

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

FINANCIAL SERVICES ACT 2012

EXPLANATORY NOTES

COMMENTARY

Part 9 – Miscellaneous

Penalties received by Financial Services Authority or Bank of England

Section 109: payment to Treasury of penalties received by Financial Services Authority

624. *Section 109* requires the FSA, in respect of its financial year beginning 1 April 2012 and any subsequent financial year, to pay to the Treasury its penalty receipts after deducting and retaining its enforcement costs. *Subsection (2)* defines “penalty receipts” for this purpose as any amounts received by the FSA by way of penalties imposed under FSMA. *Subsection (3)* defines “enforcement costs” for these purposes as the expenses incurred by the FSA in connection with the exercise of consideration of the exercise of its enforcement powers (as defined by *subsection (4)*) in particular cases or the recovery of penalties. The effect of this provision is that the FSA may retain from penalty receipts funds to cover its enforcement case costs. The general costs of the FSA’s enforcement capability which are not attributable to case work (e.g. the cost of senior management or enforcement policy work) would not be treated as an “enforcement cost”. *Subsection (7)* provides that the Treasury may give a direction to the FSA as to how it is to comply with its duty under subsection (1). *Subsection (10)* provides that the Treasury must pay into the Consolidated Fund any sums received under this paragraph. *Subsection (11)* provides that the scheme operated by the FSA under Paragraph 16 of Schedule 1 to FSMA (scheme for distribution of penalties received under FSMA) is to apply, in relation to penalties received on or after 1 April 2012, only to the sums retained by the FSA in respect of enforcement costs.