committee ”,

(c) omit subsection (3), and

(d) accordingly, in the heading, for “court of directors” substitute “ Oversight Committee ”.

Commencement Information

I4 S. 3 in force at 1.4.2013 by S.I. 2013/423, art. 3, **Sch.**

4 Financial stability strategy and Financial Policy Committee

(1) After Part 1 of the Bank of England Act 1998 insert—

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"PART 1A

FINANCIAL STABILITY

Financial stability strategy of the Bank

9A Financial stability strategy

(1) The court of directors must—
  (a) determine the Bank's strategy in relation to the Financial Stability Objective (its "financial stability strategy"), and
  (b) from time to time review, and if necessary revise, the strategy.

(2) Before determining or revising the Bank's financial stability strategy, the court of directors must consult about a draft of the strategy or of the revisions—
  (a) the Financial Policy Committee, and
  (b) the Treasury.

(3) The Financial Policy Committee may at any time make recommendations to the court of directors as to the provisions of the Bank's financial stability strategy.

(4) The court of directors must determine the financial stability strategy of the Bank within 6 months of the coming into force of this section.

(5) The court of directors must carry out and complete a review of the Bank's financial stability strategy before the end of each relevant period.

(6) The relevant period is 3 years beginning with the date on which the previous review was completed, except that in the case of the first review the relevant period is the period of 3 years beginning with the date on which the strategy was determined under subsection (4).

(7) The Bank must publish its financial stability strategy.

(8) If the financial stability strategy is revised, the Bank must publish the revised strategy.

(9) Publication under subsection (7) or (8) is to be in such manner as the Bank thinks fit.

Financial Policy Committee of the Bank

9B Financial Policy Committee

(1) There is to be a sub-committee of the court of directors of the Bank (the "Financial Policy Committee") consisting of—
  (a) the Governor of the Bank,
  (b) the Deputy Governors of the Bank,
  (c) the Chief Executive of the FCA,

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(d) one member appointed by the Governor of the Bank after consultation with the Chancellor of the Exchequer,

(e) 4 members appointed by the Chancellor of the Exchequer, and

(f) a representative of the Treasury.

(2) The member appointed under subsection (1)(d) is to be a person who has executive responsibility within the Bank for the analysis of threats to financial stability.

(3) Before appointing a person under subsection (1)(e), the Chancellor of the Exchequer must—

(a) be satisfied that the person has knowledge or experience which is likely to be relevant to the Committee's functions, and

(b) consider whether the person has any financial or other interests that could substantially affect the functions as member that it would be proper for the person to discharge.

(4) The Oversight Committee must keep the procedures followed by the Financial Policy Committee under review.

(5) Schedule 2A has effect with respect to the Financial Policy Committee.

9C Objectives of the Financial Policy Committee

(1) The Financial Policy Committee is to exercise its functions with a view to—

(a) contributing to the achievement by the Bank of the Financial Stability Objective, and

(b) subject to that, supporting the economic policy of Her Majesty's Government, including its objectives for growth and employment.

(2) The responsibility of the Committee in relation to the achievement by the Bank of the Financial Stability Objective relates primarily to the identification of, monitoring of, and taking of action to remove or reduce, systemic risks with a view to protecting and enhancing the resilience of the UK financial system.

(3) Those systemic risks include, in particular—

(a) systemic risks attributable to structural features of financial markets, such as connections between financial institutions,

(b) systemic risks attributable to the distribution of risk within the financial sector, and

(c) unsustainable levels of leverage, debt or credit growth.

(4) Subsections (1)(a) and (2) do not require or authorise the Committee to exercise its functions in a way that would in its opinion be likely to have a significant adverse effect on the capacity of the financial sector to contribute to the growth of the UK economy in the medium or long term.

(5) In this Part “systemic risk” means a risk to the stability of the UK financial system as a whole or of a significant part of that system.

(6) For the purposes of subsection (5) it is immaterial whether the risk arises in the United Kingdom or elsewhere.

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(7) In subsection (3)(c)—

"credit growth" means the growth in lending by the financial sector to individuals in the United Kingdom and businesses carried on in the United Kingdom;

"debt" means debt owed to the financial sector by individuals in the United Kingdom and businesses carried on in the United Kingdom;

"leverage" means the leverage of the financial sector in the United Kingdom.

9D Specification of matters relevant to economic policy

(1) The Treasury may by notice in writing to the Financial Policy Committee specify for the purposes of section 9C(1)(b) what the economic policy of Her Majesty's Government is to be taken to be.

(2) The Treasury must specify under subsection (1) the matter mentioned there—

(a) before the end of the period of 30 days beginning with the day on which section 9C comes into force, and

(b) at least once in every calendar year following that in which the first notice under that subsection is given.

(3) Where the Treasury give notice under this section they must—

(a) publish the notice in such manner as they think fit, and

(b) lay a copy of it before Parliament.

9E Recommendations by Treasury

(1) The Treasury may at any time by notice in writing to the Financial Policy Committee make recommendations to the Committee about—

(a) matters that the Committee should regard as relevant to the Committee's understanding of the Bank's Financial Stability Objective;

(b) the responsibility of the Committee in relation to the achievement of that objective;

(c) the responsibility of the Committee in relation to support for the economic policy of Her Majesty's Government, including its objectives for growth and employment;

(d) matters to which the Committee should have regard in exercising its functions.

(2) The Treasury must make recommendations under subsection (1)(a) or (b) ("recommendations about the objective")—

(a) before the end of the period of 30 days beginning with the day on which this section comes into force, and

(b) at least once in every calendar year following that in which the first recommendations about the objective are made.

(3) The Committee must respond to any recommendations made to it under subsection (1) by notifying the Treasury, in relation to each recommendation, of one or more of the following—

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(a) action that the Committee has taken in accordance with the recommendation;
(b) if or to the extent that the recommendation does not relate to immediate action, the Committee's intention to act in accordance with it;
(c) whether or not the recommendation relates to immediate action, the Committee's reasons for not intending to act in accordance with it.

(4) Notification under subsection (3) must be given or confirmed in writing.

(5) The Treasury must—
(a) publish in such manner as they think fit any notice given under subsection (1) or notification received under subsection (3), and
(b) lay a copy of it before Parliament.

9F Other general duties

(1) In the exercise of its functions, other than its functions under section 9A(2) or (3), the Financial Policy Committee must have regard to the Bank's financial stability strategy.

(2) In working with the FCA or the PRA or exercising functions in relation to either of them, the Committee must, so far as it is possible to do so while complying with section 9C(1), seek to avoid exercising the Committee's functions in a way that would prejudice—
(a) the advancement by the FCA of any of its operational objectives, or
(b) the advancement by the PRA of any of its objectives.

(3) In the exercise of its functions, the Committee must also have regard to—
(a) the principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction;
(b) the contribution to the achievement by the Bank of the Financial Stability Objective that the Committee can make by disclosing its views about possible systemic risks or disclosing other information about possible systemic risks;
(c) the international obligations of the United Kingdom, particularly where relevant to the exercise of the powers of the Committee in relation to the FCA or the PRA.

9G Functions of the Financial Policy Committee

(1) The functions of the Financial Policy Committee are—
(a) monitoring the stability of the UK financial system with a view to identifying and assessing systemic risks;
(b) giving directions under section 9H;
(c) making recommendations under sections 9O to 9R;
(d) preparing financial stability reports under section 9W.

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(2) The court of directors may, with the consent of the Treasury, arrange for specified functions of the Bank to be discharged by the Financial Policy Committee.

Directions by Financial Policy Committee

9H Directions to FCA or PRA requiring macro-prudential measures

(1) The Financial Policy Committee may give a direction to the FCA or the PRA ("the regulator") requiring the regulator to exercise its functions so as to ensure the implementation, by or in relation to a specified class of regulated persons, of a macro-prudential measure described in the direction.

(2) "Regulated person" means—
- (a) in relation to the FCA—
  - (i) an authorised person within the meaning of FSMA 2000,
  - (ii) a recognised investment exchange within the meaning of that Act, or
  - (iii) an EEA market operator as defined by section 312D of that Act;
- (b) in relation to the PRA, a PRA-authorised person within the meaning of that Act.

(3) "Macro-prudential measure" is to be read in accordance with section 9L.

(4) The direction may relate to all regulated persons or to regulated persons of a specified description, but may not relate to a specified regulated person.

(5) The direction—
- (a) may refer to the opinion of the regulator or require or authorise the exercise of a discretion by the regulator;
- (b) may be expressed to remain in force for a specified period or until revoked.

(6) The direction may not require its provisions to be implemented by specified means or within a specified period, but may include recommendations as to the means to be used and the timing of implementation.

(7) A recommendation made under subsection (6) may be expressed to be one to which section 9Q(3) (duty to comply or explain) applies.

(8) The direction may not require the regulator to do anything that it has no power to do, but the existence of the direction is relevant to the exercise of any discretion conferred on the regulator.

(9) The direction may specify particular matters to which the regulator is or is not to have regard in complying with the direction, but those matters must be specified in relation to all regulated persons or a class of regulated person rather than a specified regulated person.

(10) The direction may refer to a publication issued by the FCA, the PRA, another body in the United Kingdom or an international organisation, as the publication has effect from time to time.

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9I Compliance with directions under section 9H

(1) The regulator must comply with a direction given to it under section 9H as soon as reasonably practicable.

(2) An order under section 9L may, in relation to cases where the regulator is complying with a direction under section 9H, exclude or modify any procedural requirement that would otherwise apply under FSMA 2000 in relation to the exercise by the regulator of its functions in pursuance of the direction.

(3) The regulator to which a direction under section 9H is given must give the Financial Policy Committee one or more reports on how it is complying or has complied with the direction.

(4) The Financial Policy Committee may give directions to the regulator specifying the times by which reports required by subsection (3) must be given to the Committee.

(5) "Regulator" has the same meaning as in section 9H.

9J Revocation of directions under section 9H

(1) The Financial Policy Committee may at any time by notice to the regulator revoke a direction under section 9H.

(2) A direction under section 9H is to be taken to be revoked if the measure to which it relates ceases to be a macro-prudential measure, but this is subject to any provision made under section 9L(4)(e).

(3) The revocation of a direction under section 9H does not affect the validity of anything previously done in accordance with it.

(4) "Regulator" has the same meaning as in section 9H.

9K Further provisions about directions under section 9H

(1) Each of the following must be in writing—
  (a) a direction under section 9H;
  (b) a notice revoking such a direction;
  (c) a report under section 9I(3).

(2) The Financial Policy Committee must give the Treasury a copy of any direction under section 9H or any notice revoking such a direction.

(3) The Treasury may, if they think fit, lay before Parliament a copy of a direction under section 9H or a notice revoking such a direction.

(4) Where a direction under section 9H, or a notice revoking such a direction, is included in a record published under section 9U, the Treasury must, if they have not already done so, lay before Parliament a copy of the direction or notice in the form in which it is published in the record.

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9L Macro-prudential measures

(1) For the purposes of section 9H a "macro-prudential measure" is a measure prescribed by the Treasury by order.

(2) Before making an order under this section, the Treasury must—
- (a) consult the Financial Policy Committee, or
- (b) if the Treasury consider that the delay involved in consulting the Committee would be prejudicial to the stability of the UK financial system, consult the Governor of the Bank.

(3) In prescribing a measure, the order must specify whether the measure is prescribed in relation to the FCA, the PRA, or both.

(4) An order under this section—
- (a) may make different provision for different cases;
- (b) may confer a discretion on the Financial Policy Committee, the FCA or the PRA;
- (c) may refer to rules made by the FCA or the PRA;
- (d) may refer to a publication issued by the FCA, the PRA, another body in the United Kingdom or an international organisation, as the publication has effect from time to time;
- (e) may contain transitional provisions and savings relating to the coming into force of any provision of the order or to the ceasing to be in force of any temporary provision made by the order.

9M Statements of policy by Financial Policy Committee

(1) In relation to each macro-prudential measure prescribed under section 9L, the Financial Policy Committee must prepare and maintain a written statement of the general policy that it proposes to follow in relation to the exercise of its power of direction under section 9H so far as it relates to that measure.

(2) The Committee may at any time alter or replace a statement maintained under this section.

(3) The Bank must publish each statement maintained under this section.

(4) Publication is to be in such manner as the Bank thinks fit.

(5) Nothing in this section is to be regarded as preventing the Financial Policy Committee from exercising its power of direction under section 9H in relation to a macro-prudential measure, where it considers it necessary to do so by reason of urgency, before it has prepared a statement under this section in relation to that measure.

9N Parliamentary control of orders under section 9L

(1) Except as provided by subsection (2), an order under section 9L is not to be made unless a draft of the order has been laid before and approved by resolution of each House of Parliament.

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(2) An order under section 9L may be made without a draft having been laid and approved as mentioned in subsection (1) if the order contains a statement that the Treasury are of the opinion that, by reason of urgency, it is necessary to make the order without a draft being so laid and approved.

(3) An order under section 9L made in accordance with subsection (2)—
  (a) must be laid before Parliament after being made, and
  (b) ceases to have effect at the end of the relevant period unless before the end of that period the order is approved by a resolution of each House of Parliament (but without affecting anything done under the order or the power to make a new order).

(4) The "relevant period" is a period of 28 days beginning with the day on which the order is made.

(5) In reckoning the relevant period no account is to be taken of any time during which Parliament is dissolved or prorogued or during which either House is adjourned for more than 4 days.

Recommendations by Financial Policy Committee

9O Making of recommendations within the Bank

(1) The Financial Policy Committee may make recommendations within the Bank.

(2) The recommendations may, in particular, relate to—
  (a) the provision by the Bank of financial assistance to financial institutions;
  (b) the exercise by the Bank of its functions in relation to payment systems, settlement systems and clearing houses.

(3) The Committee may not make recommendations about—
  (a) the provision by the Bank of financial assistance in relation to a particular financial institution, or
  (b) the exercise by the Bank of its powers under Parts 1 to 3 of the Banking Act 2009 in relation to a particular institution.

(4) The recommendations must be made or confirmed in writing.

9P Recommendations to Treasury

(1) The Financial Policy Committee may make recommendations to the Treasury.

(2) The recommendations may, in particular, relate to the exercise by the Treasury of their power to make orders under—
  (a) section 9L (macro-prudential measures),
  (b) section 22(1) or (1A) of FSMA 2000 (regulated activities),
  (c) section 22A(1) of that Act (designation of activities requiring prudential regulation by PRA),
  (d) section 137D(1)(b) of that Act (purposes for which FCA may make product intervention rules), or

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(e) section 165A(2)(d) of that Act (additional persons who may be required by PRA to provide information).

(3) The recommendations must be made or confirmed in writing.

(4) The Committee may make a recommendation under subsection (2)(e) only if it considers that the exercise by the Treasury of their power to make an order under section 165A(2)(d) of FSMA 2000 in the manner proposed is desirable for the purposes of the exercise by the Committee of its functions.

(5) Before giving a recommendation under subsection (2)(e), the Committee must consult the Treasury.

9Q Recommendations to FCA and PRA

(1) The Financial Policy Committee may make recommendations to the FCA and the PRA about the exercise of their respective functions.

(2) The recommendations may relate to all regulated persons or to regulated persons of a specified description, but may not relate to the exercise of the functions of the FCA or the PRA in relation to a specified regulated person.

(3) If the recommendations are expressed to be recommendations to which this subsection applies, the body to which they are made must as soon as reasonably practicable—

(a) act in accordance with the recommendations, or

(b) if to any extent it does not, notify the Committee of the extent to which it has not acted in accordance with the recommendations and of the reasons for its decision.

(4) The recommendations, and any notification under subsection (3)(b), must be made or confirmed in writing.

(5) "Regulated person" has the same meaning as in section 9H.

9R Recommendations to other persons

(1) The Financial Policy Committee may make recommendations to persons other than those mentioned in sections 9O to 9Q.

(2) The recommendations must be made or confirmed in writing.

Explanation

9S Duty to prepare explanation

(1) In connection with the exercise of any of the specified powers, the Financial Policy Committee must prepare an explanation of—

(a) the reasons for the Committee's decision to exercise the power, in the way in which it is being exercised, and

(b) the Committee's reasons for believing that the exercise of the power, in the way in which it is being exercised, is compatible with the duties of the Committee under the following provisions—

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(i) section 9C(1) (as read with section 9C(4)), and
(ii) section 9F.

(2) The specified powers are—
(a) the power to give a direction under section 9H;
(b) the power to make recommendations under section 9O, so far as relating to the exercise of the Bank's functions in relation to payment systems, settlement systems and clearing houses;
(c) the power to make recommendations under section 9P, so far as relating to the exercise by the Treasury of their power to make orders under any of the provisions mentioned in subsection (2) of that section;
(d) the power to make recommendations under section 9Q.

(3) The explanation required by subsection (1) in relation to the duty in section 9F(3)(a) must include an estimate of the costs and an estimate of the benefits that would arise from compliance with the direction or recommendation in question, unless in the opinion of the Committee it is not reasonably practicable to include such an estimate.

Review

9T Duty to review directions and recommendations

(1) The Financial Policy Committee must—
(a) before the end of each review period, review each direction given by it under section 9H, other than a direction revoked before the end of the review period, and
(b) prepare a summary of its conclusions.

(2) A review period is—
(a) in relation to the first review, the period of 12 months beginning with the day on which the direction was given, and
(b) in relation to subsequent reviews, the period of 12 months beginning with the day on which the previous review was completed.

(3) The Financial Policy Committee must maintain arrangements for the review at regular intervals of any recommendations that it has made under any of sections 9O to 9R and are of continuing relevance.

(4) The purpose of a review is—
(a) in the case of a direction, to consider whether the direction ought to be revoked, and
(b) in the case of a recommendation, to consider whether the recommendation ought to be withdrawn.

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Publication of record of meetings

9U Publication of record of meetings

(1) The Bank must publish a record of each meeting of the Financial Policy Committee before the end of the period of 6 weeks beginning with the day of the meeting.

(2) The record must specify any decisions taken at the meeting (including decisions to take no action) and must set out, in relation to each decision, a summary of the Committee's deliberations.

(3) The decisions referred to in subsection (2) include in particular a decision—
- (a) to give or revoke a direction under section 9H;
- (b) to make recommendations under any of sections 9O to 9R.

(4) Where a decision has been made to give or revoke a direction under section 9H, the record must include the text of the direction or of the notice of revocation.

(5) Where a decision has been made to make recommendations under any of sections 9O to 9R, the record must include the recommendations.

(6) Where since the previous meeting the Committee has received a notification under section 9Q(3)(b), the record must include the notification.

(7) The information required by subsections (1) and (2) does not include information identifying particular members of the Committee.

(8) Subsections (1) to (6) do not require the publication of—
- (a) information about any recommendations made under 9O(2)(a);
- (b) information whose publication within the time required by subsection (1) would in the opinion of the Committee be against the public interest;
- (c) information about any decision under paragraph (b);
- (d) information about a decision to give a direction under section 9H which has been revoked before the record of the meeting at which it was given is published;
- (e) information about the decision to revoke a direction where information about the direction is withheld under paragraph (d).

(9) Publication under this section or section 9V is to be in such manner as the Bank thinks fit.

9V Deferred publication

(1) Where the Financial Policy Committee decides under subsection (8)(b) of section 9U that publication of information within the time required by subsection (1) of that section would be against the public interest—
- (a) it must consider whether to fix a date as the earliest date on which the information may be published, and

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(b) if it does not fix a date, it must keep under consideration the question whether publication of the information would still be against the public interest.

(2) The Committee must from time to time determine the procedures that it will follow in complying with the duty in subsection (1)(b).

(3) Where the Committee—

(a) fixes a date under subsection (1)(a) as the earliest date on which any information may be published, or

(b) decides under subsection (1)(b) that publication of any information is no longer against the public interest,

the Bank must publish the information at the time when it next publishes under section 9U(1) the record of a meeting of the Committee.

Financial stability reports by Financial Policy Committee

9W Financial stability reports by Financial Policy Committee

(1) The Financial Policy Committee must prepare and publish reports relating to financial stability ("financial stability reports").

(2) Two financial stability reports must be published in each calendar year.

(3) A financial stability report must include—

(a) the Committee's view of the stability of the UK financial system at the time when the report is prepared,

(b) an assessment of the developments that have influenced the current position,

(c) an assessment of the strengths and weaknesses of the UK financial system,

(d) an assessment of risks to the stability of the UK financial system, and

(e) the Committee's view of the outlook for the stability of the UK financial system.

(4) A financial stability report must also include—

(a) a summary of the activities of the Committee in the reporting period, and

(b) an assessment of the extent to which the exercise by the Committee of its functions (both during the reporting period and previously) has succeeded during the reporting period in achieving the objectives set out in section 9C(1)(a) and (b).

(5) If during the reporting period the Committee has made any decision in relation to which section 9S requires the preparation of an explanation, the financial stability report must include the required explanation.

(6) If during the reporting period the Committee has completed the review of a direction or recommendation, the financial stability report must include a summary of the review.

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(7) The reporting period is the period since the date of the previous financial stability report, except that in the case of the first financial stability report it is the period since the time when this section came fully into force.

(8) Nothing in subsections (3) to (6) is to be regarded as requiring the Committee to include in a financial stability report any information whose publication would in the Committee's opinion be against the public interest.

(9) The Committee must give a copy of each financial stability report to the Treasury.

(10) The Treasury must lay before Parliament a copy of each financial stability report.

(11) Publication of a financial stability report is to be in such manner as the Bank thinks fit.

Meetings between Governor and Chancellor of the Exchequer

9X Meetings between Governor and Chancellor of the Exchequer

(1) As soon as reasonably practicable after the publication by the Financial Policy Committee of a financial stability report, the Governor of the Bank and the Chancellor of the Exchequer must meet to discuss the report and any other matters relating to the stability of the UK financial system that they consider it appropriate to discuss.

(2) The Treasury must publish a record of each meeting required by subsection (1) before the end of the period of 6 weeks beginning with the day of the meeting.

(3) Publication under subsection (2) is to be in such manner as the Treasury think fit.

(4) Subsection (2) does not require the publication of information whose publication within the time required by that subsection would in the opinion of the Treasury be against the public interest.

(5) Before publishing the record of a meeting required by subsection (1), or deciding under subsection (4) not to publish such a record, the Treasury must consult the Bank about the record and its publication.

Power of Bank to require FCA or PRA to provide information

9Y Directions requiring information or documents

(1) The Bank may exercise the powers conferred by this section where it considers that information or documents are reasonably required in connection with the exercise by the Bank of its functions in pursuance of the Financial Stability Objective.

(2) The Bank may give a direction to the FCA or the PRA ("the regulator") requiring the regulator—

(a) to provide the Bank with specified information or information of a specified description, or

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(b) to produce to the Bank specified documents or documents of a specified description.

(3) The direction may relate to information or documents which are held by persons other than the regulator and which the regulator has power to obtain or whose production the regulator has power to require.

(4) Any information or documents to which the direction relates are—

(a) where the information or documents are held by a person in relation to whom the powers conferred by subsections (1) and (3) of section 165 of FSMA 2000 are exercisable, to be taken to be information or documents to which that section applies by virtue of subsection (4) of that section, and

(b) where they are held by a person to whom section 165A of FSMA 2000 applies and the direction is given to the PRA, to be taken to be information or documents to which that section applies by virtue of subsection (3) of that section.

(5) The information or documents must be provided or produced before the end of such period as may be specified.

(6) The Bank may require any information provided under this section to be provided in such form as it may require.

(7) The Bank may require—

(a) any information provided, whether in a document or otherwise, to be verified in such manner as it may require;

(b) any document produced to be authenticated in such manner as it may require.

9Z Further provisions about directions under section 9Y

(1) In the exercise of its functions under section 9Y, the Bank must have regard to the principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction.

(2) Before giving a direction under section 9Y to the FCA or the PRA ("the regulator"), the Bank must consult the regulator.

(3) A direction under section 9Y must be in writing, and may be revoked by a notice in writing.

(4) As soon as practicable after giving a direction under section 9Y, the Bank must publish the direction in such manner as it thinks appropriate for bringing the direction to the attention of persons (other than the regulator to which it is given) who may be affected by it.

(5) Subsection (4) does not require the publication of information whose publication at the time required by that subsection would in the opinion of the Bank be against the public interest.

(6) Where the Bank decides under subsection (5) that publication of any information would be against the public interest, it must from time to time

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review that decision and if it subsequently decides that publication is no longer against the public interest it must comply with subsection (4).

Supplementary

9ZA **Interpretation of Part 1A**

In this Part—

"the FCA" means the Financial Conduct Authority;

"financial assistance" has the meaning given by section 257(1) of the Banking Act 2009;

"the Financial Policy Committee" means the Financial Policy Committee of the Bank of England;

"the financial sector" means financial institutions generally;

"FSMA 2000" means the Financial Services and Markets Act 2000;

"the PRA" means the Prudential Regulation Authority;

"systemic risk" has the meaning given by section 9C(5);

"the UK economy" means the economy of the United Kingdom;

"the UK financial system" means the financial system of the United Kingdom."

(2) After Schedule 2 to the Bank of England Act 1998 insert as Schedule 2A the Schedule set out in Part 1 of Schedule 1 to this Act.

(3) The further amendments relating to the Financial Policy Committee in Part 2 of Schedule 1 have effect.

(4) Sections 2B and 2C of the Bank of England Act 1998 (which relate to the establishment and procedure of the Financial Stability Committee) are repealed.

Commencement Information

I5 S. 4 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(b), **Sch. Pt. 2**
I6 S. 4 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), **Sch. Pt. 3**
I7 S. 4 in force at 19.2.2013 for specified purposes by S.I. 2013/113, art. 2(2), **Sch. Pt. 4**
I8 S. 4(1)(2) in force at 1.4.2013 in so far as not already in force by S.I. 2013/423, art. 3, **Sch.**
I9 S. 4(3)(4) in force at 1.4.2013 by S.I. 2013/423, art. 3, **Sch.**

5 Further amendments relating to Bank of England

Schedule 2 contains further amendments relating to the Bank of England.

Commencement Information

I10 S. 5 in force at 19.2.2013 for specified purposes by S.I. 2013/113, art. 2(2), **Sch. Pt. 4**
I11 S. 5 in force at 1.4.2013 in so far as not already in force by S.I. 2013/423, art. 3, **Sch.**

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PART 2

AMENDMENTS OF FINANCIAL SERVICES AND MARKETS ACT 2000

Financial Conduct Authority and Prudential Regulation Authority

6 The new Regulators

(1) For sections 1 to 18 of the Financial Services and Markets Act 2000 (in this Act referred to as "FSMA 2000") substitute—

"PART 1A

THE REGULATORS

CHAPTER 1

THE FINANCIAL CONDUCT AUTHORITY

The Financial Conduct Authority

1A The Financial Conduct Authority

(1) The body corporate previously known as the Financial Services Authority is renamed as the Financial Conduct Authority.

(2) The Financial Conduct Authority is in this Act referred to as "the FCA".

(3) The FCA is to have the functions conferred on it by or under this Act.

(4) The FCA must comply with the requirements as to its constitution set out in Schedule 1ZA.

(5) Schedule 1ZA also makes provision about the status of the FCA and the exercise of certain of its functions.

(6) References in this Act or any other enactment to functions conferred on the FCA by or under this Act include references to functions conferred on the FCA by or under—

(a) the Insolvency Act 1986,

(b) the Banking Act 2009,

(c) the Financial Services Act 2012, or

(d) a qualifying EU provision that is specified, or of a description specified, for the purposes of this subsection by the Treasury by order.

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The FCA's general duties

1B The FCA's general duties

(1) In discharging its general functions the FCA must, so far as is reasonably possible, act in a way which—
  (a) is compatible with its strategic objective, and
  (b) advances one or more of its operational objectives.

(2) The FCA's strategic objective is: ensuring that the relevant markets (see section 1F) function well.

(3) The FCA's operational objectives are—
  (a) the consumer protection objective (see section 1C);
  (b) the integrity objective (see section 1D);
  (c) the competition objective (see section 1E).

(4) The FCA must, so far as is compatible with acting in a way which advances the consumer protection objective or the integrity objective, discharge its general functions in a way which promotes effective competition in the interests of consumers.

(5) In discharging its general functions the FCA must have regard to—
  (a) the regulatory principles in section 3B, and
  (b) the importance of taking action intended to minimise the extent to which it is possible for a business carried on—
    (i) by an authorised person or a recognised investment exchange, or
    (ii) in contravention of the general prohibition,
  to be used for a purpose connected with financial crime.

(6) For the purposes of this Chapter, the FCA's general functions are—
  (a) its function of making rules under this Act (considered as a whole),
  (b) its function of preparing and issuing codes under this Act (considered as a whole),
  (c) its functions in relation to the giving of general guidance under this Act (considered as a whole), and
  (d) its function of determining the general policy and principles by reference to which it performs particular functions under this Act.

(7) Except to the extent that an order under section 50 of the Financial Services Act 2012 (orders relating to mutual societies functions) so provides, the FCA's general functions do not include functions that are transferred functions within the meaning of section 52 of that Act.

(8) “General guidance” has the meaning given in section 139B(5).

1C The consumer protection objective

(1) The consumer protection objective is: securing an appropriate degree of protection for consumers.

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(2) In considering what degree of protection for consumers may be appropriate, the FCA must have regard to—
  (a) the differing degrees of risk involved in different kinds of investment or other transaction;
  (b) the differing degrees of experience and expertise that different consumers may have;
  (c) the needs that consumers may have for the timely provision of information and advice that is accurate and fit for purpose;
  (d) the general principle that consumers should take responsibility for their decisions;
  (e) the general principle that those providing regulated financial services should be expected to provide consumers with a level of care that is appropriate having regard to the degree of risk involved in relation to the investment or other transaction and the capabilities of the consumers in question;
  (f) the differing expectations that consumers may have in relation to different kinds of investment or other transaction;
  (g) any information which the consumer financial education body has provided to the FCA in the exercise of the consumer financial education function;
  (h) any information which the scheme operator of the ombudsman scheme has provided to the FCA pursuant to section 232A.

1D The integrity objective

(1) The integrity objective is: protecting and enhancing the integrity of the UK financial system.

(2) The "integrity" of the UK financial system includes—
  (a) its soundness, stability and resilience,
  (b) its not being used for a purpose connected with financial crime,
  (c) its not being affected by behaviour that amounts to market abuse,
  (d) the orderly operation of the financial markets, and
  (e) the transparency of the price formation process in those markets.

1E The competition objective

(1) The competition objective is: promoting effective competition in the interests of consumers in the markets for—
  (a) regulated financial services, or
  (b) services provided by a recognised investment exchange in carrying on regulated activities in respect of which it is by virtue of section 285(2) exempt from the general prohibition.

(2) The matters to which the FCA may have regard in considering the effectiveness of competition in the market for any services mentioned in subsection (1) include—
  (a) the needs of different consumers who use or may use those services, including their need for information that enables them to make informed choices,

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(b) the ease with which consumers who may wish to use those services, including consumers in areas affected by social or economic deprivation, can access them,

(c) the ease with which consumers who obtain those services can change the person from whom they obtain them,

(d) the ease with which new entrants can enter the market, and

(e) how far competition is encouraging innovation.

Interpretation of terms used in relation to FCA's general duties

1F Meaning of "relevant markets" in strategic objective

In section 1B(2) "the relevant markets" means—

(a) the financial markets,

(b) the markets for regulated financial services (see section 1H(2)), and

(c) the markets for services that are provided by persons other than authorised persons in carrying on regulated activities but are provided without contravening the general prohibition.

1G Meaning of "consumer"

(1) In sections 1B to 1E "consumers" means persons who—

(a) use, have used or may use—

(i) regulated financial services, or

(ii) services that are provided by persons other than authorised persons but are provided in carrying on regulated activities,

(b) have relevant rights or interests in relation to any of those services,

(c) have invested, or may invest, in financial instruments, or

(d) have relevant rights or interests in relation to financial instruments.

(2) A person ("P") has a "relevant right or interest" in relation to any services within subsection (1)(a) 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.

(3) If a person is providing a service within subsection (1)(a) as 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.

(4) A person who deals with another person ("B") in the course of B providing a service within subsection (1)(a) is to be treated as using the service.

(5) A person ("P") has a "relevant right or interest" in relation to any financial instrument if P has—

(a) a right or interest which is derived from, or is otherwise attributable to, investment in the instrument by others, or

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(b) a right or interest which may be adversely affected by the investment in the instrument by persons acting on P's behalf or in a fiduciary capacity in relation to P.

1H Further interpretative provisions for sections 1B to 1G

(1) The following provisions have effect for the interpretation of sections 1B to 1G.

(2) "Regulated financial services" means services provided—

(a) by authorised persons in carrying on regulated activities;

(b) by authorised persons in carrying on a consumer credit business in connection with the accepting of deposits;

(c) by authorised persons in communicating, or approving the communication by others of, invitations to engage in investment activity;

(d) by authorised persons who are investment firms, or credit institutions, in providing relevant ancillary services;

(e) by persons acting as appointed representatives;

(f) by payment service providers in providing payment services;

(g) by electronic money issuers in issuing electronic money;

(h) by sponsors to issuers of securities;

(i) by primary information providers to persons who issue financial instruments.

(3) "Financial crime" includes any offence involving—

(a) fraud or dishonesty,

(b) misconduct in, or misuse of information relating to, a financial market,

(c) handling the proceeds of crime, or

(d) the financing of terrorism.

(4) "Offence" includes an act or omission which would be an offence if it had taken place in the United Kingdom.

(5) "Issuer", except in the expression "electronic money issuer", has the meaning given in section 102A(6).

(6) "Financial instrument" has the meaning given in section 102A(4).

(7) "Securities" has the meaning given in section 102A(2).

(8) In this section—

"accepting", in relation to deposits, includes agreeing to accept;

"consumer credit business" has the same meaning as in the Consumer Credit Act 1974;

"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

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

"electronic money" has the same meaning as in the Electronic Money Regulations 2011;

"electronic money issuer" means a person who is an electronic money issuer as defined in regulation 2(1) of the Electronic Money Regulations 2011 other than a person falling within paragraph (f), (g) or (j) of the definition;

"engage in investment activity" has the meaning given in section 21;

"financial instrument" has the meaning given in section 102A(4);

"payment services" has the same meaning as in the Payment Services Regulations 2009;

"payment service provider" means a person who is a payment service provider as defined in regulation 2(1) of the Payment Services Regulations 2009 other than a person falling within paragraph (g) or (h) of the definition;

"primary information provider" has the meaning given in section 89P(2);

"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;

"sponsor" has the meaning given in section 88(2).

1I Meaning of "the UK financial system"

In this Act "the UK financial system" means the financial system operating in the United Kingdom and includes—

(a) financial markets and exchanges,

(b) regulated activities, and

(c) other activities connected with financial markets and exchanges.

Power to amend objectives

1J Power to amend objectives

The Treasury may by order amend any of the following provisions—

(a) in section 1E(1), paragraphs (a) and (b),

(b) section 1G, and

(c) section 1H(2) and (5) to (8).

Guidance about objectives

1K Guidance about objectives

(1) The general guidance given by the FCA under section 139A must include guidance about how it intends to advance its operational objectives in

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discharging its general functions in relation to different categories of authorised person or regulated activity.

(2) Before giving or altering any guidance complying with subsection (1), the FCA must consult the PRA.

Supervision, monitoring and enforcement

1L Supervision, monitoring and enforcement

(1) The FCA must maintain arrangements for supervising authorised persons.

(2) The FCA must maintain arrangements designed to enable it to determine whether persons other than authorised persons are complying—
   (a) with requirements imposed on them by or under this Act, in cases where the FCA is the appropriate regulator for the purposes of Part 14 (disciplinary measures), or
   (b) with requirements imposed on them by any qualifying EU provision that is specified, or of a description specified, for the purposes of this subsection by the Treasury by order.

(3) The FCA must also maintain arrangements for enforcing compliance by persons other than authorised persons with relevant requirements, within the meaning of Part 14, in cases where the FCA is the appropriate regulator for the purposes of any provision of that Part.

Arrangements for consulting practitioners and consumers

1M The FCA's general duty to consult

The FCA must make and maintain effective arrangements for consulting practitioners and consumers on the extent to which its general policies and practices are consistent with its general duties under section 1B.

1N The FCA Practitioner Panel

(1) Arrangements under section 1M must include the establishment and maintenance of a panel of persons (to be known as "the FCA Practitioner Panel") to represent the interests of practitioners.

(2) The FCA must appoint one of the members of the FCA Practitioner Panel to be its chair.

(3) The Treasury's approval is required for the appointment or dismissal of the chair.

(4) The FCA must appoint to the FCA Practitioner Panel such—
   (a) persons representing authorised persons, and
   (b) persons representing recognised investment exchanges,

   as it considers appropriate.

(5) The FCA may appoint to the FCA Practitioner Panel such other persons as it considers appropriate.

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1O The Smaller Business Practitioner Panel

(1) Arrangements under section 1M must include the establishment and maintenance of a panel of persons (to be known as "the Smaller Business Practitioner Panel") to represent the interests of eligible practitioners.

(2) "Eligible practitioners" means authorised persons of a description specified in a statement maintained by the FCA.

(3) The FCA must appoint one of the members of the Smaller Business Practitioner Panel to be its chair.

(4) The Treasury's approval is required for the appointment or dismissal of the chair.

(5) The FCA must appoint to the Smaller Business Practitioner Panel such—
   (a) individuals who are eligible practitioners, and
   (b) persons representing eligible practitioners,

   as it considers appropriate.

(6) The FCA may appoint to the Smaller Business Practitioner Panel such other persons as it considers appropriate.

(7) In making the appointments, the FCA must have regard to the desirability of ensuring the representation of eligible practitioners carrying on a range of regulated activities.

(8) The FCA may revise the statement maintained under subsection (2).

(9) The FCA must—
   (a) give the Treasury a copy of the statement or revised statement without delay, and
   (b) publish the statement as for the time being in force in such manner as it thinks fit.

1P The Markets Practitioner Panel

(1) Arrangements under section 1M must include the establishment and maintenance of a panel of persons (to be known as "the Markets Practitioner Panel") to represent the interests of practitioners who are likely to be affected by the exercise by the FCA of its functions relating to markets, including its functions under Parts 6, 8A and 18.

(2) The FCA must appoint one of the members of the Markets Practitioner Panel to be its chair.

(3) The Treasury's approval is required for the appointment or dismissal of the chair.

(4) The FCA must appoint to the Markets Practitioner Panel such persons to represent the interests of persons within subsection (5) as it considers appropriate.

(5) The persons within this subsection are—

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(a) authorised persons,
(b) persons who issue financial instruments,
(c) sponsors, as defined in section 88(2),
(d) recognised investment exchanges, and
(e) primary information providers, as defined in section 89P(2).

(6) The FCA may appoint to the Markets Practitioner Panel such other persons as it considers appropriate.

1Q The Consumer Panel

(1) Arrangements under section 1M must include the establishment and maintenance of a panel of persons (to be known as "the Consumer Panel") to represent the interests of consumers.

(2) The FCA must appoint one of the members of the Consumer Panel to be its chair.

(3) The Treasury's approval is required for the appointment or dismissal of the chair.

(4) The FCA may appoint to the Consumer Panel such consumers, or persons representing the interests of consumers, as it considers appropriate.

(5) The FCA must secure that membership of the Consumer Panel is such as to give a fair degree of representation to those who are using, or are or may be contemplating using, services otherwise than in connection with businesses carried on by them.

(6) 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.

1R Duty to consider representations made by the Panels

(1) The FCA must consider representations that are made to it in accordance with arrangements made under section 1M.

(2) The FCA must from time to time publish in such manner as it thinks fit responses to the representations.

Reviews

1S Reviews

(1) The Treasury may appoint an independent person to conduct a review of the economy, efficiency and effectiveness with which the FCA has used its resources in discharging its functions.

(2) A review may be limited by the Treasury to such functions of the FCA (however described) as the Treasury may specify in appointing the person to conduct it.

Status: *Point in time view as at 03/03/2015.*
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(3) A review is not to be concerned with the merits of the FCA's general policy or principles in complying with its general duties under section 1B(1) and (4).

(4) On completion of a review, the person conducting it must make a written report to the Treasury—
  (a) setting out the result of the review, and
  (b) making such recommendations (if any) as the person considers appropriate.

(5) A copy of the report must be—
  (a) laid before Parliament, and
  (b) published in such manner as the Treasury consider appropriate.

(6) Any expenses reasonably incurred in the conduct of the review are to be met by the Treasury out of money provided by Parliament.

(7) "Independent" means appearing to the Treasury to be independent of the FCA.

1T Right to obtain documents and information

(1) A person conducting a review under section 1S—
  (a) has a right of access at any reasonable time to all such documents as the person may reasonably require for the purposes of the review, and
  (b) may require any person holding or accountable for any such document to provide such information and explanation as are reasonably necessary for that purpose.

(2) Subsection (1) applies only to documents in the custody of or under the control of the FCA.

(3) An obligation imposed on a person as a result of the exercise of the powers conferred by subsection (1) is enforceable by injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.

CHAPTER 2

THE PRUDENTIAL REGULATION AUTHORITY

The Prudential Regulation Authority

2A The Prudential Regulation Authority

(1) The body corporate originally incorporated as the Prudential Regulation Authority Limited is renamed as the Prudential Regulation Authority.

(2) The Prudential Regulation Authority is in this Act referred to as "the PRA".

(3) The PRA is to have the functions conferred on it by or under this Act.

(4) The PRA must comply with the requirements as to its constitution set out in Schedule 1ZB.

Status: *Point in time view as at 03/03/2015.*
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(5) Schedule 1ZB also confers on the Bank of England functions in relation to the PRA and makes provision about the status of the PRA and the exercise of certain of its functions.

(6) References in this Act or any other enactment to functions conferred on the PRA by or under this Act include references to functions conferred on the PRA by or under—
   (a) the Insolvency Act 1986,
   (b) the Banking Act 2009,
   (c) the Financial Services Act 2012, or
   (d) a qualifying EU provision that is specified, or of a description specified, for the purposes of this subsection by the Treasury by order.

The PRA's general duties

2B The PRA's general objective

(1) In discharging its general functions the PRA must, so far as is reasonably possible, act in a way which advances its general objective.

(2) The PRA's general objective is: promoting the safety and soundness of PRA-authorised persons.

(3) That objective is to be advanced primarily by—
   (a) seeking to ensure that the business of PRA-authorised persons is carried on in a way which avoids any adverse effect on the stability of the UK financial system, and
   (b) seeking to minimise the adverse effect that the failure of a PRA-authorised person could be expected to have on the stability of the UK financial system.

(4) The adverse effects mentioned in subsection (3) may, in particular, result from the disruption of the continuity of financial services.

(5) In this Act "PRA-authorised person" means an authorised person who has permission—
   (a) given under Part 4A, or
   (b) resulting from any other provision of this Act,

   to carry on regulated activities that consist of or include one or more PRA-regulated activities (see section 22A).

(6) Subsection (1) is subject to sections 2C and 2D.

2C Insurance objective

(1) In discharging its general functions so far as relating to a PRA-regulated activity relating to the effecting or carrying out of contracts of insurance or PRA-authorised persons carrying on that activity, the PRA must, so far as is reasonably possible, act in a way—
   (a) which is compatible with its general objective and its insurance objective, and

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(b) which the PRA considers most appropriate for the purpose of advancing those objectives.

(2) The PRA's insurance objective is: contributing to the securing of an appropriate degree of protection for those who are or may become policyholders.

(3) This section applies only if the effecting or carrying out of contracts of insurance as principal is to any extent a PRA-regulated activity.

2D Power to provide for additional objectives

(1) Subsection (2) applies to an order under section 22A which—

(a) is made at any time after the coming into force of the first order under that section, and

(b) contains a statement by the Treasury that, in their opinion, the effect (or one of the effects) of the proposed order is that an activity would become a PRA-regulated activity.

(2) An order to which this subsection applies may specify an additional objective ("the specified objective") in relation to specified activities that become PRA-regulated activities by virtue of the order ("the additional activities").

(3) In discharging its general functions so far as relating to the additional activities or PRA-authorised persons carrying on those activities, the PRA must, so far as is reasonably possible, act in a way—

(a) which is compatible with its general objective and the specified objective, and

(b) which the PRA considers most appropriate for the purpose of advancing those objectives.

2E Strategy

(1) The PRA must—

(a) determine its strategy in relation to its objectives, and

(b) from time to time review, and if necessary revise, the strategy.

(2) Before determining or revising its strategy, the PRA must consult the court of directors of the Bank of England about a draft of the strategy or of the revisions.

(3) The PRA must determine its strategy within 12 months of the coming into force of this section.

(4) The PRA must carry out and complete a review of its strategy before the end of each relevant period.

(5) The relevant period is 12 months beginning with the date on which the previous review was completed, except that in the case of the first review the relevant period is the period of 12 months beginning with the date on which the strategy was determined under subsection (3).

(6) The PRA must publish its strategy.

(7) If the strategy is revised the PRA must publish the revised strategy.

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(8) Publication under subsection (6) or (7) is to be in such manner as the PRA thinks fit.

2F Interpretation of references to objectives

In this Act, a reference, in relation to any function of the PRA, to the objectives of the PRA is a reference to its general objective but—

(a) so far as the function is exercisable in relation to the activity of effecting or carrying out contracts of insurance, or PRA-authorised persons carrying on that activity, is a reference to its general objective and its insurance objective;

(b) so far as the function is exercisable in relation to an activity to which an objective specified by order by virtue of section 2D(2) relates, or PRA-authorised persons carrying on that activity, is a reference to its general objective and the objective specified by the order.

2G Limit on effect of sections 2B to 2D

Nothing in sections 2B to 2D is to be regarded as requiring the PRA to ensure that no PRA-authorised person fails.

2H Duty to have regard to regulatory principles

(1) In discharging its general functions, the PRA must also have regard to—

(a) the regulatory principles in section 3B, and

(b) the need to minimise any adverse effect on competition in the relevant markets that may result from the manner in which the PRA discharges those functions.

(2) In subsection (1)(b) "the relevant markets" means the markets for services provided by PRA-authorised persons in carrying on regulated activities.

2I Guidance about objectives

(1) The PRA must give, and from time to time review, guidance about how it intends to advance its objectives in discharging its general functions in relation to different categories of PRA-authorised person or PRA-regulated activity.

(2) Before giving or altering any guidance complying with subsection (1), the PRA must consult the FCA.

(3) The PRA must publish the guidance as for the time being in force.

2J Interpretation of Chapter 2

(1) For the purposes of this Chapter, the PRA's general functions are—

(a) its function of making rules under this Act (considered as a whole),

(b) its function of preparing and issuing codes under this Act (considered as a whole), and

(c) its function of determining the general policy and principles by reference to which it performs particular functions under this Act.

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(2) Except to the extent that an order under section 50 of the Financial Services Act 2012 (orders relating to mutual societies functions) so provides, the PRA's general functions do not include functions that are transferred functions within the meaning of section 52 of that Act.

(3) For the purposes of this Chapter, the cases in which a PRA-authorised person ("P") is to be regarded as failing include those where—
  (a) P enters insolvency,
  (b) any of the stabilisation options in Part 1 of the Banking Act 2009 is achieved in relation to P, or
  (c) P falls to be taken for the purposes of the compensation scheme to be unable, or likely to be unable, to satisfy claims against P.

(4) In subsection (3)(a) "insolvency" includes—
  (a) bankruptcy,
  (b) liquidation,
  (c) bank insolvency,
  (d) administration,
  (e) bank administration,
  (f) receivership,
  (g) a composition between P and P's creditors, and
  (h) a scheme of arrangement of P's affairs.

Supervision

2K Arrangements for supervision of PRA-authorised persons

The PRA must maintain arrangements for supervising PRA-authorised persons.

Arrangements for consulting practitioners

2L The PRA's general duty to consult

The PRA must make and maintain effective arrangements for consulting PRA-authorised persons or, where appropriate, persons appearing to the PRA to represent the interests of such persons on the extent to which its general policies and practices are consistent with its general duties under sections 2B to 2H.

2M The PRA Practitioner Panel

(1) Arrangements under section 2L must include the establishment and maintenance of a panel of persons (to be known as "the PRA Practitioner Panel") to represent the interests of practitioners.

(2) The PRA must appoint one of the members of the PRA Practitioner Panel to be its chair.

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(3) The Treasury's approval is required for the appointment or dismissal of the chair.

(4) The PRA must appoint to the PRA Practitioner Panel such persons representing PRA-authorised persons as it considers appropriate.

(5) The PRA may appoint to the PRA Practitioner Panel such other persons as it considers appropriate.

2N Duty to consider representations

(1) The PRA must consider representations that are made to it in accordance with arrangements made under section 2L.

(2) The PRA must from time to time publish in such manner as it thinks fit responses to the representations.

