



# Financial Services Act 2012

## 2012 CHAPTER 21

### PART 2

#### AMENDMENTS OF FINANCIAL SERVICES AND MARKETS ACT 2000

#### *Financial Conduct Authority and Prudential Regulation Authority*

### 6 The new Regulators

- (1) For sections 1 to 18 of the Financial Services and Markets Act 2000 (in this Act referred to as “FSMA 2000”) substitute—

#### “PART 1A

#### THE REGULATORS

#### CHAPTER 1

#### THE FINANCIAL CONDUCT AUTHORITY

#### *The Financial Conduct Authority*

#### **1A The Financial Conduct Authority**

- (1) The body corporate previously known as the Financial Services Authority is renamed as the Financial Conduct Authority.
- (2) The Financial Conduct Authority is in this Act referred to as “the FCA”.
- (3) The FCA is to have the functions conferred on it by or under this Act.

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- (4) The FCA must comply with the requirements as to its constitution set out in Schedule 1ZA.
- (5) Schedule 1ZA also makes provision about the status of the FCA and the exercise of certain of its functions.
- (6) References in this Act or any other enactment to functions conferred on the FCA by or under this Act include references to functions conferred on the FCA by or under—
  - (a) the Insolvency Act 1986,
  - (b) the Banking Act 2009,
  - (c) the Financial Services Act 2012, or
  - (d) a qualifying EU provision that is specified, or of a description specified, for the purposes of this subsection by the Treasury by order.

### *The FCA's general duties*

#### **1B The FCA's general duties**

- (1) In discharging its general functions the FCA must, so far as is reasonably possible, act in a way which—
  - (a) is compatible with its strategic objective, and
  - (b) advances one or more of its operational objectives.
- (2) The FCA's strategic objective is: ensuring that the relevant markets (see section 1F) function well.
- (3) The FCA's operational objectives are—
  - (a) the consumer protection objective (see section 1C);
  - (b) the integrity objective (see section 1D);
  - (c) the competition objective (see section 1E).
- (4) The FCA must, so far as is compatible with acting in a way which advances the consumer protection objective or the integrity objective, discharge its general functions in a way which promotes effective competition in the interests of consumers.
- (5) In discharging its general functions the FCA must have regard to—
  - (a) the regulatory principles in section 3B, and
  - (b) the importance of taking action intended to minimise the extent to which it is possible for a business carried on—
    - (i) by an authorised person or a recognised investment exchange,  
or
    - (ii) in contravention of the general prohibition,  
to be used for a purpose connected with financial crime.
- (6) For the purposes of this Chapter, the FCA's general functions are—
  - (a) its function of making rules under this Act (considered as a whole),
  - (b) its function of preparing and issuing codes under this Act (considered as a whole),

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- (c) its functions in relation to the giving of general guidance under this Act (considered as a whole), and
  - (d) its function of determining the general policy and principles by reference to which it performs particular functions under this Act.
- (7) Except to the extent that an order under section 50 of the Financial Services Act 2012 (orders relating to mutual societies functions) so provides, the FCA's general functions do not include functions that are transferred functions within the meaning of section 52 of that Act.
- (8) “General guidance” has the meaning given in section 139B(5).

### **1C The consumer protection objective**

- (1) The consumer protection objective is: securing an appropriate degree of protection for consumers.
- (2) In considering what degree of protection for consumers may be appropriate, the FCA must have regard to—
- (a) the differing degrees of risk involved in different kinds of investment or other transaction;
  - (b) the differing degrees of experience and expertise that different consumers may have;
  - (c) the needs that consumers may have for the timely provision of information and advice that is accurate and fit for purpose;
  - (d) the general principle that consumers should take responsibility for their decisions;
  - (e) the general principle that those providing regulated financial services should be expected to provide consumers with a level of care that is appropriate having regard to the degree of risk involved in relation to the investment or other transaction and the capabilities of the consumers in question;
  - (f) the differing expectations that consumers may have in relation to different kinds of investment or other transaction;
  - (g) any information which the consumer financial education body has provided to the FCA in the exercise of the consumer financial education function;
  - (h) any information which the scheme operator of the ombudsman scheme has provided to the FCA pursuant to section 232A.

### **1D The integrity objective**

- (1) The integrity objective is: protecting and enhancing the integrity of the UK financial system.
- (2) The “integrity” of the UK financial system includes—
- (a) its soundness, stability and resilience,
  - (b) its not being used for a purpose connected with financial crime,
  - (c) its not being affected by behaviour that amounts to market abuse,
  - (d) the orderly operation of the financial markets, and
  - (e) the transparency of the price formation process in those markets.

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### **1E The competition objective**

- (1) The competition objective is: promoting effective competition in the interests of consumers in the markets for—
  - (a) regulated financial services, or
  - (b) services provided by a recognised investment exchange in carrying on regulated activities in respect of which it is by virtue of section 285(2) exempt from the general prohibition.
- (2) The matters to which the FCA may have regard in considering the effectiveness of competition in the market for any services mentioned in subsection (1) include—
  - (a) the needs of different consumers who use or may use those services, including their need for information that enables them to make informed choices,
  - (b) the ease with which consumers who may wish to use those services, including consumers in areas affected by social or economic deprivation, can access them,
  - (c) the ease with which consumers who obtain those services can change the person from whom they obtain them,
  - (d) the ease with which new entrants can enter the market, and
  - (e) how far competition is encouraging innovation.

*Interpretation of terms used in relation to FCA's general duties*

### **1F Meaning of “relevant markets” in strategic objective**

In section 1B(2) “the relevant markets” means—

- (a) the financial markets,
- (b) the markets for regulated financial services (see section 1H(2)), and
- (c) the markets for services that are provided by persons other than authorised persons in carrying on regulated activities but are provided without contravening the general prohibition.

