

These notes refer to the Financial Services (Banking Reform) Act 2013 (c.33) which received Royal Assent on 18 December 2013

FINANCIAL SERVICES (BANKING REFORM) ACT 2013

EXPLANATORY NOTES

COMMENTARY

Part 4 – Conduct of Persons Working in Financial Services Sector

Amendments of FSMA

Section 38: Institution of proceedings

227. *Section 38* sets out who may bring proceedings for the offence. *Subsections (2) and (3)* provide that in England, Wales and Northern Ireland, prosecutions could be brought by the FCA, the PRA, the Secretary of State or the Director of Public Prosecutions (in Northern Ireland this is the Director of Public Prosecutions for Northern Ireland). Others may bring prosecutions with the consent of the Director of Public Prosecutions. In Scotland, prosecutions could (in any event) only be brought by the Procurator Fiscal.
228. *Subsections (4) and (5)* allow the Treasury to restrict the regulators' powers to prosecute, both generally and with regard to specific proceedings or categories of proceedings, providing it does so in writing.