Reviews

2O Reviews

(1) The Treasury may appoint an independent person to conduct a review of the economy, efficiency and effectiveness with which the PRA has used its resources in discharging its functions.

(2) A review may be limited by the Treasury to such functions of the PRA (however described) as the Treasury may specify in appointing the person to conduct it.

(3) A review is not to be concerned with the merits of the PRA's general policy or principles in pursuing the PRA's objectives.

(4) On completion of a review, the person conducting it must make a written report to the Treasury—
   (a) setting out the result of the review, and
   (b) making such recommendations (if any) as the person considers appropriate.

(5) A copy of the report must be—
   (a) laid before Parliament, and
   (b) published in such manner as the Treasury consider appropriate.

(6) Any expenses reasonably incurred in the conduct of the review are to be met by the Treasury out of money provided by Parliament.

(7) "Independent" means appearing to the Treasury to be independent of the PRA.

2P Right to obtain documents and information

(1) A person conducting a review under section 2O—
   (a) has a right of access at any reasonable time to all such documents as the person may reasonably require for the purposes of the review, and

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(b) may require any person holding or accountable for any such document to provide such information and explanation as are reasonably necessary for that purpose.

(2) Subsection (1) applies only to documents in the custody of or under the control of the PRA.

(3) An obligation imposed on a person as a result of the exercise of the powers conferred by subsection (1) is enforceable by injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.

CHAPTER 3

FURTHER PROVISIONS RELATING TO FCA AND PRA

Introductory

3A Meaning of "regulator"

(1) This section has effect for the interpretation of this Act.

(2) The FCA and the PRA are the "regulators", and references to a regulator are to be read accordingly.

(3) Subsection (2) does not affect—

(a) the meaning of the following expressions—

"home state regulator";

"host state regulator";

"overseas regulator"; or

(b) the meaning of "the appropriate regulator" in Part 18 (recognised investment exchanges and clearing houses).

Regulatory principles

3B Regulatory principles to be applied by both regulators

(1) In relation to the regulators, the regulatory principles referred to in section 1B(5)(a) and 2H(1)(a) are as follows—

(a) the need to use the resources of each regulator in the most efficient and economic way;

(b) the principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction;

(c) the desirability of sustainable growth in the economy of the United Kingdom in the medium or long term;

(d) the general principle that consumers should take responsibility for their decisions;

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(e) the responsibilities of the senior management of persons subject to requirements imposed by or under this Act, including those affecting consumers, in relation to compliance with those requirements;

(f) the desirability where appropriate of each regulator exercising its functions in a way that recognises differences in the nature of, and objectives of, businesses carried on by different persons subject to requirements imposed by or under this Act;

(g) the desirability in appropriate cases of each regulator publishing information relating to persons on whom requirements are imposed by or under this Act, or requiring such persons to publish information, as a means of contributing to the advancement by each regulator of its objectives;

(h) the principle that the regulators should exercise their functions as transparently as possible.

(2) "Consumer" has the meaning given in section 1G.

(3) "Objectives", in relation to the FCA, means operational objectives.

(4) The Treasury may by order amend subsection (2).

Corporate governance

3C Duty to follow principles of good governance

In managing its affairs, each regulator must have regard to such generally accepted principles of good corporate governance as it is reasonable to regard as applicable to it.

Relationship between FCA and PRA

3D Duty of FCA and PRA to ensure co-ordinated exercise of functions

(1) The regulators must co-ordinate the exercise of their respective functions conferred by or under this Act with a view to ensuring—

(a) that each regulator consults the other regulator (where not otherwise required to do so) in connection with any proposed exercise of a function in a way that may have a material adverse effect on the advancement by the other regulator of any of its objectives;

(b) that where appropriate each regulator obtains information and advice from the other regulator in connection with the exercise of its functions in relation to matters of common regulatory interest in cases where the other regulator may be expected to have relevant information or relevant expertise;

(c) that where either regulator exercises functions in relation to matters of common regulatory interest, both regulators comply with their respective duties under section 1B(5)(a) or 2H(1)(a), so far as relating to the regulatory principles in section 3B(1)(a) and (b).

(2) The duty in subsection (1) applies only to the extent that compliance with the duty—

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(a) is compatible with the advancement by each regulator of any of its objectives, and
(b) does not impose a burden on the regulators that is disproportionate to the benefits of compliance.

(3) A function conferred on either regulator by or under this Act relates to matters of common regulatory interest if—
(a) the other regulator exercises similar or related functions in relation to the same persons,
(b) the other regulator exercises functions which relate to different persons but relate to similar subject-matter, or
(c) its exercise could affect the advancement by the other regulator of any of its objectives.

(4) "Objectives", in relation to the FCA, means operational objectives.

3E Memorandum of understanding

(1) The regulators must prepare and maintain a memorandum which describes in general terms—
(a) the role of each regulator in relation to the exercise of functions conferred by or under this Act which relate to matters of common regulatory interest, and
(b) how the regulators intend to comply with section 3D in relation to the exercise of such functions.

(2) The memorandum may in particular contain provisions about how the regulators intend to comply with section 3D in relation to—
(a) applications for Part 4A permission;
(b) the variation of permission;
(c) the imposition of requirements;
(d) the obtaining and disclosure of information;
(e) cases where a PRA-authorised person is a member of a group whose other members include one or more other authorised persons (whether or not PRA-authorised persons);
(f) functions under Schedule 3 (EEA passport rights) and Schedule 4 (Treaty rights);
(g) the making of rules;
(h) directions under section 138A (modification or waiver of rules);
(i) powers to appoint competent persons under Part 11 (information gathering and investigations) to conduct investigations on their behalf;
(j) functions under Part 12 (control over authorised persons);
(k) functions under Part 13 (incoming firms: intervention by regulator);
(l) functions under Part 19 (Lloyd's);
(m) functions under section 347 (record of authorised persons etc.);
(n) functions under Part 24 (insolvency);
(o) fees payable to either regulator.

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(3) The memorandum must contain provision about the co-ordination by the regulators of—
  (a) the exercise of their functions relating to membership of, and their relations with, the European Supervisory Authorities (namely, the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority),
  (b) their relations with regulatory bodies outside the United Kingdom, and
  (c) the exercise of their functions in relation to the compensation scheme.

(4) The regulators must review the memorandum at least once in each calendar year.

(5) The regulators must give the Treasury a copy of the memorandum and any revised memorandum.

(6) The Treasury must lay before Parliament a copy of any document received by them under this section.

(7) The regulators must ensure that the memorandum as currently in force is published in the way appearing to them to be best calculated to bring it to the attention of the public.

(8) The memorandum need not relate to any aspect of compliance with section 3D if the regulators consider—
  (a) that publication of information about that aspect would be against the public interest, or
  (b) that that aspect is a technical or operational matter not affecting the public.

(9) The reference in subsection (1)(a) to matters of common regulatory interest is to be read in accordance with section 3D(3).

3F With-profits insurance policies

(1) The regulators must prepare and maintain a memorandum which describes in general terms—
  (a) the role of each regulator in relation to the exercise of functions conferred by or under this Act so far as they relate to with-profits insurers, and
  (b) how the regulators intend to comply with section 3D in relation to the exercise of those functions so far as they relate to the effecting or carrying out of with-profits policies by with-profits insurers.

(2) The memorandum required by this section may be combined with the memorandum required by section 3E.

(3) If the memorandum required by this section is contained in a separate document, the PRA and the FCA must publish the memorandum as currently in force in such manner as they think fit.

(4) Subsections (1) to (3) apply only if the effecting or carrying out of with-profits policies is a PRA-regulated activity.

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(5) For the purposes of this section—
- (a) a "with-profits policy" is a contract of insurance under which the policyholder is eligible to receive a financial benefit at the discretion of the insurer;
- (b) a "with-profits insurer" is a PRA-authorised person who has a Part 4A permission, or permission resulting from any other provision of this Act, relating to the effecting or carrying out of with-profits policies (whether or not the permission also relates to contracts of insurance of other kinds).

(6) The Treasury may by order amend the definition of "with-profits policy" applying for the purposes of this section.

3G Power to establish boundary between FCA and PRA responsibilities

(1) The Treasury may by order specify matters that, in relation to the exercise by either regulator of its functions relating to PRA-authorised persons, are to be, or are to be primarily, the responsibility of one regulator rather than the other.

(2) The order may—
- (a) provide that one regulator is or is not to have regard to specified matters when exercising specified functions;
- (b) require one regulator to consult the other.

3H Parliamentary control of orders under section 3G

(1) No order may be made under section 3G unless—
- (a) a draft of the order has been laid before Parliament and approved by a resolution of each House, or
- (b) subsection (3) applies.

(2) Subsection (3) applies if an order under section 3G contains a statement that the Treasury are of the opinion that, by reason of urgency, it is necessary to make the order without a draft being so laid and approved.

(3) Where this subsection applies the order—
- (a) must be laid before Parliament after being made, and
- (b) ceases to have effect at the end of the relevant period unless before the end of that period the order is approved by a resolution of each House of Parliament (but without that affecting anything done under the order or the power to make a new order).

(4) The "relevant period" is a period of 28 days beginning with the day on which the order is made.

(5) In calculating the relevant period no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.

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Power of PRA to restrain proposed action by FCA

3I Power of PRA to require FCA to refrain from specified action

(1) Where the first, second and third conditions are met, the PRA may give a direction under this section to the FCA.

(2) The first condition is that the FCA is proposing—
- (a) to exercise any of its regulatory powers in relation to PRA-authorised persons generally, a class of PRA-authorised persons or a particular PRA-authorised person, or
- (b) to exercise any of its insolvency powers in relation to—
  - (i) a PRA-authorised person,
  - (ii) an appointed representative whose principal, or one of whose principals, is a PRA-authorised person, or
  - (iii) a person who is carrying on a PRA-regulated activity in contravention of the general prohibition.

(3) In subsection (2)—
- (a) "regulatory powers", in relation to the FCA, means its powers in relation to the regulation of authorised persons, other than its powers in relation to consent for the purposes of section 55F or 55I or its powers under Part 24;
- (b) "insolvency powers", in relation to the FCA, means its powers under Part 24.

(4) The second condition is that the PRA is of the opinion that the exercise of the power in the manner proposed may—
- (a) threaten the stability of the UK financial system, or
- (b) result in the failure of a PRA-authorised person in a way that would adversely affect the UK financial system.

(5) The third condition is that the PRA is of the opinion that the giving of the direction is necessary in order to avoid the possible consequence falling within subsection (4).

(6) A direction under this section is a direction requiring the FCA not to exercise the power or not to exercise it in a specified manner.

(7) The direction may be expressed to have effect during a specified period or until revoked.

(8) The FCA is not required to comply with a direction under this section if or to the extent that in the opinion of the FCA compliance would be incompatible with any EU obligation or any other international obligation of the United Kingdom.

(9) The reference in subsection (4)(b) to the "failure" of a PRA-authorised person is to be read in accordance with section 2J(3) and (4).

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3J Power of PRA in relation to with-profits policies

(1) Where the first, second and third conditions are met, the PRA may give a direction under this section to the FCA.

(2) The first condition is that the FCA is proposing to exercise any of its regulatory powers in relation to with-profits insurers, a class of with-profits insurers or a particular with-profits insurer.

(3) In subsection (2) "regulatory powers", in relation to the FCA, means its powers in relation to the regulation of authorised persons, including its powers under Part 24 (insolvency) but not its powers in relation to consent for the purposes of section 55F or 55I.

(4) The second condition is that the proposed exercise of the power relates to the provision of financial benefits under with-profits policies at the discretion of the insurer, or affects or may affect the amount, timing or distribution of financial benefits that are so provided or the entitlement to future benefits that are so provided.

(5) The third condition is that the PRA is of the opinion that the giving of the direction is desirable in order to advance the PRA's general objective or its insurance objective.

(6) A direction under this section is a direction requiring the FCA not to exercise the power or not to exercise it in a specified manner.

(7) The direction may be expressed to have effect during a specified period or until revoked.

(8) The FCA is not required to comply with a direction under this section if or to the extent that in the opinion of the FCA compliance would be incompatible with any EU obligation or any other international obligation of the United Kingdom.

(9) Subsections (1) to (8) apply only if the effecting or carrying out of with-profits policies is a PRA-regulated activity.

(10) In this section "with-profits insurer" and "with-profits policy" have the same meaning as they have for the purposes of section 3F.

3K Revocation of directions under section 3I or 3J

(1) The PRA may at any time by notice to the FCA revoke a direction under section 3I or 3J.

(2) The revocation of a direction under section 3I or 3J does not affect the validity of anything previously done in accordance with it.

3L Further provisions about directions under section 3I or 3J

(1) Before giving a direction under section 3I or 3J, the PRA must consult the FCA.

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) A direction under section 3I or 3J must be given or confirmed in writing, and must be accompanied by a statement of the reasons for giving it.

(3) A notice revoking a direction under section 3I or 3J must be given or confirmed in writing.

(4) The PRA must—
  (a) publish the direction and statement, or the notice, in such manner as it thinks fit, and
  (b) where the direction or notice relates to a particular authorised person or a particular with-profits insurer, give a copy of the direction and statement, or the notice, to that person.

(5) The PRA must give the Treasury a copy of—
  (a) a direction under section 3I;
  (b) a statement relating to such a direction;
  (c) a notice revoking such a direction.

(6) The Treasury must lay before Parliament any document received by them under subsection (5).

(7) Subsection (4) does not apply where the PRA, after consulting the Treasury, decides that compliance with that subsection would be against the public interest, and at any time when this subsection excludes the application of subsection (4) in relation to a direction under section 3I, subsection (6) also does not apply.

(8) Where the PRA decides that compliance with subsection (4) would be against the public interest, it must from time to time review that decision and if it subsequently decides that compliance is no longer against the public interest it must—
  (a) comply with that subsection, and
  (b) in the case of a direction under section 3I, notify the Treasury for the purposes of subsection (6).

Directions relating to consolidated supervision

3M Directions relating to consolidated supervision of groups

(1) This section applies where one of the regulators ("the supervising regulator"), but not the other, is the competent authority for the purpose of consolidated supervision that is required in relation to some or all of the members of a group ("the relevant group") in pursuance of any of the relevant directives.

(2) "Consolidated supervision" includes supplementary supervision.

(3) The "relevant directives" are—
  (a) the banking consolidation directive;
  (b) Directive 2002/87/EC of the European Parliament and of the Council on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate;

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(c) Directive 2006/49/EC on the capital adequacy of investment firms and credit institutions;

(d) Directive 2009/138/EC of the European Parliament and the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II).

(4) The supervising regulator may, if it considers it necessary to do so for the effective consolidated supervision of the relevant group, give the other regulator a direction under this section.

(5) A direction under this section is a direction requiring the other regulator to exercise, or not to exercise, a relevant function in a specified manner in relation to authorised persons who are members of the relevant group.

(6) The direction may relate to members of the relevant group other than the members in respect of which consolidated supervision is required.

(7) A "relevant function", in relation to either regulator, is a function conferred by or under this Act which relates to the regulation of authorised persons, but does not include—

(a) the regulator's function of making rules under this Act;

(b) its function of preparing and issuing codes under this Act;

(c) its function of determining the general policy and principles by reference to which it performs particular functions;

(d) the FCA's functions in relation to the giving of general guidance;

(e) the PRA's functions in relation to the giving of guidance under section 2I;

(f) the FCA's functions in relation to consent for the purposes of section 55F or 55I.

(8) The direction may not require the regulator to which it is given ("the directed regulator") to do anything that it has no power to do, but the direction is relevant to the exercise of any discretion conferred on the directed regulator.

(9) The directed regulator must comply with the direction as soon as practicable, but this is subject to subsections (10) and (11).

(10) The directed regulator is not required to comply with a direction under this section if or to the extent that in its opinion compliance would be incompatible with any EU obligation or any other international obligation of the United Kingdom.

(11) Directions given by the FCA under this section are subject to any directions given to the FCA under section 3I or 3J.

3N Revocation of directions under section 3M

(1) The supervising regulator may at any time by notice to the other regulator revoke a direction under section 3M.

(2) The revocation of the direction does not affect the validity of anything previously done in accordance with it.

(3) Expressions defined for the purposes of section 3M have the same meaning in this section.

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

3O Further provisions about directions under section 3M

(1) Before giving a direction under section 3M, the supervising regulator must consult the other regulator.

(2) A direction under section 3M must be given or confirmed in writing, and must be accompanied by a statement of the reasons for giving it.

(3) A notice revoking a direction under section 3M must be given or confirmed in writing.

(4) The regulator to which a direction under section 3M is given must give a copy of the direction and statement to each of the authorised persons to whom the direction relates.

(5) The supervising regulator must publish the direction and statement, or the notice, in such manner as it thinks fit.

(6) But subsection (4) or (5) does not apply in a case where the regulator on which the duty is imposed considers that compliance with that subsection would be against the public interest.

(7) In a case where a regulator decides that compliance with subsection (4) or (5) would be against the public interest, the regulator must from time to time review that decision and if it subsequently decides that compliance is no longer against the public interest it must comply with the subsection.

(8) Expressions defined for the purposes of section 3M have the same meaning in this section.

3P Consultation by regulator complying with direction

(1) If the directed regulator is required by this Act to consult any person other than the supervising regulator before exercising the relevant function to which the direction relates, the directed regulator must give the supervising regulator copies of any written representations received from the persons consulted.

(2) Expressions defined for the purposes of section 3M have the same meaning in this section.

Co-operation with Bank of England

3Q Co-operation by FCA and PRA with Bank of England

(1) Each regulator must take such steps as it considers appropriate to co-operate with the Bank of England in connection with—
   (a) the pursuit by the Bank of its Financial Stability Objective, and
   (b) the Bank's compliance with its duties under sections 58 and 59 of the Financial Services Act 2012 (duty to notify Treasury of possible need for public funds and of subsequent changes).

(2) Co-operation under subsection (1) may include the sharing of information that the regulator is not prevented from disclosing.

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Arrangements for provision of services

3R Arrangements for provision of services

(1) The regulators may enter into arrangements with each other for the provision of services by one of them to the other.

(2) Either regulator may enter into arrangements with the Bank of England for the provision of services—
  (a) by the Bank to the regulator, or
  (b) by the regulator to the Bank.

(3) Either regulator may enter into arrangements with any of the bodies specified in subsection (4) for the provision of services by the regulator to that body.

(4) Those bodies are—
  (a) the consumer financial education body (see section 3S(2)),
  (b) the scheme manager (see section 212(1)), and
  (c) the scheme operator (see section 225(2)).

(5) The FCA may enter into arrangements with—
  (a) a local weights and measures authority in England, Wales or Scotland, or
  (b) the Department of Enterprise, Trade and Investment in Northern Ireland,

for the provision by the authority or department to the FCA of services which relate to activities to which this subsection applies.

(6) Subsection (5) applies to activities that are regulated activities by virtue of—
  (a) an order made under section 22(1) in relation to an investment of a kind falling within paragraph 23 or 23B of Schedule 2, or
  (b) an order made under section 22(1A)(a).

(7) Arrangements under this section are to be on such terms as may be agreed by the parties.

Enhancing public understanding of financial matters etc.

3S The consumer financial education body

(1) The consumer financial education body continues to have the consumer financial education function.

(2) The "consumer financial education body" means the body corporate originally established by the Financial Services Authority under section 6A of this Act (as it had effect before the passing of the Financial Services Act 2012).

(3) The consumer financial education function is to enhance—
  (a) the understanding and knowledge of members of the public of financial matters (including the UK financial system), and

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(b) the ability of members of the public to manage their own financial affairs.

(4) The consumer financial education function includes, in particular—

(a) promoting awareness of the benefits of financial planning;

(b) promoting awareness of the financial advantages and disadvantages in relation to particular decisions relating to different kinds of goods or services;

(c) promoting awareness of the benefits and risks associated with different kinds of financial dealing (which includes informing the FCA and other bodies of those benefits and risks);

(d) the publication of educational materials or the carrying out of other educational activities;

(e) the provision of information and advice to members of the public;

(f) assisting members of the public with the management of debt;

(g) working with other organisations which provide debt services, with a view to improving—

(i) the availability to the public of those services;

(ii) the quality of the services provided;

(iii) consistency in the services available, in the way in which they are provided and in the advice given.

(5) In subsection (4) "debt services" means debt advice or assistance with the management of debt.

(6) Schedule 1A makes further provision about the consumer financial education body."

(2) For Schedule 1 to FSMA 2000 substitute the Schedules 1ZA and 1ZB set out in Schedule 3 to this Act.

Commencement Information

I12 S. 6 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(b), **Sch. Pt. 2**

I13 S. 6 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), **Sch. Pt. 3**

I14 S. 6 in force at 19.2.2013 for specified purposes by S.I. 2013/113, art. 2(2), **Sch. Pt. 4**

I15 S. 6 in force at 1.4.2013 in so far as not already in force by S.I. 2013/423, art. 3, **Sch.**

Regulated activities

7 Extension of scope of regulation

(1) In section 22 of FSMA 2000 (the classes of activity and categories of investment)—

(a) after subsection (1) insert—

"(1A) An activity is also a regulated activity for the purposes of this Act if it is an activity of a specified kind which is carried on by way of business and relates to—

(a) information about a person's financial standing, or

(b) the setting of a specified benchmark.",

Status: *Point in time view as at 03/03/2015.*
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(b) in subsection (3), after "(1)" insert " or (1A) ",

(c) after subsection (5) insert—

"(6) Benchmark" means an index, rate or price that—

(a) is determined from time to time by reference to the state of the market,

(b) is made available to the public (whether free of charge or on payment), and

(c) is used for reference for purposes that include one or more of the following—

(i) determining the interest payable, or other sums due, under loan agreements or under other contracts relating to investments;

(ii) determining the price at which investments may be bought or sold or the value of investments;

(iii) measuring the performance of investments.", and"

(d) for the heading substitute " Regulated activities ".

(2) Schedule 2 to FSMA 2000 (regulated activities) is amended as follows.

(3) For paragraph 23 (and the italic heading before it) substitute—

23 "**Loans and other forms of credit**

(1) Rights under any contract under which one person provides another with credit.

(2) "Credit" includes any cash loan or other financial accommodation.

(3) "Cash" includes money in any form.

(4) It is immaterial for the purposes of sub-paragraph (1) whether or not the obligation of the borrower is secured on property of any kind."

(4) After paragraph 23A insert—

23B "**Contracts for hire of goods**

(1) Rights under a contract for the bailment or (in Scotland) hiring of goods to a person other than a body corporate.

(2) "Goods" has the meaning given in section 61(1) of the Sale of Goods Act 1979.

(3) It is immaterial for the purposes of sub-paragraph (1) whether the rights of the person to whom the goods are bailed or hired have been assigned to a body corporate."

(5) After paragraph 24 insert—

Status: *Point in time view as at 03/03/2015.*
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"PART 2A

REGULATED ACTIVITIES RELATING TO INFORMATION ABOUT PERSONS' FINANCIAL STANDING

24A *General*

The matters with respect to which provision may be made under section 22(1A)(a) include, in particular, those described in general terms in this Part of this Schedule.

24B *Providing credit reference services*

Furnishing persons with information that—

(a) is relevant to the financial standing of persons other than bodies corporate, and

(b) is collected for that purpose by the person furnishing it.

24C *Providing credit information services*

(1) Taking steps on behalf of a person other than a body corporate in connection with information relevant to that person's financial standing that is or may be held by a regulated person.

(2) "Regulated person" means—

(a) a person who is carrying on a regulated activity, or

(b) a person who is carrying on a business in respect of which a licence under section 21 of the Consumer Credit Act 1974 is required.

24D Giving advice to a person other than a body corporate in relation to the taking of any steps of the kind mentioned in paragraph 24C(1).

PART 2B

REGULATED ACTIVITIES RELATING TO THE SETTING OF BENCHMARKS

24E *General*

The matters with respect to which provisions may be made under section 22(1A)(b) include, in particular, those described in general terms in this Part of this Schedule.

24F *Providing information*

Providing any information or expression of opinion that—

(a) is required by another person in connection with the determination of a benchmark, and

(b) is provided to that person for that purpose.

Status: *Point in time view as at 03/03/2015.*
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24G ***Administration***

(1) Administering the arrangements for determining a benchmark.

(2) Collecting, analysing or processing information or expressions of opinion for the purpose of the determination of a benchmark.

24H ***Determining or publishing benchmark or publishing connected information***

(1) Determining a benchmark.

(2) Publishing a benchmark or information connected with a benchmark.”

Commencement Information
I16 S. 7 in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), **Sch. Pt. 1**

8 Orders under section 22 of FSMA 2000

(1) Schedule 2 to FSMA 2000 (regulated activities) is amended as follows.

(2) In paragraph 25(1)—
(a) after “22(1)” insert “ or (1A) ”, and
(b) for “the Authority”, in each place, substitute “ either regulator ”.

(3) For paragraph 26 substitute—

26 “**Parliamentary control**

(1) This paragraph applies to any order made under section 22(1) or (1A) which contains a statement by the Treasury that, in their opinion, the effect (or one of the effects) of the proposed order would be that an activity which is not a regulated activity would become a regulated activity.

(2) No order to which this paragraph applies may be made unless—
(a) a draft of the order has been laid before Parliament and approved by a resolution of each House, or
(b) sub-paragraph (4) applies.

(3) Sub-paragraph (4) applies if an order to which this paragraph applies also contains a statement that the Treasury are of the opinion that, by reason of urgency, it is necessary to make the order without a draft being so laid and approved.

(4) Where this sub-paragraph applies the order—
(a) must be laid before Parliament after being made, and
(b) ceases to have effect at the end of the relevant period unless before the end of that period the order is approved by a resolution of each House of Parliament (but without that affecting anything done under the order or the power to make a new order).

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(5) The "relevant period" is a period of 28 days beginning with the day on which the order is made.

(6) In calculating the relevant period no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days."

Commencement Information
I17 S. 8 in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), **Sch. Pt. 1**

9 Designation of activities requiring prudential regulation by PRA

After section 22 of FSMA 2000 insert—

"22A Designation of activities requiring prudential regulation by PRA

(1) The Treasury may by order specify the regulated activities that are "PRA-regulated activities" for the purposes of this Act.

(2) An order under subsection (1) may—
- (a) provide for exceptions;
- (b) confer powers on the Treasury or either regulator;
- (c) authorise the making of rules or other instruments by either regulator for purposes of, or connected with, any relevant provision;
- (d) make provision in respect of any information or document which in the opinion of the Treasury or either regulator is relevant for purposes of, or connected with, any relevant provision;
- (e) make such consequential, transitional, or supplemental provision as the Treasury consider appropriate for purposes of, or connected with, any relevant provision.

(3) Provision made as a result of subsection (2)(e) may amend any primary or subordinate legislation, including any provision of, or made under, this Act.

(4) "Relevant provision" means this section or any provision made under this section.

22B Parliamentary control in relation to certain orders under section 22A

(1) This section applies to the first order made under section 22A(1).

(2) This section also applies to any subsequent order made under section 22A(1) which—
- (a) contains a statement by the Treasury that, in their opinion, the effect (or one of the effects) of the proposed order would be—
  - (i) that an activity would become a PRA-regulated activity, or
  - (ii) that a PRA-regulated activity would become a regulated activity that is not a PRA-regulated activity, or
- (b) amends primary legislation.

Status: *Point in time view as at 03/03/2015.*
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(3) No order to which this section applies may be made unless—

(a) a draft of the order has been laid before Parliament and approved by a resolution of each House, or

(b) subsection (5) applies.

(4) Subsection (5) applies if an order to which this section applies contains a statement that the Treasury are of the opinion that, by reason of urgency, it is necessary to make the order without a draft being so laid and approved.

(5) Where this subsection applies the order—

(a) must be laid before Parliament after being made, and

(b) ceases to have effect at the end of the relevant period unless before the end of that period the order is approved by a resolution of each House of Parliament (but without that affecting anything done under the order or the power to make a new order).

(6) The "relevant period" is a period of 28 days beginning with the day on which the order is made.

(7) In calculating the relevant period no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days."

Commencement Information

I18 S. 9 in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), **Sch. Pt. 1**

Appointed representatives

10 Appointed representatives

(1) Section 39 of FSMA 2000 (appointed representatives) is amended as follows.

(2) After subsection (1B) insert—

"(1C) Subsection (1D) applies where an authorised person ("A")—

(a) has permission under Part 4A, or permission resulting from any other provision of this Act, only in relation to one or more qualifying activities,

(b) is a party to a contract with another authorised person (A's "principal") which—

(i) permits or requires A to carry on business of a prescribed description ("the relevant business"), and

(ii) complies with such requirements as may be prescribed, and

(c) is someone for whose activities in carrying on the whole or part of the relevant business A's principal has accepted responsibility in writing.

(1D) Sections 20(1) and (1A) and 23(1A) do not apply in relation to the carrying on by A of a relevant additional activity.

(1E) In subsections (1C) and (1D)—

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(a) "qualifying activity" means a regulated activity which is of a prescribed kind and relates—

(i) to rights under a contract of the kind mentioned in paragraph 23 of Schedule 2, other than one under which the obligation of the borrower to repay is secured on land, or

(ii) to rights under a contract of the kind mentioned in paragraph 23B of that Schedule;

(b) "relevant additional activity" means a regulated activity which—

(i) is not one to which A's permission relates, and

(ii) is comprised in the carrying on of the business for which A's principal has accepted responsibility."

(3) For subsection (2) substitute—

"(2) In this Act "appointed representative" means—

(a) a person who is exempt as a result of subsection (1), or

(b) a person carrying on a regulated activity in circumstances where, as a result of subsection (1D), sections 20(1) and (1A) and 23(1A) do not apply."

Commencement Information

I19 S. 10 in force at 1.4.2013 by S.I. 2013/423, art. 3, **Sch.**

Permission to carry on regulated activities

11 Permission to carry on regulated activities

(1) In section 31 (authorised persons), in subsection (1)(a), for "Part IV permission" substitute " Part 4A permission ".

(2) For sections 40 to 55 of FSMA 2000 substitute—

"PART 4A

PERMISSION TO CARRY ON REGULATED ACTIVITIES

Application for permission

55A Application for permission

(1) An application for permission to carry on one or more regulated activities may be made to the appropriate regulator by—

(a) an individual,

(b) a body corporate,

(c) a partnership, or

(d) an unincorporated association.

Status: *Point in time view as at 03/03/2015.*
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(2) "The appropriate regulator", in relation to an application under this section, means—
  (a) the PRA, in a case where—
    (i) the regulated activities to which the application relates consist of or include a PRA-regulated activity, or
    (ii) the applicant is a PRA-authorised person otherwise than by virtue of a Part 4A permission;
  (b) the FCA, in any other case.

(3) An authorised person who has a permission under this Part which is in force may not apply for permission under this section.

(4) An EEA firm may not apply for permission under this section to carry on a regulated activity which it is, or would be, entitled to carry on in exercise of an EEA right, whether through a United Kingdom branch or by providing services in the United Kingdom.

(5) A permission given by the appropriate regulator under this Part or having effect as if so given is referred to in this Act as "a Part 4A permission".

55B The threshold conditions

(1) "The threshold conditions", in relation to a regulated activity, means the conditions set out in or specified under Schedule 6, as read with any threshold condition code made by either regulator under section 137O.

(2) Any reference in this Part to the threshold conditions for which either regulator is responsible is to be read as a reference to the conditions set out in or specified under Schedule 6 that are expressed to be relevant to the discharge by that regulator of its functions, as read with any threshold condition code made by that regulator under section 137O.

(3) In giving or varying permission, imposing or varying a requirement, or giving consent, under any provision of this Part, each regulator must ensure that the person concerned will satisfy, and continue to satisfy, in relation to all of the regulated activities for which the person has or will have permission, the threshold conditions for which that regulator is responsible.

(4) But the duty imposed by subsection (3) does not prevent a regulator, having due regard to that duty, from taking such steps as it considers are necessary, in relation to a particular person, in order to advance—
  (a) in the case of the FCA, any of its operational objectives;
  (b) in the case of the PRA, any of its objectives.

55C Power to amend Schedule 6

(1) The Treasury may by order amend Parts 1 and 2 of Schedule 6 by altering, adding or repealing provisions, or by substituting for those Parts as they have effect for the time being provisions specified in the order.

(2) Different provision may be made under this section—
  (a) in relation to the discharge of the functions of each regulator;
  (b) in relation to different regulated activities;

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(c) in relation to persons who carry on, or seek to carry on, activities that consist of or include a PRA-regulated activity and in relation to other persons.

55D Firms based outside EEA

(1) This section applies in relation to a person ("the non-EEA firm")—
  (a) who is a body incorporated in, or formed under the law of, or is an individual who is a national of, any country or territory outside the EEA, and
  (b) who is carrying on a regulated activity in any country or territory outside the United Kingdom in accordance with the law of that country or territory ("the overseas state").

(2) In determining whether the non-EEA firm is satisfying or will satisfy, and continue to satisfy, any one or more of the threshold conditions for which a UK regulator is responsible, the UK regulator may have regard to any opinion notified to it by a regulatory authority in the overseas state ("the overseas regulator") which relates to the non-EEA firm and appears to the UK regulator to be relevant to compliance with those conditions.

(3) In considering how much weight (if any) to attach to the opinion, the UK regulator must have regard to the nature and scope of the supervision exercised in relation to the non-EEA firm by the overseas regulator.

(4) In this section "UK regulator" means the FCA or the PRA.

55E Giving permission: the FCA

(1) This section applies where the FCA is the appropriate regulator in relation to an application for permission under section 55A.

(2) The FCA may give permission for the applicant to carry on the regulated activity or activities to which the application relates or such of them as may be specified in the permission.

(3) If the applicant is a member of a group which includes a PRA-authorised person, the FCA must consult the PRA before determining the application.

(4) If it gives permission, the FCA must specify the permitted regulated activity or activities, described in such manner as the FCA considers appropriate.

(5) The FCA may—
  (a) incorporate in the description of a regulated activity such limitations (for example as to circumstances in which the activity may, or may not, be carried on) as it considers appropriate;
  (b) specify a narrower or wider description of regulated activity than that to which the application relates;
  (c) give permission for the carrying on of a regulated activity which is not included among those to which the application relates and is not a PRA-regulated activity.

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55F Giving permission: the PRA

(1) This section applies where the PRA is the appropriate regulator in relation to an application for permission under section 55A.

(2) The PRA may with the consent of the FCA give permission for the applicant to carry on the regulated activity or activities to which the application relates or such of them as may be specified in the permission.

(3) If it gives permission, the PRA must specify the permitted regulated activity or activities, described in such manner as the PRA considers appropriate.

(4) The PRA may—

(a) incorporate in the description of a regulated activity such limitations (for example as to circumstances in which the activity may, or may not, be carried on) as it considers appropriate;

(b) specify a narrower or wider description of regulated activity than that to which the application relates;

(c) give permission for the carrying on of a regulated activity which is not included among those to which the application relates.

(5) Consent given by the FCA for the purposes of this section may be conditional on the manner in which the PRA exercises its powers under subsections (3) and (4).

(6) Subsections (3) and (4)(b) and (c) do not enable the PRA to give permission that relates only to activities that are not PRA-regulated activities, except where the applicant is a PRA-authorised person otherwise than by virtue of a Part 4A permission.

55G Giving permission: special cases

(1) "The applicant" means an applicant for permission under section 55A.

(2) If the applicant—

(a) in relation to a particular regulated activity, is exempt from the general prohibition as a result of section 39(1) or an order made under section 38(1), but

(b) has applied for permission in relation to another regulated activity,

the application is to be treated as relating to all the regulated activities which, if permission is given, the applicant will carry on.

(3) If the applicant—

(a) in relation to a particular regulated activity, is exempt from the general prohibition as a result of section 285(2) or (3), but

(b) has applied for permission in relation to another regulated activity,

the application is to be treated as relating only to that other regulated activity.

(4) If the applicant—

(a) is a person to whom, in relation to a particular regulated activity, the general prohibition does not apply as a result of Part 19, but

(b) has applied for permission in relation to another regulated activity,

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the application is to be treated as relating only to that other regulated activity.

(5) Subsection (6) applies where either regulator ("the responsible regulator") receives an application for permission under section 55A which is in the regulator's opinion similar to an application which was previously made to the other regulator and was either—
   (a) treated by the other regulator as not being a valid application to that regulator because of the regulated activities to which it related, or
   (b) refused by the other regulator after being considered.

(6) The responsible regulator must have regard to the desirability of minimising—
   (a) the additional work for the applicant in dealing with the new application, and
   (b) the time taken to deal with the new application.

Variation and cancellation of Part 4A permission

55H Variation by FCA at request of authorised person

(1) This section applies in relation to an authorised person who has a Part 4A permission but is not a PRA-authorised person.

(2) The FCA may, on the application of the authorised person, vary the permission by—
   (a) adding a regulated activity, other than a PRA-regulated activity, to those to which the permission relates;
   (b) removing a regulated activity from those to which the permission relates;
   (c) varying the description of a regulated activity to which the permission relates.

(3) The FCA may, on the application of the authorised person, cancel the permission.

(4) The FCA may refuse an application under this section if it appears to it that it is desirable to do so in order to advance any of its operational objectives.

(5) If the applicant is a member of a group which includes a PRA-authorised person, the FCA must consult the PRA before determining the application.

(6) If as a result of a variation of a Part 4A permission under this section there are no longer any regulated activities for which the authorised person concerned has permission, the FCA must, once it is satisfied that it is no longer necessary to keep the permission in force, cancel it.

(7) The FCA's power to vary a Part 4A permission under this section extends to including in the permission as varied any provision that could be included if a fresh permission were being given by it in response to an application under section 55A.

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55I Variation by PRA at request of authorised person

(1) On the application of a PRA-authorised person with a Part 4A permission, the PRA may with the consent of the FCA vary the permission by—
  (a) adding a regulated activity to those to which the permission relates;
  (b) removing a regulated activity from those to which the permission relates;
  (c) varying the description of a regulated activity to which the permission relates.

(2) On the application of a PRA-authorised person with a Part 4A permission, the PRA may, after consulting the FCA, cancel the permission.

(3) On the application of an authorised person other than a PRA-authorised person, the PRA may with the consent of the FCA vary the permission by adding to the regulated activities to which the permission relates one or more regulated activities which include a PRA-regulated activity.

(4) The PRA may refuse an application under this section if it appears to it that it is desirable to do so in order to advance any of its objectives.

(5) The FCA may withhold its consent to a proposed variation under this section if it appears to it that it is desirable to do so in order to advance one or more of its operational objectives.

(6) If as a result of a variation of a Part 4A permission under this section there are no longer any regulated activities for which the authorised person concerned has permission, the PRA must, once it is satisfied after consulting the FCA that it is no longer necessary to keep the permission in force, cancel it.

(7) The PRA's power to vary a Part 4A permission under this section extends to including in the permission as varied any provision that could be included if a fresh permission were being given by it in response to an application under section 55A.

(8) Consent given by the FCA for the purposes of subsection (1) may be conditional on the manner in which the PRA exercises its powers under section 55F(3) and (4) (as a result of subsection (7)).

55J Variation or cancellation on initiative of regulator

(1) Either regulator may exercise its power under this section in relation to an authorised person with a Part 4A permission ("A") if it appears to the regulator that—
  (a) A is failing, or is likely to fail, to satisfy the threshold conditions for which the regulator is responsible,
  (b) A has failed, during a period of at least 12 months, to carry on a regulated activity to which the Part 4A permission relates, or
  (c) it is desirable to exercise the power in order to advance—
    (i) in the case of the FCA, one or more of its operational objectives,
    (ii) in the case of the PRA, any of its objectives.

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(2) The FCA's power under this section is the power—

(a) to vary the Part 4A permission by—

(i) adding a regulated activity other than a PRA-regulated activity to those to which the permission relates,

(ii) removing a regulated activity from those to which the permission relates, or

(iii) varying the description of a regulated activity to which the permission relates in a way which, if it is a PRA-regulated activity, does not, in the opinion of the FCA, widen the description, or

(b) to cancel the Part 4A permission.

(3) The PRA's power under this section is the power—

(a) in the case of a PRA-authorised person, to vary the Part 4A permission in any of the ways mentioned in section 55I(1) or to cancel it;

(b) in the case of an authorised person who is not a PRA-authorised person, to vary the Part 4A permission by adding a PRA-regulated activity to those to which the permission relates and, if the PRA does so, to vary the Part 4A permission in any of the other ways mentioned in section 55I(1).

(4) The FCA—

(a) must consult the PRA before exercising its power under this section in relation to—

(i) a PRA-authorised person, or

(ii) a member of a group which includes a PRA-authorised person, and

(b) in the case of a PRA-authorised person, may exercise the power so as to add a new activity to those to which the permission relates or to widen the description of a regulated activity to which the permission relates, only with the consent of the PRA.

(5) The PRA—

(a) must consult the FCA before exercising its power under this section, and

(b) may exercise the power so as to add a new activity to those to which the permission relates or to widen the description of a regulated activity to which the permission relates, only with the consent of the FCA.

(6) Without prejudice to the generality of subsections (1) to (3), a regulator may, in relation to an authorised person who is an investment firm, exercise its power under this section to cancel the Part 4A permission if it appears to it that any of the conditions in section 55K is met.

(7) Without prejudice to the generality of subsections (1) and (2), the FCA may, in relation to an authorised person who has permission to carry on the regulated activity specified in article 24A of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (which relates to bids in emission allowance auctions), exercise its power under this section to vary the Part 4A permission of the person concerned by removing that activity from those to which the permission relates if it appears to the FCA that the person has

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seriously and systematically infringed the provisions of paragraph 2 or 3 of Article 59 of the emission allowance auctioning regulation.

(8) If, as a result of a variation of a Part 4A permission under this section, there are no longer any regulated activities for which the authorised person concerned has permission, the regulator responsible for the variation must, once it is satisfied that it is no longer necessary to keep the permission in force, cancel it.

(9) Before cancelling under subsection (8) a Part 4A permission which relates to a person who (before the variation) was a PRA-authorised person, the regulator must consult the other regulator.

(10) The power of either regulator to vary a Part 4A permission under this section extends to including in the permission as varied any provision that could be included if a fresh permission were being given in response to an application to that regulator under section 55A.

(11) Consent given by one regulator for the purpose of subsection (4)(b) or (5)(b) may be conditional on the manner in which the other regulator exercises its powers under section 55E(4) and (5) or 55F(3) and (4) (as a result of subsection (10)).

(12) The power of the FCA or the PRA under this section is referred to in this Part as its own-initiative variation power.

55K Investment firms: particular conditions that enable cancellation

(1) The conditions referred to in section 55J(6) are as follows—

(a) that the firm has failed, during a period of at least 6 months, to carry on a regulated activity which is an investment service or activity for which it has a Part 4A permission;

(b) that the firm obtained the Part 4A permission by making a false statement or by other irregular means;

(c) that the firm no longer satisfies the requirements for authorisation pursuant to Chapter I of Title II of the markets in financial instruments directive, or pursuant to or contained in any EU legislation made under that Chapter, in relation to a regulated activity which is an investment service or activity for which it has a Part 4A permission;

(d) that the firm has seriously and systematically infringed the operating conditions pursuant to Chapter II of Title II of the markets in financial instruments directive, or pursuant to or contained in any EU legislation made under that Chapter, in relation to a regulated activity which is an investment service or activity for which it has a Part 4A permission.

(2) For the purposes of this section a regulated activity is an investment service or activity if it falls within the definition of "investment services and activities" in section 417(1).

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Imposition and variation of requirements

55L Imposition of requirements by FCA

(1) Where a person has applied (whether to the FCA or the PRA) for a Part 4A permission or the variation of a Part 4A permission, the FCA may impose on that person such requirements, taking effect on or after the giving or variation of the permission, as the FCA considers appropriate.

(2) The FCA may exercise its power under subsection (3) in relation to an authorised person with a Part 4A permission (whether given by it or by the PRA) ("A") if it appears to the FCA that—
  (a) A is failing, or is likely to fail, to satisfy the threshold conditions for which the FCA is responsible,
  (b) A has failed, during a period of at least 12 months, to carry on a regulated activity to which the Part 4A permission relates, or
  (c) it is desirable to exercise the power in order to advance one or more of the FCA's operational objectives.

(3) The FCA's power under this subsection is a power—
  (a) to impose a new requirement,
  (b) to vary a requirement imposed by the FCA under this section, or
  (c) to cancel such a requirement.

(4) The FCA's power under subsection (3) is referred to in this Part as its own-initiative requirement power.

(5) The FCA may, on the application of an authorised person with a Part 4A permission—
  (a) impose a new requirement,
  (b) vary a requirement imposed by the FCA under this section, or
  (c) cancel such a requirement.

(6) The FCA may refuse an application under subsection (5) if it appears to it that it is desirable to do so in order to advance any of its operational objectives.

(7) The FCA must consult the PRA before imposing or varying a requirement which relates to—
  (a) a person who is, or will on the granting of an application for Part 4A permission be, a PRA-authorised person, or
  (b) a person who is a member of a group which includes a PRA-authorised person.

55M Imposition of requirements by PRA

(1) Where—
  (a) a person has applied for a Part 4A permission in relation to activities which consist of or include a PRA-regulated activity,
  (b) a PRA-authorised person has applied for a Part 4A permission or the variation of a Part 4A permission, or

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(c) an authorised person other than a PRA-authorised person has applied for a Part 4A permission to be varied by adding to the regulated activities to which it relates one or more regulated activities which include a PRA-regulated activity,

the PRA may impose on that person such requirements, taking effect on or after the giving or variation of the permission, as the PRA considers appropriate.

(2) The PRA may exercise its power under subsection (3) in relation to a PRA-authorised person with a Part 4A permission ("P") if it appears to the PRA that—

(a) P is failing, or is likely to fail, to satisfy the threshold conditions for which the PRA is responsible,

(b) P has failed, during a period of at least 12 months, to carry on a regulated activity to which the Part 4A permission relates, or

(c) it is desirable to exercise the power in order to advance any of the PRA's objectives.

(3) The PRA's power under this subsection is a power—

(a) to impose a new requirement,

(b) to vary a requirement imposed by the PRA under this section, or

(c) to cancel such a requirement.

(4) The PRA's power under subsection (3) is referred to in this Part as its own-initiative requirement power.

(5) The PRA may, on the application of a PRA-authorised person with a Part 4A permission—

(a) impose a new requirement,

(b) vary a requirement imposed by the PRA under this section, or

(c) cancel such a requirement.

(6) The PRA may refuse an application under subsection (5) if it appears to it that it is desirable to do so in order to advance any of its objectives.

(7) The PRA must consult the FCA before imposing or varying a requirement.

55N Requirements under section 55L or 55M: further provisions

(1) A requirement may, in particular, be imposed—

(a) so as to require the person concerned to take specified action, or

(b) so as to require the person concerned to refrain from taking specified action.

(2) A requirement may extend to activities which are not regulated activities.

(3) A requirement may be imposed by reference to the person's relationship with—

(a) the person's group, or

(b) other members of the person's group.

(4) A requirement may be expressed to expire at the end of such period as the regulator imposing it may specify, but the imposition of a requirement that

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expires at the end of a specified period does not affect the regulator's power to impose a new requirement.

(5) A requirement may refer to the past conduct of the person concerned (for example, by requiring the person concerned to review or take remedial action in respect of past conduct).

(6) In this section "requirement" means a requirement imposed under section 55L or 55M.

55O Imposition of requirements on acquisition of control

(1) This section applies if it appears to the appropriate regulator that—
  (a) a person has acquired control over a UK authorised person who has a Part 4A permission, but
  (b) there are no grounds for exercising its own-initiative requirement power.

(2) If it appears to the appropriate regulator that the likely effect of the acquisition of control on the UK authorised person, or on any of its activities, is uncertain, the appropriate regulator may—
  (a) impose on the UK authorised person a requirement that could be imposed by that regulator under section 55L or 55M (as the case may be) on the giving of permission, or
  (b) vary a requirement imposed by that regulator under that section on the UK authorised person.

(3) "The appropriate regulator" means—
  (a) in a case where the UK authorised person is a PRA-authorised person, the FCA or the PRA;
  (b) in any other case, the FCA.

(4) This section does not affect any duty of the appropriate regulator to consult or obtain the consent of the other regulator in connection with the imposition of the requirement.

(5) Any reference to a person having acquired control is to be read in accordance with Part 12.

55P Prohibitions and restrictions

(1) This section applies if—
  (a) on a person being given a Part 4A permission, either regulator imposes an assets requirement on that person,
  (b) an assets requirement is imposed on an authorised person, or
  (c) an assets requirement previously imposed on such a person is varied.

(2) A person on whom an assets requirement is imposed is referred to in this section as "A".

(3) The "appropriate regulator" is the regulator which imposed the requirement.