### **1G Meaning of “consumer”**

- (1) In sections 1B to 1E “consumers” means persons who—
  - (a) use, have used or may use—
    - (i) regulated financial services, or
    - (ii) services that are provided by persons other than authorised persons but are provided in carrying on regulated activities,
  - (b) have relevant rights or interests in relation to any of those services,
  - (c) have invested, or may invest, in financial instruments, or
  - (d) have relevant rights or interests in relation to financial instruments.
- (2) A person (“P”) has a “relevant right or interest” in relation to any services within subsection (1)(a) if P has a right or interest—
  - (a) which is derived from, or is otherwise attributable to, the use of the services by others, or

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- (b) which may be adversely affected by the use of the services by persons acting on P's behalf or in a fiduciary capacity in relation to P.
- (3) If a person is providing a service within subsection (1)(a) as trustee, the persons who are, have been or may be beneficiaries of the trust are to be treated as persons who use, have used or may use the service.
- (4) A person who deals with another person (“B”) in the course of B providing a service within subsection (1)(a) is to be treated as using the service.
- (5) A person (“P”) has a “relevant right or interest” in relation to any financial instrument if P has—
  - (a) a right or interest which is derived from, or is otherwise attributable to, investment in the instrument by others, or
  - (b) a right or interest which may be adversely affected by the investment in the instrument by persons acting on P's behalf or in a fiduciary capacity in relation to P.

### **1H Further interpretative provisions for sections 1B to 1G**

- (1) The following provisions have effect for the interpretation of sections 1B to 1G.
- (2) “Regulated financial services” means services provided—
  - (a) by authorised persons in carrying on regulated activities;
  - (b) by authorised persons in carrying on a consumer credit business in connection with the accepting of deposits;
  - (c) by authorised persons in communicating, or approving the communication by others of, invitations to engage in investment activity;
  - (d) by authorised persons who are investment firms, or credit institutions, in providing relevant ancillary services;
  - (e) by persons acting as appointed representatives;
  - (f) by payment service providers in providing payment services;
  - (g) by electronic money issuers in issuing electronic money;
  - (h) by sponsors to issuers of securities;
  - (i) by primary information providers to persons who issue financial instruments.
- (3) “Financial crime” includes any offence involving—
  - (a) fraud or dishonesty,
  - (b) misconduct in, or misuse of information relating to, a financial market,
  - (c) handling the proceeds of crime, or
  - (d) the financing of terrorism.
- (4) “Offence” includes an act or omission which would be an offence if it had taken place in the United Kingdom.
- (5) “Issuer”, except in the expression “electronic money issuer”, has the meaning given in section 102A(6).
- (6) “Financial instrument” has the meaning given in section 102A(4).

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- (7) “Securities” has the meaning given in section 102A(2).
- (8) In this section—
- “accepting”, in relation to deposits, includes agreeing to accept;
  - “consumer credit business” has the same meaning as in the Consumer Credit Act 1974;
  - “credit institution” means—
    - (a) a credit institution authorised under the banking consolidation directive, or
    - (b) an institution which would satisfy the requirements for authorisation as a credit institution under that directive if it had its registered office (or if it does not have a registered office, its head office) in an EEA State;
  - “electronic money” has the same meaning as in the Electronic Money Regulations 2011;
  - “electronic money issuer” means a person who is an electronic money issuer as defined in regulation 2(1) of the Electronic Money Regulations 2011 other than a person falling within paragraph (f), (g) or (j) of the definition;
  - “engage in investment activity” has the meaning given in section 21;
  - “financial instrument” has the meaning given in section 102A(4);
  - “payment services” has the same meaning as in the Payment Services Regulations 2009;
  - “payment service provider” means a person who is a payment service provider as defined in regulation 2(1) of the Payment Services Regulations 2009 other than a person falling within paragraph (g) or (h) of the definition;
  - “primary information provider” has the meaning given in section 89P(2);
  - “relevant ancillary service” means any service of a kind mentioned in Section B of Annex I to the markets in financial instruments directive the provision of which does not involve the carrying on of a regulated activity;
  - “sponsor” has the meaning given in section 88(2).

## **1I Meaning of “the UK financial system”**

In this Act “the UK financial system” means the financial system operating in the United Kingdom and includes—

- (a) financial markets and exchanges,
- (b) regulated activities, and
- (c) other activities connected with financial markets and exchanges.

### *Power to amend objectives*

## **1J Power to amend objectives**

The Treasury may by order amend any of the following provisions—

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- (a) in section 1E(1), paragraphs (a) and (b),
- (b) section 1G, and
- (c) section 1H(2) and (5) to (8).

#### *Guidance about objectives*

##### **1K Guidance about objectives**

- (1) The general guidance given by the FCA under section 139A must include guidance about how it intends to advance its operational objectives in discharging its general functions in relation to different categories of authorised person or regulated activity.
- (2) Before giving or altering any guidance complying with subsection (1), the FCA must consult the PRA.

#### *Supervision, monitoring and enforcement*

##### **1L Supervision, monitoring and enforcement**

- (1) The FCA must maintain arrangements for supervising authorised persons.
- (2) The FCA must maintain arrangements designed to enable it to determine whether persons other than authorised persons are complying—
  - (a) with requirements imposed on them by or under this Act, in cases where the FCA is the appropriate regulator for the purposes of Part 14 (disciplinary measures), or
  - (b) with requirements imposed on them by any qualifying EU provision that is specified, or of a description specified, for the purposes of this subsection by the Treasury by order.
- (3) The FCA must also maintain arrangements for enforcing compliance by persons other than authorised persons with relevant requirements, within the meaning of Part 14, in cases where the FCA is the appropriate regulator for the purposes of any provision of that Part.

#### *Arrangements for consulting practitioners and consumers*

##### **1M The FCA's general duty to consult**

The FCA must make and maintain effective arrangements for consulting practitioners and consumers on the extent to which its general policies and practices are consistent with its general duties under section 1B.

##### **1N The FCA Practitioner Panel**

- (1) Arrangements under section 1M must include the establishment and maintenance of a panel of persons (to be known as “the FCA Practitioner Panel”) to represent the interests of practitioners.

