

# FINANCIAL SERVICES ACT 2012

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## EXPLANATORY NOTES

### COMMENTARY

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

##### **Auditors and actuaries**

##### *Section 42 and Schedule 13: Auditors and actuaries*

470. *Section 42* introduces *Schedule 13* which amends Part 22 of FSMA (auditors and actuaries).
471. *Paragraph 2 of Schedule 13* inserts *new section 339A*. This requires the arrangements that the PRA maintains to supervise PRA-authorized persons to include arrangements for the sharing with auditors of PRA-authorized persons of information and the exchange of opinions with such auditors. The PRA must issue and maintain a code of practice outlining how it will comply with this duty.
472. *Paragraph 3* confers on the PRA and FCA the FSA's existing powers: to make rules requiring the appointment of an auditor or actuary; to impose duties on auditors and actuaries; and to require authorized persons to produce periodic financial reports, and to have them reported on by an auditor or actuary. The PRA is required to make rules imposing on auditors of PRA-authorized persons a duty to cooperate with the PRA in connection with the supervision by the PRA of PRA-authorized persons. The FCA may, but is not required to, make such rules.
473. *Paragraphs 4 and 5* make consequential amendments to sections 342 and 343 of FSMA, so that auditors and actuaries may provide information to the PRA and the FCA that is relevant to their functions, notwithstanding ordinary duties of confidentiality. Amendments are also made to subsections (1) and (3) of those sections to extend the provision to auditors of recognised investment exchanges such that auditors of such bodies (or persons with close links to such bodies (see the amendments to section 343 (information given by auditor or actuaries: persons with close links) (*paragraph 5*)) may disclose information to the FCA without breaching confidentiality requirements to which they are subject. *Paragraph 6* makes consequential amendments to section 344, so that auditors and actuaries who resign, who are removed from office or who are not reappointed must give notice to the FCA or the PRA as appropriate.
474. *Paragraph 7* replaces the existing power in section 345 for the FSA to disqualify an auditor or actuary from acting for any authorized person or class of authorized person or recognised investment exchange as the case may be. *New section 345* establishes that where an auditor or actuary has failed to comply with a duty imposed by FCA rules, or to pass information to the FCA when required under FSMA to do so, the FCA may disqualify them from acting for any authorized person or class of authorized person or recognised investment exchange or class or recognised investment exchange, impose a fine, or publicly censure them.

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

475. The PRA will be able to exercise equivalent powers under *new section 345A*. But these powers will only be exercisable if an order made by Treasury provides for the relevant provisions to have effect. The power of the PRA to disqualify an auditor or actuary will be limited to disqualification from acting for any PRA-authorized person or class of PRA-authorized person. But where a PRA disqualification is in force, the FCA will be able under *new section 345(3)* to widen the disqualification to any FCA-authorized person or class of FCA-authorized person.
476. *New section 345B* provides for warning notices and decision notices to be issued in respect of the exercise of powers conferred by *new sections 345 and 345A*; the procedural provisions in Part 26 will apply to such notices; and the auditor or actuary will have a right to appeal to the Tribunal (*new section 345B(7)*). *New sections 345D and 345E* require the regulators to consult on, and publish, a statement of policy on the imposition of penalties. *Paragraph 8* brings the disciplinary powers over auditors and actuaries within sections 393 and 394 (third party rights and access to evidence).