(4) "Assets requirement" means a requirement under section 55L or 55M—

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(a) prohibiting the disposal of, or other dealing with, any of A's assets (whether in the United Kingdom or elsewhere) or restricting such disposals or dealings, or

(b) that all or any of A's assets, or all or any assets belonging to consumers but held by A or to A's order, must be transferred to and held by a trustee approved by the appropriate regulator.

(5) If the appropriate regulator—

(a) imposes a requirement of the kind mentioned in subsection (4)(a), and

(b) gives notice of the requirement to any institution with whom A keeps an account,

the notice has the effects mentioned in subsection (6).

(6) Those effects are that—

(a) the institution does not act in breach of any contract with A if, having been instructed by A (or on A's behalf) to transfer any sum or otherwise make any payment out of A's account, it refuses to do so in the reasonably held belief that complying with the instruction would be incompatible with the requirement, and

(b) if the institution complies with such an instruction, it is liable to pay to the appropriate regulator an amount equal to the amount transferred from, or otherwise paid out of, A's account in contravention of the requirement.

(7) If the appropriate regulator imposes a requirement of the kind mentioned in subsection (4)(b), no assets held by a person as trustee in accordance with the requirement may, while the requirement is in force, be released or dealt with except with the consent of the appropriate regulator.

(8) If, while a requirement of the kind mentioned in subsection (4)(b) is in force, A creates a charge over any assets of A held in accordance with the requirement, the charge is (to the extent that it confers security over the assets) void against the liquidator and any of A's creditors.

(9) Assets held by a person as trustee ("T") are to be taken to be held by T in accordance with any requirement mentioned in subsection (4)(b) only if—

(a) A has given T written notice that those assets are to be held by T in accordance with the requirement, or

(b) they are assets into which assets to which paragraph (a) applies have been transposed by T on the instructions of A.

(10) A person who contravenes subsection (7) is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(11) "Charge" includes a mortgage (or in Scotland a security over property).

(12) Subsections (7) and (9) do not affect any equitable interest or remedy in favour of a person who is a beneficiary of a trust as a result of a requirement of the kind mentioned in subsection (4)(b).

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Exercise of power in support of overseas regulator

55Q Exercise of power in support of overseas regulator

(1) Either UK regulator's own-initiative powers may be exercised in respect of an authorised person at the request of, or for the purpose of assisting, an overseas regulator of a prescribed kind.

(2) Subsection (1) applies whether or not the UK regulator has powers which are exercisable in relation to the authorised person by virtue of any provision of Part 13.

(3) Subsection (1) does not affect any duty of one UK regulator to consult or obtain the consent of the other UK regulator in relation to the exercise of its own-initiative powers.

(4) If a request to a UK regulator for the exercise of its own-initiative powers has been made by an overseas regulator who is—

(a) of a prescribed kind, and

(b) acting in pursuance of provisions of a prescribed kind,

the UK regulator must, in deciding whether or not to exercise those powers in response to the request, consider whether it is necessary to do so in order to comply with an EU obligation.

(5) In deciding whether or not to do so, in any case in which the UK regulator does not consider that the exercise of its own-initiative powers is necessary in order to comply with an EU obligation, it may take into account in particular—

(a) whether in the country or territory of the overseas regulator concerned, corresponding assistance would be given to a United Kingdom regulatory authority;

(b) whether the case concerns the breach of a law, or other requirement, which has no close parallel in the United Kingdom or involves the assertion of a jurisdiction not recognised by the United Kingdom;

(c) the seriousness of the case and its importance to persons in the United Kingdom;

(d) whether it is otherwise appropriate in the public interest to give the assistance sought.

(6) The UK regulator may decide not to exercise its own-initiative powers, in response to a request, unless the overseas regulator concerned undertakes to make such contribution towards the cost of their exercise as the UK regulator considers appropriate.

(7) Subsection (6) does not apply if the UK regulator decides that it is necessary for it to exercise its own-initiative powers in order to comply with an EU obligation.

(8) In subsection (6) "request" means a request of a kind mentioned in subsection (1).

(9) In this section—

(a) "UK regulator" means the FCA or the PRA;

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(b) "overseas regulator" means a regulator outside the United Kingdom;

(c) "own-initiative powers", in relation to the FCA or the PRA, means its own-initiative variation power and its own-initiative requirement power.

Connected persons

55R Persons connected with an applicant

(1) In considering—

(a) an application for a Part 4A permission,

(b) whether to vary or cancel a Part 4A permission,

(c) whether to impose or vary a requirement under this Part, or

(d) whether to give any consent required by any provision of this Part,

the regulator concerned may have regard to any person appearing to it to be, or likely to be, in a relationship with the applicant or a person given permission which is relevant.

(2) Before—

(a) giving permission in response to an application under section 55A made by a person who is connected with an EEA firm (other than an EEA firm falling within paragraph 5(e) of Schedule 3 (insurance and reinsurance intermediaries)), or

(b) cancelling or varying a Part 4A permission given to such a person,

the regulator concerned must in prescribed circumstances consult the firm's home state regulator.

(3) A person ("A") is connected with an EEA firm if—

(a) A is a subsidiary undertaking of the firm, or

(b) A is a subsidiary undertaking of a parent undertaking of the firm.

Additional permissions

55S Duty of FCA or PRA to consider other permissions

(1) "Additional Part 4A permission" —

(a) in relation to either regulator, means a Part 4A permission which is in force in relation to an EEA firm or a Treaty firm, and

(b) in relation to the FCA, also includes a Part 4A permission which is in force in relation to a person authorised as a result of paragraph 1(1) of Schedule 5.

(2) If either regulator is considering whether, and if so how, to exercise its own-initiative variation power or its own-initiative requirement power in relation to an additional Part 4A permission, it must take into account—

(a) the home state authorisation of the authorised person concerned,

(b) any relevant directive, and

(c) relevant provisions of the Treaty.

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Persons whose interests are protected

55T Persons whose interests are protected

For the purpose of any provision of this Part which refers to the FCA's operational objectives, or the PRA's objectives in relation to the exercise of a power in relation to a particular person, it does not matter whether there is a relationship between that person and the persons whose interests will be protected by the exercise of the power.

Procedure

55U Applications under this Part

(1) An application for a Part 4A permission must—
- (a) contain a statement of the regulated activity or regulated activities which the applicant proposes to carry on and for which the applicant wishes to have permission, and
- (b) give the address of a place in the United Kingdom for service on the applicant of any notice or other document which is required or authorised to be served on the applicant under this Act.

(2) An application for the variation of a Part 4A permission must contain a statement—
- (a) of the desired variation, and
- (b) of the regulated activity or regulated activities which the applicant proposes to carry on if the permission is varied.

(3) An application for the variation of a requirement imposed under section 55L or 55M or for the imposition of a new requirement must contain a statement of the desired variation or requirement.

(4) An application under this Part must—
- (a) be made in such manner as the regulator to which it is to be made may direct, and
- (b) contain, or be accompanied by, such other information as that regulator may reasonably require.

(5) At any time after the application is received and before it is determined, the appropriate regulator may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application or, as the case requires, to decide whether to give consent.

(6) In subsection (5), the “appropriate regulator” means—
- (a) in a case where the application is made to the FCA, the FCA;
- (b) in a case where the application is made to the PRA, the FCA or the PRA.

(7) Different directions may be given, and different requirements imposed, in relation to different applications or categories of application.

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(8) Each regulator may require an applicant to provide information which the applicant is required to provide to it under this section in such form, or to verify it in such a way, as the regulator may direct.

(9) The PRA must consult the FCA before—
  (a) giving a direction under this section in relation to a class of applications, or
  (b) imposing a requirement under this section in relation to a class of applications.

55V Determination of applications

(1) An application under this Part must be determined by the regulator to which it is required to be made ("the appropriate regulator") before the end of the period of 6 months beginning with the date on which it received the completed application.

(2) The appropriate regulator may determine an incomplete application if it considers it appropriate to do so; and it must in any event determine such an application within 12 months beginning with the date on which it received the application.

(3) Where the application cannot be determined by the appropriate regulator without the consent of the other regulator, the other regulator's decision must also be made within the period required by subsection (1) or (2).

(4) The applicant may withdraw the application, by giving the appropriate regulator written notice, at any time before the appropriate regulator determines it.

(5) If the appropriate regulator grants an application—
  (a) for Part 4A permission,
  (b) for the variation or cancellation of a Part 4A permission,
  (c) for the variation or cancellation of a requirement imposed under section 55L or 55M, or
  (d) for the imposition of a new requirement under either of those sections,

  it must give the applicant written notice.

(6) The notice must state the date from which the permission, variation, cancellation or requirement has effect.

(7) A notice under this section which is given by the PRA and relates to the grant of an application for Part 4A permission or for the variation of a Part 4A permission must state that the FCA has given its consent to the grant of the application.

55W Applications under this Part: communications between regulators

The PRA must as soon as practicable notify the FCA of the receipt or withdrawal of—
  (a) an application for permission under section 55A,
  (b) an application under section 55I, or

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(c) an application under section 55M(5).

55X Determination of applications: warning notices and decision notices

(1) If a regulator proposes—

(a) to give a Part 4A permission but to exercise its power under section 55E(5)(a) or (b) or 55F(4)(a) or (b),

(b) to give a Part 4A permission but to exercise its power under section 55L(1) or 55M(1) in connection with the application for permission,

(c) to vary a Part 4A permission on the application of an authorised person but to exercise its power under section 55E(5)(a) or (b) or 55F(4)(a) or (b),

(d) to vary a Part 4A permission but to exercise its power under section 55L(1) or 55M(1) in connection with the application for variation, or

(e) in the case of the FCA, to exercise its power under section 55L(1) in connection with an application to the PRA for a Part 4A permission or the variation of a Part 4A permission,

it must give the applicant a warning notice.

(2) If a regulator proposes to refuse an application made under this Part, it must (unless subsection (3) applies) give the applicant a warning notice.

(3) This subsection applies if it appears to the regulator that—

(a) the applicant is an EEA firm, and

(b) the application is made with a view to carrying on a regulated activity in a manner in which the applicant is, or would be, entitled to carry on that activity in the exercise of an EEA right whether through a United Kingdom branch or by providing services in the United Kingdom.

(4) If a regulator decides—

(a) to give a Part 4A permission but to exercise its power under section 55E(5)(a) or (b) or 55F(4)(a) or (b),

(b) to give a Part 4A permission but to exercise its power under section 55L(1) or 55M(1) in connection with the giving of the permission,

(c) to vary a Part 4A permission on the application of an authorised person but to exercise its power under section 55E(5)(a) or (b) or 55F(4)(a) or (b),

(d) to vary a Part 4A permission on the application of an authorised person but to exercise its power under section 55L(1) or 55M(1) in connection with the variation,

(e) in the case of the FCA, to exercise its power under section 55L(1) in connection with an application to the PRA for a Part 4A permission or the variation of a Part 4A permission, or

(f) to refuse an application under this Part,

it must give the applicant a decision notice.

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

55Y Exercise of own-initiative power: procedure

(1) This section applies to an exercise of either regulator's own-initiative variation power or own-initiative requirement power in relation to an authorised person ("A").

(2) A variation of a permission or the imposition or variation of a requirement takes effect—
  (a) immediately, if the notice given under subsection (4) states that that is the case,
  (b) on such date as may be specified in the notice, or
  (c) if no date is specified in the notice, when the matter to which the notice relates is no longer open to review.

(3) A variation of a permission, or the imposition or variation of a requirement, may be expressed to take effect immediately (or on a specified date) only if the regulator concerned, having regard to the ground on which it is exercising its own-initiative variation power or own-initiative requirement power, reasonably considers that it is necessary for the variation, or the imposition or variation of the requirement, to take effect immediately (or on that date).

(4) If either regulator proposes to vary a Part 4A permission or to impose or vary a requirement, or varies a Part 4A permission or imposes or varies a requirement, with immediate effect, it must give A written notice.

(5) The notice must—
  (a) give details of the variation of the permission or the requirement or its variation,
  (b) state the regulator's reasons for the variation of the permission or the imposition or variation of the requirement,
  (c) inform A that A may make representations to the regulator within such period as may be specified in the notice (whether or not A has referred the matter to the Tribunal),
  (d) inform A of when the variation of the permission or the imposition or variation of the requirement takes effect, and
  (e) inform A of A's right to refer the matter to the Tribunal.

(6) The regulator may extend the period allowed under the notice for making representations.

(7) If, having considered any representations made by A, the regulator decides—
  (a) to vary the permission, or impose or vary the requirement, in the way proposed, or
  (b) if the permission has been varied or the requirement imposed or varied, not to rescind the variation of the permission or the imposition or variation of the requirement,

  it must give A written notice.

(8) If, having considered any representations made by A, the regulator decides—
  (a) not to vary the permission, or impose or vary the requirement, in the way proposed,

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) to vary the permission or requirement in a different way, or impose a different requirement, or

(c) to rescind a variation or requirement which has effect,

it must give A written notice.

(9) A notice under subsection (7) must inform A of A's right to refer the matter to the Tribunal.

(10) A notice under subsection (8)(b) must comply with subsection (5).

(11) If a notice informs A of A's right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.

(12) For the purposes of subsection (2)(c), whether a matter is open to review is to be determined in accordance with section 391(8).

55Z Cancellation of Part 4A permission: procedure

(1) If a regulator proposes to cancel an authorised person's Part 4A permission otherwise than at the person's request, it must give the person a warning notice.

(2) If a regulator decides to cancel an authorised person's Part 4A permission otherwise than at the person's request, it must give the person a decision notice.

Notification

55Z1 Notification of ESMA

A regulator must notify ESMA of—

(a) the giving by it of a Part 4A permission to an investment firm, where the regulated activities to which the permission relates are investment services and activities,

(b) the giving by it of a Part 4A permission to a management company (as defined in section 237(2)), where the regulated activities to which the permission relates fall within paragraph 8 of Schedule 2,

(c) the cancellation by it of a Part 4A permission of a description falling within paragraph (b), or

(d) the cancellation by it of a Part 4A permission under section 55J(6), in reliance on any one or more of the conditions in section 55K(1)(b) to (d).

55Z2 Notification of EBA

(1) A regulator must notify EBA of—

(a) the giving by it of a Part 4A permission to a credit institution, where the regulated activity to which the permission relates falls within paragraph 4 of Schedule 2, or

(b) the cancellation by it of a Part 4A permission of a description falling within paragraph (a).

(2) “Credit institution” has the meaning given in section 1H(8).

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

References to the Tribunal

55Z3 Right to refer matters to the Tribunal

(1) An applicant who is aggrieved by the determination of an application made under this Part may refer the matter to the Tribunal.

(2) An authorised person who is aggrieved by the exercise by either regulator of its own-initiative variation power or its own-initiative requirement power may refer the matter to the Tribunal.

Interpretation

55Z4 Interpretation of Part 4A

In this Part—

"own-initiative requirement power", in relation to the FCA or the PRA, is to be read in accordance with section 55L(4) or 55M(4);

"own-initiative variation power", in relation to the FCA or the PRA, is to be read in accordance with section 55J(12)."

(3) In Schedule 6 to FSMA 2000 (the threshold conditions), omit paragraph 9.

Commencement Information

I20 S. 11 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), **Sch. Pt. 3**
I21 S. 11 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(b), **Sch. Pt. 2**
I22 S. 11(1)(3) in force at 1.4.2013 by S.I. 2013/423, art. 3, **Sch.**
I23 S. 11(2) in force at 1.4.2013 in so far as not already in force by S.I. 2013/423, art. 3, **Sch.**

Passporting

12 Passporting: exercise of EEA rights and Treaty rights

Schedule 4 contains amendments of the following provisions of FSMA 2000—

(a) Schedule 3 (EEA passport rights),
(b) Schedule 4 (Treaty rights),
(c) sections 34 and 35 (EEA firms and Treaty firms), and
(d) Part 13 (incoming firms: powers of intervention).

Commencement Information

I24 S. 12 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), **Sch. Pt. 3**
I25 S. 12 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(b), **Sch. Pt. 2**
I26 S. 12 in force at 1.4.2013 in so far as not already in force by S.I. 2013/423, art. 3, **Sch.**

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Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Performance of regulated activities

13 Prohibition orders

(1) Section 56 of FSMA 2000 (performance of regulated activities: prohibition orders) is amended as follows.

(2) For subsection (1) substitute—

"(1) The FCA may make a prohibition order if it appears to it that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by—

(a) an authorised person,

(b) a person who is an exempt person in relation to that activity, or

(c) a person to whom, as a result of Part 20, the general prohibition does not apply in relation to that activity.

(1A) The PRA may make a prohibition order if it appears to it that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by—

(a) a PRA-authorised person, or

(b) a person who is an exempt person in relation to a PRA-regulated activity carried on by the person."

(3) In subsection (2), for "The Authority may make an order ("a prohibition order")" substitute " A "prohibition order" is an order ".

(4) In subsection (3), for paragraph (b) substitute—

"(b) all persons falling within subsection (3A) or a particular paragraph of that subsection or all persons within a specified class of person falling within a particular paragraph of that subsection."

(5) After subsection (3) insert—

"(3A) A person falls within this subsection if the person is—

(a) an authorised person,

(b) an exempt person, or

(c) a person to whom, as a result of Part 20, the general prohibition does not apply in relation to a regulated activity."

(6) In subsection (6), for "An authorised person" substitute " A person falling within subsection (3A) ".

(7) In subsection (7)—

(a) for "The Authority" substitute " The regulator that has made a prohibition order ", and

(b) for "a prohibition order" substitute " the order ".

(8) After subsection (7) insert—

"(7A) If—

(a) the FCA proposes to vary or revoke a prohibition order, and

(b) as a result of the proposed variation or revocation, an individual—

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(i) will no longer be prohibited from performing a function of interest to the PRA, or

(ii) will be prohibited from performing such a function,

the FCA must consult the PRA before varying or revoking the order.

(7B) A function is of interest to the PRA if it is performed in relation to a regulated activity carried on by—

(a) a PRA-authorised person, or

(b) a person who is an exempt person in relation to a PRA-regulated activity carried on by the person.

(7C) The PRA must consult the FCA before varying or revoking a prohibition order."

(9) Omit subsection (8).

(10) Section 57 of FSMA 2000 (prohibition orders: procedure and right to refer to Tribunal) is amended as follows.

(11) In subsections (1) and (3), for "the Authority" substitute " a regulator ".

(12) At the end insert—

"(6) If—

(a) the FCA proposes to make a prohibition order, and

(b) as a result of the proposed order, an individual will be prohibited from performing a function of interest to the PRA,

the FCA must consult the PRA before giving a warning notice under this section.

(7) A function is of interest to the PRA if it is performed in relation to a regulated activity carried on by—

(a) a PRA-authorised person, or

(b) a person who is an exempt person in relation to a PRA-regulated activity carried on by the person.

(8) The PRA must consult the FCA before giving a warning notice under this section."

Commencement Information

I27 S. 13 in force at 1.4.2013 by S.I. 2013/423, art. 3, **Sch.**

14 Approval for particular arrangements

(1) In section 59 of FSMA 2000 (approval for particular arrangements)—

(a) in subsections (1) and (2), for "the Authority" substitute " the appropriate regulator ", and

(b) for subsections (3) to (7) substitute—

"(3) Controlled function"—

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(a) in relation to the carrying on of a regulated activity by a PRA-authorised person, means a function of a description specified in rules made by the FCA or the PRA, and

(b) in relation to the carrying on of a regulated activity by any other authorised person, means a function of a description specified in rules made by the FCA.

(4) "The appropriate regulator"—

(a) in relation to a controlled function which is of a description specified in rules made by the FCA, means the FCA, and

(b) in relation to a controlled function which is of a description specified in rules made by the PRA, means the PRA with the consent of the FCA.

(5) The FCA may specify a description of function under subsection (3)(a) or (b) only if, in relation to the carrying on of a regulated activity by an authorised person, it is satisfied that the function is—

(a) a customer-dealing function, or

(b) a significant-influence function.

(6) The PRA may specify a description of function under subsection (3)(a) only if, in relation to the carrying on of a regulated activity by a PRA-authorised person, it is satisfied that the function is a significant-influence function.

(7) In determining whether a function is a significant-influence function, the FCA or the PRA may take into account the likely consequences of a failure to discharge the function properly.

(7A) "Customer-dealing function", in relation to the carrying on of a regulated activity by an authorised person ("A"), means a function that will involve the person performing it in dealing with—

(a) customers of A, or

(b) property of customers of A,

in a manner substantially connected with the carrying on of the activity.

(7B) "Significant-influence function", in relation to the carrying on of a regulated activity by an authorised person, means a function that is likely to enable the person responsible for its performance to exercise a significant influence on the conduct of the authorised person's affairs, so far as relating to the activity."

(2) After section 59 of FSMA 2000 insert—

"**59A Specifying functions as controlled functions: supplementary**

(1) The FCA must—

(a) keep under review the exercise of its power under section 59(3)(a) to specify any significant-influence function as a controlled function, and

(b) exercise that power in a way that it considers will minimise the likelihood that approvals fall to be given by both the FCA and

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the PRA in respect of the performance by a person of significant-influence functions in relation to the carrying on of a regulated activity by the same PRA-authorised person.

(2) The FCA and the PRA must each consult the other before exercising any power under section 59(3)(a).

(3) Any reference in this section to the exercise of a power includes its exercise by way of amendment or revocation of provision previously made in the exercise of the power.

(4) "Approval" means an approval under section 59.

(5) Any expression which is used both in this section and section 59 has the same meaning in this section as in that section.

59B Role of FCA in relation to PRA decisions

(1) The FCA may arrange with the PRA that in such cases as may be described in the arrangements the PRA may give approval under section 59 without obtaining the consent of the FCA.

(2) Arrangements under this section must be in writing, and must specify the date on which they come into force.

(3) The regulators must publish any arrangements under this section in such manner as they think fit.

(4) Section 59(4)(b) has effect subject to any arrangements in force under this section."

(3) In section 63 of FSMA 2000 (withdrawal of approval), for subsection (1) substitute—

"(1) The FCA may withdraw an approval under section 59 given by the FCA or the PRA in relation to the performance by a person of a function if the FCA considers that the person is not a fit and proper person to perform the function.

(1A) The PRA may withdraw an approval under section 59 in relation to the performance by a person ("A") of a function if—

(a) the PRA gave the approval, or the FCA gave the approval and the function is a significant-influence function performed in relation to the carrying on by a PRA-authorised person of a regulated activity, and

(b) the PRA considers that A is not a fit and proper person to perform the function.

(1B) "Significant-influence function" has the same meaning as in section 59.

(1C) Before one regulator withdraws an approval given by the other regulator, it must consult the other regulator."

(4) In section 64 of FSMA 2000 (conduct of approved persons: statement and codes), for subsection (1) substitute—

"(1) The FCA may issue statements of principle with respect to the conduct expected of persons in relation to whom either regulator has given its approval under section 59.

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Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(1A) The PRA may issue statements of principle with respect to—

(a) the conduct expected of persons in relation to whom it has given its approval under section 59, and

(b) the conduct expected of persons in relation to whom the FCA has given its approval under section 59 in respect of the performance by them of significant-influence functions in relation to the carrying on by PRA-authorised persons of regulated activities.

(1B) A statement of principle issued by either regulator may relate to conduct expected of persons in relation to—

(a) the performance by them of controlled functions, or

(b) the performance by them of any other functions in relation to the carrying on by authorised persons of regulated activities."

Commencement Information

I28 S. 14 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), **Sch. Pt. 3**

I29 S. 14 in force at 1.4.2013 in so far as not already in force by S.I. 2013/423, art. 3, **Sch.**

15 Further amendments relating to performance of regulated activities

Schedule 5 contains further amendments of Part 5 of FSMA 2000 (performance of regulated activities).

Commencement Information

I30 S. 15 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(b), **Sch. Pt. 2**

I31 S. 15 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), **Sch. Pt. 3**

I32 S. 15 in force at 1.4.2013 in so far as not already in force by S.I. 2013/423, art. 3, **Sch.**

Official listing

16 FCA to exercise functions under Part 6 of FSMA 2000

(1) FSMA 2000 is amended as follows.

(2) In each of the provisions of Part 6 (official listing etc) mentioned in subsection (3)—

(a) for "competent authority" or "competent authority's", in each place, substitute " FCA " or "FCA's", and

(b) for "the authority" or "the Authority", in each place, substitute " the FCA ".

(3) Those provisions are—

(a) sections 73A to 84;

(b) section 86;

(c) sections 87B to 87D;

(d) section 87G;

(e) sections 87J to 87O (including the italic heading before section 87J);

(f) sections 87Q to 88;

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(g) sections 89A to 97 (including the italic heading before section 89H and the heading to that section);
(h) section 101(2);
(i) section 103(1).

(4) Before section 73A insert an italic heading *"Rules"*.

(5) In section 77(3) (discontinuance and suspension of listing), for "sections 96 and 99" substitute " section 96 and paragraph 23(6) of Schedule 1ZA ".

(6) In section 87A (criteria for approval of prospectus)—
(a) in subsection (1), for "competent authority" substitute " "FCA",
(b) in subsection (7)(a), for "competent authority", in the first place, substitute " FCA ", and
(c) in the heading, for "competent authority" substitute " FCA ".

(7) In section 87E (transfer by competent authority of application for approval)—
(a) in subsection (1), for "competent authority", in the first place, substitute " FCA ",
(b) in subsections (2) to (4), for "competent authority" substitute " FCA ", and
(c) in the heading, for "competent authority" substitute " FCA ".

(8) In section 87F (transfer to competent authority of application for approval)—
(a) in subsection (1)—
(i) for "Where the competent authority" substitute " Where the FCA ", and
(ii) in paragraph (b), for "competent authority" substitute " FCA ",
(b) in subsection (2), for "competent authority" substitute " FCA ", and
(c) in the heading, for "competent authority" substitute " FCA ".

(9) In section 87H (prospectus approved in another EEA State)—
(a) in subsection (1), for "competent authority", in the second and third places, substitute " FCA ", and
(b) in subsection (3A), for "competent authority" substitute " FCA ".

(10) In section 87I (provision of information to host member State)—
(a) in subsection (1)—
(i) for "competent authority", in the first place, substitute " FCA ",
(ii) in paragraph (b), for "competent authority" substitute " FCA ", and
(iii) in paragraph (c), omit "other",
(b) in subsection (1A), for "competent authority", in the first place, substitute " FCA ", and
(c) in subsections (3) to (5), for "competent authority" substitute " FCA ".

(11) In section 87P (exercise of powers at request of competent authority of another EEA State)—
(a) in subsection (1)(c), for "competent authority", in the second place, substitute " FCA ", and
(b) in subsection (2), for "competent authority" substitute " FCA ".

(12) In section 100A (exercise of powers where UK is host member State)—
(a) in subsections (1) and (2), for "competent authority" substitute " FCA ",

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(b) in subsection (3), for "the authority", in both places, substitute " the FCA ",
(c) in subsection (4), for "The authority" substitute " The FCA ", and
(d) in subsections (5) and (6), for "the authority" substitute " the FCA ".

(13) In Schedule 10 (compensation: exemptions), for "competent authority", in each place, substitute " FCA ".

(14) Omit the following provisions—
(a) section 72 (Financial Services Authority to exercise functions of the competent authority under Part 6) and the italic heading before it;
(b) section 73 (general duty of the competent authority);
(c) section 99 (fees);
(d) section 100 (penalties);
(e) in section 101 (general provisions), subsections (1) and (3) to (8);
(f) section 102 (exemption from liability in damages);
(g) in section 103 (interpretation), subsections (2) and (3);
(h) in section 195 (exercise of power in support of overseas regulator), subsection (4)(b);
(i) in section 410 (international obligations), subsection (4)(b);
(j) in section 415 (jurisdiction in civil proceedings), subsection (1)(b);
(k) Schedule 7 (modification of Act in its application to the Financial Services Authority when acting as competent authority for purposes of Part 6);
(l) Schedule 8 (power to transfer functions under Part 6 to other persons).

Commencement Information
I33 S. 16 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), **Sch. Pt. 3**
I34 S. 16 in force at 1.4.2013 in so far as not already in force by S.I. 2013/423, art. 3, **Sch.**

17 Discontinuance or suspension at the request of the issuer: procedure

(1) FSMA 2000 is amended as follows.

(2) In section 78A (discontinuance or suspension at the request of the issuer: procedure)—
(a) in subsection (1), for paragraphs (a) and (b) substitute—
"(a) immediately, if the notification under subsection (2) so provides;
(b) in any other case, on such date as may be provided for in that notification.",
(b) in subsection (2), for "give him written notice" substitute " notify the issuer (whether in writing or otherwise) ", and
(c) for subsection (3) substitute—

"(3) The notification must—
(a) notify the issuer of the date on which the discontinuance or suspension took effect or will take effect, and
(b) notify the issuer of such other matters (if any) as are specified in listing rules."

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(3) In section 395(13) (definition of "supervisory notice"), after "a notice" insert " or notification ".

Commencement Information

I35 S. 17 in force at 19.3.2013 for specified purposes by S.I. 2013/651, **art. 2(a)**

I36 S. 17 in force at 1.4.2013 in so far as not already in force by S.I. 2013/423, art. 3, **Sch.**

18 Listing rules: disciplinary powers in relation to sponsors

(1) FSMA 2000 is amended as follows.

(2) In section 88 (provision that may be made by listing rules in relation to sponsors)—

(a) in subsection (3), at the end insert—

"(e) provide for limitations or other restrictions to be imposed on the services to which an approval relates (whether or not the approval has already been granted);

(f) provide for the approval of a sponsor to be suspended on the application of the sponsor.",

(b) in subsection (4), in paragraph (a), for "for approval as a sponsor" substitute " under sponsor rules ",

(c) after that paragraph (but before the "or" at the end) insert—

"(aa) to impose limitations or other restrictions on the services to which a person's approval relates,",

(d) in subsection (5), in paragraph (a), for "for approval" substitute " under sponsor rules ",

(e) after that paragraph (but before the "or" at the end) insert—

"(aa) not to impose limitations or other restrictions on the services to which a person's approval relates,",

(f) in subsection (6), in paragraph (a), for "for approval" substitute " under sponsor rules ",

(g) after that paragraph (a) (but before the "or" at the end) insert—

"(aa) to impose limitations or other restrictions on the services to which a person's approval relates,", and

(h) after subsection (7) insert—

"(8) In this section any reference to an application under sponsor rules means—

(a) an application for approval as a sponsor,

(b) an application for the suspension of an approval as a sponsor,

(c) an application for the withdrawal of the suspension of an approval as a sponsor, or

(d) an application for the withdrawal or variation of a limitation or other restriction on the services to which a sponsor's approval relates."

(3) The power to make provision under section 88(3)(e) of FSMA 2000 (as inserted by subsection (2)(a) above) includes power to make provision in relation to persons who were approved as sponsors before the coming into force of subsection (2)(a) above.

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4) For section 89 substitute—

"**88A Disciplinary powers: contravention of s.88(3)(c) or (e)**

(1) The FCA may take action against a sponsor under this section if it considers that the sponsor has contravened a requirement or restriction imposed on the sponsor by rules made as a result of section 88(3)(c) or (e).

(2) If the FCA is entitled to take action under this section against a sponsor, it may do one or more of the following—
   (a) impose a penalty on the sponsor of such amount as it considers appropriate;
   (b) suspend, for such period as it considers appropriate, the sponsor's approval;
   (c) impose, for such period as it considers appropriate, such limitations or other restrictions in relation to the performance of services to which the sponsor's approval relates as it considers appropriate;
   (d) publish a statement to the effect that the sponsor has contravened a requirement or restriction imposed on the sponsor by rules made as a result of section 88(3)(c) or (e).

(3) The period for which a suspension or restriction is to have effect may not exceed 12 months.

(4) A suspension may relate only to the performance in specified circumstances of a service to which the approval relates.

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

(6) The FCA may—
   (a) withdraw a suspension or restriction; or
   (b) vary a suspension or restriction so as to reduce the period for which it has effect or otherwise to limit its effect.

(7) The FCA may not take action against a sponsor under this section after the end of the limitation period unless, before the end of that period, it has given a warning notice to the sponsor under section 88B(1).

(8) "The limitation period" means the period of 3 years beginning with the first day on which the FCA knew that the sponsor had contravened the requirement or restriction.

(9) For this purpose the FCA is to be treated as knowing that a sponsor has contravened a requirement or restriction if it has information from which that can reasonably be inferred.

88B Action under s.88A: procedure and right to refer to Tribunal

(1) If the FCA proposes to take action against a sponsor under section 88A, it must give the sponsor a warning notice.

(2) A warning notice about a proposal to impose a penalty must state the amount of the penalty.

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(3) A warning notice about a proposal—
  (a) to suspend an approval, or
  (b) to impose a restriction in relation to the performance of a service,

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

(4) A warning notice about a proposal to publish a statement must set out the terms of the statement.

(5) If the FCA decides to take action against a sponsor under section 88A, it must give the sponsor a decision notice.

(6) A decision notice about the imposition of a penalty must state the amount of the penalty.

(7) A decision notice about—
  (a) the suspension of an approval, or
  (b) the imposition of a restriction in relation to the performance of a service,

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

(8) A decision notice about the publication of a statement must set out the terms of the statement.

(9) If the FCA decides to take action against a sponsor under section 88A, the sponsor may refer the matter to the Tribunal.

88C Action under s.88A: statement of policy

(1) The FCA must prepare and issue a statement of its policy with respect to—
  (a) the imposition of penalties, suspensions or restrictions under section 88A,
  (b) the amount of penalties under that section, and
  (c) the period for which suspensions or restrictions under that section are to have effect.

(2) The FCA's policy in determining what the amount of a penalty should be, or what the period for which a suspension or restriction is to have effect should be, must include having regard to—
  (a) the seriousness of the contravention in question in relation to the nature of the requirement concerned,
  (b) the extent to which that contravention was deliberate or reckless, and
  (c) whether the sponsor concerned is an individual.

(3) The FCA may at any time alter or replace a statement issued under this section.

(4) If a statement issued under this section is altered or replaced, the FCA must issue the altered or replacement statement.

(5) In exercising, or deciding whether to exercise, its power under section 88A in the case of any particular contravention, the FCA must have regard to any statement of policy published under this section and in force at a time when the contravention in question occurred.

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(6) A statement issued under this section must be published by the FCA in the way appearing to the FCA to be best calculated to bring it to the attention of the public.

(7) The FCA may charge a reasonable fee for providing a person with a copy of the statement.

(8) The FCA must, without delay, give the Treasury a copy of any statement which it publishes under this section.

88D Statement of policy under s.88C: procedure

(1) Before issuing a statement under section 88C, the FCA must publish a draft of the proposed statement in the way appearing to the FCA to be best calculated to bring it to the attention of the public.

(2) The draft must be accompanied by notice that representations about the proposal may be made to the FCA within a specified time.

(3) Before issuing the proposed statement, the FCA must have regard to any representations made to it in accordance with subsection (2).

(4) If the FCA issues the proposed statement it must publish an account, in general terms, of—
   (a) the representations made to it in accordance with subsection (2), and
   (b) its response to them.

(5) If the statement differs from the draft published under subsection (1) in a way which is, in the opinion of the FCA, significant, the FCA must (in addition to complying with subsection (4)) publish details of the difference.

(6) The FCA may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1).

(7) This section also applies to a proposal to alter or replace a statement.

88E Powers exercisable to advance operational objectives

(1) The FCA may take action against a sponsor under this section if it considers that it is desirable to do so in order to advance one or more of its operational objectives.

(2) If the FCA is entitled to take action under this section against a sponsor, it may—
   (a) suspend, for such period as it considers appropriate, the sponsor's approval, or
   (b) impose, for such period as it considers appropriate, such limitations or other restrictions in relation to the performance of services to which the sponsor's approval relates as it considers appropriate.

(3) A suspension may relate only to the performance in specified circumstances of a service to which the approval relates.

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

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(5) The FCA may—
- (a) withdraw a suspension or restriction, or
- (b) vary a suspension or restriction so as to reduce the period for which it has effect or otherwise to limit its effect.

(6) A person against whom the FCA takes action under this section may refer the matter to the Tribunal.

88F Action under s.88E: procedure

(1) Action against a sponsor under section 88E takes effect—
- (a) immediately, if the notice given under subsection (3) so provides, or
- (b) on such later date as may be specified in the notice.

(2) If the FCA—
- (a) proposes to take action against a sponsor under that section, or
- (b) takes action against a sponsor under that section with immediate effect,

it must give the sponsor written notice.

(3) The notice must—
- (a) give details of the action,
- (b) state the FCA's reasons for taking the action and for its determination as to when the action takes effect,
- (c) inform the sponsor that the sponsor may make representations to the FCA within such period as may be specified in the notice (whether or not the matter has been referred to the Tribunal),
- (d) inform the sponsor of when the action takes effect,
- (e) inform the sponsor of the right to refer the matter to the Tribunal, and
- (f) give an indication of the procedure on such a reference.

(4) The FCA may extend the period allowed under the notice for making representations.

(5) If the FCA decides—
- (a) to take the action in the way proposed, or
- (b) if the action has taken effect, not to rescind it,

the FCA must give the sponsor written notice.

(6) If the FCA decides—
- (a) not to take the action in the way proposed,
- (b) to take action under section 88E that differs from the action originally proposed, or
- (c) to rescind action which has taken effect,

the FCA must give the sponsor written notice.

(7) A notice under subsection (5) must—
- (a) inform the sponsor of the right to refer the matter to the Tribunal, and
- (b) give an indication of the procedure on such a reference.

(8) A notice under subsection (6)(b) must comply with subsection (3).”

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(5) In section 392 (warning and decisions notices: application of provisions relating to third party rights and access to evidence)—
  (a) for "section 89(2)," substitute " section 88B(1), ", and
  (b) for "section 89(3)," substitute " section 88B(5), ".

(6) In section 395(13) (meaning of "supervisory notice"), after paragraph (bza) insert—
  "(bzb) section 88F(2), (5) or (6)(b);".

Commencement Information

I37 S. 18 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), **Sch. Pt. 3**

I38 S. 18 in force at 19.3.2013 for specified purposes by S.I. 2013/651, **art. 2(a)**

I39 S. 18 in force at 1.4.2013 in so far as not already in force by S.I. 2013/423, art. 3, **Sch.**

19 Primary information providers

(1) In Part 6 of FSMA 2000 (official listing), after section 89O insert—

"Primary information providers

89P Primary information providers

(1) Part 6 rules may require issuers of financial instruments to use primary information providers for the purpose of giving information of a specified description to a market of a specified description.

(2) "Primary information provider" means a person approved by the FCA for the purposes of this section.

(3) "Specified" means specified in the Part 6 rules.

(4) Part 6 rules made by virtue of subsection (1) may—
  (a) provide for the FCA to maintain a list of providers;
  (b) impose requirements on a provider in relation to the giving of information or of information of a specified description;
  (c) specify the circumstances in which a person is qualified for being approved as a provider;
  (d) provide for limitations or other restrictions to be imposed on the giving of information to which an approval relates (whether or not the approval has already been granted);
  (e) provide for the approval of a provider to be suspended on the application of the provider.

(5) If the FCA proposes—
  (a) to refuse a person's application under information provider rules,
  (b) to impose limitations or other restrictions on the giving of information to which a person's approval relates, or
  (c) to cancel a person's approval as a provider otherwise than at the person's request,

  it must give the person a warning notice.

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(6) If the FCA decides—
  (a) to grant the application under information provider rules,
  (b) not to impose limitations or other restrictions on the giving of information to which a person's approval relates, or
  (c) not to cancel the approval,

it must give the person concerned written notice of its decision.

(7) If the FCA decides—
  (a) to refuse to grant the application under information provider rules,
  (b) to impose limitations or other restrictions on the giving of information to which a person's approval relates, or
  (c) to cancel the approval,

it must give the person concerned a decision notice.

(8) A person to whom a decision notice is given under this section may refer the matter to the Tribunal.

(9) In this section any reference to an application under information provider rules means—
  (a) an application for approval as a provider,
  (b) an application for the suspension of an approval as a provider,
  (c) an application for the withdrawal of the suspension of an approval as a provider, or
  (d) an application for the withdrawal or variation of a limitation or other restriction on the giving of information to which a provider's approval relates.

89Q Disciplinary powers: contravention of s.89P(4)(b) or (d)

(1) The FCA may take action against a provider under this section if it considers that the provider has contravened a requirement or restriction imposed on the provider by rules made as a result of section 89P(4)(b) or (d).

(2) If the FCA is entitled to take action under this section against a provider, it may do one or more of the following—
  (a) impose a penalty on the provider of such amount as it considers appropriate;
  (b) suspend, for such period as it considers appropriate, the provider's approval;
  (c) impose, for such period as it considers appropriate, such limitations or other restrictions in relation to the giving by the provider of information as it considers appropriate;
  (d) publish a statement to the effect that the provider has contravened a requirement or restriction imposed on the provider by rules made as a result of section 89P(4)(b) or (d).

(3) The period for which a suspension or restriction is to have effect may not exceed 12 months.

(4) A suspension may relate only to the giving of information in specified circumstances.

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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

(6) The FCA may—
  (a) withdraw a suspension or restriction, or
  (b) vary a suspension or restriction so as to reduce the period for which it has effect or otherwise to limit its effect.

(7) The FCA may not take action against a provider under this section after the end of the limitation period unless, before the end of that period, it has given a warning notice to the provider under section 89R(1).

(8) "The limitation period" means the period of 3 years beginning with the first day on which the FCA knew that the provider had contravened the requirement or restriction.

(9) For this purpose the FCA is to be treated as knowing that a provider has contravened a requirement or restriction if it has information from which that can reasonably be inferred.

89R Action under s.89Q: procedure and right to refer to Tribunal

(1) If the FCA proposes to take action against a provider under section 89Q, it must give the provider a warning notice.

(2) A warning notice about a proposal to impose a penalty must state the amount of the penalty.

(3) A warning notice about a proposal—
  (a) to suspend an approval, or
  (b) to impose a restriction in relation to the giving of information,

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

(4) A warning notice about a proposal to publish a statement must set out the terms of the statement.

(5) If the FCA decides to take action against a provider under section 89Q, it must give the provider a decision notice.

(6) A decision notice about the imposition of a penalty must state the amount of the penalty.

(7) A decision notice about—
  (a) the suspension of an approval, or
  (b) the imposition of a restriction in relation to the giving of information,

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

(8) A decision notice about the publication of a statement must set out the terms of the statement.

(9) If the FCA decides to take action against a provider under section 89Q, the provider may refer the matter to the Tribunal.

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

89S Action under s.89Q: statement of policy

(1) The FCA must prepare and issue a statement of its policy with respect to—
  (a) the imposition of penalties, suspensions or restrictions under section 89Q,
  (b) the amount of penalties under that section,
  (c) the period for which suspensions or restrictions under that section are to have effect, and
  (d) the matters in relation to which suspensions or restrictions under that section are to have effect.

(2) The FCA's policy in determining what the amount of a penalty should be, or what the period for which a suspension or restriction is to have effect should be, must include having regard to—
  (a) the seriousness of the contravention in question in relation to the nature of the requirement concerned,
  (b) the extent to which that contravention was deliberate or reckless, and
  (c) whether the provider concerned is an individual.

(3) The FCA may at any time alter or replace a statement issued under this section.

(4) If a statement issued under this section is altered or replaced, the FCA must issue the altered or replacement statement.

(5) In exercising, or deciding whether to exercise, its power under section 89Q in the case of any particular contravention, the FCA must have regard to any statement of policy published under this section and in force at a time when the contravention in question occurred.

(6) A statement issued under this section must be published by the FCA in the way appearing to the FCA to be best calculated to bring it to the attention of the public.

(7) The FCA may charge a reasonable fee for providing a person with a copy of the statement.

(8) The FCA must, without delay, give the Treasury a copy of any statement which it publishes under this section.

89T Statement of policy under s.89S: procedure

(1) Before issuing a statement under section 89S, the FCA must publish a draft of the proposed statement in the way appearing to the FCA to be best calculated to bring it to the attention of the public.

(2) The draft must be accompanied by notice that representations about the proposal may be made to the FCA within a specified time.

(3) Before issuing the proposed statement, the FCA must have regard to any representations made to it in accordance with subsection (2).

(4) If the FCA issues the proposed statement it must publish an account, in general terms, of—

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) the representations made to it in accordance with subsection (2); and
(b) its response to them.

(5) If the statement differs from the draft published under subsection (1) in a way which is, in the opinion of the FCA, significant, the FCA must (in addition to complying with subsection (4)) publish details of the difference.

(6) The FCA may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1).

(7) This section also applies to a proposal to alter or replace a statement.

89U Powers exercisable to advance operational objectives

(1) The FCA may take action against a provider under this section if it considers that it is desirable to do so in order to advance one or more of its operational objectives.

(2) If the FCA is entitled to take action under this section against a provider, it may—
(a) suspend, for such period as it considers appropriate, the provider's approval, or
(b) impose, for such period as it considers appropriate, such limitations or other restrictions in relation to the giving by the provider of information as it considers appropriate.

(3) A suspension may relate only to the giving of information in specified circumstances.

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

(5) The FCA may—
(a) withdraw a suspension or restriction, or
(b) vary a suspension or restriction so as to reduce the period for which it has effect or otherwise to limit its effect.

(6) A person against whom the FCA takes action under this section may refer the matter to the Tribunal.

89V Action under s.89U: procedure

(1) Action against a provider under section 89U takes effect—
(a) immediately, if the notice given under subsection (2) so provides, or
(b) on such later date as may be specified in the notice.

(2) If the FCA—
(a) proposes to take action against a provider under that section, or
(b) takes action against a provider under that section with immediate effect,

it must give the provider written notice.

(3) The notice must—
(a) give details of the action,

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) state the FCA's reasons for taking the action and for its determination as to when the action takes effect,

(c) inform the provider that the provider may make representations to the FCA within such period as may be specified in the notice (whether or not the matter has been referred to the Tribunal),

(d) inform the provider of when the action takes effect,

(e) inform the provider of the right to refer the matter to the Tribunal, and

(f) give an indication of the procedure on such a reference.

(4) The FCA may extend the period allowed under the notice for making representations.

(5) If the FCA decides—

(a) to take the action in the way proposed, or

(b) if the action has taken effect, not to rescind it,

the FCA must give the provider written notice.

(6) If the FCA decides—

(a) not to take the action in the way proposed,

(b) to take action under section 89U that differs from the action originally proposed, or

(c) to rescind action which has taken effect,

the FCA must give the provider written notice.

(7) A notice under subsection (5) must—

(a) inform the provider of the right to refer the matter to the Tribunal, and

(b) give an indication of the procedure on such a reference.

(8) A notice under subsection (6)(b) must comply with subsection (3).”

(2) In section 395(13) (meaning of “supervisory notice”), after paragraph (bzb) (as inserted by section 18(6)) insert—

“(bzc) section 89V(2), (5) or (6)(b);”.

Commencement Information

I40 S. 19 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), **Sch. Pt. 3**

I41 S. 19 in force at 1.4.2013 in so far as not already in force by S.I. 2013/423, art. 3, **Sch.**

20 Penalties for breach of Part 6 rules

In section 91(6) of FSMA 2000 (penalties for breach of Part 6 rules: limitation period), for “two years” substitute “ 3 years ”.

Commencement Information

I42 S. 20 in force at 1.4.2013 by S.I. 2013/423, art. 3, **Sch.**

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

21 Repeal of competition scrutiny power

Section 95 of FSMA 2000 (competition scrutiny) is repealed.

Commencement Information
I43 S. 21 in force at 1.4.2013 by S.I. 2013/423, art. 3, **Sch.**

Control of business transfers

22 Control of business transfers

(1) In section 104 of FSMA 2000 (control of business transfers) omit "or banking business transfer scheme".

(2) Schedule 6 contains further amendments of Part 7 of FSMA 2000 (control of business transfers).

Commencement Information
I44 S. 22 in force at 1.4.2013 by S.I. 2013/423, art. 3, **Sch.**

Hearings and appeals

23 Proceedings before Tribunal

(1) Part 9 of FSMA 2000 (hearings and appeals) is amended as follows.

(2) In section 133 (proceedings before Tribunal: general provision)—
(a) in subsection (1)(a), for "the Authority" substitute " the FCA or the PRA ",
(b) for subsections (5) and (6) substitute—

"(5) In the case of a disciplinary reference or a reference under section 393(11), the Tribunal—
(a) must determine what (if any) is the appropriate action for the decision-maker to take in relation to the matter; and
(b) on determining the reference, must remit the matter to the decision-maker with such directions (if any) as the Tribunal considers appropriate for giving effect to its determination.

(6) In any other case, the Tribunal must determine the reference or appeal by either—
(a) dismissing it; or
(b) remitting the matter to the decision-maker with a direction to reconsider and reach a decision in accordance with the findings of the Tribunal.