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- (2) The FCA must appoint one of the members of the FCA Practitioner Panel to be its chair.
- (3) The Treasury's approval is required for the appointment or dismissal of the chair.
- (4) The FCA must appoint to the FCA Practitioner Panel such—
  - (a) persons representing authorised persons, and
  - (b) persons representing recognised investment exchanges,as it considers appropriate.
- (5) The FCA may appoint to the FCA Practitioner Panel such other persons as it considers appropriate.

### **1O The Smaller Business Practitioner Panel**

- (1) Arrangements under section 1M must include the establishment and maintenance of a panel of persons (to be known as “the Smaller Business Practitioner Panel”) to represent the interests of eligible practitioners.
- (2) “Eligible practitioners” means authorised persons of a description specified in a statement maintained by the FCA.
- (3) The FCA must appoint one of the members of the Smaller Business Practitioner Panel to be its chair.
- (4) The Treasury's approval is required for the appointment or dismissal of the chair.
- (5) The FCA must appoint to the Smaller Business Practitioner Panel such—
  - (a) individuals who are eligible practitioners, and
  - (b) persons representing eligible practitioners,as it considers appropriate.
- (6) The FCA may appoint to the Smaller Business Practitioner Panel such other persons as it considers appropriate.
- (7) In making the appointments, the FCA must have regard to the desirability of ensuring the representation of eligible practitioners carrying on a range of regulated activities.
- (8) The FCA may revise the statement maintained under subsection (2).
- (9) The FCA must—
  - (a) give the Treasury a copy of the statement or revised statement without delay, and
  - (b) publish the statement as for the time being in force in such manner as it thinks fit.

### **1P The Markets Practitioner Panel**

- (1) Arrangements under section 1M must include the establishment and maintenance of a panel of persons (to be known as “the Markets Practitioner Panel”) to represent the interests of practitioners who are likely to be affected



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by the exercise by the FCA of its functions relating to markets, including its functions under Parts 6, 8A and 18.

- (2) The FCA must appoint one of the members of the Markets Practitioner Panel to be its chair.
- (3) The Treasury's approval is required for the appointment or dismissal of the chair.
- (4) The FCA must appoint to the Markets Practitioner Panel such persons to represent the interests of persons within subsection (5) as it considers appropriate.
- (5) The persons within this subsection are—
  - (a) authorised persons,
  - (b) persons who issue financial instruments,
  - (c) sponsors, as defined in section 88(2),
  - (d) recognised investment exchanges, and
  - (e) primary information providers, as defined in section 89P(2).
- (6) The FCA may appoint to the Markets Practitioner Panel such other persons as it considers appropriate.

### **1Q The Consumer Panel**

- (1) Arrangements under section 1M must include the establishment and maintenance of a panel of persons (to be known as “the Consumer Panel”) to represent the interests of consumers.
- (2) The FCA must appoint one of the members of the Consumer Panel to be its chair.
- (3) The Treasury's approval is required for the appointment or dismissal of the chair.
- (4) The FCA may appoint to the Consumer Panel such consumers, or persons representing the interests of consumers, as it considers appropriate.
- (5) The FCA must secure that membership of the Consumer Panel is such as to give a fair degree of representation to those who are using, or are or may be contemplating using, services otherwise than in connection with businesses carried on by them.
- (6) Sections 425A and 425B (meaning of “consumers”) apply for the purposes of this section, but the references to consumers in this section do not include consumers who are authorised persons.

### **1R Duty to consider representations made by the Panels**

- (1) The FCA must consider representations that are made to it in accordance with arrangements made under section 1M.
- (2) The FCA must from time to time publish in such manner as it thinks fit responses to the representations.

## *Reviews*

### **1S Reviews**

- (1) The Treasury may appoint an independent person to conduct a review of the economy, efficiency and effectiveness with which the FCA has used its resources in discharging its functions.
- (2) A review may be limited by the Treasury to such functions of the FCA (however described) as the Treasury may specify in appointing the person to conduct it.
- (3) A review is not to be concerned with the merits of the FCA's general policy or principles in complying with its general duties under section 1B(1) and (4).
- (4) On completion of a review, the person conducting it must make a written report to the Treasury—
  - (a) setting out the result of the review, and
  - (b) making such recommendations (if any) as the person considers appropriate.
- (5) A copy of the report must be—
  - (a) laid before Parliament, and
  - (b) published in such manner as the Treasury consider appropriate.
- (6) Any expenses reasonably incurred in the conduct of the review are to be met by the Treasury out of money provided by Parliament.
- (7) “Independent” means appearing to the Treasury to be independent of the FCA.

### **1T Right to obtain documents and information**

- (1) A person conducting a review under section 1S—
  - (a) has a right of access at any reasonable time to all such documents as the person may reasonably require for the purposes of the review, and
  - (b) may require any person holding or accountable for any such document to provide such information and explanation as are reasonably necessary for that purpose.
- (2) Subsection (1) applies only to documents in the custody of or under the control of the FCA.
- (3) An obligation imposed on a person as a result of the exercise of the powers conferred by subsection (1) is enforceable by injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.

## CHAPTER 2

### THE PRUDENTIAL REGULATION AUTHORITY

#### *The Prudential Regulation Authority*

#### **2A The Prudential Regulation Authority**

- (1) The body corporate originally incorporated as the Prudential Regulation Authority Limited is renamed as the Prudential Regulation Authority.
- (2) The Prudential Regulation Authority is in this Act referred to as “the PRA”.
- (3) The PRA is to have the functions conferred on it by or under this Act.
- (4) The PRA must comply with the requirements as to its constitution set out in Schedule 1ZB.
- (5) Schedule 1ZB also confers on the Bank of England functions in relation to the PRA and makes provision about the status of the PRA and the exercise of certain of its functions.
- (6) References in this Act or any other enactment to functions conferred on the PRA by or under this Act include references to functions conferred on the PRA by or under—
  - (a) the Insolvency Act 1986,
  - (b) the Banking Act 2009,
  - (c) the Financial Services Act 2012, or
  - (d) a qualifying EU provision that is specified, or of a description specified, for the purposes of this subsection by the Treasury by order.

