

FINANCIAL SERVICES ACT 2012

EXPLANATORY NOTES

COMMENTARY

Part 2 - Amendments of Financial Services and Markets Act 2000

Miscellaneous amendments of FSMA 2000

Section 45 and Schedule 15: The consumer financial education body

487. *Section 45* introduces *Schedule 15* which amends Schedule 1A to FSMA (further provision about the consumer financial education body).
488. *Paragraph 5 of Schedule 15* amends paragraph 4 of Schedule 1A by referring to *new section 3S*. *New section 3S(4)* lists a number of activities covered by the consumer financial education function.
489. *Paragraph 7* inserts three new paragraphs (paragraphs 6, 6A and 6B) into Schedule 1A. *New paragraph 6* requires the CFEB to have regard to the FCA's duty to advance its operational objectives when discharging its function. *New paragraph 6A* provides for the CFEB and the FCA to cooperate with each other in the exercise of their functions under FSMA. The CFEB and the FCA must also prepare and maintain a memorandum describing how they will do this. The memorandum must be published by the CFEB. *New paragraph 6B* requires the CFEB to disclose information to the FCA in circumstances where it considers that the information might be of assistance to the FCA in advancing one or more of its operational objectives.
490. *New section 1C(2)(g)* (see *section 6*) places a duty on the FCA to have regard to any information which the CFEB has provided to the FCA pursuant to *new paragraph 6A* (in considering what degree of protection for consumers may be appropriate, for the purposes of securing the FCA's consumer protection objective).
491. *Paragraph 10* amends paragraph 9 of Schedule 1A. This amendment allows the Treasury to direct the CFEB to comply with provisions of the Companies Act 2006 dealing with accounts and audit which would otherwise not apply to it. The Treasury may modify the application of any provision of the Companies Act 2006 covering accounts and audit in their application to the CFEB.
492. *Paragraph 11* inserts a new paragraph 9A into Schedule 1A. *New paragraph 9A* provides for the CFEB's annual accounts to be audited by the Comptroller and Auditor General; the National Audit Office carries out audit functions of the Comptroller and Auditor General. The Treasury must lay before Parliament the certified accounts of the CFEB and the report of the Comptroller and Auditor General on them.

Section 46 and Schedule 16: Members of the professions

493. *Section 46* introduces Schedule 16 which makes amendments to Part 20 of FSMA (provision of financial services by members of the professions). Part 20 provides that members of a profession may, subject to certain conditions, carry on regulated activities

without authorisation where the activity is incidental to the provision of professional services which are supervised and regulated by a professional body which has been designated by the Treasury (see section 327, which disappplies the general prohibition in section 19, that is, the prohibition from carrying on regulated activities unless the person in question is authorised or exempt).

494. *Paragraph 1 of Schedule 16* amends section 325 of FSMA to require the FCA to keep itself informed about the way in which designated professional bodies supervise and regulate the carrying on of exempt regulated activities by their members and the way in which such members are carrying on exempt regulated activities.
495. *Paragraph 2* amends section 328 (directions in relation to the general prohibition) to enable the FCA to direct that the exemption under section 327 is not to apply; a direction under section 328 may be given in relation to different classes of person or different descriptions of regulated activity; and where a direction is in force, any class of person specified in the direction would need authorisation under Part 4A of FSMA to carry on any activities specified in the direction. *Paragraph 4* makes related amendments to section 330 (consultation on directions under section 328). *Paragraph 4* also amends the definition of “cost benefit analysis” in section 330(10).
496. *Paragraph 3* amends section 329 (orders in relation to the general prohibition) to enable the FCA to make an order disapplying section 327 (disapplication of the general prohibition) in relation to a person whom the FCA considers is not fit and proper to carry on regulated activities in accordance with section 327. *Paragraph 5* makes related amendments to section 331 (procedure on making or varying orders under section 329).
497. *Paragraph 6* amends section 332 (rules relating to persons to whom the general prohibition does not apply) to enable the FCA to make rules applicable to persons to whom, as a result of section 327, the general prohibition does not apply.

Section 47: International obligations

498. *Section 47* amends section 410 of FSMA. Section 410 enables the Treasury to direct “relevant persons” not to take proposed action if it appears to the Treasury that action would be incompatible with European Union obligations or any other international obligations of the United Kingdom. The Treasury may also direct a relevant person to take action which that person has power to take where that action is required for the purpose of implementing any such obligation.
499. The effect of section 47 is to provide that the FCA, the PRA and the Bank of England when exercising functions conferred on it by Part 18 of FSMA are “relevant persons” for this purpose and so can be the subject of a direction under section 410.

Section 48: Interpretation of FSMA 2000

500. *Subsection (1)* amends section 417 of FSMA (definitions). In particular, definitions of “the FCA”, “Part 4A permission”, “the PRA”, “PRA-authorised person” and “PRA-regulated activity” are inserted. *Subsection (2)* inserts new section 421ZA which provides a definition of “immediate group”. *Subsection (3)* inserts a new section 425C which defines “qualifying EU provision”.

Section 49: Parliamentary control of statutory instruments

501. *Section 49* amends section 429 of FSMA to make provision for the Parliamentary control of statutory instruments made under powers created by the Act. Where no express provision is made in section 429 or in other provisions of FSMA as to the procedure that applies, the negative procedure applies (which means that the instrument will be subject to annulment by resolution of either House of Parliament: see section 429(8) of FSMA).