(6A) The findings mentioned in subsection (6)(b) are limited to findings as to—
(a) issues of fact or law;

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) the matters to be, or not to be, taken into account in making the decision; and

(c) the procedural or other steps to be taken in connection with the making of the decision.", and

(c) after subsection (7) insert—

"(7A) A reference is a "disciplinary reference" for the purposes of this section if it is in respect of any of the following decisions—

(a) a decision to impose a penalty under section 63A;

(b) a decision to take action under section 66;

(c) a decision to take action under section 87M;

(d) a decision to take action under section 88A;

(e) a decision to take action under section 89K;

(f) a decision to take action under section 89Q;

(g) a decision to take action under section 91;

(h) a decision to take action under section 123;

(i) a decision to take action under section 131G;

(j) a decision to take action under section 192K;

(k) a decision to publish a statement under section 205, impose a penalty under section 206 or suspend a permission or impose a restriction under section 206A;

(l) a decision to take action under section 249;

(m) a decision to publish a statement under section 312E or impose a penalty under section 312F;

(n) a decision to take action under section 345 or 345A."

(3) In section 133A (proceedings before Tribunal: decision and supervisory notices, etc)—

(a) in subsection (1)—

(i) after "determining" insert " in accordance with section 133(5) ", and

(ii) for the words from "given by the Authority" to "the Authority would" substitute " given by a body, the Tribunal may not direct the body to take action which it would ",

(b) omit subsections (2) and (3),

(c) in subsection (4), for the words from the beginning to "a decision notice—" substitute " The action specified in a decision notice must not be taken— ", and

(d) in subsection (5)—

(i) for "the Authority" substitute " the FCA or the PRA ", and

(ii) for "the Authority's" substitute " its ".

(4) In section 133B (offences), in subsection (1)(a), for "the Authority" substitute " the FCA or the PRA ".

(5) In section 136 (funding of the legal assistance scheme), in subsections (1), (2), (6)(a), (7) (in both places) and (8), for "Authority" substitute " FCA ".

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Commencement Information

I45 S. 23 in force at 1.4.2013 by S.I. 2013/423, art. 3, **Sch.**

Rules and guidance

24 Rules and guidance

(1) For sections 138 to 164 of FSMA 2000 substitute—

"PART 9A

RULES AND GUIDANCE

CHAPTER 1

RULE-MAKING POWERS

General rule-making powers of the FCA and the PRA

137A The FCA's general rules

(1) The FCA may make such rules applying to authorised persons—

(a) with respect to the carrying on by them of regulated activities, or

(b) with respect to the carrying on by them of activities which are not regulated activities,

as appear to the FCA to be necessary or expedient for the purpose of advancing one or more of its operational objectives.

(2) Rules made under this section are referred to in this Act as the FCA's general rules.

(3) The FCA's general rules may make provision applying to authorised persons even though there is no relationship between the authorised persons to whom the rules will apply and the persons whose interests will be protected by the rules.

(4) The FCA's general rules may contain requirements which take into account, in the case of an authorised person who is a member of a group, any activity of another member of the group.

(5) The FCA's general rules may not—

(a) make provision prohibiting an EEA firm from carrying on, or holding itself out as carrying on, any activity which it has permission conferred by Part 2 of Schedule 3 to carry on in the United Kingdom;

(b) make provision, as respects an EEA firm, about any matter for which responsibility is, under any of the single market directives or the emission allowance auctioning regulation, reserved to the firm's home state regulator.

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137B FCA general rules: clients' money, right to rescind etc.

(1) Rules relating to the handling of money held by an authorised person in specified circumstances ("clients' money") may—
- (a) make provision which results in that clients' money being held on trust in accordance with the rules,
- (b) treat 2 or more accounts as a single account for specified purposes (which may include the distribution of money held in the accounts),
- (c) authorise the retention by the authorised person of interest accruing on the clients' money, and
- (d) make provision as to the distribution of such interest which is not to be retained by the authorised person.

(2) An institution with which an account is kept in pursuance of rules relating to the handling of clients' money does not incur any liability as constructive trustee if the money is wrongfully paid from the account, unless the institution permits the payment—
- (a) with knowledge that it is wrongful, or
- (b) having deliberately failed to make enquiries in circumstances in which a reasonable and honest person would have done so.

(3) Rules may—
- (a) confer rights on persons to rescind agreements with, or withdraw offers to, authorised persons within a specified period, and
- (b) make provision, in respect of authorised persons and persons exercising those rights, for the restitution of property and the making or recovery of payments where those rights are exercised.

(4) "Rules" means general rules of the FCA.

(5) "Specified" means specified in the rules.

137C FCA general rules: cost of credit and duration of credit agreements

(1) The power of the FCA to make general rules includes power to make rules prohibiting authorised persons from—
- (a) entering into a regulated credit agreement that provides for—
  - (i) the payment by the borrower of charges of a specified description, or
  - (ii) the payment by the borrower over the duration of the agreement of charges that, taken with the charges paid under one or more other agreements which are treated by the rules as being connected with it, exceed, or are capable of exceeding, a specified amount;
- (b) imposing charges of a specified description or exceeding a specified amount on a person who is the borrower under a regulated credit agreement;
- (c) entering into a regulated credit agreement that—
  - (i) is capable of remaining in force after the end of a specified period,

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(ii) when taken with one or more other regulated credit agreements which are treated by the rules as being connected with it, would be capable of remaining in force after the end of a specified period, or

(iii) is treated by the rules as being connected with a number of previous regulated credit agreements that exceeds a specified maximum;

(d) exercising the rights of the lender under a regulated credit agreement (as a person for the time being entitled to exercise them) in a way that enables the agreement to remain in force after the end of a specified period or enables the imposition on the borrower of charges within paragraph (a)(i) or (ii).

(2) "Charges" means charges payable, by way of interest or otherwise, in connection with the provision of credit under the regulated credit agreement, whether or not the agreement itself makes provision for them and whether or not the person to whom they are payable is a party to the regulated credit agreement or an authorised person.

(3) "The borrower" includes—

(a) any person providing a guarantee or indemnity under the regulated credit agreement, and

(b) a person to whom the rights and duties of the borrower under the regulated credit agreement or a person falling within paragraph (a) have passed by assignment or operation of law.

(4) In relation to an agreement entered into or obligation imposed in contravention of the rules, the rules may—

(a) provide for the agreement or obligation to be unenforceable against any person or specified person;

(b) provide for the recovery of any money or other property paid or transferred under the agreement or other obligation by any person or specified person;

(c) provide for the payment of compensation for any loss sustained by any person or specified person as a result of paying or transferring any money or other property under the agreement or obligation.

(5) The provision that may be made as a result of subsection (4) includes provision corresponding to that made by section 30 (enforceability of agreements resulting from unlawful communications).

(6) A credit agreement is a contract of the kind mentioned in paragraph 23 of Schedule 2, other than one under which the obligation of the borrower to repay is secured on land: and a credit agreement is a "regulated credit agreement" if any of the following is a regulated activity—

(a) entering into or administering the agreement;

(b) exercising or being able to exercise the rights of the lender under the agreement.

(7) In this section—

(a) "specified amount" means an amount specified in or determined in accordance with the rules;

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(b) "specified period" means a period of a duration specified in or determined in accordance with the rules;

(c) "specified person" means a person of a description specified in the rules;

(d) subject to that, "specified" means specified in the rules.

137D FCA general rules: product intervention

(1) The power of the FCA to make general rules includes power to make such rules ("product intervention rules") prohibiting authorised persons from doing anything mentioned in subsection (2) as appear to it to be necessary or expedient for the purpose of advancing—

(a) the consumer protection objective or the competition objective, or

(b) if the Treasury by order provide for this paragraph to apply, the integrity objective.

(2) Those prohibited things are—

(a) entering into specified agreements with any person or specified person;

(b) entering into specified agreements with any person or specified person unless requirements specified in the rules have been satisfied;

(c) doing anything that would or might result in the entering into of specified agreements by persons or specified persons, or the holding by them of a beneficial or other kind of economic interest in specified agreements;

(d) doing anything within paragraph (c) unless requirements specified in the rules have been satisfied.

(3) "Specified agreements" means agreements of a description specified in general rules made by the FCA.

(4) "Specified persons" means persons of a description specified in general rules made by the FCA.

(5) It is of no relevance—

(a) whether the entering into of a specified agreement itself constitutes the carrying on of a regulated activity, or

(b) whether, in a case within subsection (2)(c) or (d), the specified agreements are with the authorised persons concerned or anyone else.

(6) The requirements that may be specified under subsection (2)(b) or (d) include in particular—

(a) requirements as to the terms and conditions that are to be, or are not to be, included in specified or other agreements, and

(b) requirements limiting invitations or inducements to enter into specified or other agreements to those made to specified persons.

(7) In relation to contraventions of product intervention rules, the rules may—

(a) provide for a relevant agreement or obligation to be unenforceable against any person or specified person;

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(b) provide for the recovery of any money or other property paid or transferred under a relevant agreement or obligation by any person or specified person;

(c) provide for the payment of compensation for any loss sustained by any person or specified person as a result of paying or transferring any money or other property under a relevant agreement or obligation.

(8) "A relevant agreement or obligation" means—

(a) a specified agreement;

(b) an agreement entered into in contravention of any rule made as a result of subsection (2)(c) or (d);

(c) an obligation to which a person is subject as a result of exercising a right conferred by an agreement within paragraph (a) or (b) of this subsection.

(9) The provision that may be made as a result of subsection (7) includes provision corresponding to that made by section 30 (enforceability of agreements resulting from unlawful communications).

(10) In this section—

(a) any reference to entering into an agreement includes inviting or inducing persons to enter into an agreement, and

(b) any reference to an agreement includes an arrangement.

137E Orders under s.137D(1)(b)

(1) No order may be made under section 137D(1)(b) unless—

(a) a draft of the order has been laid before Parliament and approved by a resolution of each House, or

(b) subsection (3) applies.

(2) Subsection (3) applies if an order under section 137D(1)(b) contains a statement that the Treasury are of the opinion that, by reason of urgency, it is necessary to make the order without a draft being so laid and approved.

(3) Where this subsection applies the order—

(a) must be laid before Parliament after being made, and

(b) ceases to have effect at the end of the relevant period unless before the end of that period the order is approved by a resolution of each House of Parliament (but without that affecting anything done under the order or the power to make a new order).

(4) The "relevant period" is a period of 28 days beginning with the day on which the order is made.

(5) In calculating the relevant period no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.

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137F Rules requiring participation in benchmark

(1) The power of the FCA to make general rules includes power to make rules requiring authorised persons to take specified steps in connection with the setting by a specified person of a specified benchmark.

(2) The rules may in particular—

(a) require authorised persons to whom the rules apply to provide information of a specified kind, or expressions of opinion as to specified matters, to persons determined in accordance with the rules;

(b) make provision about the form in which and the time by which any information or expression of opinion is to be provided;

(c) make provision by reference to any code or other document published by the person responsible for the setting of the benchmark or by any other person determined in accordance with the rules, as the code or other document has effect from time to time.

(3) Rules making provision of the kind mentioned in subsection (2)(c) may provide that the code or other document is to be capable of affecting obligations imposed by the rules only if specified requirements are met in relation to it.

(4) In this section—

"benchmark" has the meaning given in section 22(6);

"specified" means specified in or determined in accordance with the rules.

137G The PRA's general rules

(1) The PRA may make such rules applying to PRA-authorised persons—

(a) with respect to the carrying on by them of regulated activities, or

(b) with respect to the carrying on by them of activities which are not regulated activities,

as appear to the PRA to be necessary or expedient for the purpose of advancing any of its objectives.

(2) Rules made under this section are referred to in this Act as the PRA's general rules.

(3) The PRA's general rules may make provision applying to PRA-authorised persons even though there is no relationship between the PRA-authorised persons to whom the rules will apply and the persons whose interests will be protected by the rules.

(4) The PRA's general rules may contain requirements which take into account, in the case of a PRA-authorised person who is a member of a group, any activity of another member of the group.

(5) The PRA's general rules may not—

(a) make provision prohibiting an EEA firm from carrying on, or holding itself out as carrying on, any activity which it has permission conferred by Part 2 of Schedule 3 to carry on in the United Kingdom;

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(b) make provision, as respects an EEA firm, about any matter for which responsibility is, under any of the single market directives or the emission allowance auctioning regulation, reserved to the firm's home state regulator.

137H General rules about remuneration

(1) This section applies where either regulator exercises its power to make general rules so as to make rules prohibiting persons, or persons of a specified description, from being remunerated in a specified way.

(2) The rules may—
  (a) provide that any provision of an agreement that contravenes such a prohibition is void, and
  (b) provide for the recovery of any payment made, or other property transferred, in pursuance of a provision that is void by virtue of paragraph (a).

(3) A provision that, at the time the rules are made, is contained in an agreement made before that time may not be rendered void under subsection (2)(a) unless it is subsequently amended so as to contravene a prohibition referred to in that subsection.

137I Remuneration policies: Treasury direction to consider compliance

(1) This section applies where either regulator exercises its power to make general rules so as to make rules requiring authorised persons, or authorised persons of a description specified in the rules, to act in accordance with a remuneration policy.

(2) A "remuneration policy" is a policy about the remuneration by an authorised person of—
  (a) officers,
  (b) employees, or
  (c) other persons,
  of a description specified in the rules.

(3) The Treasury may direct the regulator to consider whether the remuneration policies of authorised persons specified in the direction (or of authorised persons of a description so specified) comply with requirements imposed by rules made by that regulator as to the contents of the policies.

(4) Before giving a direction under subsection (3), the Treasury must consult the regulator concerned.

(5) If the regulator considers that a remuneration policy of an authorised person fails to make provision which complies with the requirements mentioned in subsection (3), the regulator must take such steps as it considers appropriate to deal with the failure.

(6) The steps that the regulator may take include requiring the remuneration policy to be revised.

(7) "Authorised person", in relation to the PRA, means PRA-authorised person.

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137J Rules about recovery plans: duty to consult

(1) Before either regulator prepares a draft of any general rules that require each relevant person (or each relevant person of a specified description) to prepare a recovery plan, the regulator must consult—

(a) the Treasury, and

(b) the Bank of England.

(2) A "relevant person" is an authorised person in relation to whom any power under Part 1 of the Banking Act 2009 (special resolution regime) is exercisable.

(3) A "recovery plan" is a document containing information within subsection (4) or (5).

(4) Information is within this subsection if it relates to action to be taken to secure that, in the event of specified circumstances affecting the carrying on of the business (or any part of the business) of an authorised person—

(a) the business of the authorised person, or

(b) a specified part of that business,

is capable of being carried on (whether or not by the authorised person and whether or not in the same way as previously).

(5) Information is within this subsection if it would facilitate the carrying on of the business (or any part of the business) of an authorised person by any other person.

(6) In this section—

"authorised person", in relation to the PRA, means PRA-authorised person;

"specified" means specified in the rules.

137K PRA rules about resolution plans: duty to consult

(1) Before the PRA prepares a draft of any general rules that require each relevant person (or each relevant person of a specified description) to prepare a resolution plan, the PRA must consult—

(a) the Treasury, and

(b) the Bank of England.

(2) A "relevant person" is a PRA-authorised person in relation to whom any power under Part 1 of the Banking Act 2009 (special resolution regime) is exercisable.

(3) A "resolution plan" is a document containing information within subsection (4) or (5).

(4) Information is within this subsection if it relates to action to be taken in the event of—

(a) circumstances arising in which it is likely that the business (or any part of the business) of an authorised person will fail, or

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(b) the failure of the business (or any part of the business) of an authorised person.

(5) Information is within this subsection if it would facilitate anything falling to be done by any person in consequence of that failure.

(6) An example of information within subsection (5) is information that, in the event of that failure, would facilitate—

(a) planning by the Treasury in relation to the possible exercise of any of its powers under Part 1 of the Banking Act 2009, or

(b) planning by the Bank of England in relation to the possible exercise of any of its powers under Part 1, 2 or 3 of that Act.

137L Interpretation of sections 137J and 137K

(1) This section has effect for the interpretation of sections 137J and 137K.

(2) References to the taking of action include the taking of action by—

(a) the authorised person,

(b) any other person in the same group as the authorised person, or

(c) a partnership of which the authorised person is a member.

(3) In subsection (2)(b) the definition of "group" in section 421 applies with the omission of subsection (1)(e) and (f) of that section.

(4) References to the business of an authorised person include the business of—

(a) any person in the same group as the authorised person, and

(b) a partnership of which the authorised person is a member.

(5) For the purposes of section 137K the cases in which the business (or any part of the business) of the authorised person ("A") is to be regarded as having failed include those where—

(a) A enters insolvency,

(b) any of the stabilisation options in Part 1 of the Banking Act 2009 is achieved in relation to A, or

(c) A falls to be taken for the purposes of the compensation scheme to be unable, or likely to be unable, to satisfy claims against A.

(6) In subsection (5)(a) "insolvency" includes—

(a) bankruptcy,

(b) liquidation,

(c) bank insolvency,

(d) administration,

(e) bank administration,

(f) receivership,

(g) a composition between A and A's creditors, and

(h) a scheme of arrangement of A's affairs.

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137M Special provision relating to adequacy of resolution plans

(1) This section applies where the PRA has exercised its power to make general rules so as to make rules requiring PRA-authorised persons, or PRA-authorised persons of a specified description, to prepare a resolution plan.

(2) The PRA must consult the Treasury and the Bank of England ("the Bank") about the adequacy of resolution plans required to be prepared by those rules, so far as relating to any matter which may be relevant to the exercise by the Treasury or the Bank of any power under Part 1, 2 or 3 of the Banking Act 2009.

(3) After being consulted under subsection (2)—

(a) the Treasury or the Bank may notify the PRA that, in the opinion of the Treasury or the Bank, a resolution plan fails to make satisfactory provision in relation to any such matter, and

(b) if the Treasury or the Bank give a notification under paragraph (a), the Treasury or the Bank must give reasons for being of that opinion to the PRA.

(4) The PRA must have regard to any notification given under subsection (3)(a) before considering whether any resolution plan makes satisfactory provision in relation to any such matter.

(5) If—

(a) a notification is given under subsection (3)(a), but

(b) the PRA is nonetheless of the opinion that the resolution plan makes satisfactory provision in relation to any such matter,

the PRA must give reasons for being of that opinion to the person who gave the notification.

(6) In this section—

"resolution plan" has the same meaning as in section 137K;

"specified" means specified in the rules.

137N Recovery plans and resolution plans: restriction on duty of confidence

(1) A contractual or other requirement imposed on a person ("P") to keep information in confidence does not apply if—

(a) the information is or may be relevant to anything required to be done as a result of a requirement imposed by general rules made by either regulator to prepare a recovery plan or a resolution plan,

(b) an authorised person or a skilled person requests or requires P to provide the information for the purpose of securing that those things are done, and

(c) the regulator in question has approved the making of the request or the imposition of the requirement before it is made or imposed.

(2) An authorised person may provide information (whether received under subsection (1) or otherwise) that would otherwise be subject to a contractual or other requirement to keep it in confidence if it is provided for the purposes of

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anything required to be done as a result of a requirement imposed by general rules to prepare a recovery plan or a resolution plan.

(3) In this section, references to preparing a recovery plan or a resolution plan include—
  (a) keeping that plan up to date, and
  (b) collecting specified information for the purposes of that plan.

(4) In this section, references to a skilled person are to a person appointed in accordance with section 166A.

(5) In this section—
  "authorised person", in relation to rules of the PRA, means a PRA-authorised person;
  "specified" means specified in the rules.

Specific rule-making powers

137O Threshold condition code

(1) Either regulator may make rules supplementing any of the conditions for the time being set out in or specified under Schedule 6 that is expressed to be relevant to the discharge of that regulator's functions.

(2) Rules made under this section by a regulator are referred to as that regulator's "threshold condition code".

(3) A threshold condition code may in particular—
  (a) specify requirements which a person must satisfy in order to be regarded as satisfying a particular condition in relation to any regulated activities;
  (b) specify matters which are, or may be, or are not, relevant in determining whether a person satisfies a particular condition in relation to any regulated activities.

(4) Except where a regulator's threshold condition code so provides, it is not to be regarded as limiting the matters that are, or may be, relevant in determining whether a person satisfies a particular condition in relation to any regulated activities.

(5) A threshold condition code cannot impose obligations that are enforceable against authorised persons otherwise than through the threshold conditions.

137P Control of information rules

(1) Either regulator may make rules ("control of information rules") about the disclosure and use of information held by an authorised person ("A").

(2) Control of information rules may—
  (a) require the withholding of information which A would otherwise be required to disclose to a person ("B") for or with whom A does business in the course of carrying on any regulated or other activity;

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(b) specify circumstances in which A may withhold information which A would otherwise be required to disclose to B;

(c) require A not to use for the benefit of B information—

(i) which is held by A, and

(ii) which A would otherwise be required to use for the benefit of B;

(d) specify circumstances in which A may decide not to use for the benefit of B information within paragraph (c).

137Q Price stabilising rules

(1) The FCA may make rules ("price stabilising rules") as to—

(a) the circumstances and manner in which,

(b) the conditions subject to which, and

(c) the time when or the period during which,

action may be taken for the purpose of stabilising the price of investments of specified kinds.

(2) Price stabilising rules—

(a) are to be made so as to apply only to authorised persons;

(b) may make different provision in relation to different kinds of investment.

(3) The FCA may make rules which, for the purposes of the relevant exemption provisions, treat a person who acts or engages in conduct—

(a) for the purpose of stabilising the price of investments, and

(b) in conformity with such provisions corresponding to price stabilising rules and made by a body or authority outside the United Kingdom as may be specified in rules made by the FCA,

as acting, or engaging in that conduct, for that purpose and in conformity with price stabilising rules.

(4) "The relevant exemption provisions" are the following provisions of the Financial Services Act 2012—

(a) section 90(9)(b);

(b) section 91(4)(a).

137R Financial promotion rules

(1) The FCA may make rules applying to authorised persons about the communication by them, or their approval of the communication by others, of invitations or inducements—

(a) to engage in investment activity, or

(b) to participate in a collective investment scheme.

(2) Rules under this section may, in particular, make provision about the form and content of communications.

(3) Subsection (1) applies only to communications which—

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(a) if made by a person other than an authorised person, without the approval of an authorised person, would contravene section 21(1), and

(b) may be made by an authorised person without contravening section 238(1).

(4) But subsection (3) does not prevent the FCA from making rules under subsection (1) in relation to a communication that would not contravene section 21(1) if made by a person other than an authorised person, without the approval of an authorised person, if the conditions set out in subsection (5) are satisfied.

(5) Those conditions are—

(a) that the communication would not contravene subsection (1) of section 21 because it is a communication to which that subsection does not apply as a result of an order under subsection (5) of that section,

(b) that the FCA considers that any of the requirements of—

(i) paragraphs 1 to 8 of Article 19 of the markets in financial instruments directive,

(ii) any implementing measure made under paragraph 10 of that Article, or

(iii) Article 77 of the UCITS directive,

apply to the communication, and

(c) that the FCA considers that the rules are necessary to secure that the communication satisfies such of the requirements mentioned in paragraph (b) as the FCA considers apply to the communication.

(6) "Engage in investment activity" has the same meaning as in section 21.

(7) The Treasury may by order impose limitations on the power to make rules under this section.

137S Financial promotion rules: directions given by FCA

(1) The FCA may give a direction under this section if—

(a) an authorised person has made, or proposes to make, a communication or has approved, or proposes to approve, another person's communication, and

(b) the FCA considers that there has been, or is likely to be, a contravention of financial promotion rules in respect of the communication or approval.

(2) A direction under this section may require the authorised person—

(a) to withdraw the communication or approval;

(b) to refrain from making the communication or giving the approval (whether or not it has previously been made or given);

(c) to publish details of the direction;

(d) to do anything else specified in the direction in relation to the communication or approval.

Status: *Point in time view as at 03/03/2015.*
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(3) A requirement in a direction under this section to refrain from making or approving a communication includes a requirement to refrain from making or approving another communication where—

(a) the other communication is in all material respects the same as, or substantially the same as, the communication to which the direction relates, and

(b) in all the circumstances a reasonable person would think that another direction would be given under this section in relation to the other communication.

(4) The requirements contained in a direction under this section have effect as follows—

(a) a requirement to publish details of the direction has effect at such time (if any) as the FCA gives a notice under subsection (8)(a);

(b) any other requirement takes effect immediately.

(5) If the FCA gives a direction under this section to an authorised person—

(a) it must give written notice to the authorised person, and

(b) if the direction relates to the approval by the authorised person of another person's communication, it must also give written notice to that other person.

(6) The notice must—

(a) give details of the direction,

(b) inform the person to whom the notice is given that the direction takes effect immediately,

(c) state the FCA's reasons for giving the direction, and

(d) inform the person to whom the notice is given that the person may make representations to the FCA within such period as may be specified in the notice (which may be extended by the FCA).

(7) The FCA may amend the direction if, having considered any representations made by a person to whom notice is given under subsection (5), it considers it appropriate to do so.

(8) If, having considered any such representations, the FCA decides not to revoke the direction—

(a) the FCA must give separate written notice to the persons mentioned in subsection (5)(a) or (b), and

(b) any such person may refer the matter to the Tribunal.

(9) A notice under subsection (8)(a) must—

(a) give details of the direction and of any amendment of it,

(b) state the FCA's reasons for deciding not to revoke the direction and, if relevant, for amending it,

(c) inform the person to whom the notice is given of the person's right to refer the matter to the Tribunal, and

(d) give an indication of the procedure on such a reference.

(10) If, having considered any representations made by a person to whom notice is given under subsection (5), the FCA decides to revoke the direction, it must give separate written notice to those persons.

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(11) After the period for making representations in relation to a direction given under this section has ended, the FCA may publish such information about the direction as it considers appropriate (even if the direction is revoked).

(12) Nothing in this section requires a notice to be given to a person mentioned in subsection (5)(b) if the FCA considers it impracticable to do so.

Supplementary powers

137T General supplementary powers

Rules made by either regulator—

(a) may make different provision for different cases and may, in particular, make different provision in respect of different descriptions of authorised persons, activity or investment,

(b) may make provision by reference to rules made by the other regulator, as those rules have effect from time to time, and

(c) may contain such incidental, supplemental, consequential and transitional provision as the regulator making the rule considers appropriate.

CHAPTER 2

RULES: MODIFICATION, WAIVER, CONTRAVENTION AND PROCEDURAL PROVISIONS

Modification or waiver of rules

138A Modification or waiver of rules

(1) Either regulator may, on the application or with the consent of a person who is subject to rules made by that regulator, direct that all or any of those rules—

(a) are not to apply to that person, or

(b) are to apply to that person with such modifications as may be specified in the direction.

(2) Subsection (1) does not apply to—

(a) rules made by either regulator under section 137O (threshold condition code);

(b) rules made by the FCA under section 247 (trust scheme rules) or section 248 (scheme particulars rules).

(3) An application must be made in such manner as the regulator may direct.

(4) A regulator may not give a direction unless it is satisfied that—

(a) compliance by the person with the rules, or with the rules as unmodified, would be unduly burdensome or would not achieve the purpose for which the rules were made, and

(b) the direction would not adversely affect the advancement of any of the regulator's objectives.

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(5) In subsection (4)(b) "objectives", in relation to the FCA, means operational objectives.

(6) A direction may be given subject to conditions.

(7) The regulator may—
  (a) revoke a direction, or
  (b) vary it on the application, or with the consent, of the person to whom it relates.

(8) "Direction" means a direction under this section.

138B Publication of directions under section 138A

(1) Subject to subsection (2), a direction must be published by the regulator concerned in the way appearing to the regulator to be best calculated for bringing it to the attention of—
  (a) persons likely to be affected by it, and
  (b) persons who are, in the opinion of the regulator, likely to make an application for a similar direction.

(2) Subsection (1) does not apply if the regulator is satisfied that it is inappropriate or unnecessary to publish the direction.

(3) In deciding whether it is satisfied as mentioned in subsection (2), the regulator must—
  (a) consider whether the publication of the direction would be detrimental to the stability of the UK financial system,
  (b) take into account whether the direction relates to a rule contravention of which is actionable in accordance with section 138D,
  (c) consider whether publication of the direction would prejudice, to an unreasonable degree, the commercial interests of the person concerned or any other member of the person's immediate group, and
  (d) consider whether its publication would be contrary to an international obligation of the United Kingdom.

(4) The FCA must consult the PRA before publishing or deciding not to publish a direction which relates to—
  (a) a PRA-authorised person, or
  (b) an authorised person who has as a member of its immediate group a PRA-authorised person.

(5) For the purposes of paragraphs (c) and (d) of subsection (3), the regulator must consider whether it would be possible to publish the direction without either of the consequences mentioned in those paragraphs by publishing it without disclosing the identity of the person concerned.

(6) "Direction" means a direction under section 138A.

Status: *Point in time view as at 03/03/2015.*
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Contravention of rules

138C Evidential provisions

(1) If a particular rule made by either regulator so provides, contravention of the rule does not give rise to any of the consequences provided for by other provisions of this Act.

(2) A rule made by a regulator which so provides must also provide—
  (a) that contravention may be relied on as tending to establish contravention of such other rule made by that regulator as may be specified, or
  (b) that compliance may be relied on as tending to establish compliance with such other rule made by that regulator as may be specified.

(3) A rule may include the provision mentioned in subsection (1) only if the regulator making the rule considers that it is appropriate for it also to include the provision required by subsection (2).

(4) In this section "rule" does not include a rule made under—
  (a) section 137O (threshold condition code);
  (b) section 192J (provision of information by parent undertakings).

138D Actions for damages

(1) A rule made by the PRA may provide that contravention of the rule is actionable at the suit of a private person who suffers loss as a result of the contravention, subject to the defences and other incidents applying to actions for breach of statutory duty.

(2) A contravention by an authorised person of a rule made by the FCA is actionable at the suit of a private person who suffers loss as a result of the contravention, subject to the defences and other incidents applying to actions for breach of statutory duty.

(3) If rules made by the FCA so provide, subsection (2) does not apply to a contravention of a specified provision of the rules.

(4) In prescribed cases, a contravention of a rule which by virtue of subsection (1) or (2) would be actionable at the suit of a private person is actionable at the suit of a person who is not a private person, subject to the defences and other incidents applying to actions for breach of statutory duty.

(5) In subsections (1), (2) and (3) "rule" does not include—
  (a) Part 6 rules;
  (b) rules under section 137O (threshold condition code);
  (c) rules under section 192J (provision of information by parent undertakings);
  (d) a rule requiring an authorised person to have or maintain financial resources.

(6) "Private person" has such meaning as may be prescribed.

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138E Limits on effect of contravening rules

(1) A person is not guilty of an offence by reason of a contravention of a rule made by either regulator.

(2) No such contravention makes any transaction void or unenforceable.

(3) Subsection (2) does not apply in relation to—
  (a) rules made by the FCA under section 137C, or
  (b) product intervention rules made by the FCA under section 137D.

Procedural provisions

138F Notification of rules

If either regulator makes, alters or revokes any rules, that regulator must without delay give written notice—
  (a) to the Treasury, and
  (b) to the Bank of England.

138G Rule-making instruments

(1) Any power conferred on either regulator to make rules is exercisable in writing.

(2) An instrument by which rules are made by either regulator ("a rule-making instrument") must specify the provision under which the rules are made.

(3) To the extent that a rule-making instrument does not comply with subsection (2), it is void.

(4) A rule-making instrument must be published by the regulator making the rule in the way appearing to that regulator to be best calculated to bring it to the attention of the public.

(5) The regulator making the rule may charge a reasonable fee for providing a person with a copy of a rule-making instrument.

(6) A person is not to be taken to have contravened any rule made by a regulator if the person shows that at the time of the alleged contravention the rule-making instrument concerned had not been made available in accordance with this section.

138H Verification of rules

(1) The production of a printed copy of a rule-making instrument purporting to be made by a regulator—
  (a) on which is endorsed a certificate signed by a member of staff of that regulator who is authorised by the regulator for that purpose, and
  (b) which contains the required statements,

is evidence (or in Scotland sufficient evidence) of the facts stated in the certificate.

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(2) The required statements are—
  (a) that the instrument was made by the FCA or the PRA (as the case may be),
  (b) that the copy is a true copy of the instrument, and
  (c) that on a specified date the instrument was made available to the public in accordance with section 138G(4).

(3) A certificate purporting to be signed as mentioned in subsection (1) is to be taken to have been properly signed unless the contrary is shown.

(4) A person who wishes in any legal proceedings to rely on a rule-making instrument may require the regulator that made the rule to endorse a copy of the instrument with a certificate of the kind mentioned in subsection (1).

138I Consultation by the FCA

(1) Before making any rules, the FCA must—
  (a) consult the PRA, and
  (b) after doing so, publish a draft of the proposed rules in the way appearing to the FCA to be best calculated to bring them to the attention of the public.

(2) The draft must be accompanied by—
  (a) a cost benefit analysis,
  (b) an explanation of the purpose of the proposed rules,
  (c) any statement prepared under section 138K(2),
  (d) an explanation of the FCA's reasons for believing that making the proposed rules is compatible with its duties under section 1B(1) and (5)(a), and
  (e) notice that representations about the proposals may be made to the FCA within a specified time.

(3) Before making the proposed rules, the FCA must have regard to any representations made to it in accordance with subsection (2)(e).

(4) If the FCA makes the proposed rules, it must publish an account, in general terms, of—
  (a) the representations made to it in accordance with subsection (2)(e), and
  (b) its response to them.

(5) If the rules differ from the draft published under subsection (1)(b) in a way which is, in the opinion of the FCA, significant the FCA must publish—
  (a) details of the difference (in addition to complying with subsection (4)) together with a cost benefit analysis, and
  (b) any statement prepared under section 138K(4).

(6) The requirements to carry out a cost benefit analysis under this section do not apply in relation to rules made under—
  (a) section 136(2);
  (b) subsection (1) of section 213 as a result of subsection (4) of that section;

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(c) section 234;
(d) paragraph 23 of Schedule 1ZA;
(e) paragraph 12 of Schedule 1A.

(7) "Cost benefit analysis" means—
(a) an analysis of the costs together with an analysis of the benefits that will arise—
(i) if the proposed rules are made, or
(ii) if subsection (5) applies, from the rules that have been made, and
(b) subject to subsection (8), an estimate of those costs and of those benefits.

(8) If, in the opinion of the FCA—
(a) the costs or benefits referred to in subsection (7) cannot reasonably be estimated, or
(b) it is not reasonably practicable to produce an estimate,
the cost benefit analysis need not estimate them, but must include a statement of the FCA's opinion and an explanation of it.

(9) The FCA may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1)(b).

(10) Subsection (1)(a) does not apply to rules made by the FCA in relation to recognised investment exchanges under Part 18.

(11) This section is subject to section 138L.

138J Consultation by the PRA

(1) Before making any rules, the PRA must—
(a) consult the FCA, and
(b) after doing so, publish a draft of the proposed rules in the way appearing to the PRA to be best calculated to bring them to the attention of the public.

(2) The draft must be accompanied by—
(a) a cost benefit analysis,
(b) an explanation of the purpose of the proposed rules,
(c) any statement prepared under section 138K(2),
(d) an explanation of the PRA's reasons for believing that making the proposed rules is compatible with its duties under—
(i) section 2B(1) or, as the case requires, section 2C(1) or 2D(3), and
(ii) section 2H, and
(e) notice that representations about the proposals may be made to the PRA within a specified time.

(3) Before making the proposed rules, the PRA must have regard to any representations made to it in accordance with subsection (2)(e).

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(4) If the PRA makes the proposed rules, it must publish an account, in general terms, of—
  (a) the representations made to it in accordance with subsection (2)(e), and
  (b) its response to them.

(5) If the rules differ from the draft published under subsection (1)(b) in a way which is, in the opinion of the PRA, significant the PRA must publish—
  (a) details of the difference (in addition to complying with subsection (4)) together with a cost benefit analysis, and
  (b) any statement prepared under section 138K(4).

(6) The requirements to carry out a cost benefit analysis under this section do not apply in relation to rules made under—
  (a) section 136(2);
  (b) subsection (1) of section 213 as a result of subsection (4) of that section;
  (c) section 234;
  (d) paragraph 31 of Schedule 1ZB;
  (e) paragraph 12 of Schedule 1A.

(7) "Cost benefit analysis" means—
  (a) an analysis of the costs together with an analysis of the benefits that will arise—
    (i) if the proposed rules are made, or
    (ii) if subsection (5) applies, from the rules that have been made, and
  (b) subject to subsection (8), an estimate of those costs and of those benefits.

(8) If, in the opinion of the PRA—
  (a) the costs or benefits referred to in subsection (7) cannot reasonably be estimated, or
  (b) it is not reasonably practicable to produce an estimate,

  the cost benefit analysis need not estimate them, but must include a statement of the PRA's opinion and an explanation of it.

(9) The PRA may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1)(b).

(10) This section is subject to section 138L.

138K Consultation: mutual societies

(1) Subsection (2) applies where a regulator proposes to make a rule ("the proposed rule") which would apply both to—
  (a) authorised persons which are mutual societies, and
  (b) other authorised persons.

(2) The regulator must prepare a statement setting out—

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(a) its opinion whether or not the impact of the proposed rule on persons within subsection (1)(a) will be significantly different from its impact on persons within subsection (1)(b), and

(b) if so, details of the difference.

(3) Subsection (4) applies where a regulator makes a rule which—

(a) applies both to—

(i) authorised persons which are mutual societies, and

(ii) other authorised persons, and

(b) differs from the draft of the proposed rule published under section 138I(1)(b) or section 138J(1)(b) (as the case may be).

(4) The regulator must prepare a statement setting out—

(a) its opinion whether or not the impact of the rule is significantly different from the impact of the proposed rule on—

(i) the persons within subsection (3)(a)(i), and

(ii) those persons as compared with persons within subsection (3)(a)(ii), and

(b) if so, details of the difference.

(5) A "mutual society" is—

(a) a building society within the meaning of the Building Societies Act 1986;

(b) a friendly society within the meaning of the Friendly Societies Act 1992;

(c) a registered society within the meaning of the Industrial and Provident Societies Act 1965;

(d) an EEA mutual society.

(6) An "EEA mutual society" is—

(a) a body which is a European Cooperative Society for the purposes of Council Regulation (EC) No 1435/2003 (statute for a European Cooperative Society);

(b) a body which is established as a cooperative under the law of an EEA state as mentioned in that Regulation;

(c) a body which is a cooperative or mutual undertaking of such description as the Treasury specify by order and which is established or operates in accordance with the laws of an EEA state.

138L Consultation: general exemptions

(1) Sections 138I(1)(b) and (2) to (5) and 138K do not apply in relation to rules made by the FCA if the FCA considers that the delay involved in complying with them would be prejudicial to the interests of consumers, as defined in section 425A.

(2) Sections 138J(1)(b) and (2) to (5) and 138K do not apply in relation to rules made by the PRA if the PRA considers that the delay involved in complying with them would—

(a) be prejudicial to the safety and soundness of PRA-authorised persons, or

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(b) in a case where section 2C applies, be prejudicial to securing the appropriate degree of protection for policyholders.

(3) The provisions listed in subsection (4) do not apply if the regulator concerned considers that, making the appropriate comparison—
(a) there will be no increase in costs, or
(b) there will be an increase in costs but that increase will be of minimal significance.

(4) Those provisions are—
(a) subsections (2)(a) and (5)(a) of section 138I;
(b) subsections (2)(a) and (5)(a) of section 138J.

(5) The "appropriate comparison" means—
(a) in relation to section 138I(2)(a) or 138J(2)(a), a comparison between the overall position if the rules are made and the overall position if the rules are not made;
(b) in relation to section 138I(5)(a) or 138J(5)(a), a comparison between the overall position after the making of the rules and the overall position before they were made.

138M Consultation: exemptions for temporary product intervention rules

(1) Sections 138I(1)(b) and (2) to (5) and 138K do not apply in relation to product intervention rules made by the FCA if it considers that it is necessary or expedient not to comply with them for the purpose of advancing—
(a) the consumer protection objective or the competition objective, or
(b) if an order under section 137D(1)(b) is in force, the integrity objective.

(2) Any rules made as a result of subsection (1) ("temporary product intervention rules") are to cease to have effect at the end of the period specified in the rules.

(3) The longest period that may be specified is the period of 12 months beginning with the day on which the rules come into force.

(4) Nothing in subsection (2) prevents the FCA from revoking temporary product intervention rules before the end of the period mentioned there.

(5) If the FCA has made temporary product intervention rules ("the initial rules"), it may not make further temporary product intervention rules containing the same, or substantially the same, provision as that contained in the initial rules until the prohibited period has ended.

(6) "The prohibited period" means the period of 12 months beginning with the day on which the period mentioned in subsection (2) ends (whether or not the initial rules have been revoked before the end of the period mentioned there).

138N Temporary product intervention rules: statement of policy

(1) The FCA must prepare and issue a statement of its policy with respect to the making of temporary product intervention rules.

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(2) The FCA may at any time alter or replace a statement issued under this section.

(3) If a statement issued under this section is altered or replaced, the FCA must issue the altered or replacement statement.

(4) The FCA must, without delay, give the Treasury a copy of any statement which it publishes under this section.

(5) A statement issued under this section must be published by the FCA in the way appearing to the FCA to be best calculated to bring it to the attention of the public.

(6) The FCA may charge a reasonable fee for providing a person with a copy of the statement.

138O Statement of policy under section 138N: procedure

(1) Before issuing a statement under section 138N, the FCA must publish a draft of the proposed statement in the way appearing to the FCA to be best calculated to bring it to the attention of the public.

(2) The draft must be accompanied by notice that representations about the proposal may be made to the FCA within a specified time.

(3) Before issuing the proposed statement, the FCA must have regard to any representations made to it in accordance with subsection (2).

(4) If the FCA issues the proposed statement it must publish an account, in general terms, of—
   (a) the representations made to it in accordance with subsection (2), and
   (b) its response to them.

(5) If the statement differs from the draft published under subsection (1) in a way which is, in the opinion of the FCA, significant, the FCA must (in addition to complying with subsection (4)) publish details of the difference.

(6) The FCA may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1).

(7) This section also applies to a proposal to alter or replace a statement.

CHAPTER 3

GUIDANCE

139A Power of the FCA to give guidance

(1) The FCA may give guidance consisting of such information and advice as it considers appropriate—
   (a) with respect to the operation of specified parts of this Act and of any rules made by the FCA;
   (b) with respect to any other matter relating to functions of the FCA;

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(c) with respect to any other matters about which it appears to the FCA to be desirable to give information or advice.

(2) The FCA may give financial or other assistance to persons giving information or advice of a kind which the FCA could give under this section.

(3) Subsection (5) applies where the FCA proposes to give guidance to FCA-regulated persons generally, or to a class of FCA-regulated persons, in relation to rules to which those persons are subject.

(4) Subsection (5) also applies in relation to guidance which the FCA proposes to give to persons generally, or to a class of person, in relation to its functions under the short selling regulation.

(5) Where this subsection applies, subsections (1), (2)(e) and (3) of section 138I (consultation) apply to the proposed guidance as they apply to proposed rules, unless the FCA considers that the delay in complying with those provisions would be prejudicial to the interests of consumers.

(6) The FCA may—
(a) publish its guidance,
(b) offer copies of its published guidance for sale at a reasonable price, and
(c) if it gives guidance in response to a request made by any person, make a reasonable charge for that guidance.

(7) In this Chapter, references to guidance given by the FCA include references to any recommendations made by the FCA to FCA-regulated persons generally, or to any class of FCA-regulated person.

(8) "Consumers" has the meaning given in section 1G.

(9) "FCA-regulated person" means—
(a) an authorised person, or
(b) any person who is otherwise subject to rules made by the FCA.

139B Notification of FCA guidance to the Treasury

(1) On giving any general guidance, the FCA must give written notice to the Treasury without delay.

(2) If the FCA alters any of its guidance, it must give written notice to the Treasury without delay.

(3) The notice under subsection (2) must include details of the alteration.

(4) If the FCA revokes any of its general guidance, it must give written notice to the Treasury without delay.

(5) "General guidance" means guidance given by the FCA under section 139A which is—
(a) given to persons generally, to FCA-regulated persons generally or to a class of FCA-regulated person,
(b) intended to have continuing effect, and
(c) given in writing or other legible form.

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(6) "FCA-regulated person" has the same meaning as in section 139A.

CHAPTER 4

COMPETITION SCRUTINY

140A Interpretation

(1) In this Chapter—

"market in the United Kingdom" includes—

(a) so far as it operates in the United Kingdom or a part of the United Kingdom, any market which operates there and in another country or territory or in a part of another country or territory, and

(b) any market which operates only in a part of the United Kingdom;

"the OFT" means the Office of Fair Trading;

"practices", in relation to each regulator, means practices adopted by that regulator in the exercise of functions under this Act;

"regulating provisions" means—

(a) in relation to the FCA, any—

(i) rules of the FCA;

(ii) general guidance (as defined by section 139B(5));

(iii) statement issued by the FCA under section 64;

(iv) code issued by the FCA under section 64 or 119;

(b) in relation to the PRA, any—

(i) rules of the PRA;

(ii) statement issued by the PRA under section 64;

(iii) code issued by the PRA under section 64.

(2) In this Chapter each of the Competition Commission and the OFT is "a competition authority".

(3) For the purposes of this Chapter, any reference to a feature of a market in the United Kingdom for goods or services is to be read as a reference to—

(a) the structure of the market concerned or any aspect of that structure,

(b) any conduct (whether or not in the market concerned) of one or more than one person who supplies or acquires goods or services in the market concerned, or

(c) any conduct relating to the market concerned of customers of any person who supplies or acquires goods or services.

(4) In subsection (3) "conduct" includes any failure to act (whether or not intentional) and any other unintentional conduct.

140B Advice about effect of regulating provision or practice

(1) In this Chapter, any reference to the giving of "section 140B advice" to a regulator is to be read in accordance with this section.

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) The OFT gives "section 140B advice" to a regulator if—
  (a) it gives advice to the regulator under section 7 of the Enterprise Act 2002 (provision of competition advice to Ministers etc.), and
  (b) the advice states that in the opinion of the OFT one or more of the things mentioned in subsection (4) may cause, or contribute to, the effect mentioned in subsection (5), or might be expected to do so in the future.

(3) The Competition Commission gives "section 140B advice" to a regulator if a report published by it under section 136 of the Enterprise Act 2002 (investigations and reports on market investigation reference) contains—
  (a) a decision that one or more of the things mentioned in subsection (4) may cause, or contribute to, the effect mentioned in subsection (5), and
  (b) a recommendation that any action should be taken by that regulator.

(4) Those things are—
  (a) a regulating provision or practice of the regulator,
  (b) two or more regulating provisions or practices (of that regulator or of both regulators) taken together,
  (c) a particular combination of regulating provision or practices (of that regulator or of both regulators), or
  (d) a feature, or combination of features, of a market in the United Kingdom that could be dealt with by regulating provision or practices (of that regulator or of both regulators).

(5) That effect is the prevention, restriction or distortion of competition in connection with the supply or acquisition of any goods or services in the United Kingdom or a part of the United Kingdom.

140C Consultation with regulator

Before giving section 140B advice, a competition authority must consult the regulator to which the advice is to be given.

140D Investigation powers of OFT

Where the OFT is deciding whether to exercise its power under section 7 of the Enterprise Act 2002 to give advice which, if given, would be section 140B advice, section 174 of that Act has effect as if—
  (a) in subsection (1), for the words from "make a reference" to the end there were substituted " give advice which would for the purposes of Chapter 4 of Part 9A of the Financial Services and Markets Act 2000 be section 140B advice ", and
  (b) in subsection (2), for "make such a reference" there were substituted " give such advice ".

140E Publication by OFT of section 140B advice

The OFT must publish in such manner as it thinks fit any section 140B advice given by it to either regulator.

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

140F Duty of Competition Commission to send report to regulator

(1) Where the publication of a report of the Competition Commission under section 142 of the Enterprise Act 2002 constitutes the giving of section 140B advice to either regulator, the Commission must give a copy of the report to that regulator.

(2) The day on which the copy is given is the day on which the regulator is to be taken to receive the section 140B advice.

140G Duty of regulator to publish response

(1) A regulator must, within 90 days after the day on which it receives section 140B advice, publish a response stating how it proposes to deal with the advice and in particular—
   (a) whether it has decided to take any action, or to take no action, in response to the advice,
   (b) if it has decided to take action, what action it proposes to take, and
   (c) its reasons for its proposals.

(2) Publication is to be in such manner as the regulator thinks fit.