#### *The PRA's general duties*

#### **2B The PRA's general objective**

- (1) In discharging its general functions the PRA must, so far as is reasonably possible, act in a way which advances its general objective.
- (2) The PRA's general objective is: promoting the safety and soundness of PRA-  
authorised persons.
- (3) That objective is to be advanced primarily by—
  - (a) seeking to ensure that the business of PRA-  
authorised persons is carried on in a way which avoids any adverse effect on the stability of the UK financial system, and
  - (b) seeking to minimise the adverse effect that the failure of a PRA-  
authorised person could be expected to have on the stability of the UK financial system.
- (4) The adverse effects mentioned in subsection (3) may, in particular, result from the disruption of the continuity of financial services.

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- (5) In this Act “PRA-*authorised person*” means an authorised person who has permission—
- (a) given under Part 4A, or
  - (b) resulting from any other provision of this Act,
- to carry on regulated activities that consist of or include one or more PRA-regulated activities (see section 22A).
- (6) Subsection (1) is subject to sections 2C and 2D.

### **2C Insurance objective**

- (1) In discharging its general functions so far as relating to a PRA-regulated activity relating to the effecting or carrying out of contracts of insurance or PRA-*authorised persons* carrying on that activity, the PRA must, so far as is reasonably possible, act in a way—
- (a) which is compatible with its general objective and its insurance objective, and
  - (b) which the PRA considers most appropriate for the purpose of advancing those objectives.
- (2) The PRA's insurance objective is: contributing to the securing of an appropriate degree of protection for those who are or may become policyholders.
- (3) This section applies only if the effecting or carrying out of contracts of insurance as principal is to any extent a PRA-regulated activity.

### **2D Power to provide for additional objectives**

- (1) Subsection (2) applies to an order under section 22A which—
- (a) is made at any time after the coming into force of the first order under that section, and
  - (b) contains a statement by the Treasury that, in their opinion, the effect (or one of the effects) of the proposed order is that an activity would become a PRA-regulated activity.
- (2) An order to which this subsection applies may specify an additional objective (“the specified objective”) in relation to specified activities that become PRA-regulated activities by virtue of the order (“the additional activities”).
- (3) In discharging its general functions so far as relating to the additional activities or PRA-*authorised persons* carrying on those activities, the PRA must, so far as is reasonably possible, act in a way—
- (a) which is compatible with its general objective and the specified objective, and
  - (b) which the PRA considers most appropriate for the purpose of advancing those objectives.

### **2E Strategy**

- (1) The PRA must—
- (a) determine its strategy in relation to its objectives, and

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- (b) from time to time review, and if necessary revise, the strategy.
- (2) Before determining or revising its strategy, the PRA must consult the court of directors of the Bank of England about a draft of the strategy or of the revisions.
- (3) The PRA must determine its strategy within 12 months of the coming into force of this section.
- (4) The PRA must carry out and complete a review of its strategy before the end of each relevant period.
- (5) The relevant period is 12 months beginning with the date on which the previous review was completed, except that in the case of the first review the relevant period is the period of 12 months beginning with the date on which the strategy was determined under subsection (3).
- (6) The PRA must publish its strategy.
- (7) If the strategy is revised the PRA must publish the revised strategy.
- (8) Publication under subsection (6) or (7) is to be in such manner as the PRA thinks fit.

## **2F Interpretation of references to objectives**

In this Act, a reference, in relation to any function of the PRA, to the objectives of the PRA is a reference to its general objective but—

- (a) so far as the function is exercisable in relation to the activity of effecting or carrying out contracts of insurance, or PRA-authorized persons carrying on that activity, is a reference to its general objective and its insurance objective;
- (b) so far as the function is exercisable in relation to an activity to which an objective specified by order by virtue of section 2D(2) relates, or PRA-authorized persons carrying on that activity, is a reference to its general objective and the objective specified by the order.

## **2G Limit on effect of sections 2B to 2D**

Nothing in sections 2B to 2D is to be regarded as requiring the PRA to ensure that no PRA-authorized person fails.

## **2H Duty to have regard to regulatory principles**

- (1) In discharging its general functions, the PRA must also have regard to—
  - (a) the regulatory principles in section 3B, and
  - (b) the need to minimise any adverse effect on competition in the relevant markets that may result from the manner in which the PRA discharges those functions.
- (2) In subsection (1)(b) “the relevant markets” means the markets for services provided by PRA-authorized persons in carrying on regulated activities.

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## **2I Guidance about objectives**

- (1) The PRA must give, and from time to time review, guidance about how it intends to advance its objectives in discharging its general functions in relation to different categories of PRA-authorised person or PRA-regulated activity.
- (2) Before giving or altering any guidance complying with subsection (1), the PRA must consult the FCA.
- (3) The PRA must publish the guidance as for the time being in force.

## **2J Interpretation of Chapter 2**

- (1) For the purposes of this Chapter, the PRA's general functions are—
  - (a) its function of making rules under this Act (considered as a whole),
  - (b) its function of preparing and issuing codes under this Act (considered as a whole), and
  - (c) its function of determining the general policy and principles by reference to which it performs particular functions under this Act.
- (2) Except to the extent that an order under section 50 of the Financial Services Act 2012 (orders relating to mutual societies functions) so provides, the PRA's general functions do not include functions that are transferred functions within the meaning of section 52 of that Act.
- (3) For the purposes of this Chapter, the cases in which a PRA-authorised person (“P”) is to be regarded as failing include those where—
  - (a) P enters insolvency,
  - (b) any of the stabilisation options in Part 1 of the Banking Act 2009 is achieved in relation to P, or
  - (c) P falls to be taken for the purposes of the compensation scheme to be unable, or likely to be unable, to satisfy claims against P.
- (4) In subsection (3)(a) “insolvency” includes—
  - (a) bankruptcy,
  - (b) liquidation,
  - (c) bank insolvency,
  - (d) administration,
  - (e) bank administration,
  - (f) receivership,
  - (g) a composition between P and P's creditors, and
  - (h) a scheme of arrangement of P's affairs.

