

# FINANCIAL SERVICES ACT 2012

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## EXPLANATORY NOTES

### COMMENTARY

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

#### **Regulated activities**

##### *Section 7: Extension of scope of regulation*

179. *Section 7* amends section 22 of and Schedule 2 to FSMA to expand the scope of the power conferred by section 22 on the Treasury to specify by order what activities are “regulated” activities (and so subject to the general prohibition in section 19 of FSMA).
180. *Subsection (1)* inserts a new subsection (1A) to section 22 which enables the Treasury to specify as a regulated activity an activity which is carried on by way of business and which relates either to information about a person’s financial standing or the setting of a specified benchmark. “Benchmark” for these purposes is defined in *subsection (6)*.
181. *Subsections (3) and (4)* amend Schedule 2 to FSMA, which sets out in general terms the matters with respect to which provision may be made under section 22(1) (specification of activities and investments which are regulated activities). *Subsection (3)* substitutes paragraph 23, which currently relates to the provision of credit where the obligation of the borrower is secured on land, with a new provision which relates to the provision of credit (whether or not secured on land). *Subsection (4)* amends Schedule 2 to FSMA to include a reference to rights under contracts for the hire of goods. The effect of *subsections (3) and (4)* is to enable an order under section 22 to specify that activities in relation to the provision of credit and contracts for the hire of goods (which are currently subject to regulation by the Office of Fair Trading under the Consumer Credit Act 1974) are regulated activities for the purposes of FSMA.
182. New Parts 2A and 2B of Schedule 2 to FSMA, inserted by *subsection (5)* outlines, in general terms, the matters with respect to which provision may be made under section 22(1A). These amendments would enable being a credit reference agency or the provision of credit information services (which are currently subject to regulation by the Office of Fair Trading under the Consumer Credit Act 1974) to be specified as a regulated activity for the purposes of FSMA. The amendments would also enable activities relating to setting and administering benchmarks such as LIBOR to be specified as regulated activities for the purposes of FSMA.

##### *Section 8: Orders under section 22 of FSMA 2000*

183. Section 22 of FSMA provides that an activity is a regulated activity for the purposes of FSMA if it is an activity of a kind specified by order made by the Treasury which is carried on by way of business and relates to an investment of a kind specified by order made by the Treasury, or, in the case of an activity of a kind which is also specified by order made by the Treasury, is carried on in relation to property of any kind. Schedule 2 to FSMA makes further provision in relation to regulated activities.

184. *Section 8* replaces paragraph 26 of Schedule 2 to FSMA, which provides for the Parliamentary control of orders under section 22. The *new paragraph 26* provides that such an order which contains a statement by the Treasury that in their opinion the effect of the proposed order would be to expand the scope of regulation must be laid before Parliament in draft and approved by each House of Parliament before being made unless the order contains a statement by the Treasury as to its urgency whereupon the order may be laid before Parliament after being made but ceases to have effect unless approved by each House of Parliament within 28 sitting days (see *sub-paragraphs (2) to (5)*). (Paragraph 26 currently provides for the 28 day procedure to apply to all such orders, even where there is no urgency.)

***Section 9: Designation of activities requiring prudential regulation by PRA***

185. *Section 9* inserts *new sections 22A and 22B*. *New section 22A* provides for the Treasury to specify, by order, the activities that are “PRA-regulated activities” for the purposes of FSMA. The order will determine the scope of regulation by the PRA and the persons whom the PRA will regulate.
186. *Subsection (2)* sets out further provision as to what an order under section 22A may include. In particular, such an order may confer powers on the Treasury, FCA or PRA.
187. The procedure for orders under *new section 22A* reflects that for orders made under section 22 (regulated activities) as amended by *section 8*. *New section 22B* provides that the first order under *new section 22A* must be laid before Parliament in draft and approved by each House of Parliament before being made unless the order contains a statement by the Treasury as to its urgency whereupon the order may be laid before Parliament after being made but ceases to have effect unless approved by each House of Parliament within 28 sitting days. The same procedure is to apply to any subsequent order which, in the Treasury’s opinion, makes a regulated activity into a PRA-regulated activity or removes a regulated activity from the list of PRA-regulated activities or which amends primary legislation. Other orders made under section 22A are subject to the negative procedure.
188. A definition of “PRA-regulated activity” is inserted into section 417 FSMA (definitions) by *section 48* (see below).