140H Role of the Treasury

(1) This section applies where—
   (a) a competition authority has given section 140B advice and the regulator has published a response under section 140G, and
   (b) the competition authority remains of the opinion that one or more of the things mentioned in section 140B(4) may cause or contribute to, the effect mentioned in section 140B(5).

(2) The competition authority may refer the section 140B advice to the Treasury by sending the Treasury—
   (a) a copy of the section 140B advice and of the response, and
   (b) a request to consider the advice and the response.

(3) In referring the section 140B advice, the competition authority may give advice to the Treasury as to what action, if any, ought to be taken by the regulator.

(4) If section 140B advice is referred to them, the Treasury may give a direction to the regulator to which the advice was given requiring the regulator to take such action as may be specified in the direction.

(5) In considering whether to give a direction and, if so, what action to specify, the Treasury must have regard to—
   (a) any advice the competition authority has given under subsection (3),
   (b) any action which the section 140B advice suggests that the regulator should take, and
   (c) the response of the regulator to the section 140B advice.

Status: *Point in time view as at 03/03/2015.*
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(6) The direction may not require the regulator to do anything that it has no power to do, but the existence of the direction is relevant to the exercise of any discretion conferred on the regulator.

(7) Before giving a direction under this section, the Treasury must consult the regulator to which it is to be given.

(8) If the Treasury give a direction under this section they must—
  (a) publish in such manner as they think fit a statement giving details of the direction and of their reasons for giving it, and
  (b) lay a copy of the statement before Parliament.

CHAPTER 5

POWER TO MAKE CONSEQUENTIAL AMENDMENTS

141A Power to make consequential amendments of references to rules etc.

(1) This section applies if—
  (a) a provision of primary or subordinate legislation (whenever passed or made) contains a reference (however expressed) to rules of either regulator or to guidance of the FCA,
  (b) it appears to the Treasury or the Secretary of State that the reference requires amendment in consequence of the exercise by that regulator of its power under this Part to make, alter or revoke its rules or the exercise by the FCA of its power to make, alter or revoke its guidance.

(2) The Treasury or the Secretary of State may by order make such amendment of the legislation referred to in subsection (1)(a) as appears to them to be necessary or expedient in consequence of the exercise by the regulator of the power mentioned in subsection (1)(b).

(3) The power conferred by subsection (2) includes power—
  (a) to replace a reference to the rules of one regulator with a reference to the rules of the other regulator or to the rules of both regulators;
  (b) to replace a reference to the rules of both regulators with a reference to the rules of one regulator.

(4) In subsection (1)(a) "subordinate legislation" does not include rules of either regulator."

(2) In section 391 of FSMA 2000 (publication), after subsection (5) insert—

"(5A) Subsection (5) does not apply in relation to a notice given in accordance with section 137S(5) or (8)(a) (but see section 137S(11))."

(3) In section 395 of FSMA 2000 (procedures in relation to giving of supervisory notices etc), in subsection (13), after paragraph (bb) insert—

"(bba) section 137S(5) or (8)(a);".

(4) Omit Schedule 14 to FSMA 2000 (role of the Competition Commission).

Status: *Point in time view as at 03/03/2015.*
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Commencement Information

I46 S. 24 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), **Sch. Pt. 3**

I47 S. 24 in force at 1.4.2013 in so far as not already in force by S.I. 2013/423, art. 3, **Sch.**

Short selling

25 Functions relating to short selling

(1) In every provision of Part 8A of FSMA 2000 (short selling) for "Authority" or "Authority's" in each place substitute " FCA " or "FCA's".

(2) Subsection (1) does not affect references to "the competent authority".

Commencement Information

I48 S. 25 in force at 1.4.2013 by S.I. 2013/423, art. 3, **Sch.**

Control over authorised persons

26 Control over authorised persons

(1) FSMA 2000 is amended as follows.

(2) In every provision of Part 12 (control over authorised persons), for "Authority" or "Authority's", in each place (where not expressly amended by the following provisions), substitute " appropriate regulator " or "appropriate regulator's".

(3) In section 178 (obligation to notify an acquisition of control), after subsection (2) insert—

"(2A) In this Part, "the appropriate regulator" means—

(a) where the UK authorised person is a PRA-authorised person, the PRA;

(b) in any other case, the FCA."

(4) In section 179 (requirements for section 178 notices) in subsection (2), for "The Authority" substitute " Each regulator ".

(5) In section 187 (approval with conditions), for subsection (2) substitute—

"(2) The appropriate regulator may only impose conditions where—

(a) if it did not impose those conditions, it would propose to object to the acquisition, or

(b) it is required to do so by a direction under section 187A(3)(b) or section 187B(3)."

(6) After section 187 insert—

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"**187A Assessment: consultation by PRA with FCA**

(1) The PRA must consult the FCA before acting under section 185.

(2) The FCA may make representations to the PRA in relation to any of the matters set out in sections 185(2) and 186.

(3) If the FCA considers that on the basis of the matters set out in section 186(f) there are reasonable grounds to object to the acquisition, the FCA may—
  (a) direct the PRA to object to the acquisition, or
  (b) direct the PRA not to approve the acquisition unless it does so subject to conditions specified in the direction (with or without other conditions).

(4) Before giving a direction under subsection (3), the FCA must notify the PRA of its proposal to do so.

(5) In order to comply with the obligation under subsection (1), the PRA must provide the FCA with—
  (a) copies of—
    (i) the section 178 notice, and
    (ii) any document included with that notice,
  (b) any further information provided pursuant to section 190, and
  (c) any other information in the possession of the PRA which—
    (i) in the opinion of the PRA, is relevant to the application, or
    (ii) is reasonably requested by the FCA.

(6) If the PRA acts under section 185(1)(b), it must indicate to the section 178 notice-giver any representations or directions received from the FCA.

(7) Directions given by the FCA under this section are subject to any directions given to the FCA under section 3I or 3J.

187B Assessment: consultation by FCA with PRA

(1) The FCA must consult the PRA before acting under section 185 if—
  (a) the UK authorised person to which the section 178 notice relates has as a member of its immediate group a PRA-authorised person, or
  (b) the section 178 notice-giver is a PRA-authorised person.

(2) The PRA may make representations to the FCA in relation to any of the matters set out in sections 185(2) and 186.

(3) If the PRA considers that on the basis of relevant matters there are reasonable grounds to object to the acquisition, the PRA may direct the FCA not to approve the acquisition unless it does so subject to conditions specified in the direction (with or without other conditions).

(4) In subsection (3) "relevant matters"—
  (a) means the matters in paragraphs (d) and (e)(i) of section 186, and
  (b) in a case falling within subsection (1)(b) of this section, also includes the matter in paragraph (c) of section 186.

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(5) In order to comply with the obligation under subsection (1), the FCA must provide the PRA with—
  (a) copies of—
    (i) the section 178 notice, and
    (ii) any document included with that notice,
  (b) any further information provided pursuant to section 190, and
  (c) any other information in the possession of the FCA which—
    (i) in the opinion of the FCA, is relevant to the application, or
    (ii) is reasonably requested by the PRA.

(6) If the FCA acts under section 185(1)(b), it must indicate to the section 178 notice-giver any representations or directions received from the PRA.

187C Variation etc of conditions

(1) Where the PRA has imposed conditions required by a direction given by the FCA under section 187A(3)—
  (a) the FCA may direct the PRA to exercise its power under section 187(4) to vary or cancel any of those conditions;
  (b) the PRA must consult the FCA before it exercises that power in relation to those conditions otherwise than in accordance with a direction under paragraph (a).

(2) Where the FCA has imposed conditions required by a direction given by the PRA under section 187B(3)—
  (a) the PRA may direct the FCA to exercise its power under section 187(4) to vary or cancel any of those conditions;
  (b) the FCA must consult the PRA before it exercises that power in relation to those conditions otherwise than in accordance with a direction under paragraph (a).”

(7) In section 191A (objection to control), after subsection (4) insert—

“(4A) Where the appropriate regulator is the PRA, it must consult the FCA before giving a warning notice under this section.

(4B) Where the appropriate regulator is the FCA, it must consult the PRA before giving a warning notice under this section if—
  (a) the UK authorised person has as a member of its immediate group a PRA-authorised person, or
  (b) the person to whom the warning notice is to be given is a PRA-authorised person.”

(8) In section 191B (restriction notices), after subsection (2) insert—

“(2A) Where the appropriate regulator is the PRA, it must consult the FCA before giving a restriction notice under this section.

(2B) Where the appropriate regulator is the FCA, it must consult the PRA before giving a restriction notice under this section if—
  (a) the UK authorised person has as a member of its immediate group a PRA-authorised person, or

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(b) the person to whom the restriction notice is to be given is a PRA-authorised person."

(9) In section 191C (orders for the sale of shares), after subsection (2) insert—

"(2A) Where the appropriate regulator is the PRA, it must consult the FCA before making an application to the court under this section.

(2B) Where the appropriate regulator is the FCA, it must consult the PRA before making an application to the court under this section if—

(a) the UK authorised person has as a member of its immediate group a PRA-authorised person, or

(b) the person holding the shares or voting power is a PRA-authorised person."

(10) In section 191D (obligation to notify of disposition of control), after subsection (1) insert—

"(1A) The PRA must give the FCA a copy of any notice it receives under this section.

(1B) The FCA must give the PRA a copy of any notice it receives under this section which—

(a) relates to a UK authorised person who has as a member of its immediate group a PRA-authorised person, or

(b) is given by a PRA-authorised person."

(11) In section 191E (requirements for notices under section 191D), in subsection (2), for "The Authority" substitute " Each regulator ".

(12) In section 191G (interpretation), in subsection (1), after the definition of "acquisition" insert—

""the appropriate regulator" is to be read in accordance with section 178(2A);".

Commencement Information

I49 S. 26 in force at 1.4.2013 by S.I. 2013/423, art. 3, **Sch.**

27 Powers of regulators in relation to parent undertakings

After section 192 of FSMA 2000 insert—

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

"PART 12A

POWERS EXERCISABLE IN RELATION TO PARENT UNDERTAKINGS

Introductory

192A Meaning of "qualifying authorised person"

(1) In this Part "qualifying authorised person" means an authorised person satisfying the following conditions.

(2) Condition A is that the authorised person is a body corporate incorporated in the United Kingdom.

(3) Condition B is that the authorised person is—
  (a) a PRA-authorised person, or
  (b) an investment firm.

(4) The Treasury may by order—
  (a) amend subsection (3) so as to add to or restrict the descriptions of authorised person who can be qualifying authorised persons, or
  (b) provide that while the order is in force subsection (3) is not to have effect.

(5) Except as provided by subsection (6), an order under subsection (4) is not to be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

(6) An order under subsection (4) may be made without a draft having been laid and approved as mentioned in subsection (5) if the order contains a statement that the Treasury are of the opinion that, by reason of urgency, it is necessary to make the order without a draft being so laid and approved.

(7) An order under subsection (4) made in accordance with subsection (6)—
  (a) must be laid before Parliament after being made, and
  (b) ceases to have effect at the end of the relevant period unless before the end of that period the order is approved by a resolution of each House of Parliament (but without affecting anything done under the order or the power to make a new order).

(8) The "relevant period" is a period of 28 days beginning with the day on which the order is made.

(9) In calculating the relevant period no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.

192B Meaning of "qualifying parent undertaking"

(1) The parent undertaking of a qualifying authorised person or recognised UK investment exchange is for the purposes of this Part a "qualifying parent undertaking" if the following conditions are satisfied in relation to it.

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(2) Condition A is that the parent undertaking is a body corporate which—
  (a) is incorporated in the United Kingdom, or
  (b) has a place of business in the United Kingdom.

(3) Condition B is that the parent undertaking is not itself an authorised person, a recognised investment exchange or a recognised clearing house.

(4) Condition C is that the parent undertaking is a financial institution of a kind prescribed by the Treasury by order.

(5) "Recognised UK investment exchange" means a recognised investment exchange that is not an overseas investment exchange as defined in section 313(1).

(6) The Treasury may by order—
  (a) amend subsection (4) by omitting the words "a financial institution", and
  (b) make any amendment of subsection (2) that they consider desirable in connection with an amendment made under paragraph (a).

Power of direction

192C Power to direct qualifying parent undertaking

(1) The appropriate regulator may give a direction under this section to a qualifying parent undertaking if either the general condition or the consolidated supervision condition is satisfied.

(2) The general condition is that the appropriate regulator considers that it is desirable to give the direction in order to advance—
  (a) in the case of the FCA, one or more of its operational objectives;
  (b) in the case of the PRA, any of its objectives.

(3) The consolidated supervision condition is that—
  (a) the appropriate regulator is the competent authority for the purpose of consolidated supervision that is required, in relation to some or all of the members of the group of a qualifying authorised person, in pursuance of any of the directives mentioned in section 3M(3), and
  (b) the appropriate regulator considers that the giving of the direction is desirable for the purpose of the effective consolidated supervision of the group.

(4) In subsection (3)(a) "consolidated supervision" includes supplemental supervision.

(5) In deciding whether to give a direction under this section, a regulator must have regard—
  (a) to the desirability where practicable of exercising its powers in relation to authorised persons or recognised investment exchanges rather than its powers under this section, and

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(b) to the principle that a burden or restriction which is imposed on a person should be proportionate to the benefits, considered in general terms, which are expected to result from its imposition.

(6) "The appropriate regulator" means—

(a) where a direction relates to a qualifying authorised person or recognised investment exchange who is a PRA-authorised person, the FCA or the PRA;

(b) in any other case, the FCA.

192D Requirements that may be imposed

(1) A direction under section 192C may require the parent undertaking—

(a) to take specified action, or

(b) to refrain from taking specified action.

(2) A requirement may be imposed by reference to the parent undertaking's relationship with—

(a) its group, or

(b) other members of its group.

(3) A requirement may refer to the past conduct of the parent undertaking (for example, by requiring the parent undertaking to review or take remedial action in respect of past conduct).

(4) A requirement imposed by the direction may be expressed to expire at the end of a specified period, but the imposition of a requirement that expires at the end of a specified period does not affect the power to give a further direction imposing a new requirement.

(5) The direction—

(a) may be revoked by the regulator which gave it by written notice to the body to which it is given, and

(b) ceases to be in force if the body to which it is given ceases to be a qualifying parent undertaking.

192E Direction: procedure

(1) If a regulator proposes to give a direction under section 192C, or gives such a direction with immediate effect, it must give written notice to—

(a) the parent undertaking to which the direction is given (or to be given) ("P"), and

(b) any authorised person or recognised investment exchange who will, in the opinion of the regulator, be significantly affected by the direction.

(2) In the following provisions of this section "notified person" means a person to whom notice under subsection (1) is given.

(3) A direction under section 192C takes effect—

(a) immediately, if the notice under subsection (1) states that that is the case,

(b) on such other date as may be specified in the notice, or

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(c) if no date is specified in the notice, when the matter to which the notice relates is no longer open to review.

(4) A direction may be expressed to take effect immediately (or on a specified date) only if the regulator reasonably considers that it is necessary for the direction to take effect immediately (or on that date).

(5) The notice under subsection (1) must—
(a) give details of the direction,
(b) state the regulator's reasons for the direction and for its determination as to when the direction takes effect,
(c) inform the notified person that the person may make representations to the regulator within such period as may be specified in the notice (whether or not the notified person has referred the matter to the Tribunal), and
(d) inform the notified person of the person's right to refer the matter to the Tribunal.

(6) The regulator may extend the period allowed under the notice for making representations.

(7) If, having considered any representations made by any notified person, the regulator decides—
(a) to give the direction proposed, or
(b) if the direction has been given, not to revoke the direction,
it must give each of the notified persons written notice.

(8) If, having considered any representations made by any notified person, the regulator decides—
(a) not to give the direction proposed,
(b) to give a different direction, or
(c) to revoke a direction which has effect,
it must give each of the notified persons written notice.

(9) A notice given under subsection (7) must inform the notified person of the person's right to refer the matter to the Tribunal.

(10) A notice under subsection (8)(b) must comply with subsection (5).

(11) If a notice informs the notified person of the person's right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.

(12) For the purposes of subsection (3)(c), whether a matter is open to review is to be determined in accordance with section 391(8).

192F Consultation between regulators

(1) Before the PRA gives a notice under section 192E(1) or (8)(b), it must consult the FCA.

(2) Before the FCA gives a notice under section 192E(1) or (8)(b) in relation to the parent undertaking of a PRA-authorised person, the FCA must consult the PRA.

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(3) Before either regulator gives a notice under section 192E(1) or (8)(b) in relation to the parent undertaking of a recognised clearing house, the regulator must consult the Bank of England.

192G References to Tribunal

(1) A notified person who is aggrieved by the exercise by either regulator of its powers in relation to directions under section 192C may refer the matter to the Tribunal.

(2) "Notified person" is to be read in accordance with subsection (2) of section 192E, except that it includes a person to whom a notice under subsection (1) of that section ought to have been given.

192H Statement of policy: directions under section 192C

(1) Each regulator must prepare and issue a statement of policy with respect to the giving of directions under section 192C.

(2) A regulator may at any time alter or replace a statement issued under this section.

(3) If a statement issued under this section is altered or replaced, the regulator must issue the altered or replacement statement.

(4) In exercising or deciding whether to exercise its power under section 192C in any particular case, a regulator must have regard to any statement published under this section and for the time being in force.

(5) A statement under this section must be published by the regulator concerned in the way appearing to the regulator to be best calculated to bring it to the attention of the public.

(6) A regulator may charge a reasonable fee for providing a person with a copy of a statement published under this section.

(7) A regulator must, without delay, give the Treasury a copy of any statement which the regulator publishes under this section.

192I Statement of policy relating to directions: procedure

(1) Before issuing a statement of policy under section 192H, a regulator ("the issuing regulator") must—
   (a) consult the other regulator and the Bank of England, and
   (b) publish a draft of the proposed statement in the way appearing to the issuing regulator to be best calculated to bring it to the attention of the public.

(2) The draft must be accompanied by notice that representations about the proposal may be made to the issuing regulator within a specified time.

(3) Before issuing the proposed statement, the issuing regulator must have regard to any representations made to it in accordance with subsection (2).

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(4) If the issuing regulator issues the proposed statement it must publish an account, in general terms, of—
  (a) the representations made to it in accordance with subsection (2), and
  (b) its response to them.

(5) If the statement differs from the draft published under subsection (2) in a way which is, in the opinion of the issuing regulator, significant, the issuing regulator—
  (a) must before issuing it consult the other regulator again, and
  (b) must (in addition to complying with subsection (4)), publish details of the difference.

(6) The issuing regulator may charge a reasonable fee for providing a person with a draft published under subsection (1)(b).

(7) This section also applies to a proposal to alter or replace a statement.

Rules requiring provision of information by parent undertakings

192J Rules requiring provision of information by parent undertakings

(1) The appropriate regulator may make rules requiring qualifying parent undertakings—
  (a) to provide to the regulator information of a specified description;
  (b) to produce to the regulator documents of a specified description.

(2) The rules may only specify a description of information or documents that is relevant to the exercise by the regulator of its functions.

(3) The rules may make provision—
  (a) as to the time within which information must be provided or documents produced;
  (b) about the form in which any information is to provided;
  (c) about the place where any documents are to be produced;
  (d) requiring information provided to be verified in a specified manner;
  (e) requiring documents produced to be authenticated in a specified manner.

(4) "The appropriate regulator" means—
  (a) in relation to the parent undertaking of a qualifying authorised person who is a PRA-authorised person, the FCA or the PRA;
  (b) in any other case, the FCA.

Failure to comply with direction or breach of rules

192K Power to impose penalty or issue censure

(1) This section applies if a regulator is satisfied that a person who is or has been a qualifying parent undertaking ("P") has contravened—

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) a requirement of a direction given to P by that regulator under section 192C, or
(b) a provision of rules made by that regulator under section 192J.

(2) The regulator may impose a penalty of such amount as it considers appropriate on—
(a) P, or
(b) any person who was knowingly concerned in the contravention.

(3) The regulator may, instead of imposing a penalty on a person, publish a statement censuring the person.

(4) The regulator may not take action against a person under this section after the end of the limitation period unless, before the end of that period, it has given a warning notice to the person under section 192L.

(5) "The limitation period" means the period of 3 years beginning with the first day on which the regulator knew of the contravention.

(6) For this purpose a regulator is to be treated as knowing of a contravention if it has information from which the contravention can reasonably be inferred.

192L Procedure and right to refer to Tribunal

(1) If a regulator proposes to take action against a person under section 192K, it must give the person a warning notice.

(2) A warning notice about a proposal to impose a penalty must state the amount of the penalty.

(3) A warning notice about a proposal to publish a statement must set out the terms of the statement.

(4) If the regulator decides to take action against a person under section 192K, it must give the person a decision notice.

(5) A decision notice about the imposition of a penalty must state the amount of the penalty.

(6) A decision notice about the publication of a statement must set out the terms of the statement.

(7) If the regulator decides to take action against a person under section 192K, the person may refer the matter to the Tribunal.

192M Duty on publication of statement

After a statement under section 192K(3) is published, the regulator must send a copy of the statement to—
(a) the person in respect of whom it is made, and
(b) any person to whom a copy of the decision notice was given under section 393(4).

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

192N Imposition of penalties under section 192K: statement of policy

(1) Each regulator must prepare and issue a statement of policy with respect to—
  (a) the imposition of penalties under section 192K, and
  (b) the amount of penalties under that section.

(2) A regulator's policy in determining what the amount of a penalty should be must include having regard to—
  (a) the seriousness of the contravention,
  (b) the extent to which the contravention was deliberate or reckless, and
  (c) whether the person on whom the penalty is to be imposed is an individual.

(3) A regulator may at any time alter or replace a statement issued under this section.

(4) If a statement issued under this section is altered or replaced, the regulator must issue the altered or replacement statement.

(5) In exercising, or deciding whether to exercise, a power under section 192K(2) in the case of any particular contravention, a regulator must have regard to any statement of policy published under this section and in force at a time when the contravention occurred.

(6) A statement under this section must be published by the regulator concerned in the way appearing to the regulator to be best calculated to bring it to the attention of the public.

(7) A regulator may charge a reasonable fee for providing a person with a copy of the statement published under this section.

(8) A regulator must, without delay, give the Treasury a copy of any statement which it publishes under this section.

(9) Section 192I applies in relation to a statement under this section as it applies in relation to a statement under section 192H.”

Commencement Information

I50 S. 27 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), **Sch. Pt. 3**
I51 S. 27 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(b), **Sch. Pt. 2**
I52 S. 27 in force at 1.4.2013 in so far as not already in force by S.I. 2013/423, art. 3, **Sch.**

Recognised investment exchanges and clearing houses

28 Exemption for recognised investment exchanges and clearing houses

(1) Section 285 of FSMA 2000 (exemption from general prohibition for recognised investment exchanges and recognised clearing houses) is amended as follows.

(2) In subsection (2), for paragraph (b) substitute—

Status: *Point in time view as at 03/03/2015.*
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"(b) which is carried on for the purposes of, or in connection with, the provision by the exchange of services designed to facilitate the provision of clearing services by another person."

(3) In subsection (3) for the words from "activity which" to the end substitute "activity—

(a) which is carried on for the purposes of, or in connection with, the provision of clearing services by the clearing house, or

(b) which is carried on for the purposes of, or in connection with, the provision by the clearing house of services designed to facilitate the provision of clearing services by another person."

(4) After that subsection insert—

"(4) The Treasury may by order amend paragraph (b) of subsection (2) or (3)."

Commencement Information

I53 S. 28 in force at 1.4.2013 by S.I. 2013/423, art. 3, **Sch.**

29 Powers in relation to recognised investment exchanges and clearing houses

(1) After section 285 of FSMA 2000 insert—

"**285A Powers exercisable in relation to recognised investment exchanges and clearing houses**

(1) For the purposes of this Part, the FCA is "the appropriate regulator" in relation to recognised investment exchanges.

(2) For the purposes of this Part, the Bank of England is "the appropriate regulator" in relation to recognised clearing houses.

(3) In Schedule 17A—

(a) Part 1 makes provision for a memorandum of understanding between the appropriate regulators and the PRA with respect to the exercise of their functions in relation to recognised investment exchanges and clearing houses;

(b) Part 2 applies certain provisions of this Act in relation to the Bank of England in consequence of the conferring of functions on the Bank under this Part of this Act;

(c) Part 3 makes provision relating to the winding up, administration or insolvency of UK clearing houses; and

(d) Part 4 makes provision about fees."

(2) After Schedule 17 of FSMA 2000 insert the Schedule 17A set out in Schedule 7 to this Act.

Commencement Information

I54 S. 29 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), **Sch. Pt. 3**

I55 S. 29 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(b), **Sch. Pt. 2**

I56 S. 29 in force at 1.4.2013 in so far as not already in force by S.I. 2013/423, art. 3, **Sch.**

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

30 Recognition requirements: power of FCA and Bank to make rules

In section 286 of FSMA 2000 (qualification for recognition), after subsection (4E) insert—

"(4F) Regulations under subsection (1) may confer power on the appropriate regulator to make rules for the purposes of the regulations or of any specified provision made by the regulations."

Commencement Information

I57 S. 30 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(b), **Sch. Pt. 2**

I58 S. 30 in force at 1.4.2013 in so far as not already in force by S.I. 2013/423, art. 3, **Sch.**

31 Additional power to direct UK clearing houses

After section 296 of FSMA 2000 insert—

"296A Additional power to direct UK clearing houses

(1) The Bank of England may direct a UK clearing house to take, or refrain from taking, specified action if the Bank is satisfied that it is necessary to give the direction, having regard to the public interest in—
- (a) protecting and enhancing the stability of the UK financial system,
- (b) maintaining public confidence in the stability of the UK financial system,
- (c) maintaining the continuity of the central counterparty clearing services provided by the clearing house, and
- (d) maintaining and enhancing the financial resilience of the clearing house.

(2) The direction may, in particular—
- (a) specify the time for compliance with the direction,
- (b) require the rules of the clearing house to be amended, and
- (c) override such rules (whether generally or in their application to a particular case).

(3) The direction may not require the clearing house—
- (a) to take any steps for the purpose of securing its compliance with—
  - (i) the recognition requirements, or
  - (ii) any obligation of a kind mentioned in section 296(1)(b) or (1A), or
- (b) to accept a transfer of property, rights or liabilities of another clearing house.

(4) If the direction is given in reliance on section 298(7) the Bank must, within a reasonable time of giving the direction, give the clearing house a statement of its reasons—
- (a) for giving the direction, and
- (b) for relying on section 298(7).

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(5) The direction is enforceable, on the application of the Bank, by an injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.

(6) The Bank may revoke a direction given under this section."

Commencement Information
I59 S. 31 in force at 1.4.2013 by S.I. 2013/423, art. 3, **Sch.**

32 Recognised bodies: procedure for giving directions under s.296 etc

(1) Section 298 of FSMA 2000 (directions under section 296 and revocation orders under section 297(2) or (2A): procedure) is amended as follows.

(2) In subsection (1), omit paragraphs (b) and (c) (requirements to bring notice to attention of members of the body and other persons).

(3) In subsection (3), omit paragraphs (b) and (c) (members of the body and other persons may make representations).

(4) For subsection (4) substitute—

"(4) The period for making representations is such period as is specified in the notice (which may, in any particular case, be extended by the appropriate regulator)."

(5) In subsection (6), omit paragraph (b) (notice of decision to members of the body and others) and the "and" before it.

(6) In subsection (7), for "considers it essential" substitute " reasonably considers it necessary ".

Commencement Information
I60 S. 32 in force at 1.4.2013 by S.I. 2013/423, art. 3, **Sch.**

33 Power to take disciplinary measures against recognised bodies

After section 312D of FSMA 2000 insert—

"CHAPTER 3B

DISCIPLINARY MEASURES

312E Public censure

(1) If the appropriate regulator considers that a recognised body has contravened a relevant requirement imposed on the body, it may publish a statement to that effect.

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) Where the FCA is the appropriate regulator, a requirement is a "relevant requirement" for the purposes of this Chapter if it is—
  (a) a requirement that is imposed by or under any provision of this Part that relates to a recognised investment exchange,
  (b) a requirement that is imposed under any other provision of this Act by the FCA that relates to a recognised investment exchange,
  (c) a requirement that is imposed by a qualifying EU provision specified, or of a description specified, for the purposes of this subsection by the Treasury by order, or
  (d) a requirement that is imposed by this Act and whose contravention constitutes an offence that the FCA has power to prosecute under this Act (see section 401).

(3) Where the Bank of England is the appropriate regulator, a requirement is a "relevant requirement" for the purposes of this Chapter if it is—
  (a) a requirement that is imposed by or under any provision of this Part that relates to a recognised clearing house,
  (b) a requirement that is imposed under any other provision of this Act by the Bank,
  (c) a requirement that is imposed by a qualifying EU provision specified, or of a description specified, for the purposes of this subsection by the Treasury by order, or
  (d) a requirement that is imposed by this Act and whose contravention constitutes an offence that the Bank has power to prosecute under this Act (see section 401, as applied by paragraph 31 of Schedule 17A).

312F Financial penalties

If the appropriate regulator considers that a recognised body has contravened a relevant requirement imposed on the body, it may impose on the body a penalty, in respect of the contravention, of such amount as it considers appropriate.

312G Proposal to take disciplinary measures

(1) If the appropriate regulator proposes—
  (a) to publish a statement in respect of a recognised body under section 312E, or
  (b) to impose a penalty on a recognised body under section 312F,

it must give the body a warning notice.

(2) A warning notice about a proposal to publish a statement must set out the terms of the statement.

(3) A warning notice about a proposal to impose a penalty must state the amount of the penalty.

312H Decision notice

(1) If the appropriate regulator decides—
  (a) to publish a statement in respect of a recognised body under section 312E (whether or not in the terms proposed), or

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) to impose a penalty on a recognised body under section 312F (whether or not of the amount proposed),

it must give the body a decision notice.

(2) In the case of a statement, the decision notice must set out the terms of the statement.

(3) In the case of a penalty, the decision notice must state the amount of the penalty.

(4) If the appropriate regulator decides—

(a) to publish a statement in respect of a recognised body under section 312E, or

(b) to impose a penalty on a recognised body under section 312F,

the body may refer the matter to the Tribunal.

312I Publication

After an appropriate regulator publishes a statement under section 312E, it must send a copy of the statement to—

(a) the recognised body concerned, and

(b) any person to whom a copy of the decision notice was given under section 393(4).

312J Statement of policy

(1) Each appropriate regulator must prepare and issue a statement of its policy with respect to—

(a) the imposition of penalties under section 312F, and

(b) the amount of penalties under that section.

(2) An appropriate regulator's policy in determining what the amount of a penalty should be must include having regard to—

(a) the seriousness of the contravention in question in relation to the nature of the requirement concerned, and

(b) the extent to which that contravention was deliberate or reckless.

(3) An appropriate regulator may at any time alter or replace a statement issued by it under this section.

(4) If a statement issued by an appropriate regulator under this section is altered or replaced, the regulator must issue the altered or replacement statement.

(5) In exercising, or deciding whether to exercise, its power under section 312F in the case of any particular contravention, an appropriate regulator must have regard to any statement of policy published by it under this section and in force at a time when the contravention in question occurred.

(6) A statement issued by an appropriate regulator under this section must be published by the regulator in the way appearing to the regulator to be best calculated to bring it to the attention of the public.

(7) An appropriate regulator may charge a reasonable fee for providing a person with a copy of the statement.

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(8) An appropriate regulator must, without delay, give the Treasury a copy of any statement which it publishes under this section.

312K Statement of policy: procedure

(1) Before issuing a statement under section 312J, an appropriate regulator must publish a draft of the proposed statement in the way appearing to the regulator to be best calculated to bring it to the attention of the public.

(2) The draft must be accompanied by notice that representations about the proposal may be made to the regulator within a specified time.

(3) Before issuing the proposed statement, the regulator must have regard to any representations made to it in accordance with subsection (2).

(4) If the regulator issues the proposed statement it must publish an account, in general terms, of—
   (a) the representations made to it in accordance with subsection (2), and
   (b) its response to them.

(5) If the statement differs from the draft published under subsection (1) in a way which is, in the opinion of the regulator, significant, the regulator must (in addition to complying with subsection (4)) publish details of the difference.

(6) An appropriate regulator may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1).

(7) This section also applies to a proposal to alter or replace a statement."

Commencement Information

I61 S. 33 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(b), **Sch. Pt. 2**
I62 S. 33 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), **Sch. Pt. 3**
I63 S. 33 in force at 1.4.2013 in so far as not already in force by S.I. 2013/423, art. 3, **Sch.**

34 Repeal of special competition regime

In Part 18 of FSMA 2000 (recognised investment exchanges and clearing houses)—
   (a) omit Chapter 2 (competition scrutiny), and
   (b) omit Chapter 3 (exclusion from the Competition Act 1998).

Commencement Information

I64 S. 34 in force at 1.4.2013 by S.I. 2013/423, art. 3, **Sch.**

35 Sections 28 to 34: minor and consequential amendments

Schedule 8 contains—
   (a) minor amendments of FSMA 2000 in connection with provision made by sections 28 to 34, and
   (b) other amendments of that Act in consequence of that provision.

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information

I65 S. 35 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), **Sch. Pt. 3**

I66 S. 35 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(b), **Sch. Pt. 2**

I67 S. 35 in force at 1.4.2013 in so far as not already in force by S.I. 2013/423, art. 3, **Sch.**

Suspension and removal of financial instruments from trading

36 Suspension and removal of financial instruments from trading

In every provision of Part 18A of FSMA 2000 (suspension and removal of financial instruments from trading)—

(a) for "Authority", in each place, substitute " FCA ", and

(b) for "Authority's", in each place, substitute "FCA's".

Commencement Information

I68 S. 36 in force at 1.4.2013 by S.I. 2013/423, art. 3, **Sch.**

Discipline and enforcement

37 Discipline and enforcement

(1) Schedule 9 contains miscellaneous amendments of FSMA 2000 relating to discipline and enforcement.

(2) If the Treasury consider that it is in the public interest to do so, the Treasury may by order—

(a) amend section 391 of FSMA 2000 by substituting for subsections (1) to (1ZB) the following—

"(1) Neither the regulator giving a warning notice nor a person to whom it is given or copied may publish the notice or any details concerning it.", and

(b) repeal section 395(1)(d) and (2)(b) and (c) of that Act.

Commencement Information

I69 S. 37 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), **Sch. Pt. 3**

I70 S. 37 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(b), **Sch. Pt. 2**

I71 S. 37(1) in force at 1.4.2013 in so far as not already in force by S.I. 2013/423, art. 3, **Sch.**

I72 S. 37(2) in force at 1.4.2013 by S.I. 2013/423, art. 3, **Sch.**

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Financial Services Compensation Scheme

38 The Financial Services Compensation Scheme

(1) Schedule 10 contains amendments of Part 15 of FSMA 2000 (the Financial Services Compensation Scheme).

(2) In section 224F(1) of that Act (power to require FSCS manager to act in relation to other schemes: rules about the schemes), for "Authority" substitute " regulators ".

Commencement Information

I73 S. 38 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), **Sch. Pt. 3**
I74 S. 38 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(b), **Sch. Pt. 2**
I75 S. 38 in force at 1.4.2013 in so far as not already in force by S.I. 2013/423, art. 3, **Sch.**

Financial ombudsman service

39 The financial ombudsman service

Schedule 11 contains amendments of FSMA 2000 relating to the financial ombudsman service.

Commencement Information

I76 S. 39 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), **Sch. Pt. 3**
I77 S. 39 in force at 19.3.2013 for specified purposes by S.I. 2013/651, **art. 2(b)**
I78 S. 39 in force at 1.4.2013 in so far as not already in force by S.I. 2013/423, art. 3, **Sch.**

Lloyd's

40 Lloyd's

(1) Part 19 of FSMA 2000 (Lloyd's) is amended as follows.

(2) In section 314 (Authority's general duty)—

(a) for subsection (1) substitute—

"(1) So far as it is appropriate to do so for the purpose of advancing one or more of its operational objectives, the FCA must keep itself informed about—

(a) the way in which the Council supervises and regulates the market at Lloyd's, and

(b) the way in which regulated activities are being carried on in that market.

(1A) So far as it is appropriate to do so for the purpose of advancing its general objective or (if section 2C applies) its insurance objective, the PRA must keep itself informed about—

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) the way in which the Council supervises and regulates the market at Lloyd's, and

(b) the way in which any PRA-regulated activities are being carried on in that market.",

(b) in subsection (2)—

(i) for "The Authority" substitute " Each regulator ", and

(ii) in paragraph (b), for "section 315" substitute " provision made by or under this Act ", and

(c) in the heading, for "Authority's" substitute "Regulators'".

(3) After that section insert—

"**314A The PRA's objectives in relation to Lloyd's etc**

(1) This section modifies—

(a) the effect of sections 2B and 2C (the PRA's general objective and insurance objective), and

(b) the effect of section 3I (power of PRA to require FCA to refrain from specified action),

in relation to anything done, or proposed to be done, by the PRA under or for the purposes of this Part.

(2) This section applies only if PRA-authorised persons include—

(a) the Society, or

(b) other persons who carry on regulated activities in relation to anything done at Lloyd's.

(3) Section 2B(2) and (3) have effect as if references to PRA-authorised persons (or a PRA-authorised person) were references to the Society, and the members of the Society, taken together (and sections 2G and 2J(3) are to be read accordingly).

(4) Section 2C(1) has effect as if the reference to the discharge of the PRA's general functions so far as relating to the activity mentioned there were a reference to the discharge of its general functions so far as relating to the carrying on by the Society or other persons of PRA-regulated activities in relation to anything done at Lloyd's.

(5) Section 3I(4)(b) has effect as if the reference to a PRA-authorised person were a reference to the Society, and the members of the Society, taken together."

(4) For section 315 substitute—

"**315 The Society: regulated activities**

(1) This section applies if an activity carried on by the Society is of a kind specified in an order made under section 22 (regulated activities).

(2) The order may provide that the Society is not to be subject to any requirement of this Act concerning the registered office of a body corporate."

(5) In section 316 (direction by Authority)—

(a) in subsection (1), for "the Authority" substitute " a regulator ",

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) after that subsection insert—

"(1A) A direction under subsection (1)—

(a) may be given by the FCA only if it considers that giving the direction is necessary or expedient for the purpose of advancing one or more of its operational objectives, and

(b) may be given by the PRA only if it considers that giving the direction is necessary or expedient for the purpose of advancing its general objective or (if section 2C applies) the insurance objective.

(1B) A direction under subsection (1) which applies the general prohibition to a member of the Society, or to the members of the Society taken together, may be given by a regulator only with the consent of the other regulator.",

(c) in subsection (4)—

(i) for "the Authority", in both places, substitute " the regulator concerned ", and

(ii) in paragraph (c), for "section 315" substitute " provision made by or under this Act ",

(d) in subsection (9)—

(i) after "subsection (1)" insert " given by a regulator ", and

(ii) for "the Authority" substitute " the regulator ",

(e) in subsection (10), for "The Authority" substitute " A regulator who gives a direction under subsection (1) ",

(f) in subsection (11)—

(i) for "The Authority" substitute " A regulator who gives a direction under subsection (1) ", and

(ii) for "any direction which it gives under this section" substitute " the direction ", and

(g) in the heading, for "Authority" substitute " a regulator ".

(6) In section 317 (the core provisions), in subsection (1), for "X" substitute " 9A ".

(7) In section 318 (exercise of powers through Council)—

(a) in subsection (1), for "The Authority" substitute " A regulator ",

(b) after subsection (3) insert—

"(3A) A direction under subsection (1)—

(a) may be given by the FCA only if it considers that giving the direction is necessary or expedient for the purpose of advancing one or more of its operational objectives, and

(b) may be given by the PRA only if it considers that giving the direction is necessary or expedient for the purpose of advancing its general objective or (if section 2C applies) the insurance objective.",

(c) in subsection (4)(b), for "the Authority" substitute " the regulator concerned ",

(d) in subsection (6)(a), for "the Authority" substitute " a regulator ",

(e) in subsection (7)—

(i) after "subsection (1)" insert " given by a regulator ", and

(ii) for "the Authority" substitute " the regulator ",

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(f) in subsection (8), for "The Authority" substitute " A regulator who gives a direction under subsection (1) ", and

(g) in subsection (9)—

(i) for "The Authority" substitute " A regulator who gives a direction under subsection (1) ", and

(ii) for "any direction which it gives under this section" substitute " the direction ".

(8) In section 319 (consultation)—

(a) for subsection (1) substitute—

"(1) Before a regulator gives a direction under section 316 or 318, it must—

(a) in a case where section 316(1B) requires the regulator to obtain the consent of the other regulator, obtain that consent,

(b) in any other case, consult the other regulator, and

(c) after complying with paragraph (a) or (b), publish a draft of the proposed direction.",

(b) in subsection (2)(b), for "the Authority" substitute " the regulator ",

(c) for subsection (3) substitute—

"(3) Before a regulator gives the proposed direction—

(a) it must have regard to any representations made to it in accordance with subsection (2)(b), and

(b) if it was required by subsection (1)(b) to consult the other regulator and proposes to give a direction which differs from the draft published under subsection (1) in a way which is, in the opinion of the regulator, significant, it must again consult the other regulator.",

(d) in subsections (4) and (5) (in both places), for "the Authority" substitute " the regulator ",

(e) for subsection (6) substitute—

"(6) Subsections (1)(c) and (2) to (5) do not apply in relation to—

(a) a direction given by the FCA if it considers that the delay involved in complying with them would be prejudicial to the interests of consumers, as defined in section 425A, or

(b) a direction given by the PRA if it considers that the delay involved in complying with them would—

(i) be prejudicial to the safety and soundness of the Society, and the members of the Society, taken together, or

(ii) in a case where section 2C applies, be prejudicial to securing the appropriate degree of protection for policyholders.",

(f) in subsection (7), for "the Authority" substitute " the regulator concerned ",

(g) in subsection (8)—

(i) for "The Authority" substitute " A regulator who publishes a draft under subsection (1) ", and

(ii) for "a draft published under subsection (1)" substitute " the draft ",

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(h) in subsection (9), for "the Authority" substitute " a regulator ", and

(i) for subsection (10) substitute—

"(10) Cost benefit analysis" means—

(a) an analysis of the costs together with an analysis of the benefits that will arise—

(i) if the proposed direction is given, or

(ii) if subsection (5)(b) applies, from the direction that has been given, and

(b) subject to subsection (10A), an estimate of those costs and of those benefits.

(10A) If, in the opinion of the regulator concerned—

(a) the costs or benefits referred to in subsection (10) cannot reasonably be estimated, or

(b) it is not reasonably practicable to produce an estimate,

the cost benefit analysis need not estimate them, but must include a statement of the opinion of the regulator concerned and an explanation of it."

(9) In section 320 (former underwriting members)—

(a) in subsection (2), for "Part IV permission" substitute " Part 4A permission ",

(b) in subsection (3), for "The Authority" substitute " The PRA ", and

(c) at the end insert—

"(5) In the event that the activity of effecting or carrying out contracts of insurance as principal is not to any extent a PRA-regulated activity, the function conferred on the PRA by subsection (3) is exercisable instead by the FCA.

(6) Accordingly, in that case—

(a) references in section 321 to the PRA are to be read as references to the FCA, and

(b) the reference in section 321(13) to the FCA is to be read as a reference to the PRA."

(10) In section 321 (requirements imposed under section 320)—

(a) in subsection (2), for "the Authority" substitute " the PRA ",

(b) in subsection (3)(b), for "the Authority's" substitute "the PRA's",

(c) in subsections (3)(c), (4) to (9) and (11), for "Authority" substitute " PRA ", and

(d) after subsection (12) insert—

"(13) Before giving a notice under any provision of this section, the PRA must consult the FCA."

(11) In section 322 (rules applicable to former underwriting members)—

(a) in subsection (1), for "The Authority" substitute " The PRA ",

(b) in subsection (4), for "Part X (except sections 152 to 154)" substitute " Part 9A (except sections 137T, 138F, 138G and 138H) ", and

(c) at the end insert—

Status: *Point in time view as at 03/03/2015.*
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"(5) In the event that the activity of effecting or carrying out contracts of insurance as principal is not to any extent a PRA-regulated activity, the function conferred on the PRA by subsection (1) is exercisable instead by the FCA."

Commencement Information

I79 S. 40 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), **Sch. Pt. 3**

I80 S. 40 in force at 1.4.2013 in so far as not already in force by S.I. 2013/423, art. 3, **Sch.**

Information

41 Information, investigations, disclosure etc.

Schedule 12 contains miscellaneous amendments of FSMA 2000, including amendments relating to information gathering, investigations and disclosure.

Commencement Information

I81 S. 41 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), **Sch. Pt. 3**

I82 S. 41 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(b), **Sch. Pt. 2**

I83 S. 41 in force at 1.4.2013 in so far as not already in force by S.I. 2013/423, art. 3, **Sch.**

Auditors and actuaries

42 Auditors and actuaries

Schedule 13 contains miscellaneous amendments of Part 22 of FSMA 2000 (auditors and actuaries).

Commencement Information

I84 S. 42 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), **Sch. Pt. 3**

I85 S. 42 in force at 1.4.2013 in so far as not already in force by S.I. 2013/423, art. 3, **Sch.**

Consumer protection and competition

43 Provisions about consumer protection and competition

After section 234B of FSMA 2000 insert—

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

"PART 16A

CONSUMER PROTECTION AND COMPETITION

Super-complaints and references to FCA

234C Complaints by consumer bodies

(1) A designated consumer body may make a complaint to the FCA that a feature, or combination of features, of a market in the United Kingdom for financial services is, or appears to be, significantly damaging the interests of consumers.

(2) "Designated consumer body" means a body designated by the Treasury by order.

(3) The Treasury—
- (a) may designate a body only if it appears to them to represent the interests of consumers of any description, and
- (b) must publish in such manner as they think fit (and may from time to time vary) criteria to be applied by them in determining whether to make or revoke a designation.

(4) 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.

(5) In this section—
- (a) "market in the United Kingdom" has the meaning given in section 140A;
- (b) the reference to a feature of a market in the United Kingdom for financial services has a meaning corresponding to that which a reference to a feature of a market in the United Kingdom for goods and services has (by virtue of section 140A(3)) for the purposes of Chapter 4 of Part 9A.

234D Reference by scheme operator or regulated person

(1) A relevant person may make a reference to the FCA where it appears to that person that either the first set of conditions or the second set of conditions are satisfied.

(2) Each of the following is a "relevant person"—
- (a) the scheme operator;
- (b) a regulated person.

(3) The first set of conditions is—
- (a) that there may have been—
  - (i) in the case of a reference by the scheme operator, a regular failure by one or more regulated persons to comply with requirements applicable to the carrying on by them of any activity, or

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(ii) in the case of a reference by a regulated person, a regular failure by that person to comply with requirements applicable to the carrying on by that person of any activity, and

(b) that as a result consumers have suffered, or may suffer, loss or damage in respect of which, if they brought legal proceedings, a remedy or relief would be available in the proceedings.

(4) The reference to the failure by a regulated person ("R") to comply with a requirement applicable to the carrying on by R of any activity includes anything done, or omitted to be done, by R in carrying on the activity—

(a) which is a breach of a duty or other obligation, prohibition or restriction, or

(b) which otherwise gives rise to the availability of remedy or relief in legal proceedings.

(5) It does not matter whether—

(a) the duty or other obligation, prohibition or restriction, or

(b) the remedy or relief,

arises as a result of any provision made by or under this or any other Act, a rule of law or otherwise.

(6) The second set of conditions is—

(a) in the case of a reference by the scheme operator, that one or more regulated persons have, on a regular basis, acted or failed to act, in such a way that, if a complaint were made under the ombudsman scheme in relation to that conduct, the ombudsman would be likely to determine the complaint in favour of the complainant,

(b) in the case of a reference by a regulated person, that the regulated person has, on a regular basis, acted or failed to act in such a way that, if a complaint were made under the ombudsman scheme in relation to that conduct, the ombudsman would be likely to determine the complaint in favour of the complainant, and

(c) in either case, that—

(i) if the complaint would fall within the compulsory jurisdiction or the consumer credit jurisdiction, the ombudsman would be likely to make an award under section 229(2)(a) or give a direction under section 229(2)(b), or

(ii) if voluntary jurisdiction rules made for the purposes of section 227 provide for the making of an award against a respondent or the giving of a direction that a respondent take certain steps in relation to a complainant, and the complaint would fall within the voluntary jurisdiction, the ombudsman would be likely to make such an award or give such a direction.

(7) "Consumers" has the meaning given in section 1G.

(8) "Regulated person" means—

(a) an authorised person;

(b) an electronic money issuer, as defined in section 1H(8);

(c) a payment service provider, as defined in section 1H(8).