### *Supervision*

## **2K Arrangements for supervision of PRA-authorised persons**

The PRA must maintain arrangements for supervising PRA-authorised persons.

### *Arrangements for consulting practitioners*

#### **2L The PRA's general duty to consult**

The PRA must make and maintain effective arrangements for consulting PRA-authorized persons or, where appropriate, persons appearing to the PRA to represent the interests of such persons on the extent to which its general policies and practices are consistent with its general duties under sections 2B to 2H.

#### **2M The PRA Practitioner Panel**

- (1) Arrangements under section 2L must include the establishment and maintenance of a panel of persons (to be known as “the PRA Practitioner Panel”) to represent the interests of practitioners.
- (2) The PRA must appoint one of the members of the PRA Practitioner Panel to be its chair.
- (3) The Treasury's approval is required for the appointment or dismissal of the chair.
- (4) The PRA must appoint to the PRA Practitioner Panel such persons representing PRA-authorized persons as it considers appropriate.
- (5) The PRA may appoint to the PRA Practitioner Panel such other persons as it considers appropriate.

#### **2N Duty to consider representations**

- (1) The PRA must consider representations that are made to it in accordance with arrangements made under section 2L.
- (2) The PRA must from time to time publish in such manner as it thinks fit responses to the representations.

### *Reviews*

#### **2O Reviews**

- (1) The Treasury may appoint an independent person to conduct a review of the economy, efficiency and effectiveness with which the PRA has used its resources in discharging its functions.
- (2) A review may be limited by the Treasury to such functions of the PRA (however described) as the Treasury may specify in appointing the person to conduct it.
- (3) A review is not to be concerned with the merits of the PRA's general policy or principles in pursuing the PRA's objectives.
- (4) On completion of a review, the person conducting it must make a written report to the Treasury—

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- (a) setting out the result of the review, and
  - (b) making such recommendations (if any) as the person considers appropriate.
- (5) A copy of the report must be—
- (a) laid before Parliament, and
  - (b) published in such manner as the Treasury consider appropriate.
- (6) Any expenses reasonably incurred in the conduct of the review are to be met by the Treasury out of money provided by Parliament.
- (7) “Independent” means appearing to the Treasury to be independent of the PRA.

### **2P Right to obtain documents and information**

- (1) A person conducting a review under section 2O—
- (a) has a right of access at any reasonable time to all such documents as the person may reasonably require for the purposes of the review, and
  - (b) may require any person holding or accountable for any such document to provide such information and explanation as are reasonably necessary for that purpose.
- (2) Subsection (1) applies only to documents in the custody of or under the control of the PRA.
- (3) An obligation imposed on a person as a result of the exercise of the powers conferred by subsection (1) is enforceable by injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.

## **CHAPTER 3**

### FURTHER PROVISIONS RELATING TO FCA AND PRA

#### *Introductory*

### **3A Meaning of “regulator”**

- (1) This section has effect for the interpretation of this Act.
- (2) The FCA and the PRA are the “regulators”, and references to a regulator are to be read accordingly.
- (3) Subsection (2) does not affect—
- (a) the meaning of the following expressions—
    - “home state regulator”;
    - “host state regulator”;
    - “overseas regulator”;
  - (b) the meaning of “the appropriate regulator” in Part 18 (recognised investment exchanges and clearing houses).



## *Regulatory principles*

### **3B Regulatory principles to be applied by both regulators**

- (1) In relation to the regulators, the regulatory principles referred to in section 1B(5)(a) and 2H(1)(a) are as follows—
  - (a) the need to use the resources of each regulator in the most efficient and economic way;
  - (b) the principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction;
  - (c) the desirability of sustainable growth in the economy of the United Kingdom in the medium or long term;
  - (d) the general principle that consumers should take responsibility for their decisions;
  - (e) the responsibilities of the senior management of persons subject to requirements imposed by or under this Act, including those affecting consumers, in relation to compliance with those requirements;
  - (f) the desirability where appropriate of each regulator exercising its functions in a way that recognises differences in the nature of, and objectives of, businesses carried on by different persons subject to requirements imposed by or under this Act;
  - (g) the desirability in appropriate cases of each regulator publishing information relating to persons on whom requirements are imposed by or under this Act, or requiring such persons to publish information, as a means of contributing to the advancement by each regulator of its objectives;
  - (h) the principle that the regulators should exercise their functions as transparently as possible.
- (2) “Consumer” has the meaning given in section 1G.
- (3) “Objectives”, in relation to the FCA, means operational objectives.
- (4) The Treasury may by order amend subsection (2).

## *Corporate governance*

### **3C Duty to follow principles of good governance**

In managing its affairs, each regulator must have regard to such generally accepted principles of good corporate governance as it is reasonable to regard as applicable to it.

### *Relationship between FCA and PRA*

#### **3D Duty of FCA and PRA to ensure co-ordinated exercise of functions**

- (1) The regulators must co-ordinate the exercise of their respective functions conferred by or under this Act with a view to ensuring—
  - (a) that each regulator consults the other regulator (where not otherwise required to do so) in connection with any proposed exercise of a function in a way that may have a material adverse effect on the advancement by the other regulator of any of its objectives;
  - (b) that where appropriate each regulator obtains information and advice from the other regulator in connection with the exercise of its functions in relation to matters of common regulatory interest in cases where the other regulator may be expected to have relevant information or relevant expertise;
  - (c) that where either regulator exercises functions in relation to matters of common regulatory interest, both regulators comply with their respective duties under section 1B(5)(a) or 2H(1)(a), so far as relating to the regulatory principles in section 3B(1)(a) and (b).
- (2) The duty in subsection (1) applies only to the extent that compliance with the duty—
  - (a) is compatible with the advancement by each regulator of any of its objectives, and
  - (b) does not impose a burden on the regulators that is disproportionate to the benefits of compliance.
- (3) A function conferred on either regulator by or under this Act relates to matters of common regulatory interest if—
  - (a) the other regulator exercises similar or related functions in relation to the same persons,
  - (b) the other regulator exercises functions which relate to different persons but relate to similar subject-matter, or
  - (c) its exercise could affect the advancement by the other regulator of any of its objectives.
- (4) “Objectives”, in relation to the FCA, means operational objectives.

