

## FINANCIAL SERVICES ACT 2012

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### EXPLANATORY NOTES

#### COMMENTARY

#### **Part 2 - Amendments of Financial Services and Markets Act 2000**

#### **Control over authorised persons**

#### *Section 26: Control over authorised persons*

323. *Section 26(2)* amends the references in Part 12 to the “Authority” to references to the “appropriate regulator”. *Subsection (3)* inserts into section 178 a *new subsection (2A)* which provides that the PRA, as the prudential regulator of a PRA-authorised persons, is the “appropriate regulator” in cases concerning the change of control over PRA-authorised persons. The FCA is the “appropriate regulator” in other cases. Therefore, in the case of a person who wishes to acquire control in a PRA-authorised person, that person would need to submit a section 178 notice to the PRA.
324. *Subsection (4)* amends section 179 (requirements for section 178 notices) with the effect of imposing on the PRA and the FCA a requirement to publish a list of requirements as to the form, information and accompanying documents for a section 178 notice.
325. *Subsection (5)* amends section 187 (approval with conditions) by inserting a *new subsection (2)*. *Paragraph (a) of new subsection (2)* replicates the effect of the existing subsection (2) which specifies that a regulator may grant approval of a change of control subject to conditions where, if it were not to impose those conditions, it would propose to object to the application (on the grounds specified in section 185 (assessment: general)). *Paragraph (b)* is new and provides that the appropriate regulator may grant conditional approval where it is required to do so by virtue of a direction issued by the other regulator under *new section 187A(3)(b)* or the *new section 187B(3)* (as the case may be).
326. *Subsection (6)* inserts *new sections 187A to 187C* into FSMA.
327. *New section 187A(1)* requires the PRA to consult the FCA before approving or objecting to an acquisition of control over a PRA-authorised person and to supply to the FCA relevant information. These requirements ensure that the FCA can consider and, if necessary, make representations to the PRA concerning the acquisition of control over a firm regulated by the FCA on a conduct of business basis. *Subsection (3)* confers a power on the FCA, where it considers there are reasonable grounds for objecting to the acquisition on the basis of the assessment criteria specified in section 186(f) (this provision concerns the risk of money laundering or terrorist financing being committed or attempted), to direct the PRA (a) to object to the acquisition; or (b) to grant approval subject to any conditions specified by the FCA. The FCA, in its capacity as the conduct of business regulator, will be best placed to make this assessment. If the PRA is subject to a direction from the FCA under *subsection (3)* the PRA must indicate to the notice-giver any representations received from the FCA. The effect of *subsection (7)* is that the PRA could exercise its power under *new section 3I* or *new section 3J* to prevent the FCA from giving a direction under *subsection (3)*.

*These notes refer to the Financial Services Act 2012  
(c.21) which received Royal Assent on 19 December 2012*

328. *New section 187B(1)* requires the FCA to consult with the PRA before approving or objecting to an acquisition of control where (a) the firm to which the section 178 notice relates has a PRA-authorised person as a member of its “immediate group” (defined in *section 421ZA* (inserted by *section 48(2)*)) or (b) the section 178 notice-giver is a PRA-authorised person. *Subsection (2)* enables the PRA to make representations to the FCA on any of the matters set out in section 185(2) and section 186 (the criteria against which a notice must be assessed). *Subsection (3)* confers on the PRA a power (a) to direct the FCA to object to the acquisition; or (b) to direct the FCA to grant approval subject to any conditions specified by the PRA. This power is available where the PRA considers that, on the basis of “relevant matters” (defined in *subsection (4)* and including the ability of the firm to meet its prudential requirement following the acquisition) there are reasonable grounds to object to the acquisition.
329. *New section 187C* provides that where one regulator has directed the other to impose conditions, it may direct the variation or cancellation of those conditions; and the other regulator may not vary or cancel conditions other than in accordance with the direction without first consulting the regulator which gave the direction.
330. *Subsection (7)* inserts a *new subsection (4A) and (4B)* into section 191A which require the PRA and FCA to consult with one another before giving a warning notice objecting to the acquisition of control in certain cases. *Subsections (8) and (9)* make similar amendments in relation to sections 191B and 191C, which deal with restriction notices and applications to court for orders for the sale of shares.
331. *Subsection (10)* requires the PRA and the FCA to provide each other with a copy of a notice received under section 191D (regarding a disposition of control) in certain cases.
332. *Subsections (11) and (12)* make minor amendments to section 191E and 191G.