Status: *Point in time view as at 03/03/2015.*
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234E Response by FCA

(1) The FCA must within 90 days after the day on which it receives a complaint under section 234C or a reference under section 234D publish a response stating how it proposes to deal with the complaint or reference, and in particular—
  (a) whether it has decided to take any action, or to take no action, and
  (b) if it has decided to take action, what action it proposes to take.

(2) The response must—
  (a) include a copy of the complaint or reference, and
  (b) state the FCA's reasons for its proposals.

(3) The Treasury may by order amend subsection (1) by substituting any period for the period for the time being specified there.

234F Section 234E: exceptions

(1) This section applies where the FCA has received a reference under section 234D from a person who is a relevant person as a result of subsection (2)(b) of that section.

(2) The duty to respond in section 234E does not apply if the FCA considers that the reference is frivolous, vexatious or has been made in bad faith.

(3) The FCA must within 90 days after the day on which it receives the reference inform the person who made it—
  (a) that the duty to respond under section 234E does not apply by virtue of this section, and
  (b) of its reasons for reaching the conclusion in paragraph (a).

(4) The Treasury may by order amend subsection (3) by substituting any period for the period for the time being specified there.

234G Guidance

(1) The guidance given by the FCA under section 139A—
  (a) must include guidance about the presentation of a reasoned case for a complaint under section 234C or a reference under section 234D, and
  (b) may include guidance about such other matters as appears to the FCA to be appropriate for the purposes of section 234C or 234D.

(2) Guidance given under this section is to be taken to be general guidance as defined in section 139B(5).

Competition

234H Power of FCA to make request to Office of Fair Trading

(1) The FCA may ask the Office of Fair Trading ("the OFT") to consider whether a feature, or combination of features, of a market in the United Kingdom for financial services may prevent, restrict or distort competition in connection

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with the supply or acquisition of any financial services in the United Kingdom or a part of the United Kingdom.

(2) The OFT must, within 90 days after the day on which it receives the request, publish a response stating how it proposes to deal with the request and in particular—

(a) whether it has decided to take any action, or to take no action, in response to the request, and

(b) if it has decided to take action, what action it proposes to take.

(3) The response must state the OFT's reasons for its proposals.

(4) The Treasury may by order amend subsection (2) by substituting any period for the period for the time being specified there.

(5) In this section—

(a) "market in the United Kingdom" has the meaning given in section 140A(1);

(b) the reference to a feature of a market in the United Kingdom for financial services has a meaning corresponding to that which a reference to a feature of a market in the United Kingdom for goods and services has (by virtue of section 140A(3)) for the purposes of Chapter 4 of Part 9A."

Commencement Information

I86 S. 43 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), **Sch. Pt. 3**

I87 S. 43 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(b), **Sch. Pt. 2**

I88 S. 43 in force at 1.4.2013 in so far as not already in force by S.I. 2013/423, art. 3, **Sch.**

Insolvency

44 Insolvency

Schedule 14 contains amendments of Part 24 of FSMA 2000 (insolvency).

Commencement Information

I89 S. 44 in force at 1.4.2013 by S.I. 2013/423, art. 3, **Sch.**

Miscellaneous amendments of FSMA 2000

45 The consumer financial education body

Schedule 15 contains amendments of FSMA 2000 relating to the consumer financial education body.

Commencement Information

I90 S. 45 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), **Sch. Pt. 3**

I91 S. 45 in force at 1.4.2013 in so far as not already in force by S.I. 2013/423, art. 3, **Sch.**

46 Members of the professions

Schedule 16 contains miscellaneous amendments of FSMA 2000 relating to financial services provided by members of the professions.

Commencement Information
I92 S. 46 in force at 1.4.2013 by S.I. 2013/423, art. 3, **Sch.**

47 International obligations

In section 410 of FSMA 2000 (international obligations), in subsection (4), for paragraph (a) substitute—

"(a) the FCA;
(aa) the PRA;
(ab) the Bank of England when exercising functions conferred on it by Part 18;".

Commencement Information
I93 S. 47 in force at 1.4.2013 by S.I. 2013/423, art. 3, **Sch.**

48 Interpretation of FSMA 2000

(1) In section 417 of FSMA 2000 (definitions), in subsection (1)—

(a) omit the definition of "the Authority",
(b) in the definition of "control of information rules" for "section 147(1)" substitute " section 137P ",
(c) after that definition insert—

""credit-related regulated activity" has the meaning given in section 23(1B);",

(d after the definition of "exempt person" insert—

""the FCA" means the Financial Conduct Authority;",

(e) in the definition of "financial promotion rules" for "section 145" substitute " section 137R ",
(f) for the definition of "general rules" substitute—

""general rules"—
(a) in relation to the FCA, has the meaning given in section 137A(2), and
(b) in relation to the PRA, has the meaning given in section 137G(2);",

(g) omit the definition of "money laundering rules",
(h) omit the definition of "notice of control",
(i) for the definition of "Part IV permission" substitute—

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""Part 4A permission" has the meaning given in section 55A(5);",

(j after the definition of "partnership" insert—

""the PRA" means the Prudential Regulation Authority;

"PRA-authorised person" has the meaning given in section 2B(5);

"PRA-regulated activity" has the meaning given in section 22A;",

(k) in the definition of "price stabilising rules" for "section 144" substitute " section 137Q ",

(l) after that definition insert—

""principal" in relation to an appointed representative, is to be read in accordance with section 39;",

(m) in the definition of "regulating provisions" for "section "159(1)" substitute " section 140A ",

(n after that definition insert—

""regulator" has the meaning given in section 3A(2);",

(o) omit the definitions of "regulatory objectives" and "regulatory provisions",

(p) for the definition of "rule" substitute—

""rule" means a rule made by the FCA or the PRA under this Act;",

(q) in the definition of "rule-making instrument" for "section 153" substitute " section 138G ",

(r) for the definition of "threshold conditions" substitute—

""threshold conditions", in relation to a regulated activity, has the meaning given in section 55B(1);",

(s) in the definition of "UK authorised person" for "section 178(4)" substitute " section 191G(1) ", and

(t) in the definition of "the UK financial system" for "section 3" substitute " section 1I ".

(2 After section 421 of FSMA 2000 insert—

"**421ZA Immediate group**

In this Act "immediate group", in relation to a person ("A"), means—

(a) A;

(b) a parent undertaking of A;

(c) a subsidiary undertaking of A;

(d) a subsidiary undertaking of a parent undertaking of A;

(e) a parent undertaking of a subsidiary undertaking of A."

(3 After section 425B of FSMA 2000 insert—

"**425C Qualifying EU provision"**

(1) In this Act "qualifying EU provision" means a provision of—

(a) a directly applicable EU regulation, or

(b) an EU decision for whose enforcement the United Kingdom is required by an EU obligation to make provision.

Status: *Point in time view as at 03/03/2015.*
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(2) In subsection (1)(b) "EU decision" means a decision under an EU directive or EU regulation."

Commencement Information

I94 S. 48(1)(a)-(c)(e)(i)s. 48(1)(k)-(m)s. 48(1)(o)-(t) in force at 1.4.2013 by S.I. 2013/423, art. 3, **Sch.**

I95 S. 48(1)(d)(j)(n)(2)(3) in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), **Sch. Pt. 1**

49 Parliamentary control of statutory instruments

(1) Section 429 of FSMA 2000 (Parliamentary control of statutory instruments) is amended as follows.

(2) In subsection (1) (orders subject to the affirmative resolution procedure)—

(a) in paragraph (a)—

(i) after "section" insert " 1J, 3B(4), 3F(6), 55C, ",

(ii) after "or (e)," insert " 138K(6)(c), 192B(6), 204A(7), 213(1A), ", and

(iii) after "236(5)," insert " 285(4), 380(12), 382(15), 384(13), ", and

(b) omit paragraph (b).

(3) In subsection (8)—

(a) after "under section" insert " 3G(1), 137D(1)(b), ",

(b) after "165A(2)(d)" insert " , 192A(4) ", and

(c) after "which" insert " section 22B or 23A or ".

Commencement Information

I96 S. 49 in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), **Sch. Pt. 1**

PART 3

MUTUAL SOCIETIES

Transfer of functions

50 Mutual societies: power to transfer functions

(1) The Treasury may by order amend the legislation relating to mutual societies for any of the relevant purposes.

(2) "The legislation relating to mutual societies" means—

(a) the Industrial and Provident Societies Act 1965;

(b) the Industrial and Provident Societies Act 1967;

(c) the Friendly and Industrial and Provident Societies Act 1968;

(d) the Industrial and Provident Societies Act (Northern Ireland) 1969;

(e) the Friendly Societies Act 1974;

(f) the Credit Unions Act 1979;

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(g) the Credit Unions (Northern Ireland) Order 1985;
(h) the Building Societies Act 1986;
(i) the Friendly Societies Act 1992.

(3) The relevant purposes are—
(a) providing for any function of the FSA to be exercisable by that body corporate as the FCA;
(b) providing for any function of the FSA to be transferred to the PRA;
(c) providing for any function of the FSA to be exercisable by that body corporate as the FCA and also to be exercisable concurrently by the PRA;
(d) providing for any function which is exercisable by the FCA or the PRA (whether by virtue of a previous order under this section or otherwise) to be transferred to, or to be exercisable concurrently by, the other regulator;
(e) providing for any function which is exercisable by the FCA and the PRA (whether by virtue of a previous order under this section or otherwise) to be exercisable only by one of them;
(f) making provision that appears to the Treasury to be necessary or expedient in consequence of the provisions of this Act.

(4) In relation to the Industrial and Provident Societies Act (Northern Ireland) 1969 and the Credit Unions (Northern Ireland) Order 1985, the relevant purposes also include—
(a) providing for any function of a Northern Ireland department or the Registrar of Credit Unions for Northern Ireland to be transferred to the FCA or the PRA, or to both the FCA and PRA to be exercised concurrently;
(b) providing for any function of a Northern Ireland department or the Registrar of Credit Unions for Northern Ireland which relates to the determination of disputes to be exercisable instead by a court.

Commencement Information
I97 S. 50 in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), **Sch. Pt. 1**

51 Further provision that may be included in orders under section 50

(1) In this section a "transfer order" means an order under section 50 making provision for any of the purposes mentioned in subsection (3)(a) to (e) or (4) of that section.

(2) The additional powers conferred by section 115(2) on a person making an order under this Act include power for the Treasury, when making a transfer order, to include—
(a) such consequential provision as the Treasury consider appropriate;
(b) provision for the transfer of any property, rights or liabilities held, enjoyed or incurred by any person in connection with transferred functions;
(c) provision for the application of the Transfer of Undertakings (Protection of Employment) Regulations 2006 in connection with any transfer of staff;
(d) provision for the carrying on and completion by or under the authority of the person to whom the functions are transferred of any proceedings, investigations or other matters commenced, before the order takes effect, by or under the authority of the person from whom the functions are transferred;

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(e) provision amending any enactment relating to transferred functions in connection with their exercise by, or under the authority of, the person to whom they are transferred;

(f) provision requiring either regulator to consult the other, notify the other or obtain the consent of the other in connection with the exercise of transferred functions;

(g) provision for the substitution of the person to whom functions are transferred for the person from whom they are transferred, in any instrument, contract or legal proceedings made or begun before the order takes effect.

(3) For the purposes of subsection (2) a transfer order is to be taken to transfer functions to any person by whom any function becomes exercisable by virtue of the order.

(4) On or after the making of a transfer order ("the original order") the Treasury may by order make any incidental, supplemental, consequential or transitional provision or provision by virtue of subsection (2) which they had power to include in the original order.

(5) The provisions of this section do not limit—

(a) the powers conferred by section 118 or 119(3), or

(b) the powers exercisable under Schedule 21 in connection with a transfer order that transfers functions to the PRA or to the FCA and the PRA.

Commencement Information

I98 S. 51 in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), **Sch. Pt. 1**

52 Power to apply or disapply provision made by or under FSMA 2000

(1) The Treasury may by order provide—

(a) for any relevant provision that would not otherwise apply in relation to transferred functions to apply in relation to those functions with such modifications as may be specified;

(b) for any relevant provision that would otherwise apply in relation to transferred functions not to apply in relation to them or to apply with such modifications as may be specified.

(2) "Relevant provision" means a provision of, or made under, FSMA 2000.

(3) "Transferred function" means a function that has been or is being transferred by an order under section 50; and section 51(3) applies for the purpose of this subsection.

Commencement Information

I99 S. 52 in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), **Sch. Pt. 1**

53 Evidence

(1) A certificate issued by the Treasury that property vested in a person immediately before a transfer order takes effect has been transferred as a result of the order is conclusive evidence of the transfer.

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) "Transfer order" means—

(a) an order under section 50,

(b) an order under section 51(4), or

(c) an order under Part 21 of FSMA 2000 (mutual societies).

Commencement Information

I100 S. 53 in force at 1.4.2013 by S.I. 2013/423, art. 3, **Sch.**

54 Repeals in Part 21 of FSMA 2000

(1) The following provisions of Part 21 of FSMA 2000 are repealed—

(a) in section 334 (the Friendly Societies Commission), subsections (1) and (2);

(b) section 335 (the Registry of Friendly Societies);

(c) section 336 (the Building Societies Commission);

(d) section 337 (the Building Societies Investor Protection Board);

(e) section 338 (industrial and provident societies and credit unions);

(f) section 339 (supplemental provisions).

(2) The repeals in subsection (1) do not have the effect of revoking any order made under any provision of Part 21 of FSMA 2000 before the commencement of this section.

Commencement Information

I101 S. 54 in force at 1.4.2013 by S.I. 2013/423, art. 3, **Sch.**

Building societies: miscellaneous

55 Building societies: creation of floating charges

(1) Section 9B of the Building Societies Act 1986 (restriction on creation of floating charges) is amended as follows.

(2) In subsection (1), at the end insert " unless it complies with the requirements in subsection (1A) ".

(3) After that subsection insert—

"(1A) The requirements are that the floating charge—

(a) is created in favour of a participant in a system, and

(b) is created for the purpose of securing any rights and obligations that may arise in connection with participation in that system."

(4) After subsection (2) insert—

"(3) In this section "participant" and "system" have the meaning given by Article 2 of Directive 98/26/EC of the European Parliament and of the Council of 19th May 1998 on settlement finality in payment and securities settlement systems (as amended by Directives 2009/44/EC and 2010/78/EU)."

Status: *Point in time view as at 03/03/2015.*
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Commencement Information
I102 S. 55 in force at 1.4.2013 by S.I. 2013/423, art. 3, **Sch.**

56 Power to direct transfer of building society's business

(1) Section 42B of the Building Societies Act 1986 (power to direct transfers of engagements or business) is amended as follows.

(2) In subsection (1)—

(a) before the "or" at the end of paragraph (a) insert—

"(aa) direct the society, within a specified period, to transfer its business under section 97 to an existing or specially formed company that is a subsidiary of another mutual society by a transfer to which provision made by order under section 3 of the 2007 Act (transfers to subsidiaries of other mutuals) applies;", and

(b) in paragraph (b), for "to an existing company under section 97" substitute " under section 97 to an existing company that is not a subsidiary of another mutual society ".

(3) After subsection (1) insert—

"(1A) In this section—

(a) "the 2007 Act" means the Building Societies (Funding) and Mutual Societies (Transfers) Act 2007;

(b) "mutual society" has the same meaning as in section 3 of that Act."

(4) In subsection (4)—

(a) in paragraph (a), for "(1)(b)" substitute " (1)(aa) or (b) ", and

(b) in paragraph (b), after "existing company" insert " , or to a specially formed company that is a subsidiary of another mutual society, ".

(5) In Schedule 8A to that Act (directions under section 42B(4)), in paragraph 9(3), for "section 42B(1)(b)" substitute " section 42B(1)(aa) or (b) ".

Commencement Information
I103 S. 56 in force at 1.4.2013 by S.I. 2013/423, art. 3, **Sch.**

Interpretation

57 Interpretation of Part 3

(1) In this Part "regulator" means the FCA or the PRA.

(2) In this Part a reference to a person's functions under an enactment includes a reference to the person's functions under any other enactment as applied by that enactment.

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information
I104 S. 57 in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), **Sch. Pt. 1**

PART 4

COLLABORATION BETWEEN TREASURY AND BANK OF ENGLAND, FCA OR PRA

58 Duty of Bank to notify Treasury of possible need for public funds

(1) Where it appears to the Bank of England that there is a material risk of circumstances within any of the following cases arising, the Bank must immediately notify the Treasury.

(2) A notification under subsection (1) or section 59(2) is referred to in this Part as a "public funds notification".

(3) The first case is where the Treasury or the Secretary of State might reasonably be expected to regard it as appropriate to provide financial assistance to or in respect of a financial institution.

(4) The second case is where—
- (a) the Treasury, the Bank of England, the PRA, the FCA or the Secretary of State might reasonably be expected to regard it as appropriate to exercise any of their respective powers under Parts 1 to 3 of the Banking Act 2009, and
- (b) the Treasury might reasonably be expected to regard it as appropriate to incur expenditure in connection with the exercise of any of those powers (whether by the Treasury, the Bank, the PRA, the FCA or the Secretary of State).

(5) The third case is where the scheme manager of the Financial Services Compensation Scheme might reasonably be expected to request—
- (a) a loan from the National Loans Fund under section 223B of FSMA 2000, or
- (b) financial assistance from the Treasury,

for the purpose of funding expenses incurred or expected to be incurred under the Financial Services Compensation Scheme.

(6) A public funds notification must give a general indication of the matters giving rise to the notification.

(7) A public funds notification must be given or confirmed in writing.

Commencement Information
I105 S. 58 in force at 1.4.2013 by S.I. 2013/423, art. 3, **Sch.**

59 Duty of Bank to notify Treasury of changes

(1) This section applies where a public funds notification has been given.

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) If the Bank of England is of the opinion that the risk to which the notification relates continues but that there is a substantial change in the matters which gave rise to the notification, the Bank must notify the Treasury.

(3) If the Bank of England is of the opinion that the risk to which the notification relates has ceased, it must notify the Treasury.

(4) Before giving a notification under subsection (3), the Bank must consult the Treasury.

(5) A notification under subsection (3) must be given or confirmed in writing.

Commencement Information
I106 S. 59 in force at 1.4.2013 by S.I. 2013/423, art. 3, **Sch.**

60 Circumstances in which Treasury power of direction exercisable

(1) This section makes provision about the circumstances in which the Treasury's power of direction under section 61 is exercisable, subject to the provisions of that section.

(2) Where a public funds notification has been given, the power of direction is exercisable by reference to the notification unless the notification has been superseded by a notification under section 59(3).

(3) Where qualifying financial assistance has been provided, the power of direction is exercisable by reference to the provision of the assistance unless it appears to the Treasury that the assistance has been recovered.

(4) It is immaterial for the purposes of subsection (3)—
- (a) whether the qualifying financial assistance was provided before or after the commencement of this section, and
- (b) whether or not a public funds notification had been given in connection with it.

(5) For the purposes of this Part qualifying financial assistance is provided if, and only if—
- (a) the Treasury or the Secretary of State provide financial assistance to or in respect of a financial institution,
- (b) the Treasury incur expenditure in connection with the exercise by the Treasury, the Bank, the PRA, the FCA or the Secretary of State of any of their powers under Parts 1 to 3 of the Banking Act 2009,
- (c) the Treasury arrange a loan from the National Loans Fund in pursuance of a request by the scheme manager of the Financial Services Compensation Scheme under section 223B of FSMA 2000, or
- (d) the Treasury provide financial assistance to the scheme manager of that scheme for the purpose of funding expenses incurred or expected to be incurred under it.

(6) For the purposes of this section the circumstances in which qualifying financial assistance is to be taken to have been recovered include the following—
- (a) where, in the case of a loan, the principal of the loan has been repaid and all interest due under the terms of the loan has been paid,

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) where, in the case of a guarantee or indemnity, the Treasury or the Secretary of State will not become liable under the guarantee or indemnity,

(c) where, in a case involving the issue or transfer of shares to the Treasury in connection with the provision of qualifying financial assistance, the shares are no longer held by the Treasury.

Commencement Information

I107 S. 60 in force at 1.4.2013 by S.I. 2013/423, art. 3, **Sch.**

61 Treasury power of direction

(1) Subsection (2) applies where—

(a) the power of direction is exercisable by virtue of section 60(2) by reference to a public funds notification and the Treasury are satisfied that Condition A is met, or

(b) the power of direction is exercisable by virtue of section 60(3) by reference to the provision of qualifying financial assistance and the Treasury are satisfied that Condition A or Condition B is met.

(2) The Treasury may give a direction to the Bank of England relating to one or more of the following—

(a) the provision by the Bank to one or more financial institutions of financial assistance other than ordinary market assistance offered by the Bank on its usual terms,

(b) the exercise by the Bank of any of the stabilisation powers, as defined by section 1(4) of the Banking Act 2009**[**[F1]or the making by the Bank of a mandatory reduction instrument within the meaning of section 6B of that Act**]**, or

(c) the exercise by the Bank of its powers under Part 3 of that Act (bank administration).

(3) Condition A is that the giving of the direction is necessary to resolve or reduce a serious threat to the stability of the financial system of the United Kingdom which is connected—

(a) in case within subsection (1)(a), with the matters to which the public funds notification relates;

(b) in a case within subsection (1)(b), with the matters that gave rise to the provision of the qualifying financial assistance.

(4) Condition B is that—

(a) the qualifying financial assistance was provided for the purpose of resolving or reducing a serious threat to the stability of the financial system of the United Kingdom, and

(b) the giving of the direction is necessary to protect the public interest in connection with the provision of that assistance.

(5) References to the provision of qualifying financial assistance are to be read in accordance with section 60(5).

(6) This section is subject to section 62.

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(7) Nothing in this section limits the powers conferred by section 4(1) of the Bank of England Act 1946 (Treasury directions to the Bank).

Textual Amendments

F1 Words in s. 61(2)(b) inserted (1.1.2015) by The Bank Recovery and Resolution Order 2014 (S.I. 2014/3329), arts. 1(2), **124**

Commencement Information

I108 S. 61 in force at 1.4.2013 by S.I. 2013/423, art. 3, **Sch.**

62 Directions under section 61: supplementary provisions

(1) References in this section to a direction are to a direction under section 61.

(2) Before giving a direction, the Treasury must consult the Bank of England.

(3) On being given a direction, the Bank must give the Treasury one or more reports on how it is complying or intends to comply with the direction, and on such other matters relating to the direction as it considers appropriate.

(4) The Treasury may at any time by notice to the Bank revoke a direction.

(5) The revocation of a direction does not affect the validity of anything previously done in accordance with it.

(6) Where the Treasury's power of direction is exercised by virtue of section 60(2) by reference to a public funds notification, the direction remains in force (unless revoked under subsection (4)) even if the public funds notification is subsequently superseded by a notification under section 59(3).

(7) Where the Treasury's power of direction is exercised by virtue of section 60(3) by reference to the provision of qualifying financial assistance, the direction remains in force (unless revoked under subsection (4)) even if it appears to the Treasury that the qualifying financial assistance has subsequently been recovered.

(8) Each of the following must be in writing—
   (a) a direction,
   (b) a report under subsection (3), and
   (c) a notice revoking a direction.

Commencement Information

I109 S. 62 in force at 1.4.2013 by S.I. 2013/423, art. 3, **Sch.**

63 Duty to lay direction etc before Parliament

(1) As soon as practicable after giving or revoking a direction under section 61 or receiving a report under section 62(3), the Treasury must lay before Parliament a copy of the direction, notice of revocation or report.

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) But subsection (1) does not apply in a case where the Treasury consider that the publication of the direction, notice of revocation or report would be against the public interest.

(3) Where the Treasury decide that publication of a direction, notice of revocation or report would be against the public interest, they must from time to time review that decision and if they subsequently decide that publication is no longer against the public interest they must comply with subsection (1).

Commencement Information
I110 S. 63 in force at 1.4.2013 by S.I. 2013/423, art. 3, **Sch.**

64 Duty of Treasury, Bank and PRA to co-ordinate discharge of functions

(1) The Treasury (on the one hand) and the Bank of England and the PRA (on the other) must arrange to co-ordinate the discharge of their respective functions so far as they—
  (a) relate to the stability of the UK financial system, and
  (b) affect the public interest.

(2) In complying with subsection (1), the Treasury, the Bank and the PRA must have regard in particular to the importance of co-ordination in circumstances where the Bank has given, or is considering the giving of, a public funds notification.

Commencement Information
I111 S. 64 in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), **Sch. Pt. 1**

65 Memorandum of understanding: crisis management

(1) The Treasury (on the one hand) and the Bank of England and the PRA (on the other) must prepare and maintain a memorandum describing in general terms how they intend to comply with section 64 in relation to the circumstances mentioned in subsection (2) of that section.

(2) The memorandum must, in particular, make provision about—
  (a) what the Treasury and the Bank regard as a material risk for the purposes of section 58(1);
  (b) steps to be taken when the Bank has given a public funds notification;
  (c) the respective roles of the Treasury, the Bank and the PRA, in cases where the Bank has given a public funds notification, in relation to the consideration and assessment of, and taking of, steps to resolve or reduce, threats to the stability of the UK financial system;
  (d) how the Treasury, the Bank and the PRA will co-operate in fulfilling those roles;
  (e) the use by the Treasury of their power under section 61;
  (f) matters connected with the Bank's compliance with a direction under that section;
  (g) the obtaining and sharing of information.

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(3) The memorandum may make provision about such other matters as may be agreed between the Treasury, the Bank and the PRA, which must be matters that—
  (a) relate to the stability of the UK financial system or the regulation of financial services, and
  (b) affect the public interest.

(4) The memorandum need not make provision about the relationship between the Bank and the PRA.

(5) The Treasury, the Bank of England and the PRA may, with the agreement of a body falling within subsection (6), include in the memorandum provisions relating to co-operation between any of them and that body in relation to matters falling within subsection (3)(a) and (b).

(6) The bodies falling within this subsection are—
  (a) the FCA;
  (b) the scheme manager of the Financial Services Compensation Scheme;
  (c) any other body exercising functions that relate to the stability of the UK financial system or the regulation of financial services.

(7) The Treasury must—
  (a) lay before Parliament a copy of the memorandum and any revised memorandum, and
  (b) publish the memorandum as currently in force in such manner as they think fit.

Commencement Information

I112 S. 65 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), **Sch. Pt. 3**

I113 S. 65 in force at 1.4.2013 in so far as not already in force by S.I. 2013/423, art. 3, **Sch.**

66 Memorandum of understanding: international organisations

(1) The Treasury, the Bank of England, the FCA and the PRA ("the UK authorities") must prepare and maintain a memorandum describing how they intend to co-ordinate the exercise of their relevant functions so far as they relate to membership of, or relations with, the European Supervisory Authorities, EU institutions and other international organisations.

(2) The "European Supervisory Authorities" are the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority.

(3) "Relevant function"—
  (a) in relation to the FCA or the PRA, means any of its functions;
  (b) in relation to the Bank of England, means any of its functions relating to the stability of the UK financial system or the regulation of financial services;
  (c) in relation to the Treasury, means any of their functions relating to the matters mentioned in paragraph (b).

(4) The memorandum is to be made with a view to ensuring—
  (a) that, to the extent that it is appropriate to do so, the UK authorities agree consistent objectives in relation to matters of common interest;

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(b) that, to the extent that it is appropriate to do so, they exercise their relevant functions in a way that is likely to advance those objectives;

(c) that they exercise their relevant functions in a way that is consistent and effective.

(5) The memorandum must, in particular, make provision—

(a) stating, in relation to each of the UK authorities, those international organisations of which it is a member or with which it has relations and which are concerned with matters that are related to its relevant functions;

(b) for there to be a committee for the purposes of the co-ordination mentioned in subsection (1);

(c) for that committee to include representatives of the UK authorities and to be chaired by a representative of the Treasury;

(d) about the procedures to be followed by the UK authorities in agreeing consistent objectives in relation to matters that materially affect 2 or more of them;

(e) about how the UK authorities will consult each other about the discharge of their relevant functions relating to international organisations.

(6) The memorandum need not make provision about co-ordination between the FCA and the PRA in relation to membership of, or relations with, the European Supervisory Authorities (as to which, see section 3E of FSMA 2000).

(7) The UK authorities may, with the agreement of a body exercising functions relating to the stability of the UK financial system or the regulation of financial services, include in the memorandum provisions relating to co-operation between any of them and that body in relation to membership of, or relations with, the European Supervisory Authorities, EU institutions and other international organisations.

(8) The Treasury must—

(a) lay before Parliament a copy of the memorandum and any revised memorandum, and

(b) publish the memorandum as currently in force in such manner as they think fit.

Commencement Information

I114 S. 66 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), **Sch. Pt. 3**

I115 S. 66 in force at 1.4.2013 in so far as not already in force by S.I. 2013/423, art. 3, **Sch.**

67 Interpretation of Part 4

(1) This section has effect for the interpretation of this Part.

(2) "Public funds notification" is to be read in accordance with section 58(2).

(3) "Financial assistance" includes giving guarantees or indemnities and any other kind of financial assistance (actual or contingent).

(4) The Treasury may by order provide that a specified activity or transaction, or class of activity or transaction, is to be or not to be treated as financial assistance for the purposes of this Part; and subsection (3) is subject to this subsection.

(5) "Qualifying financial assistance" is to be read in accordance with section 60(5).

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information
I116 S. 67 in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), **Sch. Pt. 1**

PART 5

INQUIRIES AND INVESTIGATIONS

Inquiries

68 Cases in which Treasury may arrange independent inquiries

(1) This section applies in **[**[F2]three **]** cases.

(2) The first case is where it appears to the Treasury that—

(a) events have occurred in relation to—

(i) a collective investment scheme,

(ii) a person who is, or was at the time of the events, carrying on a regulated activity (whether or not as an authorised person), or

(iii) listed securities or an issuer of listed securities,

which posed or could have posed a serious threat to the stability of the UK financial system or caused or risked causing significant damage to the interests of consumers, and

(b) those events might not have occurred, or the threat or damage might have been reduced, but for a serious failure in—

(i) the system established by FSMA 2000, or by any previous statutory provision, for the regulation of such schemes, or of such persons and their activities, or the listing of securities, or

(ii) the operation of that system.

(3) The second case is where it appears to the Treasury that—

(a) events have occurred in relation to a recognised clearing house or a recognised inter-bank payment system which—

(i) posed or could have posed a serious threat to the stability of or confidence in the UK financial system, or

(ii) caused or risked causing significant damage to business or other interests throughout the United Kingdom, and

(b) those events might not have occurred, or the threat or damage might have been reduced, but for a serious failure in—

(i) the system established by Part 18 of FSMA 2000, or by any previous statutory provision, for the regulation of clearing houses,

(ii) the system established by Part 5 of the Banking Act 2009 for the regulation of inter-bank payment systems, or

(iii) the operation of either of those systems.

[[F3](3A) The third case is where it appears to the Treasury that—

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) events have occurred in relation to a regulated payment system which caused or risked causing significant damage to business or other interests throughout the United Kingdom, and

(b) those events might not have occurred, or the threat or damage might have been reduced, but for a serious failure in—

(i) the system established by Part 5 of the Financial Services (Banking Reform) Act 2013 for the regulation of payment systems, or

(ii) the operation of that system.**]**

(4) If the Treasury consider that it is in the public interest that there should be an independent inquiry into the events and the circumstances surrounding them, they may arrange for an inquiry to be held under section 69.

(5) In this section—

"event" does not include any event occurring before 1 December 2001 (but no such limitation applies to the reference in subsection (4) to surrounding circumstances);

"recognised inter-bank payment system" means an inter-bank payment system, as defined by section 182 of the Banking Act 2009, that is a recognised system for the purposes of Part 5 of that Act.

Textual Amendments

F2 Word in s. 68(1) substituted (1.3.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), **ss. 105(2)**, 148(5); S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1

F3 S. 68(3A) inserted (1.3.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), **ss. 105(3)**, 148(5); S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1

Modifications etc. (not altering text)

C1 S. 68 modified (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013 (S.I. 2013/1881), art. 1(2)(6)**65(3)(d)**

Commencement Information

I117 S. 68 in force at 1.4.2013 by S.I. 2013/423, art. 3, **Sch.**

69 Power to appoint person to hold an inquiry

(1) If the Treasury decide to arrange for an inquiry to be held under this section, they may appoint such person as they consider appropriate to hold the inquiry.

(2) The Treasury may, by a direction to the appointed person, control—

(a) the scope of the inquiry;

(b) the period during which the inquiry is to be held;

(c) the conduct of the inquiry;

(d) the making of reports.

(3) A direction may, in particular—

(a) confine the inquiry to particular matters;

(b) extend the inquiry to additional matters;

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(c) require the appointed person to postpone the start of, or suspend, an inquiry until a specified time or until a further direction;

(d) require the appointed person to discontinue the inquiry or to take only such steps as are specified in the direction;

(e) require the appointed person to make such interim reports as are so specified.

Commencement Information

I118 S. 69 in force at 1.4.2013 by S.I. 2013/423, art. 3, **Sch.**

70 Powers of appointed person and procedure

(1) The person appointed to hold an inquiry under section 69 ("A") may—

(a) obtain such information from such persons and in such manner as A thinks fit,

(b) make such inquiries as A thinks fit, and

(c) determine the procedure to be followed in connection with the inquiry.

(2) A may require any person who, in A's opinion, is able to provide any information, or produce any document, which is relevant to the inquiry to provide any such information or produce any such document.

(3) For the purposes of an inquiry, A has the same powers as the court in respect of the attendance and examination of witnesses (including the examination of witnesses abroad) and in respect of the production of documents.

(4) "The court" means—

(a) the High Court, or

(b) in Scotland, the Court of Session.

Commencement Information

I119 S. 70 in force at 1.4.2013 by S.I. 2013/423, art. 3, **Sch.**

71 Conclusion of inquiry

(1) On completion of an inquiry under section 69, the person holding the inquiry must make a written report to the Treasury—

(a) setting out the result of the inquiry, and

(b) making such recommendations (if any) as the person considers appropriate.

(2) Any expenses reasonably incurred in holding an inquiry under section 69 are to be met by the Treasury out of money provided by Parliament.

Commencement Information

I120 S. 71 in force at 1.4.2013 by S.I. 2013/423, art. 3, **Sch.**

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

72 Obstruction and contempt

(1) If a person ("P")—

(a) fails to comply with a requirement imposed on P by a person holding an inquiry under section 69, or

(b) otherwise obstructs such an inquiry,

the person holding the inquiry may certify the matter to the High Court (or, in Scotland, the Court of Session).

(2) The court may enquire into the matter.

(3) If, after hearing—

(a) any witnesses who may be produced against or on behalf of P, and

(b) any statement made by or on behalf of P,

the court is satisfied that P would have been in contempt of court if the inquiry had been proceedings before the court, it may deal with P as if P were in contempt.

Commencement Information

I121 S. 72 in force at 1.4.2013 by S.I. 2013/423, art. 3, **Sch.**

Investigations

73 Duty of FCA to investigate and report on possible regulatory failure

(1) Subsection (3) applies where it appears to the FCA that—

(a) events have occurred in relation to a regulated person or collective investment scheme which—

(i) indicated a significant failure to secure an appropriate degree of protection for consumers,

(ii) had or could have had a significant adverse effect on the integrity of the UK financial system, as defined by section 1D of FSMA 2000 (the integrity objective), or

(iii) had or could have had a significant adverse effect on effective competition in the interests of consumers in the markets for the services described in paragraphs (a) and (b) of section 1E(1) of FSMA 2000 (the competition objective), and

(b) those events might not have occurred, or the failure or adverse effect might have been reduced, but for a serious failure in—

(i) the system established by FSMA 2000 for the regulation of authorised persons and **[**[F4]of the carrying on of regulated activities, **]** for the listing of securities **[**[F5] , for the regulation of collective investment schemes or for the regulation of recognised investment exchanges,**]**, so far as it relates to the functions of the FCA, or

(ii) the operation of that system, so far as it relates to those functions.

(2) Subsection (3) also applies where the Treasury direct the FCA that it appears to the Treasury that the conditions in subsection (1) are met in relation to specified events.

(3) The FCA must carry out an investigation into the events and the circumstances surrounding them and report to the Treasury on the result of the investigation.

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4) Subsection (3) does not apply by virtue of subsection (1) if the Treasury direct the FCA that it is not required to carry out an investigation into the events concerned.

(5) "Regulated person" means—
- (a) an authorised person,
- (b) a recognised investment exchange,
- (c) any other person lawfully carrying on a regulated activity,
- (d) a person carrying on business in contravention of the general prohibition in section 19 of FSMA 2000, or
- (e) an issuer of listed securities.

Textual Amendments

F4 Words in s. 73(1)(b)(i) substituted (1.3.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), **Sch. 10 para. 9(a)**; S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1

F5 Words in s. 73(1)(b)(i) substituted (1.3.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), **Sch. 10 para. 9(b)**; S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1

Commencement Information

I122 S. 73 in force at 1.4.2013 by S.I. 2013/423, art. 3, **Sch.**

74 Duty of PRA to investigate and report on possible regulatory failure

(1) Subsection (4) applies where it appears to the PRA that—
- (a) relevant public expenditure has been incurred in respect of a PRA-authorised person, and
- (b) that expenditure might not have been incurred but for a serious failure in—
  - (i) the system established by FSMA 2000 for the regulation of PRA-authorised persons and their activities, so far as it relates to the functions of the PRA, or
  - (ii) the operation of that system, so far as it relates to those functions.

(2) Subsection (4) also applies where it appears to the PRA that—
- (a) events have occurred which—
  - (i) had or could have had a significant adverse effect on the safety or soundness of one or more PRA-authorised persons, or
  - (ii) if the effecting and carrying out of contracts of insurance is a PRA-regulated activity for the purposes of FSMA 2000, related to a PRA-authorised person carrying on that activity and indicated a significant failure to secure an appropriate degree of protection for policyholders, and
- (b) those events might not have occurred, or the adverse effect or failure might have been reduced, but for a serious failure in—
  - (i) the system established by FSMA 2000 for the regulation of PRA-authorised persons and their activities, so far as it relates to the functions of the PRA, or
  - (ii) the operation of that system, so far as it relates to those functions.

(3) Subsection (4) also applies where the Treasury direct the PRA that it appears to the Treasury—

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Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) that the conditions in subsection (1)(a) and (b) are met in relation to a specified person, or

(b) that the conditions in subsection (2)(a) and (b) are met in relation to specified events.

(4) The PRA must—

(a) carry out an investigation into—

(i) the events that gave rise to the incurring of the public expenditure mentioned in subsection (1)(a) and the circumstances surrounding them, or

(ii) the events mentioned in subsection (2)(a) and the circumstances surrounding them, and

(b) report to the Treasury on the result of the investigation.

(5) Subsection (4) does not apply by virtue of subsection (1) if the Treasury direct the PRA that it is not required to carry out an investigation into the events concerned.

Commencement Information

I123 S. 74 in force at 1.4.2013 by S.I. 2013/423, art. 3, **Sch.**

75 Interpretation of section 74

(1) This section has effect for the interpretation of section 74.

(2) "Policyholder" has the same meaning as in FSMA 2000.

(3) Relevant public expenditure has been incurred in respect of a PRA-authorised person ("P") in each of the following cases (but no others)—

(a) where the Treasury or the Secretary of State have provided financial assistance to or in respect of P for the purposes of resolving or reducing a threat to the stability of the UK financial system;

(b) where the Treasury have incurred expenditure in connection with the exercise by the Treasury, the Secretary of State or the Bank of England of any power under Parts 1 to 3 of the Banking Act 2009 in relation to P;

(c) where the scheme manager of the Financial Services Compensation Scheme has received a loan from the National Loans Fund, or financial assistance from the Treasury, for the purpose of funding expenses incurred or expected to be incurred under the Financial Services Compensation Scheme by reason of events relating to P.

(4) In subsection (3)(a) and (c) "financial assistance" includes giving guarantees or indemnities and any other kind of financial assistance (actual or contingent), but does not include the giving by the Treasury of an indemnity or guarantee in respect of the provision of financial assistance by the Bank of England.

(5) The Treasury may by order made by statutory instrument provide that a specified activity or transaction, or class of activity or transaction, is to be or is not to be treated as financial assistance for the purposes of subsection (3)(a), and subsection (4) is subject to this subsection.

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Commencement Information
I124 S. 75 in force at 1.4.2013 by S.I. 2013/423, art. 3, **Sch.**

76 Modification of section 74 in relation to Lloyd's

(1) This section applies only if PRA-authorised persons include—
- (a) the Society, or
- (b) other persons who carry on regulated activities in relation to anything done at Lloyd's.

(2) Section 74 has effect as if—
- (a) in subsection (1)(a) (and section 75(3)), the reference to a PRA-authorised person included a reference to a member of the Society,
- (b) in subsection (2)(a)(i), the reference to one or more PRA-authorised persons included a reference to the Society, and the members of the Society, taken together, and
- (c) in subsection (2)(a)(ii), the reference to a PRA-authorised person carrying on the activity of effecting and carrying out contracts of insurance included a reference to—
  - (i) the Society, or
  - (ii) any other person who carries on PRA-regulated activities in relation to anything done at Lloyd's.

(3) In this section—
- (a) "PRA-regulated activity" is to be read in accordance with section 22A of FSMA 2000, and
- (b) terms which are defined in Lloyd's Act 1982 have the same meaning as in that Act.

Commencement Information
I125 S. 76 in force at 1.4.2013 by S.I. 2013/423, art. 3, **Sch.**

[F6 76A Duty of Payment Systems Regulator to investigate and report on possible regulatory failure

(1) Subsection (3) applies where it appears to the Payment Systems Regulator that—
- (a) events have occurred in relation to a regulated payment system which had or could have had a significant adverse effect on effective competition in the interests of—
  - (i) participants in the payment system, or
  - (ii) those who use, or are likely to use, the services provided by the payment system, and
- (b) those events might not have occurred, or the adverse effect might have been reduced, but for a serious failure in—
  - (i) the system established by Part 5 of the Financial Services (Banking Reform) Act 2013 for the regulation of payment systems, or
  - (ii) the operation of that system.

Status: *Point in time view as at 03/03/2015.*
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(2) Subsection (3) also applies where the Treasury direct the Payment Systems Regulator that it appears to the Treasury that the conditions in subsection (1) are met in relation to specified events.

(3) The Payment Systems Regulator must carry out an investigation into the events and the circumstances surrounding them and report to the Treasury on the result of the investigation.

(4) Subsection (3) does not apply by virtue of subsection (1) if the Treasury direct the Payment Systems Regulator that it is not required to carry out an investigation into the events concerned.

(5) In this section "participant", in relation to a regulated payment system, has the same meaning as in Part 5 of the Financial Services (Banking Reform) Act 2013 (see section 42 of that Act).**]**

Textual Amendments

F6 S. 76A inserted (1.3.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), **ss. 106(2)**, 148(5); S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1

77 [F7Power of Treasury to require regulator to undertake investigation]

(1) This section applies where—

(a) the Treasury consider that it is in the public interest that **[**F8a regulator **]** should undertake an investigation into any relevant events, and

(b) it does not appear to the Treasury that the regulator has undertaken or is undertaking an investigation (under this Part or otherwise) into those events.

(2) The Treasury must give the regulator a direction specifying the relevant events and requiring the regulator to undertake an investigation into those events and the circumstances surrounding them and to report to the Treasury on the result of the investigation.

(3) "Relevant events" means events that have occurred in relation to—

(a) a collective investment scheme,

(b) a person who is, or was at the time of the events, carrying on a regulated activity (whether or not as an authorised person), F9...

(c) listed securities or an issuer of listed securities**[**F10, or**]**

[F10(d) a regulated payment system.**]**

(4) "Relevant events" do not include any events occurring before 1 December 2001 (but no such limitation applies to the reference in subsection (2) to surrounding circumstances).

Textual Amendments

F7 Pt. 5(crossheading)(investigations) Words in s. 77 cross-heading substituted (1.3.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), **ss. 106(3)(c)**, 148(5); S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1

F8 Words in s. 77(1)(a) substituted (1.3.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), **ss. 106(3)(a)**, 148(5); S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1

Status: *Point in time view as at 03/03/2015.*
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F9 Word in s. 77(3)(b) omitted (1.3.2014) by virtue of Financial Services (Banking Reform) Act 2013 (c. 33), **ss. 106(3)(b)**, 148(5); S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1

F10 S. 77(3)(d) and word inserted (1.3.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), **ss. 106(3)(b)**, 148(5); S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1

Commencement Information

I126 S. 77 in force at 1.4.2013 by S.I. 2013/423, art. 3, **Sch.**

78 Conduct of investigation

(1) Where a regulator is required by section 73 **[**[F11], 74 or 76A**]** or under section 77 to carry out an investigation, it is for the regulator to decide how it is to be carried out, but this is subject to the following provisions.

(2) In carrying out such an investigation, the regulator must have regard to the desirability of minimising any adverse effect that the carrying out of the investigation may have on the exercise by the regulator of any of its other functions.

(3) The regulator may postpone the start of, or suspend, an investigation if it considers it necessary to do so to avoid a material adverse effect on the exercise by it of any of its other functions.

(4) The regulator must notify the Treasury if it postpones the start of, or suspends, an investigation under subsection (3), and the notification must specify when the investigation will begin or resume.

(5) The Treasury may, by a direction to the regulator, control—
- (a) the scope of the investigation;
- (b) the period during which the investigation is to be carried out;
- (c) the conduct of the investigation;
- (d) the making of reports.

(6) A direction may, in particular—
- (a) confine the investigation to particular matters;
- (b) extend the investigation to additional matters;
- (c) require the regulator to postpone the start of, or suspend, an investigation until a specified time or until a further direction;
- (d) where a notification has been received under subsection (3), require the regulator to begin or resume the investigation immediately or at a specified time;
- (e) require the regulator to discontinue the investigation or to take only such steps as are specified in the direction;
- (f) require the regulator to make such interim reports as are so specified.

(7) In exercising the power conferred on them by this section, the Treasury must have regard to the desirability of minimising any adverse effect that the carrying out of the investigation may have on the exercise by the regulator of any of its other functions.

Textual Amendments

F11 Words in s. 78(1) substituted (1.3.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), **ss. 106(4)**, 148(5); S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1

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Commencement Information

I127 S. 78 in force at 1.4.2013 by S.I. 2013/423, art. 3, **Sch.**

79 Conclusion of investigation

On completion of an investigation required by section 73 **[**[F12], 74 or 76A **]** or under section 77, the regulator must make a written report to the Treasury—

(a) setting out the result of the investigation,

(b) setting out the lessons (if any) that the regulator considers that it should learn from the investigation, and

(c) making such recommendations (if any) as the regulator considers appropriate.

Textual Amendments

F12 Words in s. 79 substituted (1.3.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), **ss. 106(5)**, 148(5); S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1

Commencement Information

I128 S. 79 in force at 1.4.2013 by S.I. 2013/423, art. 3, **Sch.**

80 Statements of policy

(1) Each regulator must prepare and issue a statement of its policy with respect to the exercise of its functions under sections 73 to 79 ("the relevant sections") and, in particular—

(a) the matters it will take into account in determining whether the conditions which give rise to its duty to carry out an investigation under section 73 **[**[F13], 74 or 76A**]** (as the case may be) are met, and

(b) how it will carry out investigations under the relevant sections.

(2) A regulator may at any time alter or replace a statement issued by it under this section.

(3) If a statement issued under this section is altered or replaced by a regulator, the regulator must issue the altered or replacement statement.

(4) A regulator must obtain the consent of the Treasury before issuing a statement under this section.

(5) A statement issued under this section by a regulator must be published by the regulator in the way appearing to the regulator to be best calculated to bring it to the attention of the public.

(6) A regulator must, without delay, give the Treasury a copy of any statement which it publishes under this section.

(7) In exercising, or deciding whether to exercise, its functions under the relevant sections a regulator must have regard to any statement published by it under this section and for the time being in force.

(8) A regulator may charge a reasonable fee for providing a person with a copy of a statement issued by it.

Status: *Point in time view as at 03/03/2015.*
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Textual Amendments

F13 Words in s. 80(1)(a) substituted (1.3.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), **ss. 106(6)**, 148(5); S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1

Commencement Information

I129 S. 80 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), **Sch. Pt. 3**

I130 S. 80 in force at 1.4.2013 in so far as not already in force by S.I. 2013/423, art. 3, **Sch.**

81 Publication of directions

(1) This section applies to a direction given by the Treasury under any of the following provisions—

(a) section 73(4);

(b) section 74(5);

[[F14](ba) section 76A(4);**]**

(c) section 78(5).

(2) As soon as practicable after giving the direction, the Treasury must—

(a) lay before Parliament a copy of the direction, and

(b) publish the direction in such manner as the Treasury think fit.