#### **3E Memorandum of understanding**

- (1) The regulators must prepare and maintain a memorandum which describes in general terms—
  - (a) the role of each regulator in relation to the exercise of functions conferred by or under this Act which relate to matters of common regulatory interest, and
  - (b) how the regulators intend to comply with section 3D in relation to the exercise of such functions.
- (2) The memorandum may in particular contain provisions about how the regulators intend to comply with section 3D in relation to—

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- (a) applications for Part 4A permission;
  - (b) the variation of permission;
  - (c) the imposition of requirements;
  - (d) the obtaining and disclosure of information;
  - (e) cases where a PRA-authorized person is a member of a group whose other members include one or more other authorised persons (whether or not PRA-authorized persons);
  - (f) functions under Schedule 3 (EEA passport rights) and Schedule 4 (Treaty rights);
  - (g) the making of rules;
  - (h) directions under section 138A (modification or waiver of rules);
  - (i) powers to appoint competent persons under Part 11 (information gathering and investigations) to conduct investigations on their behalf;
  - (j) functions under Part 12 (control over authorised persons);
  - (k) functions under Part 13 (incoming firms: intervention by regulator);
  - (l) functions under Part 19 (Lloyd's);
  - (m) functions under section 347 (record of authorised persons etc.);
  - (n) functions under Part 24 (insolvency);
  - (o) fees payable to either regulator.
- (3) The memorandum must contain provision about the co-ordination by the regulators of—
- (a) the exercise of their functions relating to membership of, and their relations with, the European Supervisory Authorities (namely, the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority),
  - (b) their relations with regulatory bodies outside the United Kingdom, and
  - (c) the exercise of their functions in relation to the compensation scheme.
- (4) The regulators must review the memorandum at least once in each calendar year.
- (5) The regulators must give the Treasury a copy of the memorandum and any revised memorandum.
- (6) The Treasury must lay before Parliament a copy of any document received by them under this section.
- (7) The regulators must ensure that the memorandum as currently in force is published in the way appearing to them to be best calculated to bring it to the attention of the public.
- (8) The memorandum need not relate to any aspect of compliance with section 3D if the regulators consider—
- (a) that publication of information about that aspect would be against the public interest, or
  - (b) that that aspect is a technical or operational matter not affecting the public.

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- (9) The reference in subsection (1)(a) to matters of common regulatory interest is to be read in accordance with section 3D(3).

### **3F With-profits insurance policies**

- (1) The regulators must prepare and maintain a memorandum which describes in general terms—
- (a) the role of each regulator in relation to the exercise of functions conferred by or under this Act so far as they relate to with-profits insurers, and
  - (b) how the regulators intend to comply with section 3D in relation to the exercise of those functions so far as they relate to the effecting or carrying out of with-profits policies by with-profits insurers.
- (2) The memorandum required by this section may be combined with the memorandum required by section 3E.
- (3) If the memorandum required by this section is contained in a separate document, the PRA and the FCA must publish the memorandum as currently in force in such manner as they think fit.
- (4) Subsections (1) to (3) apply only if the effecting or carrying out of with-profits policies is a PRA-regulated activity.
- (5) For the purposes of this section—
- (a) a “with-profits policy” is a contract of insurance under which the policyholder is eligible to receive a financial benefit at the discretion of the insurer;
  - (b) a “with-profits insurer” is a PRA-authorized person who has a Part 4A permission, or permission resulting from any other provision of this Act, relating to the effecting or carrying out of with-profits policies (whether or not the permission also relates to contracts of insurance of other kinds).
- (6) The Treasury may by order amend the definition of “with-profits policy” applying for the purposes of this section.

### **3G Power to establish boundary between FCA and PRA responsibilities**

- (1) The Treasury may by order specify matters that, in relation to the exercise by either regulator of its functions relating to PRA-authorized persons, are to be, or are to be primarily, the responsibility of one regulator rather than the other.
- (2) The order may—
- (a) provide that one regulator is or is not to have regard to specified matters when exercising specified functions;
  - (b) require one regulator to consult the other.

### **3H Parliamentary control of orders under section 3G**

- (1) No order may be made under section 3G unless—

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- (a) a draft of the order has been laid before Parliament and approved by a resolution of each House, or
  - (b) subsection (3) applies.
- (2) Subsection (3) applies if an order under section 3G contains a statement that the Treasury are of the opinion that, by reason of urgency, it is necessary to make the order without a draft being so laid and approved.
- (3) Where this subsection applies the order—
  - (a) must be laid before Parliament after being made, and
  - (b) ceases to have effect at the end of the relevant period unless before the end of that period the order is approved by a resolution of each House of Parliament (but without that affecting anything done under the order or the power to make a new order).
- (4) The “relevant period” is a period of 28 days beginning with the day on which the order is made.
- (5) In calculating the relevant period no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.

