

FINANCIAL SERVICES ACT 2012

EXPLANATORY NOTES

COMMENTARY

Part 2 - Amendments of Financial Services and Markets Act 2000

Lloyd's

Section 40: Lloyd's

450. *Section 40* amends Part 19 of FSMA which imposes duties and confers powers on the FSA in relation to Lloyd's of London. The effect of section 40 is to impose these duties and confer these powers on both the FCA and the PRA.
451. *Subsection (2)* amends section 314 to require the FCA and PRA to keep themselves informed about the way in which the Council of Lloyd's supervises and regulates the market at Lloyd's and the way in which regulated activities that the regulator regulates are being carried on in that market. The duty only applies in so far as it is appropriate for the purpose of, for the FCA, advancing its operational objectives and, for the PRA, for advancing its general objective and insurance objective (if effecting or carrying out of contracts of insurance is a PRA-regulated activity such that new section 2C applies).
452. *Subsection (3)* inserts new section 314A which modifies the application of the PRA's objectives and related provisions such as *new section 3I* (power of PRA to require FCA to refrain from specified action) so that the reference to PRA-*authorised persons* includes a reference to the Society of Lloyd's and its members, taken together, notwithstanding the fact that the members of Lloyd's are not *authorised persons*. Thus the general objective applies to require the PRA to promote the safety and soundness of the Society and its members, taken together, and the power in section 3I may be exercisable where the PRA is of the opinion that the exercise by the FCA of a proposed power may result in the disorderly failure of the Society and its members taken together.
453. *Subsection (4)* substitutes section 315 of FSMA. It provides that if an activity carried on by the Society is a regulated activity, the order made under section 22 of FSMA may make provision disapplying any requirement of FSMA which relates to the registered office of a body corporate.
454. *Subsection (5)* amends section 316 of FSMA. The effect of the amendments is to provide that either the PRA or FCA may exercise the power of direction if it considers that it is necessary or expedient to do so for the purpose of advancing its operational objectives (in the case of the FCA) or general objective or, if applicable, insurance objective (in the case of the PRA). The subsection also inserts *new subsection (1B)* which provides that if a direction would apply the general prohibition to members of Lloyd's (i.e. require members of Lloyd's to be *authorised persons*), it may be given only with the consent of the other regulator.
455. *Subsection (7)* amends section 318 FSMA. The effect of the amendments is to provide that either the PRA or FCA may exercise the power of direction to the Council or Society if it considers that it is necessary or expedient to do so for the purpose of

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

advancing its operational objectives (in the case of the FCA) or general objective or, if applicable, insurance objective (in the case of the PRA).

456. *Subsection (8)* amends section 319 (consultation in connection with the exercise of the powers under section 316 and 318). Each regulator must consult the other before exercising a power of direction under section 316 or 318. Provision is made to allow the regulator to dispense with the duty to consult publicly on a proposed direction (in the case of the FCA, on the basis that to comply with the duty would be prejudicial to the interests of consumers, and in the case of the PRA, on the basis that to comply with the duty would be prejudicial to the safety and soundness of the Society and the members of the Society, or if applicable, its insurance objective). *Subsection (8)* also amends the definition of “cost benefit analysis” in section 319(10).
457. *Subsection (9)* amends section 320 (former underwriting members). The power to impose requirements on former underwriting members is conferred on the PRA (unless the activity of effecting or carrying out of contracts of insurance is not a PRA-regulated activity in which case the power is exercisable by the FCA). *Subsection (10)* makes related amendments to section 321 (procedure for requirements imposed under section 320) including requiring the PRA to consult the FCA before giving notice under section 320.
458. *Subsection (11)* amends section 322 (rules applicable to former underwriting members). The power to make rules imposing requirements on former underwriting members is conferred on the PRA (unless the activity of effecting or carrying out of contracts of insurance is not a PRA-regulated activity in which case the power is exercisable by the FCA).