(3) Subsection (2) does not apply where the Treasury consider that publication of the direction would be against the public interest.

Textual Amendments

F14 S. 81(1)(ba) inserted (1.3.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), **ss. 106(7)**, 148(5); S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1

Commencement Information

I131 S. 81 in force at 1.4.2013 by S.I. 2013/423, art. 3, **Sch.**

Publication of reports

82 Publication of reports of inquiries and investigations

(1) This section applies where a report is made to the Treasury under section 71 or 79.

(2) Subject to subsection (3), the Treasury must publish the report in full.

(3) The Treasury may withhold material in the report from publication to such extent—

(a) as is required by any statutory provision, enforceable EU obligation or rule of law, or

(b) as the Treasury consider to be necessary in the public interest, having regard in particular to the matters mentioned in subsection (4).

(4) Those matters are—

(a) the extent to which withholding material might inhibit the allaying of public concern;

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(b) the risk of harm or damage that could be avoided or reduced by withholding any material;

(c) any conditions of confidentiality subject to which any person acquired information that was given to the inquiry or used in the investigation.

(5) In subsection (4)(b) "harm or damage" includes in particular—

(a) damage to national security or international relations;

(b) damage to the economic interests of the United Kingdom or a part of the United Kingdom;

(c) damage caused by disclosure of commercially sensitive information.

(6) The Treasury must lay before Parliament whatever is published under subsection (2).

(7) If the Treasury receive a report under section 71 or 79, but withhold all or part of the material in the report from publication, they must publish and lay before Parliament a statement of their reasons for not publishing the report in full.

(8) Publication under subsection (2) or (7) is to be in such manner as the Treasury think fit.

(9) References to a report under section 71 or 79 include references to an interim report required under section 69 or 78.

Commencement Information

I132 S. 82 in force at 1.4.2013 by S.I. 2013/423, art. 3, **Sch.**

Supplementary

83 Interpretation and supplementary provision

(1) In this Part—

"authorised person" has the same meaning as in FSMA 2000;

"collective investment scheme" has the same meaning as in FSMA 2000;

"consumer" has the meaning given in section 1G of FSMA 2000;

"listed securities" means anything which has been admitted to the official list under Part 6 of FSMA 2000;

[[F15]"PRA-authorised person" has the same meaning as in FSMA 2000;

"recognised clearing house" has the same meaning as in FSMA 2000;

"recognised investment exchange" has the same meaning as in FSMA 2000;

"regulated activity" has the same meaning as in FSMA 2000;

[[F16]"regulator" means the FCA **[**[F17], the PRA or the Payment Systems Regulator**]**.

(2) A direction by the Treasury under this Part must be given in writing.**]]**

Textual Amendments

F15 Words in s. 83(1) inserted (1.3.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), **ss. 106(8)(a)**, 148(5); S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1

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F16 Words in s. 83(1) inserted (1.3.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), **ss. 105(4)**, 148(5); S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1

F17 Words in s. 83(1) substituted (1.3.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), **ss. 106(8)(b)**, 148(5); S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1

Commencement Information

I133 S. 83 in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), **Sch. Pt. 1**

PART 6

INVESTIGATION OF COMPLAINTS AGAINST REGULATORS

84 Arrangements for the investigation of complaints

(1) The regulators must—

(a) make arrangements ("the complaints scheme") for the investigation of complaints arising in connection with the exercise of, or failure to exercise, any of their relevant functions (see section 85), and

(b) appoint an independent person ("the investigator") to be responsible for the conduct of investigations in accordance with the complaints scheme.

(2) For the purposes of this Part "the regulators" are the FCA, the PRA and the Bank of England, and references to a regulator are to be read accordingly.

(3) The complaints scheme must be designed so that, as far as reasonably practicable, complaints are investigated quickly.

(4) The Treasury's approval is required for the appointment or dismissal of the investigator.

(5) The terms and conditions on which the investigator is appointed must be such as, in the opinion of the regulators, are reasonably designed to secure—

(a) that the investigator will be free at all times to act independently of the regulators, and

(b) that complaints will be investigated under the complaints scheme without favouring the regulators.

Modifications etc. (not altering text)

C2 S. 84 applied (with modifications) (1.4.2013) by The Financial Services Act 2012 (Transitional Provisions) (Miscellaneous Provisions) Order 2013 (S.I. 2013/442), arts. 1(3), **63(2)**

C3 Ss. 84-86 applied by SI 2001/2326 art. 18(2) (as amended) (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 paras. 49(b)(bb)-(ff)**, (ii)

C4 S. 84(1)(a) applied (with modifications) (1.4.2013) by The Financial Services Act 2012 (Transitional Provisions) (Miscellaneous Provisions) Order 2013 (S.I. 2013/442), arts. 1(3), **61(3)(a)**

Commencement Information

I134 S. 84 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), **Sch. Pt. 3**

I135 S. 84 in force at 1.4.2013 in so far as not already in force by S.I. 2013/423, art. 3, **Sch.**

Status: *Point in time view as at 03/03/2015.*
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85 Relevant functions in relation to complaints scheme

(1) This section has effect for the interpretation of the reference in section 84(1)(a) to the relevant functions of the regulators.

[F18(2) The relevant functions of the FCA or the PRA are—
(a) its functions conferred by or under FSMA 2000, other than its legislative functions, and
(b) such other functions as the Treasury may by order provide.]

[F19(3) The relevant functions of the Bank of England are—
(a) its functions under Part 18 of FSMA 2000 (recognised clearing houses) or under Part 5 of the Banking Act 2009 (inter-bank payment systems), other than its legislative functions, and
(b) such other functions as the Treasury may by order provide.]

(4) For the purposes of [F20subsection (2)(a)], the following are the FCA's legislative functions—
(a) making rules under FSMA 2000;
(b) issuing codes under section 64 or 119 of FSMA 2000;
(c) issuing statements under—
(i) section [F21 63ZD,] 63C, 64, 69, 88C, 89S, 93, 124, 131J, 138N, 192H, 192N, 210 [F22, 312J or 333K] of FSMA 2000,
(ii) section 345D of FSMA 2000 (whether as a result of section 345(2) or 345A(3) or section 249(1) [F23or 261K(1)] of that Act), or
(iii) section 80 of the Financial Services Act 2012;
(d) giving directions under section 316, 318 or 328 of FSMA 2000;
(e) issuing general guidance, as defined in section 139B(5) [F24or 333P(9)] of FSMA 2000.
[F25(f) setting standards under section 333H of FSMA 2000.]

(5) For the purposes of [F26subsection (2)(a)], the following are the PRA's legislative functions—
(a) making rules under FSMA 2000;
(b) issuing codes under section 64 of FSMA 2000;
(c) issuing statements under—
(i) section [F27 63ZD,] 63C, 64, 69, 192H, 192N, 210 or 345D of FSMA 2000, or
(ii) section 80 of the Financial Services Act 2012;
(d) giving directions under section 316 or 318 of FSMA 2000;
(e) issuing guidance under section 2I of FSMA 2000.

(6) For the purposes of [F28subsection (3)(a)], the following functions of the Bank of England under Part 18 of FSMA 2000 are legislative functions—
(a) making rules;
(b) issuing statements—
(i) under section 312J, or
(ii) by virtue of the application by Schedule 17A of a provision mentioned in subsection (5)(c)(i) of this section.

Status: *Point in time view as at 03/03/2015.*
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(7) For the purposes of **[**[F29]subsection (3)(a) **]**, the following functions of the Bank of England under Part 5 of the Banking Act 2009 are legislative functions—

(a) publishing principles or codes of practice under sections 188 and 189;

(b) preparing statements under section 198(3).

[[F30](8) For the purposes of subsection (2), sections 1A(6) and 2A(6) of FSMA 2000 do not apply.**]**

Textual Amendments

F18 S. 85(2) substituted (1.3.2014 for specified purposes, 1.6.2014 in so far as not already in force) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), **Sch. 10 para. 10(2)**; S.I. 2014/377, art. 2(1)(b)(3), Sch. Pt. 2

F19 S. 85(3) substituted (1.3.2014 for specified purposes, 1.6.2014 in so far as not already in force) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), **Sch. 10 para. 10(3)**; S.I. 2014/377, art. 2(1)(b)(3), Sch. Pt. 2

F20 Words in s. 85(4) substituted (1.3.2014 for specified purposes, 1.6.2014 in so far as not already in force) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), **Sch. 10 para. 10(4)**; S.I. 2014/377, art. 2(1)(b)(3), Sch. Pt. 2

F21 Word in s. 85(4)(c)(i) inserted (25.7.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), **Sch. 3 para. 19(2)(b)(i)**; S.I. 2014/1819, art. 2(4)(b)

F22 Words in s. 85(4)(c)(i) substituted (3.3.2015) by Pension Schemes Act 2015 (c. 8), s. 89(1)(a), **Sch. 3 para. 17(a)** (with s. 87)

F23 Words in s. 85(4)(c)(ii) inserted (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), regs. 1, **6** (with reg. 24)

F24 Words in s. 85(4)(e) inserted (3.3.2015) by Pension Schemes Act 2015 (c. 8), s. 89(1)(a), **Sch. 3 para. 17(b)** (with s. 87)

F25 S. 85(4)(f) inserted (3.3.2015) by Pension Schemes Act 2015 (c. 8), s. 89(1)(a), **Sch. 3 para. 17(c)** (with s. 87)

F26 Words in s. 85(5) substituted (1.3.2014 for specified purposes, 1.6.2014 in so far as not already in force) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), **Sch. 10 para. 10(4)**; S.I. 2014/377, art. 2(1)(b)(3), Sch. Pt. 2

F27 Word in s. 85(5)(c)(i) inserted (25.7.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), **Sch. 3 para. 19(3)(b)(i)**; S.I. 2014/1819, art. 2(4)(b)

F28 Words in s. 85(6) substituted (1.3.2014 for specified purposes, 1.6.2014 in so far as not already in force) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), **Sch. 10 para. 10(5)**; S.I. 2014/377, art. 2(1)(b)(3), Sch. Pt. 2

F29 Words in s. 85(7) substituted (1.3.2014 for specified purposes, 1.6.2014 in so far as not already in force) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), **Sch. 10 para. 10(5)**; S.I. 2014/377, art. 2(1)(b)(3), Sch. Pt. 2

F30 S. 85(8) inserted (1.3.2014 for specified purposes, 1.6.2014 in so far as not already in force) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), **Sch. 10 para. 10(6)**; S.I. 2014/377, art. 2(1)(b)(3), Sch. Pt. 2

Modifications etc. (not altering text)

C3 Ss. 84-86 applied by SI 2001/2326 art. 18(2) (as amended) (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 paras. 49(b)(bb)-(ff)**, (ii)

C5 S. 85 modified (20.2.2013) by The Financial Services Act 2012 (Transitional Provisions) (Rules and Miscellaneous Provisions) Order 2013 (S.I. 2013/161), arts. 1(1), **3(8)(c)**

C6 S. 85 modified (1.4.2013) by The Financial Services Act 2012 (Transitional Provisions) (Miscellaneous Provisions) Order 2013 (S.I. 2013/442), arts. 1(3), **61(3)(b)**

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

C7 S. 85 applied (with modifications) (1.4.2013) by The Financial Services Act 2012 (Transitional Provisions) (Miscellaneous Provisions) Order 2013 (S.I. 2013/442), arts. 1(3), **63(2)**

Commencement Information

I136 S. 85 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), **Sch. Pt. 3**

I137 S. 85 in force at 1.4.2013 in so far as not already in force by S.I. 2013/423, art. 3, **Sch.**

86 Consultation in relation to, and publication of, complaints scheme

(1) Before making the complaints scheme, the regulators must publish a draft of the proposed scheme in the way appearing to them to be best calculated to bring it to the attention of the public.

(2) The draft must be accompanied by notice that representations about it may be made to any of the regulators within a specified time.

(3) Before making the proposed complaints scheme, the regulators must have regard to any representations made to any of them in accordance with subsection (2).

(4) If the regulators make the proposed complaints scheme, they must publish an account, in general terms, of—

(a) the representations made to any of them in accordance with subsection (2), and

(b) their response to the representations.

(5) If the complaints scheme differs from the draft published under subsection (1) in a way which is, in the opinion of the regulators, significant the regulators must (in addition to complying with subsection (4)) publish details of the difference.

(6) The regulators must publish up-to-date details of the complaints scheme including, in particular, details of—

(a) the provision made under section 87(5), and

(b) the powers which the investigator has to investigate a complaint.

(7) Those details must be published in the way appearing to the regulators to be best calculated to bring them to the attention of the public.

(8) The regulators must notify the Treasury of the publication of details under subsection (6).

(9) A regulator may charge a reasonable fee for providing a person with a copy of—

(a) a draft published under subsection (1), or

(b) details published under subsection (6).

(10) Subsections (1) to (5) and (9)(a) also apply to a proposal to alter or replace the complaints scheme.

Modifications etc. (not altering text)

C3 Ss. 84-86 applied by SI 2001/2326 art. 18(2) (as amended) (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 paras. 49(b)(bb)-(ff)**, (ii)

Commencement Information

I138 S. 86 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), **Sch. Pt. 3**

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

I139 S. 86 in force at 1.4.2013 in so far as not already in force by S.I. 2013/423, art. 3, **Sch.**

87 Investigation of complaints

(1) A regulator is not obliged to investigate in accordance with the complaints scheme a complaint which it reasonably considers would be more appropriately dealt with in another way (for example by referring the matter to the Upper Tribunal or by the institution of other legal proceedings).

(2) The complaints scheme must provide—
- (a) for reference to the investigator of any complaint which a regulator is investigating,
- (b) for the investigator—
  - (i) to have the means to conduct a full investigation of the complaint,
  - (ii) to report to the regulator to which the complaint relates and the complainant on the result of the investigator's investigation, and
  - (iii) to be able to publish the investigator's report (or part of it) if the investigator considers that it (or the part) ought to be brought to the attention of the public, and
- (c) for the meeting by the regulators of the expenses of the scheme.

(3) If a regulator has decided not to investigate a complaint, it must notify the investigator.

(4) If the investigator considers that a complaint of which the investigator has been notified under subsection (3) ought to be investigated, the investigator may proceed as if the complaint had been referred to the investigator under the complaints scheme.

(5) The complaints scheme must confer on the investigator the power to recommend, if the investigator thinks it appropriate, that the regulator to which a complaint relates takes either or both of the following steps—
- (a) makes a compensatory payment to the complainant, or
- (b) remedies the matter complained of.

(6) The complaints scheme must require the regulator to which a complaint relates, in a case where the investigator—
- (a) has reported that the complaint is well-founded, or
- (b) has criticised the regulator in a report,

to inform the investigator and the complainant of the steps which it proposes to take in response to the report.

(7) The investigator may require the regulator to which a complaint relates to publish the whole or a specified part of the response.

(8) The investigator may appoint a person to conduct the investigation on the investigator's behalf but subject to the investigator's direction.

(9) An officer or employee of any of the regulators may not be appointed under subsection (8).

(10) Subsection (2) is not to be taken as preventing a regulator from making arrangements for the initial investigation of a complaint to be conducted by the regulator.

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information

I140 S. 87 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), **Sch. Pt. 3**

I141 S. 87 in force at 1.4.2013 in so far as not already in force by S.I. 2013/423, art. 3, **Sch.**

88 Exemption from liability in damages

(1) Neither the investigator appointed under section 84 nor a person appointed to conduct an investigation on the investigator's behalf under section 87(8) is to be liable in damages for anything done or omitted in the discharge, or purported discharge, of functions in relation to the investigation of a complaint.

(2) Subsection (1) does not apply—

(a) if the act or omission is shown to have been in bad faith, or

(b) so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful as a result of section 6(1) of the Human Rights Act 1998.

Commencement Information

I142 S. 88 in force at 1.4.2013 by S.I. 2013/423, art. 3, **Sch.**

PART 7

OFFENCES RELATING TO FINANCIAL SERVICES

89 Misleading statements

(1) Subsection (2) applies to a person ("P") who—

(a) makes a statement which P knows to be false or misleading in a material respect,

(b) makes a statement which is false or misleading in a material respect, being reckless as to whether it is, or

(c) dishonestly conceals any material facts whether in connection with a statement made by P or otherwise.

(2) P commits an offence if P makes the statement or conceals the facts with the intention of inducing, or is reckless as to whether making it or concealing them may induce, another person (whether or not the person to whom the statement is made)—

(a) to enter into or offer to enter into, or to refrain from entering or offering to enter into, a relevant agreement, or

(b) to exercise, or refrain from exercising, any rights conferred by a relevant investment.

(3) In proceedings for an offence under subsection (2) brought against a person to whom that subsection applies as a result of paragraph (a) of subsection (1), it is a defence for the person charged ("D") to show that the statement was made in conformity with—

(a) price stabilising rules,

(b) control of information rules, or

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(c) the relevant provisions of Commission Regulation (EC) No 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments.

(4) Subsections (1) and (2) do not apply unless—

(a) the statement is made in or from, or the facts are concealed in or from, the United Kingdom or arrangements are made in or from the United Kingdom for the statement to be made or the facts to be concealed,

(b) the person on whom the inducement is intended to or may have effect is in the United Kingdom, or

(c) the agreement is or would be entered into or the rights are or would be exercised in the United Kingdom.

Commencement Information

I143 S. 89 in force at 1.4.2013 by S.I. 2013/423, art. 3, **Sch.**

90 Misleading impressions

(1) A person ("P") who does any act or engages in any course of conduct which creates a false or misleading impression as to the market in or the price or value of any relevant investments commits an offence if—

(a) P intends to create the impression, and

(b) the case falls within subsection (2) or (3) (or both).

(2) The case falls within this subsection if P intends, by creating the impression, to induce another person to acquire, dispose of, subscribe for or underwrite the investments or to refrain from doing so or to exercise or refrain from exercising any rights conferred by the investments.

(3) The case falls within this subsection if—

(a) P knows that the impression is false or misleading or is reckless as to whether it is, and

(b) P intends by creating the impression to produce any of the results in subsection (4) or is aware that creating the impression is likely to produce any of the results in that subsection.

(4) Those results are—

(a) the making of a gain for P or another, or

(b) the causing of loss to another person or the exposing of another person to the risk of loss.

(5) References in subsection (4) to gain or loss are to be read in accordance with subsections (6) to (8).

(6) "Gain" and "loss"—

(a) extend only to gain or loss in money or other property of any kind;

(b) include such gain or loss whether temporary or permanent.

(7) "Gain" includes a gain by keeping what one has, as well as a gain by getting what one does not have.

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(8) "Loss" includes a loss by not getting what one might get, as well as a loss by parting with what one has.

(9) In proceedings brought against any person ("D") for an offence under subsection (1) it is a defence for D to show—

(a) to the extent that the offence results from subsection (2), that D reasonably believed that D's conduct would not create an impression that was false or misleading as to the matters mentioned in subsection (1),

(b) that D acted or engaged in the conduct—

(i) for the purpose of stabilising the price of investments, and

(ii) in conformity with price stabilising rules,

(c) that D acted or engaged in the conduct in conformity with control of information rules, or

(d) that D acted or engaged in the conduct in conformity with the relevant provisions of Commission Regulation (EC) No 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments.

(10) This section does not apply unless—

(a) the act is done, or the course of conduct is engaged in, in the United Kingdom, or

(b) the false or misleading impression is created there.

Commencement Information

I144 S. 90 in force at 1.4.2013 by S.I. 2013/423, art. 3, **Sch.**

91 Misleading statements etc in relation to benchmarks

(1) A person ("A") who makes to another person ("B") a false or misleading statement commits an offence if—

(a) A makes the statement in the course of arrangements for the setting of a relevant benchmark,

(b) A intends that the statement should be used by B for the purpose of the setting of a relevant benchmark, and

(c) A knows that the statement is false or misleading or is reckless as to whether it is.

(2) A person ("C") who does any act or engages in any course of conduct which creates a false or misleading impression as to the price or value of any investment or as to the interest rate appropriate to any transaction commits an offence if—

(a) C intends to create the impression,

(b) the impression may affect the setting of a relevant benchmark,

(c) C knows that the impression is false or misleading or is reckless as to whether it is, and

(d) C knows that the impression may affect the setting of a relevant benchmark.

(3) In proceedings for an offence under subsection (1), it is a defence for the person charged ("D") to show that the statement was made in conformity with—

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) price stabilising rules,
(b) control of information rules, or
(c) the relevant provisions of Commission Regulation (EC) No 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments.

(4) In proceedings brought against any person ("D") for an offence under subsection (2) it is a defence for D to show—
(a) that D acted or engaged in the conduct—
(i) for the purpose of stabilising the price of investments, and
(ii) in conformity with price stabilising rules,
(b) that D acted or engaged in the conduct in conformity with control of information rules, or
(c) that D acted or engaged in the conduct in conformity with the relevant provisions of Commission Regulation (EC) No 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments.

(5) Subsection (1) does not apply unless the statement is made in or from the United Kingdom or to a person in the United Kingdom.

(6) Subsection (2) does not apply unless—
(a) the act is done, or the course of conduct is engaged in, in the United Kingdom, or
(b) the false or misleading impression is created there.

Commencement Information
I145 S. 91 in force at 1.4.2013 by S.I. 2013/423, art. 3, **Sch.**

92 Penalties

(1) A person guilty of an offence under this Part is liable—
(a) on summary conviction, to imprisonment for a term not exceeding the applicable maximum term or a fine not exceeding the statutory maximum, or both;
(b) on conviction on indictment, to imprisonment for a term not exceeding 7 years or a fine, or both.

(2) For the purpose of subsection (1)(a) "the applicable maximum term" is—
(a) in England and Wales, 12 months (or 6 months, if the offence was committed before the commencement of section 154(1) of the Criminal Justice Act 2003);
(b) in Scotland, 12 months;
(c) in Northern Ireland, 6 months.

Commencement Information
I146 S. 92 in force at 1.4.2013 by S.I. 2013/423, art. 3, **Sch.**

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

93 Interpretation of Part 7

(1) This section has effect for the interpretation of this Part.

(2) "Investment" includes any asset, right or interest.

(3) "Relevant agreement" means an agreement—

(a) the entering into or performance of which by either party constitutes an activity of a kind specified in an order made by the Treasury, and

(b) which relates to a relevant investment.

(4) "Relevant benchmark" means a benchmark of a kind specified in an order made by the Treasury.

(5) "Relevant investment" means an investment of a kind specified in an order made by the Treasury.

(6) Schedule 2 to FSMA 2000 (except paragraphs 25 and 26) applies for the purposes of subsections (3) and (5) with references to section 22 of that Act being read as references to each of those subsections.

(7) Nothing in Schedule 2 to FSMA 2000, as applied by subsection (6), limits the power conferred by subsection (3) or (5).

(8) "Price stabilising rules" and "control of information rules" have the same meaning as in FSMA 2000.

(9) In this section "benchmark" has the meaning given in section 22(6) of FSMA 2000.

Commencement Information

I147 S. 93 in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), **Sch. Pt. 1**

94 Affirmative procedure for certain orders

(1) This section applies to the first order made under section 93.

(2) This section also applies to any subsequent order made under that section which contains a statement by the Treasury that the effect of the proposed order would include one or more of the following—

(a) that an activity which is not specified for the purposes of subsection (3)(a) of that section would become one so specified,

(b) that an investment which is not a relevant investment would become a relevant investment;

(c) that a benchmark which is not a relevant benchmark would become a relevant benchmark.

(3) A statutory instrument containing (alone or with other provisions) an order to which this section applies may not be made unless a draft of the instrument has been laid before Parliament and approved by a resolution of each House.

Commencement Information

I148 S. 94 in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), **Sch. Pt. 1**

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

95 Consequential repeal

Section 397 of FSMA 2000 (which relates to misleading statements and practices and is superseded by the provisions of this Part) is repealed.

Commencement Information
I149 S. 95 in force at 1.4.2013 by S.I. 2013/423, art. 3, **Sch.**

PART 8

AMENDMENTS OF BANKING ACT 2009

Special resolution regime and bank administration

96 Objectives and conditions

(1) The Banking Act 2009 is amended as follows.

(2) In section 3 (interpretation: other expressions), after "this Part—" insert—

""client assets" means assets which an institution has undertaken to hold for a client (whether or not on trust, and whether or not the undertaking has been complied with),".

(3) In section 4 (special resolution objectives), after subsection (8) insert—

"(8A) Objective 6, which applies in any case in which client assets may be affected, is to protect those assets.

(8B) Objective 7 is to minimise adverse effects on institutions (such as investment exchanges and clearing houses) that support the operation of financial markets."

(4) In section 8(2) (Condition A: private sector purchaser and bridge bank)—

(a) in paragraph (b) for "the banking systems of the United Kingdom, or" substitute " those systems, ", and

(b) after paragraph (c) insert ", or

(d) the protection of any client assets that may be affected."

(5) In section 47 (restriction of partial transfers), for subsection (3) substitute—

"(3) Provision under subsection (2) may, in particular, refer to—

(a) particular classes of deposit;

(b) particular classes of client assets."

(6) In the Table in section 261 (index of defined terms), after the entry relating to "central counterparty clearing services", insert—

"Client assets (Part 1)	3".

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information

I150 S. 96(1)(2)(5)(6) in force at 1.1.2015 by S.I. 2014/3323, **art. 2**

97 Private sector purchasers

(1) The Banking Act 2009 is amended as follows.

(2) After section 26 insert—

"26A Private sector purchaser: reverse share transfer

(1) This section applies where the Bank of England has made a share transfer instrument in accordance with section 11(2) ("the original instrument") providing for the transfer of securities issued by a bank to a person ("the original transferee").

(2) The Bank of England may make one or more private sector reverse share transfer instruments in respect of securities issued by the bank and held by the original transferee.

(3) A private sector reverse share transfer instrument is a share transfer instrument which—

(a) provides for transfer to the transferor under the original instrument;

(b) makes other provision for the purposes of, or in connection with, the transfer of securities which are, could be or could have been transferred under paragraph (a).

(4) The Bank of England must not make a private sector reverse share transfer instrument without the written consent of the original transferee.

(5) Sections 7, 8 and 50 do not apply to a private sector reverse share transfer instrument (but it is to be treated in the same way as any other share transfer instrument for all other purposes including for the purposes of the application of a power under this Part).

(6) Before making a private sector reverse share transfer instrument the Bank of England must consult—

(a) the PRA,

(b) the FCA, and

(c) the Treasury.

(7) Section 26 applies where the Bank of England has made a private sector reverse share transfer instrument."

(3) In section 29 (reverse share transfer)—

(a) in subsection (3) for the words from "securities", in the second place, to the end substitute " securities issued by the bank and held by a transferee under the onward share transfer order ("the onward transferee"). ", and

(b) after subsection (4) insert—

"(4A) The Treasury must not make a reverse share transfer order under subsection (3) unless—

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) the onward transferee is—
(i) a company wholly owned by the Bank of England,
(ii) a company wholly owned by the Treasury, or
(iii) a nominee of the Treasury, or
(b) the reverse share transfer order is made with the written consent of the onward transferee."

(4) In section 31 (bridge bank: reverse share transfer)—
(a) in subsection (1) omit the words from "providing for" to the end,
(b) in subsection (2) for "person within subsection (1)(a) to (c)" substitute " transferee under the original instrument ",
(c) after subsection (3) insert—

"(3A) The Bank of England must not make a bridge bank reverse share transfer instrument unless—
(a) the transferee under the original instrument is—
(i) a company wholly owned by the Bank of England,
(ii) a company wholly owned by the Treasury, or
(iii) a nominee of the Treasury, or
(b) the bridge bank reverse share transfer instrument is made with the written consent of the transferee under the original instrument."

(5) After section 42 insert—

"**42A Private sector purchaser: reverse property transfer**

(1) This section applies where the Bank of England has made a property transfer instrument in accordance with section 11(2) ("the original instrument") providing for the transfer of property, rights or liabilities of a bank to a person ("the original transferee").

(2) The Bank of England may make one or more private sector reverse property transfer instruments in respect of property, rights or liabilities of the original transferee.

(3) A private sector reverse property transfer instrument is a property transfer instrument which—
(a) provides for transfer to the transferor under the original instrument;
(b) makes other provision for the purposes of, or in connection with, the transfer of property, rights or liabilities that are, could be or could have been transferred under paragraph (a) (whether the transfer has been or is to be effected by that instrument or otherwise).

(4) The Bank of England must not make a private sector reverse property transfer instrument without the written consent of the original transferee.

(5) Sections 7, 8 and 50 do not apply to a private sector reverse property transfer instrument (but it is to be treated in the same way as any other property transfer instrument for all other purposes including for the purposes of the application of a power under this Part).

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(6) Before making a private sector reverse property transfer instrument the Bank of England must consult—
  (a) the PRA,
  (b) the FCA, and
  (c) the Treasury.

(7) Section 42 applies where the Bank of England has made a private sector reverse property transfer instrument."

(6) In section 44 (reverse property transfer)—
  (a) in subsection (3) for "of a transferee" to the end substitute " of a transferee under the onward property transfer instrument ("the onward transferee"). ",
  (b) after subsection (4) insert—

"(4A) The Bank of England must not make a reverse property transfer instrument unless—
  (a) the onward transferee is—
    (i) a company wholly owned by the Bank of England,
    (ii) a company wholly owned by the Treasury, or
    (iii) a company wholly owned by a nominee of the Treasury, or
  (b) the reverse property transfer instrument is made with the written consent of the onward transferee."

(7) In section 46 (temporary public ownership: reverse property transfer)—
  (a) in subsection (1) omit from "providing for" to the end, and
  (b) after subsection (3) insert—

"(3A) The Treasury must not make a reverse property transfer order unless—
  (a) the transferee under the original order is—
    (i) a company wholly owned by the Bank of England,
    (ii) a company wholly owned by the Treasury, or
    (iii) a nominee of the Treasury, or
  (b) the reverse property transfer order is made with the written consent of the transferee under the original order."

(8) In section 48A (creation of liabilities), in subsection (1) after "42(3)(b)," insert " 42A(3)(b), ".

(9) In section 53 (onward and reverse transfers: compensation), in subsection (1)—
  (a) before paragraph (a) insert—
    "(za) the Bank of England makes a private sector reverse share transfer instrument under section 26A,", and
  (b) after paragraph (d) insert—
    "(da) the Bank of England makes a private sector reverse property transfer instrument under section 42A,".

(10) In section 83 (supplemental), in subsection (2)(d)—
  (a) at the end of sub-paragraph (iii) insert " and ", and
  (b) for sub-paragraphs (iv) and (v) substitute—

Status: *Point in time view as at 03/03/2015.*
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"(iv) is not subject to the restriction in section 29(3) that the securities issued by the bank were transferred under the original order (as defined in section 29(1))."

(11) In the Table in section 261 (index of defined terms), after the entry relating to "partial property transfer", insert—

"Private sector reverse property transfer instrument	42A
Private sector reverse share transfer instrument	26A"

Commencement Information
I151 S. 97 in force at 1.4.2013 by S.I. 2013/423, art. 3, **Sch.**

98 Property transfer instruments: property held on trust

(1) The Banking Act 2009 is amended as follows.

(2) In section 34(7) (effect of property transfer instruments: provision in respect of property held on trust), in paragraph (a) omit "(which provision may remove or alter the terms of the trust)".

(3) At the end of section 34 insert—

"(8) Provision under subsection (7)(a) may remove or alter the terms of the trust on which the property is held only to the extent that the Bank of England thinks it necessary or expedient for the purpose of transferring—

(a) the legal or beneficial interest of the transferor in the property;

(b) any powers, rights or obligations of the transferor in respect of the property.

(9) In subsection (8) references to the transferor are references to the transferor under the property transfer instrument."

(4) In section 45 (temporary public ownership: property transfer orders) after subsection (5) insert—

"(5A) In the application of section 34(8) by virtue of subsection (5)(b) above, the reference to the Bank of England is to be treated as a reference to the Treasury."

(5) In section 46 (temporary public ownership: reverse property transfer orders) after subsection (5) insert—

"(5A) In the application of section 34(8) by virtue of subsection (5)(b) above, the reference to the Bank of England is to be treated as a reference to the Treasury."

Commencement Information
I152 S. 98 in force at 1.1.2015 by S.I. 2014/3323, **art. 2**

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

99 Reports following exercise of a stabilisation power

(1) After section 79 of the Banking Act 2009 insert—

"**79A Private sector purchaser: report**

(1) This section applies where the Bank of England sells all or part of a bank's business to a commercial purchaser.

(2) The Bank must report to the Chancellor of the Exchequer about the exercise of the power to make share transfer instruments and property transfer instruments under section 11(2).

(3) The report must comply with any requirements as to content specified by the Treasury.

(4) The report must be made as soon as is reasonably practicable after the end of one year beginning with the date of the first transfer instrument made under section 11(2)."

(2) After section 81 of that Act insert—

"**81A Accounting information to be included in reports under sections 80 and 81**

(1) A report under section 80(1) or 81 must include accounting information in respect of the bank or bridge bank that is the subject of the report.

(2) In this section "accounting information" means—
  (a) a balance sheet that, in the opinion of the person making the report, gives a true and fair view of the state of affairs of the bank or bridge bank as at the reporting date, and
  (b) a profit and loss account that, in the opinion of the person making the report, gives a true and fair view of the profit or loss of the bank or bridge bank for the reporting period.

(3) In this section—
  (a) "reporting period" means the period to which the report relates, and
  (b) "reporting date" means the last day of the reporting period."

(3) In section 1(6) of that Act (table describing provisions of Part 1), in the entry relating to sections 76 to 81, for "81" substitute " 81A ".

Commencement Information
I153 S. 99 in force at 1.1.2015 by S.I. 2014/3323, **art. 2**

100 Groups

(1) The Banking Act 2009 is amended as follows.

(2) In section 1 (overview), for the entry in the Table relating to sections 82 and 83 substitute—

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

"Sections 81B to 83	Groups".

(3) In section 20 (directors), after subsection (1) insert—

"(1A) Subsection (1) also applies to a director of any undertaking which is a banking group company in respect of a specified bank."

(4) After section 36 insert—

"**36A Directors**

(1) A property transfer instrument may enable the Bank of England—
  (a) to remove a director of a specified bank;
  (b) to vary the service contract of a director of a specified bank;
  (c) to terminate the service contract of a director of a specified bank;
  (d) to appoint a director of a specified bank.

(2) Subsection (1) also applies to a director of any undertaking which is a banking group company in respect of a specified bank.

(3) Appointments under subsection (1)(d) are to be on terms and conditions agreed with the Bank of England."

(5) For the italic heading before section 82 substitute " *Groups* ", and after that heading insert—

"81B **Sale to commercial purchaser and transfer to bridge bank**

(1) The Bank of England may exercise a stabilisation power in respect of a banking group company in accordance with section 11(2) or 12(2) if the following conditions are met.

(2) Condition 1 is that the PRA is satisfied that the general conditions for the exercise of a stabilisation power set out in section 7 are met in respect of a bank in the same group.

(3) Condition 2 (which does not apply in a financial assistance case) is that the Bank of England is satisfied that the exercise of the power in respect of the banking group company is necessary, having regard to the public interest in—
  (a) the stability of the financial systems of the United Kingdom,
  (b) the maintenance of public confidence in the stability of those systems,
  (c) the protection of depositors, or
  (d) the protection of any client assets that may be affected.

(4) Condition 3 (which applies only in a financial assistance case) is that—
  (a) the Treasury have recommended the Bank of England to exercise a stabilisation power on the grounds that it is necessary to protect the public interest, and
  (b) in the Bank's opinion, exercise of the power in respect of the banking group company is an appropriate way to provide that protection.

(5) Condition 4 is that the banking group company is an undertaking incorporated in, or formed under the law of any part of, the United Kingdom.

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(6) Before determining whether Condition 2 or 3 (as appropriate) is met, the Bank of England must consult—
  (a) the Treasury,
  (b) the PRA, and
  (c) the FCA.

(7) In exercising a stabilisation power in reliance on this section the Bank of England must have regard to the need to minimise the effect of the exercise of the power on other undertakings in the same group.

(8) In this section "financial assistance case" means a case in which the Treasury notify the Bank of England that they have provided financial assistance in respect of a bank in the same group for the purpose of resolving or reducing a serious threat to the stability of the financial systems of the United Kingdom.

81C Section 81B: supplemental

(1) In the following provisions references to banks include references to banking group companies—
  (a) section 10(1), and
  (b) section 75(5)(a).

(2) Where the Bank of England exercises a stabilisation power in respect of a banking group company in reliance on section 81B, the provisions relating to the stabilisation powers and the bank administration procedure contained in this Act (except sections 7 and 8) and any other enactment apply (with any necessary modifications) as if the banking group company were a bank.

(3) For the purposes of the application of section 143 (grounds for applying for bank administration order), the reference in subsection (2) to the Bank of England exercising a stabilisation power includes a case where the Bank of England intends to exercise such a power.

81D Interpretation: "banking group company" &c.

(1) In this Part "banking group company" means an undertaking—
  (a) which is (or, but for the exercise of a stabilisation power, would be) in the same group as a bank, and
  (b) in respect of which any conditions specified in an order made by the Treasury are met.

(2) An order may require the Bank of England to consult specified persons before determining whether the conditions are met.

(3) An order—
  (a) is to be made by statutory instrument, and
  (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

(4) If an order contains a statement that the Treasury are of the opinion that, by reason of urgency, it is necessary to make the order without complying with subsection (3)(b)—

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(a) the order may be made, and

(b) the order lapses unless approved by resolution of each House of Parliament during the period of 28 days (ignoring periods of dissolution, prorogation or adjournment of either House for more than 4 days) beginning with the day on which the order is made.

(5) The lapse of an order under subsection (4)(b)—

(a) does not invalidate anything done under or in reliance on the order before the lapse and at a time when neither House has declined to approve the order, and

(b) does not prevent the making of a new order (in new terms).

(6) Undertakings are in the same group for the purposes of sections 81B, 81C and this section if they are group undertakings in respect of each other.

(7) Expressions defined in the Companies Act 2006 have the same meaning in section 81B and this section as in that Act."

(6) In the Table in section 259 (statutory instruments), in Part 1 after the entry relating to section 78 insert—

"81D	Meaning of "banking group company"	Draft affirmative resolution (except for urgent cases)"

(7) In the Table in section 261 (index of defined terms), after the entry relating to "bank insolvency order" insert—

"Banking group company	81D".

Commencement Information

I154 S. 100(1)(6)(7) in force at 5.6.2014 for specified purposes by S.I. 2014/1447, **art. 2(a)(c)**

I155 S. 100(1)(5)-(7) in force at 1.8.2014 in so far as not already in force by S.I. 2014/1847, **art. 2**

I156 S. 100(2)-(4) in force at 1.8.2014 by S.I. 2014/1847, **art. 2**

I157 S. 100(5) in force at 5.6.2014 for specified purposes by S.I. 2014/1447, **art. 2(b)**

101 Application to investment firms

(1) The Banking Act 2009 is amended as follows.

(2) In section 1 (overview), after the entry in the Table relating to sections 84 to 89 insert—

"Section 89A	Investment firms".

(3) In section 2 (interpretation: "bank"), at the end insert—

"(8) Section 89A applies this Part to investment firms with modifications."

(4) In section 75(5) (power to change law: application to other institutions), omit the "or" following paragraph (c) and after that paragraph insert—

"(ca) to investment firms,".

(5) After section 89 (and in Part 1) insert—

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"Investment firms

89A Application to investment firms

(1) This Part applies to investment firms as it applies to banks, subject to the modifications in subsection (2).

(2) Ignore sections 1(2)(b), 4(2)(b) and (6), 5(1)(b), 7(7), 8(2)(c) and 14(5)."

(6) After section 159 insert—

"**159A Application to investment firms**

This Part applies to investment firms as it applies to banks."

(7) After section 258 insert—

"**258A Investment firm"**

(1) In this Act "investment firm" means a UK institution which is (or, but for the exercise of a stabilisation power, would be) an investment firm for the purposes of Directive 2006/49/EC on the capital adequacy of investment firms and credit institutions.

(2) But "investment firm" does not include—
- (a) an institution which is also—
  - (i) a bank (within the meaning of Part 1),
  - (ii) a building society (within the meaning of section 119 of the Building Societies Act 1986), or
  - (iii) a credit union (within the meaning of section 31 of the Credit Unions Act 1979 or Article 2(2) of the Credit Unions (Northern Ireland) Order 1985), or
- (b) an institution which is of a class or description specified in an order made by the Treasury.

(3) An order—
- (a) is to be made by statutory instrument, and
- (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

(4) If an order contains a statement that the Treasury are of the opinion that, by reason of urgency, it is necessary to make the order without complying with subsection (3)(b)—
- (a) the order may be made, and
- (b) the order lapses unless approved by resolution of each House of Parliament during the period of 28 days (ignoring periods of dissolution, prorogation or adjournment of either House for more than 4 days) beginning with the day on which the order is made.

(5) The lapse of an order under subsection (4)(b)—

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) does not invalidate anything done under or in reliance on the order before the lapse and at a time when neither House has declined to approve the order, and

(b) does not prevent the making of a new order (in new terms).

(6) In subsection (1) "UK institution" means an institution which is incorporated in, or formed under the law of any part of, the United Kingdom."

(8) In the Table in section 259 (statutory instruments), in Part 7 after the entry relating to section 257 insert—

"258A	Meaning of "investment firm"	Draft affirmative resolution (except for urgent cases)"

(9) In the Table in section 261 (index of defined terms), after the entry relating to "inter-bank payment system", insert—

"Investment firm	258A".

(10) In section 214B(1)(a) of FSMA 2000 (contribution to costs of special resolution regime) for "or credit union" substitute " , credit union or investment firm ".

Commencement Information

I158 S. 101(1)(7)-(9) in force at 5.6.2014 for specified purposes by S.I. 2014/1447, **art. 2(d)(f)**

I159 S. 101(1)(5)(7)-(9) in force at 1.8.2014 in so far as not already in force by S.I. 2014/1847, **art. 2**

I160 S. 101(2)-(4)(6)(10) in force at 1.8.2014 by S.I. 2014/1847, **art. 2**

I161 S. 101(5) in force at 5.6.2014 for specified purposes by S.I. 2014/1447, **art. 2(e)**

102 Application to UK clearing houses

(1) The Banking Act 2009 is amended as follows.

(2) In section 1 (overview), after the entry in the Table relating to section 89A, insert—

"Sections 89B to 89G	UK clearing houses".

(3) In section 2 (interpretation: "bank"), after subsection (8) insert—

"(9) Section 89B applies this Part to UK clearing houses with modifications."

(4) After section 39 insert—

"**39A Banks which are clearing houses**

Sections 89C to 89E (clearing house rules, membership and recognition) apply in relation to a bank which would be a UK clearing house but for section 89G(2) (exclusion of banks etc from definition of UK clearing house) as they apply in relation to a UK clearing house."

(5) In section 75(5) (power to change law: application to other institutions), after paragraph (ca) insert—

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"(cb) to UK clearing houses, or".

(6) After section 89A (and in Part 1) insert—

"UK clearing houses

89B Application to UK clearing houses

(1) This Part applies to UK clearing houses as it applies to banks, subject to—
  (a) the modifications specified in subsections (2) to (5), and in the Table in subsection (6), and
  (b) any other necessary modifications.

(2) For section 13 substitute—

"**13 Transfer of ownership**

(1) The third stabilisation option is to transfer ownership of the UK clearing house to any person.

(2) For that purpose the Bank of England may make one or more share transfer instruments."

(3) For sections 28 and 29 substitute—

"**28 Onward transfer**

(1) This section applies where the Bank of England has made a share transfer instrument, in respect of securities issued by a UK clearing house, in accordance with section 13(2) ("the original instrument").

(2) The Bank of England may make one or more onward share transfer instruments.

(3) An onward share transfer instrument is a share transfer instrument which—
  (a) provides for the transfer of—
    (i) securities which were issued by the UK clearing house before the original instrument and have been transferred by the original instrument or a supplemental share transfer instrument, or
    (ii) securities which were issued by the UK clearing house after the original instrument;
  (b) makes other provision for the purposes of, or in connection with, the transfer of securities issued by the UK clearing house (whether the transfer has been or is to be effected by that instrument, by another share transfer instrument or otherwise).

(4) An onward share transfer instrument may not transfer securities to the transferor under the original instrument.

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(5) The Bank of England may not make an onward share transfer instrument unless the transferee under the original instrument is—
  (a) the Bank of England,
  (b) a nominee of the Treasury, or
  (c) a company wholly owned by the Bank of England or the Treasury.

(6) Sections 7 and 8 do not apply to an onward share transfer instrument (but it is to be treated in the same way as any other share transfer instrument for all other purposes, including for the purposes of the application of a power under this Part).

(7) Before making an onward share transfer instrument the Bank of England must consult—
  (a) if the UK clearing house is a PRA-authorised person, the PRA, and
  (b) the FCA.

(8) Section 26 applies where the Bank of England has made an onward share transfer instrument.

29 Reverse share transfer

(1) This section applies where the Bank of England has made a share transfer instrument in accordance with section 13(2) ("the original instrument") providing for the transfer of securities issued by a UK clearing house to a person ("the original transferee").

(2) The Bank of England may make one or more reverse share transfer instruments in respect of securities issued by the UK clearing house and held by the original transferee (whether or not they were transferred by the original instrument).

(3) If the Bank of England makes an onward share transfer instrument in respect of securities transferred by the original instrument, the Bank may make one or more reverse share transfer instruments in respect of securities issued by the UK clearing house and held by a transferee under the onward share transfer instrument ("the onward transferee").

(4) A reverse share transfer instrument is a share transfer instrument which—
  (a) provides for transfer to the transferor under the original instrument (where subsection (2) applies);
  (b) provides for transfer to the original transferee (where subsection (3) applies);
  (c) makes other provision for the purposes of, or in connection with, the transfer of securities which are, could be or could have been transferred under paragraph (a) or (b).

(5) The Bank of England may not make a reverse share transfer instrument under subsection (2) unless—
  (a) the original transferee is—
    (i) the Bank of England,

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(ii) a company wholly owned by the Bank of England or the Treasury, or

(iii) a nominee of the Treasury, or

(b) the reverse share transfer instrument is made with the written consent of the original transferee.

(6) The Bank of England may not make a reverse share transfer instrument under subsection (3) unless—

(a) the onward transferee is—

(i) the Bank of England,

(ii) a company wholly owned by the Bank of England or the Treasury, or

(iii) a nominee of the Treasury, or

(b) the reverse share transfer instrument is made with the written consent of the onward transferee.

(7) Sections 7 and 8 do not apply to a reverse share transfer instrument (but it is to be treated in the same way as any other share transfer instrument for all other purposes including for the purposes of the application of a power under this Part).

(8) Before making a reverse share transfer instrument the Bank of England must consult—

(a) if the UK clearing house is a PRA-authorised person, the PRA, and

(b) the FCA.

(9) Section 26 applies where the Bank of England has made a reverse share transfer instrument."

(4) For sections 45 and 46 substitute—

"**45 Transfer of ownership: property transfer**

(1) This section applies where the Bank of England has made a share transfer instrument, in respect of securities issued by a UK clearing house, in accordance with section 13(2) ("the original instrument").

(2) The Bank of England may make one or more property transfer instruments.

(3) A property transfer instrument is an instrument which—

(a) provides for property, rights or liabilities of the UK clearing house to be transferred (whether accruing or arising before or after the original instrument);

(b) makes other provision for the purposes of, or in connection with, the transfer of property, rights or liabilities of the UK clearing house (whether the transfer has been or is to be effected by the instrument or otherwise).

(4) The Bank of England may not make a property transfer instrument in accordance with this section unless the original instrument transferred securities to—

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) the Bank of England,
(b) a company wholly owned by the Bank of England or the Treasury, or
(c) a nominee of the Treasury.

(5) Sections 7 and 8 do not apply to a property transfer instrument made in accordance with this section.

(6) Section 42 applies where the Bank of England has made a property transfer instrument in accordance with this section.

(7) Before making a property transfer instrument in accordance with this section, the Bank of England must consult—
(a) if the UK clearing house is a PRA-authorised person, the PRA, and
(b) the FCA.

46 Transfer of ownership: reverse property transfer

(1) This section applies where the Bank of England has made a property transfer instrument in accordance with section 45(2) ("the original instrument").

(2) The Bank of England may make one or more reverse property transfer instruments in respect of property, rights or liabilities of the transferee under the original instrument.

(3) A reverse property transfer instrument is a property transfer instrument which—
(a) provides for transfer to the transferor under the original instrument;
(b) makes other provision for the purposes of, or in connection with, the transfer of property, rights or liabilities which are, could be or could have been transferred.