#### *Power of PRA to restrain proposed action by FCA*

### **3I Power of PRA to require FCA to refrain from specified action**

- (1) Where the first, second and third conditions are met, the PRA may give a direction under this section to the FCA.
- (2) The first condition is that the FCA is proposing—
  - (a) to exercise any of its regulatory powers in relation to PRA-authorised persons generally, a class of PRA-authorised persons or a particular PRA-authorised person, or
  - (b) to exercise any of its insolvency powers in relation to—
    - (i) a PRA-authorised person,
    - (ii) an appointed representative whose principal, or one of whose principals, is a PRA-authorised person, or
    - (iii) a person who is carrying on a PRA-regulated activity in contravention of the general prohibition.
- (3) In subsection (2)—
  - (a) “regulatory powers”, in relation to the FCA, means its powers in relation to the regulation of authorised persons, other than its powers in relation to consent for the purposes of section 55F or 55I or its powers under Part 24;
  - (b) “insolvency powers”, in relation to the FCA, means its powers under Part 24.
- (4) The second condition is that the PRA is of the opinion that the exercise of the power in the manner proposed may—
  - (a) threaten the stability of the UK financial system, or

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- (b) result in the failure of a PRA-*authorised* person in a way that would adversely affect the UK financial system.
- (5) The third condition is that the PRA is of the opinion that the giving of the direction is necessary in order to avoid the possible consequence falling within subsection (4).
- (6) A direction under this section is a direction requiring the FCA not to exercise the power or not to exercise it in a specified manner.
- (7) The direction may be expressed to have effect during a specified period or until revoked.
- (8) The FCA is not required to comply with a direction under this section if or to the extent that in the opinion of the FCA compliance would be incompatible with any EU obligation or any other international obligation of the United Kingdom.
- (9) The reference in subsection (4)(b) to the “failure” of a PRA-*authorised* person is to be read in accordance with section 2J(3) and (4).

### **3J Power of PRA in relation to with-profits policies**

- (1) Where the first, second and third conditions are met, the PRA may give a direction under this section to the FCA.
- (2) The first condition is that the FCA is proposing to exercise any of its regulatory powers in relation to with-profits insurers, a class of with-profits insurers or a particular with-profits insurer.
- (3) In subsection (2) “regulatory powers”, in relation to the FCA, means its powers in relation to the regulation of authorised persons, including its powers under Part 24 (insolvency) but not its powers in relation to consent for the purposes of section 55F or 55I.
- (4) The second condition is that the proposed exercise of the power relates to the provision of financial benefits under with-profits policies at the discretion of the insurer, or affects or may affect the amount, timing or distribution of financial benefits that are so provided or the entitlement to future benefits that are so provided.
- (5) The third condition is that the PRA is of the opinion that the giving of the direction is desirable in order to advance the PRA's general objective or its insurance objective.
- (6) A direction under this section is a direction requiring the FCA not to exercise the power or not to exercise it in a specified manner.
- (7) The direction may be expressed to have effect during a specified period or until revoked.
- (8) The FCA is not required to comply with a direction under this section if or to the extent that in the opinion of the FCA compliance would be incompatible with any EU obligation or any other international obligation of the United Kingdom.

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- (9) Subsections (1) to (8) apply only if the effecting or carrying out of with-profits policies is a PRA-regulated activity.
- (10) In this section “with-profits insurer” and “with-profits policy” have the same meaning as they have for the purposes of section 3F.

### **3K Revocation of directions under section 3I or 3J**

- (1) The PRA may at any time by notice to the FCA revoke a direction under section 3I or 3J.
- (2) The revocation of a direction under section 3I or 3J does not affect the validity of anything previously done in accordance with it.

### **3L Further provisions about directions under section 3I or 3J**

- (1) Before giving a direction under section 3I or 3J, the PRA must consult the FCA.
- (2) A direction under section 3I or 3J must be given or confirmed in writing, and must be accompanied by a statement of the reasons for giving it.
- (3) A notice revoking a direction under section 3I or 3J must be given or confirmed in writing.
- (4) The PRA must—
  - (a) publish the direction and statement, or the notice, in such manner as it thinks fit, and
  - (b) where the direction or notice relates to a particular authorised person or a particular with-profits insurer, give a copy of the direction and statement, or the notice, to that person.
- (5) The PRA must give the Treasury a copy of—
  - (a) a direction under section 3I;
  - (b) a statement relating to such a direction;
  - (c) a notice revoking such a direction.
- (6) The Treasury must lay before Parliament any document received by them under subsection (5).
- (7) Subsection (4) does not apply where the PRA, after consulting the Treasury, decides that compliance with that subsection would be against the public interest, and at any time when this subsection excludes the application of subsection (4) in relation to a direction under section 3I, subsection (6) also does not apply.
- (8) Where the PRA decides that compliance with subsection (4) would be against the public interest, it must from time to time review that decision and if it subsequently decides that compliance is no longer against the public interest it must—
  - (a) comply with that subsection, and
  - (b) in the case of a direction under section 3I, notify the Treasury for the purposes of subsection (6).

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### *Directions relating to consolidated supervision*

#### **3M Directions relating to consolidated supervision of groups**

- (1) This section applies where one of the regulators (“the supervising regulator”), but not the other, is the competent authority for the purpose of consolidated supervision that is required in relation to some or all of the members of a group (“the relevant group”) in pursuance of any of the relevant directives.
- (2) “Consolidated supervision” includes supplementary supervision.
- (3) The “relevant directives” are—
  - (a) the banking consolidation directive;
  - (b) Directive [2002/87/EC](#) of the European Parliament and of the Council on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate;
  - (c) Directive [2006/49/EC](#) on the capital adequacy of investment firms and credit institutions;
  - (d) Directive [2009/138/EC](#) of the European Parliament and the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II).
- (4) The supervising regulator may, if it considers it necessary to do so for the effective consolidated supervision of the relevant group, give the other regulator a direction under this section.
- (5) A direction under this section is a direction requiring the other regulator to exercise, or not to exercise, a relevant function in a specified manner in relation to authorised persons who are members of the relevant group.
- (6) The direction may relate to members of the relevant group other than the members in respect of which consolidated supervision is required.
- (7) A “relevant function”, in relation to either regulator, is a function conferred by or under this Act which relates to the regulation of authorised persons, but does not include—
  - (a) the regulator's function of making rules under this Act;
  - (b) its function of preparing and issuing codes under this Act;
  - (c) its function of determining the general policy and principles by reference to which it performs particular functions;
  - (d) the FCA's functions in relation to the giving of general guidance;
  - (e) the PRA's functions in relation to the giving of guidance under section [2I](#);
  - (f) the FCA's functions in relation to consent for the purposes of section [55F](#) or [55I](#).
- (8) The direction may not require the regulator to which it is given (“the directed regulator”) to do anything that it has no power to do, but the direction is relevant to the exercise of any discretion conferred on the directed regulator.
- (9) The directed regulator must comply with the direction as soon as practicable, but this is subject to subsections [\(10\)](#) and [\(11\)](#).