(4) The Bank of England must not make a reverse property transfer instrument unless—
(a) the transferee under the original instrument is—
(i) the Bank of England,
(ii) a company wholly owned by the Bank of England or the Treasury, or
(iii) a nominee of the Treasury, or
(b) the reverse property transfer instrument is made with the written consent of the transferee under the original instrument.

(5) Sections 7 and 8 do not apply to a reverse property transfer instrument made in accordance with this section.

(6) Before making a reverse property transfer instrument in accordance with this section, the Bank of England must consult—
(a) if the UK clearing house is a PRA-authorised person, the PRA, and

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(b) the FCA.

(7) Section 42 applies where the Bank of England has made a reverse property transfer instrument in accordance with this section."

(5) For section 81 substitute—

"**81 Transfer of ownership: report**

(1) This section applies where the Bank of England makes one or more share transfer instruments in respect of a UK clearing house under section 13(2).

(2) The Bank must report to the Chancellor of the Exchequer about the exercise of the power to make share transfer instruments under that section.

(3) The report must comply with any requirements as to content specified by the Treasury.

(4) The report must be made as soon as is reasonably practicable after the end of one year beginning with the date of the first transfer instrument made under section 13(2)."

(6) The table mentioned in subsection (1)(a) is as follows—

TABLE OF MODIFICATIONS

Provision	***Modification***
Section 1	Ignore subsection (2)(b) and (c). In subsection (3)(c), for "to temporary public ownership" substitute " of ownership ". In subsection (4)(a), for "15, 16, 26 to 31 and 85" substitute " 15, 26 and 28 to 31 ".
Section 4	Ignore subsection (2)(b) and (c). Ignore subsection (3)(a), (b) and (ba). In subsection (5), for "banking" substitute " financial ". In subsection (6), for "protect depositors" substitute " maintain the continuity of central counterparty clearing services ". Ignore subsections (8A), (8B) and (9).
Section 5	Ignore subsection (1)(b) and (c). In subsection (3)— (a) for "Sections 12 and 13 require" substitute " Section 12 requires ", and (b) ignore the words "and temporary public ownership".
Section 6	In subsection (4)— (a) after "Before" insert " issuing or ", and (b) ignore paragraph (d).

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In subsection (5) after "after" insert " issuing or ".

Section 7

In subsection (1), for "PRA" substitute " Bank of England ".

In subsection (2), for the words following "satisfy the" substitute " recognition requirements ".

The Bank of England may treat Condition 1 as met if satisfied that it would be met but for the withdrawal or possible withdrawal of critical clearing services by the UK clearing house.

In subsection (3), for "satisfy the threshold conditions" substitute " maintain the continuity of any critical clearing services it provides while also satisfying the recognition requirements ".

In subsection (4), for "PRA" substitute " Bank of England ".

Ignore subsection (4A).

In subsection (5)—
(a) for "PRA" substitute " Bank of England ", and
(b) ignore paragraph (a) unless the UK clearing house is a PRA-authorised person, in which case for "Bank of England" substitute " PRA ".

Ignore subsections (7) and (8).

For the purposes of section 7—
(a) "critical clearing services" means central counterparty clearing services the withdrawal of which may, in the Bank of England's opinion, threaten the stability of the financial systems of the United Kingdom, and
(b) "recognition requirements" means the requirements resulting from section 286 of the Financial Services and Markets Act 2000.

Section 8

In subsection (1), omit "in accordance with section 11(2) or 12(2)".

Ignore subsection (2)(c) and (d).

In subsection (3), ignore paragraph (a) unless the UK clearing house is a PRA-authorised person.

In subsection (4), ignore the words "in accordance with section 11(2) or 12(2)".

Section 9

Ignore section 9.

Section 11

Ignore subsection (2)(a).

Section 13

See above.

Section 14

Ignore subsection (5).

Section 16

Ignore section 16.

Section 20

Ignore subsections (2) and (4).

Section 24

In subsection (1), ignore paragraph (c) unless the UK clearing house is a PRA-authorised person.

Section 25

Ignore section 25.

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Section 26	In subsection (1), for "11(2)" substitute " 13(2) ". In subsection (5), ignore paragraph (a) unless the UK clearing house is a PRA-authorised person. In subsection (6), for "11(2)" substitute " 13(2) ".
Sections 26A and 27	Ignore sections 26A and 27.
Sections 28 and 29	See above.
Section 30	In subsection (5), ignore paragraph (a) unless the UK clearing house is a PRA-authorised person.
Section 31	In subsection (4), for "7, 8 and 51" substitute " 7 and 8 ". In subsection (5), ignore paragraph (a) unless the UK clearing house is a PRA-authorised person.
Section 41	In subsection (1), ignore paragraph (c) unless the UK clearing house is a PRA-authorised person.
Section 42	In subsection (5), ignore paragraph (a) unless the UK clearing house is a PRA-authorised person.
Section 42A	In subsection (5), for "7, 8 and 50" substitute " 7 and 8 ". In subsection (6), ignore paragraph (a) unless the UK clearing house is a PRA-authorised person.
Section 43	In subsection (6), for "7, 8 and 52" substitute " 7 and 8 ". In subsection (7), ignore paragraph (a) unless the UK clearing house is a PRA-authorised person.
Section 44	In subsection (5), for "7, 8 and 52" substitute " 7 and 8 ". In subsection (6), ignore paragraph (a) unless the UK clearing house is a PRA-authorised person.
Sections 45 and 46	See above.
Sections 49 to 53	Ignore sections 49 to 53.
Section 54	In subsection (1), for "A compensation scheme order" substitute " An order under section 89F ". In subsection (4)(b), for "compensation scheme order" substitute " the order under section 89F ".
Section 55	In subsection (10), for "to which section 62 applies" substitute " under section 89F ".
Section 56	In subsection (6), for "to which section 62 applies" substitute " under section 89F ".
Section 57	In subsection (1), for "A compensation scheme order" substitute " An order under section 89F ". In subsection (4)(a), for "has had a permission under Part 4A of the Financial Services and Markets Act 2000 (regulated

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activities) varied or cancelled" substitute " no longer qualifies as a recognised body under Part 18 of the Financial Services and Markets Act 2000 (recognised investment exchanges and clearing houses) or is subject to a requirement imposed under that Part ".

Section 58

In subsection (1), for "A resolution fund order" substitute " An order under section 89F that provides for transferors to become entitled to the proceeds of the disposal of things transferred ".

Ignore subsection (3).

In subsection (4), for "A resolution fund order" substitute " An order under section 89F that provides for transferors to become entitled to the proceeds of the disposal of things transferred ".

In subsection (5), for "A resolution fund order" substitute " An order under section 89F that provides for transferors to become entitled to the proceeds of the disposal of things transferred ".

Ignore subsections (6) to (8).

Section 59

Ignore section 59.

Section 60

In subsection (3)(c), ignore the references to bank insolvency and bank administration.

In subsection (4)—
(a) ignore paragraphs (a) and (b), and
(b) in paragraph (c), for "a third party compensation order" substitute " an order under section 89F ".

In subsection (5)—
(a) ignore paragraph (a), and
(b) in paragraph (c), for "a compensation scheme order or resolution fund order" substitute " an order under section 89F ".

Section 61

In subsection (1)—
(a) ignore paragraphs (a) to (c), and
(b) treat the subsection as including a reference to orders under section 89F.

Ignore subsection (2)(b).

Section 62

Ignore section 62.

Section 65

In subsection (1)(a)(ii), for "order" substitute " instrument ".

In subsection (3)—
(a) in paragraph (a), ignore the words "where subsection (1)(a)(i) applies", and
(b) ignore paragraph (b).

Section 66

In subsection (1)—
(a) in paragraph (a), ignore the reference to section 11(2)(a),
(b) in paragraph (d)(i), ignore the words following "England", and
(c) ignore paragraph (d)(ii).

Section 68

In subsection (1)(a), for "order" substitute " instrument ".

Status: *Point in time view as at 03/03/2015.*
Changes to legislation: *Financial Services Act 2012 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Section 69	In subsection (4)— (a) in paragraph (a), ignore the words "in relation to sections 63 and 64", and (b) ignore paragraph (b).
Section 70	In subsection (3)— (a) in paragraph (a), ignore the words "in relation to section 63", and (b) ignore paragraph (b).
Section 71	Ignore subsection (1)(a).
Section 72	Ignore subsection (1)(a).
Section 73	Ignore subsection (1)(a).
Section 79A	In subsection (2), ignore the words "share transfer instruments and".
Section 81	See above.
Section 81B	In subsection (1), for "or 12(2)" substitute " , 12(2) or 13(2) ". Ignore subsection (3)(c) and (d). In subsection (6), ignore paragraph (b) unless the clearing house is a PRA-authorised person.
Section 81C	In subsection (2), ignore the words "and the bank administration procedure". Ignore subsection (3).
Sections 82 and 83	Ignore sections 82 and 83.

89C Clearing house rules

(1) A property transfer instrument made in respect of a UK clearing house may make provision about the consequences of a transfer for the rules of the clearing house.

(2) In particular, an instrument may—
  (a) modify or amend the rules of a UK clearing house;
  (b) in a case where some, but not all, of the business of a UK clearing house is transferred, make provision as to the application of the rules in relation to the parts of the business that are, and are not, transferred.

(3) Provision by virtue of this section may (but need not) be limited so as to have effect—
  (a) for a specified period, or
  (b) until a specified event occurs or does not occur.

89D Clearing house membership

(1) A property transfer instrument made in respect of a UK clearing house may make provision about the consequences of a transfer for membership of the clearing house.

Status: *Point in time view as at 03/03/2015.*
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(2) In particular, an instrument may—
  (a) make provision modifying the terms on which a person is a member of a UK clearing house;
  (b) in a case where some, but not all, of the business of a UK clearing house is transferred, provide for a person who was a member of the transferor to remain a member of the transferor while also becoming a member of the transferee.

89E Recognition of transferee company

(1) The Bank of England may provide for a company to which the business of a UK clearing house is transferred in accordance with section 12(2) to be treated as a recognised clearing house for the purposes of the Financial Services and Markets Act 2000—
  (a) for a specified period, or
  (b) until a specified event occurs.

(2) The provision may have effect—
  (a) for a period specified in the instrument, or
  (b) until the occurrence of an event specified or described in the instrument.

(3) The power under this section—
  (a) may be exercised only with the consent of the Treasury, and
  (b) must be exercised by way of provision in a property transfer instrument (or supplemental instrument).

89F Clearing house compensation orders

(1) The Treasury may by order make provision for protecting the financial interests of transferors and others in connection with any transfer under this Part as it applies by virtue of section 89B.

(2) The order may make provision establishing a scheme—
  (a) for determining whether transferors should be paid compensation, or providing for transferors to be paid compensation, and establishing a scheme for paying any compensation,
  (b) under which transferors become entitled to the proceeds of the disposal of things transferred in specified circumstances, and to a specified extent, and
  (c) for compensation to be paid to persons other than transferors.

(3) An order—
  (a) is to be made by statutory instrument, and
  (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

89G Interpretation: "UK clearing house" &c.

(1) In this Part "UK clearing house" means a clearing house—

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(a) which is incorporated in, or formed under the law of any part of, the United Kingdom,

(b) which provides central counterparty clearing services, and

(c) in relation to which a recognition order is in force under Part 18 of the Financial Services and Markets Act 2000.

(2) But "UK clearing house" does not include a clearing house which is also—

(a) a bank,

(b) a building society (within the meaning of section 119 of the Building Societies Act 1986),

(c) a credit union (within the meaning of section 31 of the Credit Unions Act 1979 or Article 2(2) of the Credit Unions (Northern Ireland) Order 1985), or

(d) an investment firm.

(3) Where a stabilisation power is exercised in respect of a UK clearing house, it does not cease to be a UK clearing house for the purposes of this Part if the recognition order referred to in subsection (1)(c) is later revoked.

(4) In this Part—

"central counterparty clearing services" has the same meaning as in section 155 of the Companies Act 1989 (see subsection (3A) of that section), and

"PRA-authorised person" has the meaning given by section 2B(5) of the Financial Services and Markets Act 2000."

(7) In the Table in section 259 (statutory instruments), in Part 1 after the entry relating to section 89 insert—

"89F	Clearing house compensation orders	Draft affirmative resolution"

(8) In the Table in section 261 (index of defined terms)—

(a) after the entry relating to "bridge bank share transfer instrument" insert—

"central counterparty clearing services	89G",

(b) after the entry relating to "partial property transfer" insert—

"PRA-authorised person	89G"

(c) at the end insert—

"UK clearing house	89G".

Commencement Information

I162 S. 102(1) in force at 5.6.2014 for specified purposes by S.I. 2014/1447, **art. 2(g)**

I163 S. 102(1)(6) in force at 1.8.2014 in so far as not already in force by S.I. 2014/1847, **art. 2**

I164 S. 102(2)-(5)(7)(8) in force at 1.8.2014 by S.I. 2014/1847, **art. 2**

I165 S. 102(6) in force at 5.6.2014 for specified purposes by S.I. 2014/1447, **art. 2(h)**

Status: *Point in time view as at 03/03/2015.*
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103 State aid

After section 145 of the Banking Act 2009 insert—

"145A Power to direct bank administrator

(1) This section applies where—
- (a) a bank administration order has been made, and
- (b) the Treasury are of the opinion that anything done, or proposed to be done, in connection with the exercise of one or more of the stabilisation powers may constitute the granting of aid to which any of the provisions of Article 107 or 108 of TFEU applies ("State aid").

(2) The Treasury may, in writing, direct the bank administrator to take specified action to enable the United Kingdom to fulfil any of the purposes specified in subsection (3).

(3) The purposes are—
- (a) to inform the European Commission that State aid has been, may have been, or may be, given;
- (b) to obtain a decision from the Commission whether State aid—
  - (i) has been given, or
  - (ii) would be given, if the action proposed was taken;
- (c) to apply for approval that such aid is, or would be, compatible with the internal market, within the meaning of Article 107 of TFEU;
- (d) to comply with any requirements to enable an investigation under Article 108 of TFEU to be carried out;
- (e) to comply with any undertaking given to the European Commission in connection with the application for approval referred to in paragraph (c);
- (f) to comply with any requests from the Commission relating to the application for approval, including the provision of information;
- (g) to comply with any undertakings given to the Commission, or conditions imposed by the Commission, where approval has been given.

(4) Before giving a direction under this section the Treasury must consult the bank administrator.

(5) The bank administrator must comply with the direction within the period of time specified in the direction, or if no period of time is specified, as soon as reasonably practicable.

(6) A direction under this section is enforceable on an application made by the Treasury, by injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.

(7) A direction may specify circumstances in which the bank administrator is immune from liability in damages.

(8) Immunity by virtue of subsection (7) does not extend to action—
- (a) in bad faith, or
- (b) in contravention of section 6(1) of the Human Rights Act 1998.

Status: *Point in time view as at 03/03/2015.*
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(9) If the United Kingdom has made, or proposes to make, an application to the Council of the European Union under Article 108 of TFEU, references in subsection (3) to the Commission are to be read as including references to the Council.

(10) In this section "TFEU" means the Treaty on the Functioning of the European Union."

Commencement Information
I166 S. 103 in force at 1.4.2013 by S.I. 2013/423, art. 3, **Sch.**

Inter-bank payment systems

104 Inter-bank payment systems

(1) Part 5 of the Banking Act 2009 (inter-bank payment systems) is amended as follows.

(2) After section 186 insert—

"**186A Amendment of recognition order**

(1) The Treasury may amend a recognition order.

(2) Before amending a recognition order the Treasury must—
(a) consult the Bank of England,
(b) notify the operator of the recognised inter-bank payment system, and
(c) consider any representations made.

(3) In addition, the Treasury—
(a) must consult the FCA before amending a recognition order in respect of a payment system the operator of which—
(i) is, or has applied to become, a recognised investment exchange, or
(ii) has, or has applied for, a Part 4A permission, and
(b) if the operator has, or has applied for, a Part 4A permission for the carrying on of a PRA-regulated activity, must also consult the PRA.

(4) The Treasury must consider any request by the operator of a recognised inter-bank payment system for the amendment of its recognition order."

(3) For section 191 substitute—

"**191 Directions**

(1) The Bank of England may give directions in writing to the operator of a recognised inter-bank system.

(2) A direction may—
(a) require or prohibit the taking of specified action in the operation of the system;

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(b) set standards to be met in the operation of the system.

(3) If a direction is given for the purpose of resolving or reducing a threat to the stability of the UK financial system, the operator (including its officers and staff) has immunity from liability in damages in respect of action or inaction in accordance with the direction.

(4) A direction given for the purpose mentioned in subsection (3) must—
(a) include a statement that it is given for that purpose, and
(b) inform the operator of the effect of that subsection.

(5) The Treasury may by order confer immunity on any person from liability in damages in respect of action or inaction in accordance with a direction (including a direction given for the purpose mentioned in subsection (3)).

(6) An order—
(a) is to be made by statutory instrument, and
(b) is subject to annulment in pursuance of a resolution of either House of Parliament.

(7) An immunity conferred by or under this section does not extend to action or inaction—
(a) in bad faith, or
(b) in contravention of section 6(1) of the Human Rights Act 1998."

(4) In section 186 (procedure)—
(a) for subsection (2) substitute—

"(2) In addition, the Treasury—
(a) must consult the FCA before making a recognition order in respect of a payment system the operator of which—
(i) is, or has applied to become, a recognised investment exchange, or
(ii) has, or has applied for, a Part 4A permission, and
(b) if the operator has, or has applied for, a Part 4A permission for the carrying on of a PRA-regulated activity, must also consult the PRA.", and

(b) in subsection (3), for "or the FSA" substitute " , the FCA or the PRA ".

(5) In section 187 (de-recognition), for subsection (4) substitute—

"(4) In addition, the Treasury—
(a) must consult the FCA before revoking a recognition order in respect of a payment system the operator of which—
(i) is, or has applied to become, a recognised investment exchange, or
(ii) has, or has applied for, a Part 4A permission, and
(b) if the operator has, or has applied for, a Part 4A permission for the carrying on of a PRA-regulated activity, must also consult the PRA."

(6) In section 192 (role of FSA)—
(a) in subsection (1), for "the FSA" substitute " the FCA or the PRA ",
(b) for subsection (2) substitute—

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"(2) The Bank of England—

(a) must consult the FCA before taking action under this Part in respect of a recognised inter-bank payment system the operator of which satisfies section 186(2)(a), and

(b) must consult the PRA before taking action under this Part in respect of a recognised inter-bank payment system the operator of which satisfies section 186(2)(b).",

(c) in subsection (3)—

(i) for "the FSA", in the first place, substitute " the FCA or the PRA ",

(ii) for "the FSA", in the second place, substitute " it ",

(iii) for "section 186(2)" substitute " section 186(2)(a) or (b) ", and

(iv) in paragraph (a), for "the FSA" substitute " the FCA or (as the case may be) the PRA ", and

(d) in the heading, for "FSA" substitute " FCA and PRA ".

(7) After section 202 insert—

"**202A Injunctions**

(1) If, on the application of the Bank of England, the court is satisfied—

(a) that there is a reasonable likelihood that there will be a compliance failure, or

(b) that there has been a compliance failure and there is a reasonable likelihood that it will continue or be repeated,

the court may make an order restraining the conduct constituting the failure.

(2) If, on the application of the Bank of England, the court is satisfied—

(a) that there has been a compliance failure by the operator of a recognised inter-bank payment system, and

(b) that there are steps which could be taken for remedying the failure,

the court may make an order requiring the operator, and anyone else who appears to have been knowingly concerned in the failure, to take such steps as the court may direct to remedy it.

(3) If, on the application of the Bank of England, the court is satisfied—

(a) that there may have been a compliance failure by the operator of a recognised inter-bank payment system, or

(b) that a person may have been knowingly concerned in a compliance failure,

the court may make an order restraining the operator or person from dealing with any assets which it is satisfied the operator or person is reasonably likely to deal with.

(4) The jurisdiction conferred by this section is exercisable—

(a) in England and Wales and Northern Ireland, by the High Court, and

(b) in Scotland, by the Court of Session.

(5) In this section—

(a) references to an order restraining anything are, in Scotland, to be read as references to an interdict prohibiting that thing,

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(b) references to remedying a failure include mitigating its effect, and
(c) references to dealing with assets include disposing of them."

(8) After section 203 insert—

"**203A Records**

(1) The Bank of England must maintain satisfactory arrangements for—
(a) recording decisions made in the exercise of its functions under this Part, and
(b) the safe-keeping of those records which it considers ought to be preserved.

(2) The duty in subsection (1) does not apply to a decision to issue a notice under section 204(1).

203B Annual report

(1) At least once a year the Bank of England must make a report to the Treasury on—
(a) the discharge of its functions under this Part,
(b) the extent to which, in its opinion, in discharging those functions its financial stability objective has been met, and
(c) such other matters as the Treasury may from time to time direct.

(2) Subsection (1) does not require the inclusion in the report of any information whose publication would in the opinion of the Bank of England be against the public interest.

(3) The Treasury must lay before Parliament a copy of each report received by them under this section."

(9) In section 204 (information)—
(a) after subsection (1), insert—

"(1A) The Bank of England may by notice in writing require the operator of a recognised inter-bank payment system to provide information which the Bank requires in connection with the exercise of its functions (whether under this Part or otherwise) in pursuance of its financial stability objective.",
(b) in subsections (2) and (3), after "notice" insert " under subsection (1) or (1A) ",
(c) in subsection (4), for paragraph (b) substitute—
"(b) the FCA;
(ba) the PRA;", and
(d) in paragraph (c) of that subsection, for "or the FSA" substitute " , the FCA or the PRA ".

(10) In section 206A (services forming part of recognised inter-bank payment systems)—
(a) in subsection (4)(a), for "and the FSA" substitute " , the FCA and the PRA ", and
(b) in subsection (6), for paragraph (b) (and the "and" at the end of it) substitute—
"(b) the FCA,

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(ba) the PRA, and".

Commencement Information
I167 S. 104 in force at 1.4.2013 by S.I. 2013/423, art. 3, **Sch.**

105 International obligations

In Part 5 of the Banking Act 2009, after section 206A insert—

"**206B International obligations**

(1) If it appears to the Treasury that any action proposed to be taken by the Bank of England in exercising its powers under this Part would be incompatible with EU obligations or any other international obligations of the United Kingdom, the Treasury may direct the Bank not to take that action.

(2) If it appears to the Treasury that any action which the Bank of England has power under this Part to take is required for the purpose of implementing any such obligation, the Treasury may direct the Bank to take that action.

(3) A direction under this section—

(a) may include such supplemental or incidental requirements as the Treasury consider necessary or expedient, and

(b) is enforceable on an application by the Treasury, by injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988."

Commencement Information
I168 S. 105 in force at 1.4.2013 by S.I. 2013/423, art. 3, **Sch.**

Further amendments

106 Amendments relating to new regulators

Schedule 17 contains amendments of the Banking Act 2009 related to the provisions of Part 2 of this Act.

Commencement Information
I169 S. 106 in force at 1.4.2013 by S.I. 2013/423, art. 3, **Sch.**

Status: *Point in time view as at 03/03/2015.*
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PART 9

MISCELLANEOUS

Consumer credit

107 Power to make further provision about regulation of consumer credit

(1) Subsection (2) applies on or at any time after the making, after the passing of this Act, of an order under section 22 of FSMA 2000 which has the effect that an activity (a "transferred activity")—

(a) ceases to be an activity in respect of which a licence under section 21 of CCA 1974 is required or would be required but for the exemption conferred by subsection (2), (3) or (4) of that section or paragraph 15(3) of Schedule 3 to FSMA 2000, and

(b) becomes a regulated activity for the purposes of FSMA 2000.

(2) The Treasury may by order do any one or more of the following—

(a) transfer to the FCA functions of the OFT under any provision of CCA 1974 that remains in force;

(b) provide that any specified provision of FSMA 2000 which relates to the powers or duties of the FCA in connection with the failure of any person to comply with a requirement imposed by or under FSMA 2000 is to apply, subject to any specified modifications, in connection with the failure of any person to comply with a requirement imposed by or under a specified provision of CCA 1974;

(c) require the FCA to issue a statement of policy in relation to the exercise of powers conferred on it by virtue of paragraph (b);

(d) in connection with provision made by virtue of paragraph (b), provide that failure to comply with a specified provision of CCA 1974 no longer constitutes an offence or that a person may not be convicted of an offence under a specified provision of CCA 1974 in respect of an act or omission in a case where the FCA has exercised specified powers in relation to that person in respect of that act or omission;

(e) provide for the transfer to the Treasury of any functions under CCA 1974 previously exercisable by the Secretary of State;

(f) provide that functions of the Secretary of State under CCA 1974 are exercisable concurrently with the Treasury;

(g) provide for any provision of sections 162 to 165 and 174A of CCA 1974 which relates to—

(i) the powers of a local weights and measures authority in Great Britain or the Department of Enterprise, Trade and Investment in Northern Ireland in relation to compliance with any provision made by or under CCA 1974,

(ii) the powers of such an authority or that Department in relation to the commission or suspected commission of offences under any provision made by or under CCA 1974,

(iii) the powers that may be conferred by warrant on an officer of such an authority or that Department, or

(iv) things done in the exercise of any of those powers,

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to apply in relation to compliance with FSMA 2000 so far as relating to relevant regulated activities, in relation to the commission or suspected commission of a relevant offence or in relation to things done in the exercise of any of those powers as applied by the order;

(h) enable local weights and measures authorities to institute proceedings in England and Wales for a relevant offence;

(i) enable the Department of Enterprise, Trade and Investment in Northern Ireland to institute proceedings in Northern Ireland for a relevant offence;

(j) provide that references in a specified enactment to the FCA's functions under FSMA 2000 include references to its functions resulting from any order under this section.

(3) If an order under this section makes provision by virtue of subsection (2)(b) enabling the FCA to exercise any of its powers under sections 205 to 206A of FSMA 2000 (disciplinary measures) by reference to an act or omission that constitutes an offence under CCA 1974, the order must also make provision by virtue of subsection (2)(d) ensuring that a person in respect of whom the power has been exercised cannot subsequently be convicted of the offence by reference to the same act or omission.

(4) In subsection (2)(g) to (i)—

(a) "relevant regulated activity" means an activity that is a regulated activity for the purposes of FSMA 2000 by virtue of—

(i) an order made under section 22(1) of that Act in relation to an investment of a kind falling within paragraph 23 or 23B of Schedule 2 to that Act, or

(ii) an order made under section 22(1A)(a) of that Act;

(b) "relevant offence" means an offence under FSMA 2000 committed in relation to such an activity.

(5) The Treasury may make provision by virtue of subsection (2)(i) only with the consent of the Department of Enterprise, Trade and Investment in Northern Ireland.

(6) On or at any time after the making of an order under section 22 of FSMA 2000 of the kind mentioned in subsection (1), the Treasury may by order—

(a) exclude the application of any provision of CCA 1974 in relation to a transferred activity, or

(b) repeal any provision of CCA 1974 which relates to a transferred activity.

(7) In exercising their powers under this section, the Treasury must have regard to—

(a) the importance of securing an appropriate degree of protection for consumers, and

(b) the principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction.

(8) The additional powers conferred by section 115(2) on a person making an order under this Act include power for the Treasury, when making an order under this section—

(a) to make such consequential provision as the Treasury consider appropriate;

(b) to amend any enactment, including any provision of, or made under, this Act.

(9) The provisions of this section do not limit—

(a) the powers conferred by section 118 or by section 22 of FSMA 2000, or

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(b) the powers exercisable under Schedule 21 in connection with the transfer of functions from the OFT.

(10) In this section—

"CCA 1974" means the Consumer Credit Act 1974;

"consumers" has the meaning given in section 1G of FSMA 2000;

"the OFT" means the Office of Fair Trading.

Commencement Information

I170 S. 107 in force at 1.4.2013 by S.I. 2013/423, art. 3, **Sch.**

108 Suspension of licences under Part 3 of Consumer Credit Act 1974

(1) The Consumer Credit Act 1974 is amended as follows.

(2) In section 32 (suspension or revocation)—

(a) in subsection (1), omit "or suspended",

(b) in subsection (2)—

(i) in paragraph (a), omit ", as the case may be," and ", or suspend it until a specified date or indefinitely,", and

(ii) in paragraph (b), omit "or suspension" and "or suspend",

(c) in subsection (3)—

(i) in paragraph (a), omit ", as the case may be," and ", or suspend it until a specified date or indefinitely,", and

(ii) in paragraph (b), omit "or suspension",

(d) in subsection (4)—

(i) in paragraph (a), omit ", as the case may be," and ", or suspend it until a specified date or indefinitely,", and

(ii) in paragraph (b), omit "or suspension",

(e) in subsections (6) and (7), omit "or suspension",

(f) omit subsection (8),

(g) in subsection (9), omit "or to suspend", and

(h) in the heading, omit "Suspension and".

(3) After section 32 insert—

"**32A Power to suspend licence**

(1) If during the currency of a licence it appears to the OFT to be urgently necessary for the protection of consumers that the licence should cease to have effect immediately or on a specified date, the OFT is to proceed as follows.

(2) In the case of a standard licence the OFT must, by notice—

(a) inform the licensee that the OFT is suspending the licence from the date of the notice or from a later date specified in the notice,

(b) state the OFT's reasons for the suspension,

(c) state either—

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(i) that the suspension is to end on a specified date, which must be no later than the last day of the 12 months beginning with the day on which the suspension takes effect, or

(ii) that the duration of the suspension is to be as provided by section 32B,

(d) specify any provision to be made under section 34A, and

(e) invite the licensee to submit to the OFT in accordance with section 34ZA representations—

(i) as to the suspension, and

(ii) about the provision (if any) that is or should be made under section 34A.

(3) In the case of a group licence the OFT must—

(a) give general notice that the OFT is suspending the licence from the date of the notice or from a later date specified in the notice,

(b) state in the notice the OFT's reasons for the suspension,

(c) state in the notice either—

(i) that the suspension is to end on a specified date, which must be no later than the last day of the 12 months beginning with the day on which the suspension takes effect, or

(ii) that the duration of the suspension is to be as provided by section 32B,

(d) specify in the notice any provision to be made under section 34A, and

(e) in the notice invite any licensee to submit to the OFT in accordance with section 34ZA representations as to the suspension.

(4) In the case of a group licence issued on application the OFT must also—

(a) inform the original applicant of the matters specified under subsection (3)(a) to (d) in the general notice, and

(b) invite the original applicant to submit to the OFT in accordance with section 34ZA representations as to the suspension.

(5) Except for the purposes of sections 29 to 32 and section 33A, a licensee under a suspended licence is to be treated, in respect of the period of suspension, as if the licence had not been issued.

(6) The suspension may, if the OFT thinks fit, be ended by notice given by it to the licensee or, in the case of a group licence, by general notice.

(7) In this section “consumers”, in relation to a licence, means individuals who have been or may be affected by the carrying on of the business to which the licence relates, other than individuals who are themselves licensees.

32B Duration of suspension

(1) This section applies where a notice under section 32A provides for the duration of a suspension under that section to be as provided by this section.

(2) The suspension ends at the end of the period of 12 months beginning with the day on which it takes effect, but this is subject to—

(a) subsections (3) and (4) (where those subsections give a later time), and

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(b) the powers of the OFT under section 32A(6) and section 33.

(3) Subsection (4) applies where—

(a) the OFT gives notice under section 32 that it is minded to revoke the licence, and

(b) it gives that notice—

(i) on or before giving the notice under section 32A, or

(ii) after giving that notice but before the end of the period of 12 months mentioned in subsection (2).

(4) The period of suspension is to continue until—

(a) the time of any determination by the OFT not to revoke the licence in pursuance of the notice under section 32, or

(b) where the OFT determines to revoke the licence in pursuance of the notice, the end of the appeal period."

(4) In section 33 (application to end suspension), for subsection (1) substitute—

"(1) On an application made by a licensee the OFT may, if it thinks fit, by notice to the licensee end the suspension of a licence under section 32A, whether the suspension was for a fixed period or for a period determined in accordance with section 32B."

(5) In section 33A (power of OFT to impose requirements on licensees) after subsection (6) insert—

"(6A) A requirement imposed under this section during a period of suspension cannot take effect before the end of the suspension."

(6) After section 34 insert—

"**34ZA Representations to OFT: suspension under section 32A**

(1) Where this section applies to an invitation by the OFT to any person ("P") to submit representations, the OFT must invite P, within 21 days after the notice containing the invitation is given to P or published, or such longer period as the OFT may allow—

(a) to submit P's representations in writing to the OFT, and

(b) to give notice to the OFT, if P thinks fit, that P wishes to make representations orally,

and where notice is given under paragraph (b) the OFT must arrange for the oral representations to be heard.

(2) The OFT must reconsider its determination under section 32A and determine whether to confirm it (with or without variation) or revoke it and in doing so must take into account any representations submitted or made under this section.

(3) The OFT must give notice of its determination under this section to the persons who were required to be invited to submit representations about the original determination under section 32A or, where the invitation to submit representations was required to be given by general notice, must give general notice of the confirmation or revocation."

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(7) In section 34A (winding-up of standard licensee's business), in subsection (2)—

(a) in paragraph (c), omit "suspend or", and

(b) after paragraph (c) insert—

"(d) a determination to suspend such a licence under section 32A (including a determination made under section 34ZA on reconsidering a previous determination under section 32A);".

(8) In section 41 (appeals) after subsection (1) insert—

"(1ZA) References in the table to a determination as to the suspension of a standard licence or group licence are to be read as references to a determination under section 34ZA to confirm a determination to suspend a standard licence or group licence."

(9) Nothing in this section affects the powers conferred by section 22 of FSMA 2000 or section 107 of this Act.

Penalties received by Financial Services Authority or Bank of England

109 Payment to Treasury of penalties received by Financial Services Authority

(1) The Financial Services Authority ("the FSA") must in respect of its financial year beginning with 1 April 2012 and each subsequent financial year pay to the Treasury its penalty receipts after deducting its enforcement costs.

(2) The FSA's "penalty receipts" in respect of a financial year are any amounts received by it during the year by way of penalties imposed under FSMA 2000.

(3) The FSA's "enforcement costs" in respect of a financial year are the expenses incurred by it during the year in connection with—

(a) the exercise, or consideration of the possible exercise, of any of its enforcement powers in particular cases, or

(b) the recovery of penalties imposed under FSMA 2000.

(4) For this purpose the FSA's enforcement powers are—

(a) its powers under any of the provisions mentioned in subsection (5),

(b) its powers under any other enactment specified by the Treasury by order,

(c) its powers in relation to the investigation of relevant offences, and

(d) its powers in England and Wales or Northern Ireland in relation to the prosecution of relevant offences.

(5) The provisions referred to in subsection (4)(a) are the following provisions of FSMA 2000—

(a) section 56 (prohibition orders),

(b) section 63A (penalties relating to performance of controlled functions without approval),

(c) section 66 (disciplinary powers in relation to approved persons),

(d) section 87M (public censure of issuer),

(e) section 89 (public censure of sponsor),

(f) section 89K (public censure of issuer),

(g) section 91 (penalties for breach of Part 6 rules),

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(h) section 123 (penalties in case of market abuse),
(i) section 131G (short selling etc: power to impose penalty or issue censure),
(j) sections 205, 206 and 206A (disciplinary measures),
(k) section 249 (disqualification of auditor for breach of trust scheme rules),
(l) section 345 (disqualification of auditor or actuary), and
(m) Part 25 (injunctions and restitution).

(6) "Relevant offences" are—
(a) offences under FSMA 2000,
(b) offences under subordinate legislation made under that Act,
(c) offences falling within section 402(1) of that Act, and
(d) any other offences specified by the Treasury by order.

(7) The Treasury may give directions to the FSA as to how the FSA is to comply with its duty under subsection (1).

(8) The directions may in particular—
(a) specify descriptions of expenditure that are, or are not, to be regarded as incurred in connection with either of the matters mentioned in subsection (3),
(b) relate to the calculation and timing of the deduction in respect of the FSA's enforcement costs, and
(c) specify the time when any payment is required to be made to the Treasury.

(9) The directions may also require the FSA to provide the Treasury at specified times with information relating to—
(a) penalties that the FSA has imposed under FSMA 2000, or
(b) the FSA's enforcement costs.

(10) The Treasury must pay into the Consolidated Fund any sums received by them under this section.

(11) The scheme operated by the FSA under paragraph 16 of Schedule 1 to FSMA 2000 is, in the case of penalties received by the FSA on or after 1 April 2012, to apply only in relation to sums retained by the FSA as a result of the deduction for which subsection (1) provides.

(12) When section 6(2) is fully in force, the Treasury may by order repeal this section.

110 Payment to Treasury of penalties received by Bank of England

(1) The Bank of England ("the Bank") must in respect of each of its financial years pay to the Treasury its penalty receipts after deducting its enforcement costs.

(2) The Bank's "penalty receipts" in respect of a financial year are any amounts received by the Bank during the year by way of penalties imposed under any of the following provisions—
(a) sections 192K and 312F of FSMA 2000, and
(b) section 198 of the Banking Act 2009.

(3) The Bank's "enforcement costs" in respect of a financial year are the expenses incurred by it during the year in connection with—
(a) the exercise, or consideration of the possible exercise, of any of its enforcement powers in particular cases, or

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(b) the recovery of penalties imposed under any of the provisions mentioned in subsection (2).

(4) For this purpose the Bank's enforcement powers are—

(a) its powers under any of the provisions mentioned in subsection (5),

(b) its powers under any other enactment specified by the Treasury by order,

(c) its powers in relation to the investigation of offences under FSMA 2000 or of any other offences specified by the Treasury by order, and

(d) its powers in England and Wales or Northern Ireland in relation to the prosecution of offences under FSMA 2000 or of any other offences specified by the Treasury by order.

(5) The provisions referred to in subsection (4)(a) are as follows—

(a) sections 192K to 192N of FSMA 2000 (parent undertakings), as applied to the Bank by Schedule 17A to that Act,

(b) sections 312E and 312F of that Act (disciplinary measures in relation to clearing houses),

(c) sections 380, 382 and 384 of that Act (injunctions and restitution), as applied to the Bank by Schedule 17A to that Act, and

(d) sections 197 to 200 and 202A of the Banking Act 2009 (inter-bank payment systems).

(6) The Treasury may give directions to the Bank as to how the Bank is to comply with its duty under subsection (1).

(7) The directions may in particular—

(a) specify descriptions of expenditure that are, or are not, to be regarded as incurred in connection with either of the matters mentioned in subsection (3),

(b) relate to the calculation and timing of the deduction in respect of the Bank's enforcement costs, and

(c) specify the time when any payment is required to be made to the Treasury.

(8) The directions may also require the Bank to provide the Treasury at specified times with specified information relating to—

(a) penalties that the Bank has imposed under the provisions mentioned in subsection (2), or

(b) the Bank's enforcement costs.

(9) The Treasury must pay into the Consolidated Fund any sums received by them under this section.

Commencement Information

I171 S. 110 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(b), **Sch. Pt. 2**

I172 S. 110 in force at 1.4.2013 in so far as not already in force by S.I. 2013/423, art. 3, **Sch.**

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Amendments of Companies Act 1989

111 Amendments of Companies Act 1989

(1) Section 166 of the Companies Act 1989 (power of Secretary of State to give directions to recognised investment exchange or recognised clearing house) is amended as follows.

(2) In subsection (2)(a)—
- (a) for "Authority", in the first place, substitute " appropriate regulator ", and
- (b) for "Authority", in the second place, substitute " regulator ".

(3) In subsection (2)(b)—
- (a) for "Authority", in the first place, substitute " appropriate regulator ", and
- (b) for "Authority", in the second place, substitute " regulator ".

(4) In subsection (3)—
- (a) for "Authority" substitute " appropriate regulator ",
- (b) omit the "or" following paragraph (a), and
- (c) at the end insert—

"(c) in either case, that the direction is necessary having regard to the public interest in the stability of the financial system of the United Kingdom, or

(d) in either case, that the direction is necessary—

(i) to facilitate a proposed or possible use of a power under Part 1 of the Banking Act 2009 (special resolution regime), or

(ii) in connection with a particular exercise of a power under that Part."

(5) In subsection (7)—
- (a) for "Authority", in the first place, substitute " appropriate regulator ", and,
- (b) omit the words from "The Authority shall not" to the end.

(6) After that subsection insert—

"(7A) Where the exchange or clearing house is acting in accordance with a direction under subsection (2)(a) that was given only by virtue of paragraph (a) of subsection (3), the appropriate regulator shall not give a direction under subsection (7) unless it is satisfied that the direction under that subsection will not impede or frustrate the proper and efficient conduct of the default proceedings.

(7B) Where the exchange or clearing house has taken action under its default rules without being directed to do so, the appropriate regulator shall not give a direction under subsection (7) unless—

(a) it is satisfied that the direction under that subsection will not impede or frustrate the proper and efficient conduct of the default proceedings, or

(b) it is satisfied that the direction is necessary—

(i) having regard to the public interest in the stability of the financial system of the United Kingdom,

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(ii) to facilitate a proposed or possible use of a power under Part 1 of the Banking Act 2009 (special resolution regime), or

(iii) in connection with a particular exercise of a power under that Part."

(7) In subsection (8), for "Authority" substitute " regulator which gave the direction ".

(8) At the end insert—

"(9) The appropriate regulator"—

(a) in relation to a recognised UK investment exchange, means the FCA, and

(b) in relation to a recognised UK clearing house, means the Bank of England."

(9) In the heading, omit "of Secretary of State".

Commencement Information

I173 S. 111 in force at 1.4.2013 by S.I. 2013/423, art. 3, **Sch.**

Settlement systems

112 Evidencing and transfer of title to securities without written instrument

In section 785 of the Companies Act 2006 (provision enabling procedures for evidencing and transferring title), at the end insert—

"(7) The regulations may confer functions on any person, including—

(a) the function of giving guidance or issuing a code of practice in relation to any provision made by the regulations, and

(b) the function of making rules for the purposes of any provision made by the regulations.

(8) The regulations may, in prescribed cases, confer immunity from liability in damages."

Commencement Information

I174 S. 112 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(b), **Sch. Pt. 2**

I175 S. 112 in force at 1.4.2013 in so far as not already in force by S.I. 2013/423, art. 3, **Sch.**

Director of Savings

113 Provision of services by Director of Savings

(1) The Director of Savings ("the Director") may enter into arrangements with a public body for the provision by the Director, or persons authorised by the Director, of services to the body.

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(2) Arrangements are to be on such terms, including terms as to payment, as may be agreed.

(3) "Public body" means a person or body whose functions are of a public nature.

PART 10

GENERAL

Further amendments and repeals

114 Further minor and consequential amendments and repeals

(1) Schedule 18 contains further amendments of FSMA 2000 and other enactments.

(2) Schedule 19 contains further consequential repeals.

Commencement Information

I176 S. 114 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), **Sch. Pt. 3**
I177 S. 114(1) in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(b), **Sch. Pt. 2**
I178 S. 114(1) in force at 1.4.2013 in so far as not already in force by S.I. 2013/423, art. 3, **Sch.**
I179 S. 114(2) in force at 1.4.2013 by S.I. 2013/423, art. 3, **Sch.**

Orders

115 Orders: general

(1) Any power of the Treasury or the Secretary of State to make an order under this Act is exercisable by statutory instrument.

(2) Any order made by the Treasury or the Secretary of State under this Act may—
- (a) contain such incidental or transitional provision as the Treasury consider appropriate, and
- (b) make different provision for different cases.

116 Orders: Parliamentary control

(1) A statutory instrument containing (alone or with other provision) an order to which subsection (2) applies may not be made unless a draft of the instrument has been laid before Parliament and approved by a resolution of each House.

(2) This subsection applies to—
- (a) an order under section 37(2) (power to amend sections 391 and 395 of FSMA 2000);
- (b) an order under Part 3 (mutual societies);
- (c) an order under section 107 (power to make further provision about regulation of consumer credit);

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(d) an order under section 118 (power to make further consequential amendments) that amends or repeals primary legislation.

(3) A statutory instrument containing an order under this Act, other than an instrument to which section 94 or subsection (1) applies or an instrument containing only provision made under section 122 (commencement), is subject to annulment in pursuance of a resolution of either House of Parliament.

(4) In this section "primary legislation" means—

(a) an Act of Parliament,

(b) an Act of the Scottish Parliament,

(c) a Measure or Act of the National Assembly for Wales, or

(d) Northern Ireland legislation.

Interpretation

117 Interpretation

(1) In this Act "FSMA 2000" means the Financial Services and Markets Act 2000.

(2) In this Act—

"the FCA" means the Financial Conduct Authority;

"the PRA" means the Prudential Regulation Authority;

"the UK financial system" means the financial system of the United Kingdom.

(3) In this Act "enactment" includes—

(a) an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978;

(b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament;

(c) an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales;

(d) an enactment contained in, or in an instrument made under, Northern Ireland legislation.

Consequential and transitional provisions

118 Power to make further consequential amendments etc

(1) The Treasury or the Secretary of State may by order make such provision amending, repealing, revoking or applying with modifications any enactment to which this section applies as they consider necessary or expedient in consequence of any provision made by or under this Act.

(2) This section applies to—

(a) any enactment passed or made before the passing of this Act, and

(b) any enactment passed or made on or before the last day of the Session in which this Act is passed.

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(3) Amendments and repeals made under this section are additional to those made by or under any other provision of this Act.

119 Transitional provisions and savings

(1 Schedule 20 contains transitional provisions.

(2 Schedule 21 contains provision about the transfer of property, rights and liabilities.

(3) The Treasury may by order make such provision as they consider necessary or expedient for transitory, transitional or saving purposes in connection with the commencement of any provision made by or under this Act.

(4) An order under subsection (3) may, in particular—

(a) make provision enabling any person by whom any powers will become exercisable, on a date set by or under this Act, by virtue of any provision made by or under this Act to take before that date any steps which are necessary as a preliminary to the exercise of those powers;

(b) make provision treating any relevant instrument which was made, issued or given by the Financial Services Authority under any enactment before section 6 is fully in force and is designated by the FCA, the PRA or the Bank of England (or any two or more of them) in accordance with the order—

(i) as having been made, issued or given by the designating body or bodies;

(ii) as having been made, issued or given (or also made, issued or given) under a corresponding provision of this Act or of an enactment as amended by or under this Act;

(c) make provision enabling a body which makes a designation by virtue of paragraph (b) to modify the instrument being designated;

(d) make provision treating anything done before section 6 is fully in force by persons appointed by the Financial Services Authority with the approval of the Treasury as having been done by the FCA;

(e) make provision treating anything done before section 6 is fully in force by persons appointed by the Prudential Regulation Authority Limited with the approval of the Treasury and the Bank of England as having been done by the PRA;

(f) make provision treating any permission given or other thing done by the Financial Services Authority before commencement under an enactment amended by this Act—

(i) as having been made, given or done under a corresponding provision of the enactment as so amended;

(ii) as having been made, given or done (or also made, given or done) by the PRA or the Bank of England;

(g) make provision for the continuation of proceedings begun before commencement, including provision about the decisions available to bodies before which such proceedings take place and the effect of their decisions;

(h) make provision for making savings, or additional savings, from the effect of any repeal or revocation made by or under this Act.

(5) An order under subsection (3) may—

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(a) confer functions on the Treasury, the FCA or the PRA, or on the Bank of England or its Financial Policy Committee;

(b) modify, exclude or apply (with or without modifications) any enactment (including any provision of, or made under, this Act).

(6) In subsection (4)—

(a) "commencement" means the commencement of such provisions of this Act as may be specified by the order;

(b) "relevant instrument" means rules, guidance, requirements or a code, scheme, statement or direction.

Commencement Information

I180 S.119 partly in force; s. 119(3)-(6) in force at Royal Assent, see s. 122(1).

I181 S. 119(1)(2) in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), **Sch. Pt. 1**

Final provisions

120 Financial provision

(1) There is to be paid out of money provided by Parliament—

(a) any expenditure incurred under or by virtue of this Act by a Minister of the Crown or government department (apart from any expenditure to be met from the National Loans Fund), and

(b) any increase attributable to this Act in the sums payable under any other Act out of money so provided.

(2) There is to be paid out of the National Loans Fund any increase attributable to this Act in the sums payable under any other Act out of that Fund.

121 Extent

This Act extends to England and Wales, Scotland and Northern Ireland.

122 Commencement

(1) The following provisions come into force on the day on which this Act is passed—

section 109;
sections 115 to 118;
section 119(3) to (6);
sections 120 and 121;
this section;
section 123.

(2) Sections 108 and 113 come into force at the end of the period of 2 months beginning with day on which this Act is passed.

(3) The remaining provisions of this Act come into force on such day as the Treasury may by order appoint.

(4) Different days may be appointed for different purposes.

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123 Short title

This Act may be cited as the Financial Services Act 2012.

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Changes to legislation:
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