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- (10) The directed regulator is not required to comply with a direction under this section if or to the extent that in its opinion compliance would be incompatible with any EU obligation or any other international obligation of the United Kingdom.
- (11) Directions given by the FCA under this section are subject to any directions given to the FCA under section 3I or 3J.

### **3N Revocation of directions under section 3M**

- (1) The supervising regulator may at any time by notice to the other regulator revoke a direction under section 3M.
- (2) The revocation of the direction does not affect the validity of anything previously done in accordance with it.
- (3) Expressions defined for the purposes of section 3M have the same meaning in this section.

### **3O Further provisions about directions under section 3M**

- (1) Before giving a direction under section 3M, the supervising regulator must consult the other regulator.
- (2) A direction under section 3M must be given or confirmed in writing, and must be accompanied by a statement of the reasons for giving it.
- (3) A notice revoking a direction under section 3M must be given or confirmed in writing.
- (4) The regulator to which a direction under section 3M is given must give a copy of the direction and statement to each of the authorised persons to whom the direction relates.
- (5) The supervising regulator must publish the direction and statement, or the notice, in such manner as it thinks fit.
- (6) But subsection (4) or (5) does not apply in a case where the regulator on which the duty is imposed considers that compliance with that subsection would be against the public interest.
- (7) In a case where a regulator decides that compliance with subsection (4) or (5) would be against the public interest, the regulator must from time to time review that decision and if it subsequently decides that compliance is no longer against the public interest it must comply with the subsection.
- (8) Expressions defined for the purposes of section 3M have the same meaning in this section.

### **3P Consultation by regulator complying with direction**

- (1) If the directed regulator is required by this Act to consult any person other than the supervising regulator before exercising the relevant function to which the direction relates, the directed regulator must give the supervising regulator copies of any written representations received from the persons consulted.

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- (2) Expressions defined for the purposes of section 3M have the same meaning in this section.

### *Co-operation with Bank of England*

#### **3Q Co-operation by FCA and PRA with Bank of England**

- (1) Each regulator must take such steps as it considers appropriate to co-operate with the Bank of England in connection with—
- (a) the pursuit by the Bank of its Financial Stability Objective, and
  - (b) the Bank's compliance with its duties under sections 58 and 59 of the Financial Services Act 2012 (duty to notify Treasury of possible need for public funds and of subsequent changes).
- (2) Co-operation under subsection (1) may include the sharing of information that the regulator is not prevented from disclosing.

### *Arrangements for provision of services*

#### **3R Arrangements for provision of services**

- (1) The regulators may enter into arrangements with each other for the provision of services by one of them to the other.
- (2) Either regulator may enter into arrangements with the Bank of England for the provision of services—
- (a) by the Bank to the regulator, or
  - (b) by the regulator to the Bank.
- (3) Either regulator may enter into arrangements with any of the bodies specified in subsection (4) for the provision of services by the regulator to that body.
- (4) Those bodies are—
- (a) the consumer financial education body (see section 3S(2)),
  - (b) the scheme manager (see section 212(1)), and
  - (c) the scheme operator (see section 225(2)).
- (5) The FCA may enter into arrangements with—
- (a) a local weights and measures authority in England, Wales or Scotland, or
  - (b) the Department of Enterprise, Trade and Investment in Northern Ireland,
- for the provision by the authority or department to the FCA of services which relate to activities to which this subsection applies.
- (6) Subsection (5) applies to activities that are regulated activities by virtue of—
- (a) an order made under section 22(1) in relation to an investment of a kind falling within paragraph 23 or 23B of Schedule 2, or
  - (b) an order made under section 22(1A)(a).

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- (7) Arrangements under this section are to be on such terms as may be agreed by the parties.

*Enhancing public understanding of financial matters etc.*

### **3S The consumer financial education body**

- (1) The consumer financial education body continues to have the consumer financial education function.
- (2) The “consumer financial education body” means the body corporate originally established by the Financial Services Authority under section 6A of this Act (as it had effect before the passing of the Financial Services Act 2012).
- (3) The consumer financial education function is to enhance—
- (a) the understanding and knowledge of members of the public of financial matters (including the UK financial system), and
  - (b) the ability of members of the public to manage their own financial affairs.
- (4) The consumer financial education function includes, in particular—
- (a) promoting awareness of the benefits of financial planning;
  - (b) promoting awareness of the financial advantages and disadvantages in relation to particular decisions relating to different kinds of goods or services;
  - (c) promoting awareness of the benefits and risks associated with different kinds of financial dealing (which includes informing the FCA and other bodies of those benefits and risks);
  - (d) the publication of educational materials or the carrying out of other educational activities;
  - (e) the provision of information and advice to members of the public;
  - (f) assisting members of the public with the management of debt;
  - (g) working with other organisations which provide debt services, with a view to improving—
    - (i) the availability to the public of those services;
    - (ii) the quality of the services provided;
    - (iii) consistency in the services available, in the way in which they are provided and in the advice given.
- (5) In subsection (4) “debt services” means debt advice or assistance with the management of debt.
- (6) Schedule 1A makes further provision about the consumer financial education body.”
- (2) For Schedule 1 to FSMA 2000 substitute the Schedules 1ZA and 1ZB set out in Schedule 3 to this Act.