



Financial Services and Markets Act 2023

2023 CHAPTER 29

PART 6

MISCELLANEOUS

Amendments to FSMA 2000

59 Application of provisions to regulatory functions under this Act

- (1) FSMA 2000 is amended as follows.
- (2) In section 1A (the FCA), in subsection (6) after paragraph (czb) insert—
“(czc) the Financial Services and Markets Act 2023,”.
- (3) In section 2AB (functions of the PRA), in subsection (3) after paragraph (c) insert—
“(ca) the Financial Services and Markets Act 2023,”.

60 Formerly authorised persons

- (1) FSMA 2000 is amended as follows.
- (2) In section 404C after “(which” insert “, subject to section 415AA(1),”.
- (3) After section 415A insert—

“415AA Application of powers to formerly authorised persons

- (1) A power in the following provisions may be exercised in relation to persons who were at any time authorised persons (in addition to persons who are authorised persons at the time when the power is exercised)—
 - (a) section 168 (appointment of investigators in certain cases);
 - (b) section 205 (public censure);
 - (c) section 206 (financial penalties);
 - (d) section 384 (power to require restitution).

(2) Accordingly, references in the provisions listed in subsection (1), and in sections 207 to 209, to an authorised person are (so far as appropriate) to be read as including a person who was at any time an authorised person but who has ceased to be an authorised person.”

(4) The amendments made by this section have effect only in relation to persons who cease to be authorised persons on or after 20 July 2022.

61 Control over authorised persons

In Part 12 of FSMA 2000 (control over authorised persons), in section 187 (approval with conditions), in subsection (2)—

- (a) at the end of paragraph (a) omit “or”, and
- (b) after that paragraph insert—

“(aa) it appears to that regulator that it is desirable to impose those conditions in order to advance any of that regulator’s objectives (subject to section 185(2)(c)), or”.

62 Financial services compensation scheme

- (1) FSMA 2000 is amended as set out in subsections (2) and (3).
- (2) In section 212 (the scheme manager), in subsection (3)(aa) omit the words “(who is to be the accounting officer)”.
- (3) Omit section 218B (Treasury’s power to receive information).
- (4) Omit section 15 of the Financial Services (Banking Reform) Act 2013 (which inserted section 218B of FSMA 2000).

63 The Ombudsman scheme

- (1) FSMA 2000 is amended as follows.
- (2) In section 429 (Parliamentary control of statutory instruments), in subsection (2B) after paragraph (c) insert—
 - “(d) provision made under paragraph 15(3) of Schedule 17.”
- (3) Paragraph 15 of Schedule 17 (the Ombudsman scheme: power of scheme operator to charge fees) is amended as set out in subsections (4) and (5).
- (4) In sub-paragraph (1) after “respondent” insert “or other persons of a specified description”.
- (5) After sub-paragraph (2) insert—
 - “(3) The reference in sub-paragraph (1) to persons of a specified description is a reference to such descriptions of persons as may be specified in regulations made by the Treasury.
 - (4) The power conferred by sub-paragraph (3) to specify descriptions of persons may not be exercised so as to provide for eligible complainants to fall within a specified description of persons.

Status: This is the original version (as it was originally enacted).

- (5) The reference in sub-paragraph (4) to “eligible complainants” is a reference to complainants who are eligible in relation to the compulsory or voluntary jurisdiction of the ombudsman scheme (see section 226(6) and 227(7)).
- (6) Before making regulations under sub-paragraph (3) the Treasury must consult the scheme operator.”

64 Unauthorised co-ownership AIFs

- (1) FSMA 2000 is amended as follows.
- (2) In section 261E (authorised contractual schemes: holding of units)—
 - (a) before subsection (1) insert—

“(A1) This section sets out requirements for the purposes of section 261D(1) (a) (authorisation orders).”;
 - (b) in subsection (1) for “a contractual” substitute “the”.
- (3) After section 261Z5 insert—

“CHAPTER 3B

UNAUTHORISED CO-OWNERSHIP AIFs

261Z6 Power to make provision about unauthorised co-ownership AIFs

- (1) The Treasury may by regulations make provision about unauthorised co-ownership AIFs that corresponds or is similar to, or applies with modifications, any of sections 261M to 261O and section 261P(1) and (2) (rights and liabilities of participants in authorised co-ownership schemes).
- (2) Regulations under subsection (1) may make provision about unauthorised co-ownership AIFs generally, or about unauthorised co-ownership AIFs of a description specified in the regulations.
- (3) In this section “unauthorised co-ownership AIF” means a co-ownership scheme that—
 - (a) is an AIF, and
 - (b) is not authorised for the purposes of this Act by an authorisation order in force under section 261D(1).”

65 Power to amend enactments in consequence of rules

- (1) FSMA 2000 is amended as follows.
- (2) After section 141A insert—

“141B Power to consequentially amend enactments

- (1) The Treasury may by regulations make provision amending an enactment that is consequential on rules.

Status: This is the original version (as it was originally enacted).

(2) In this section—

“enactment” includes—

- (a) an enactment comprised in subordinate legislation,
- (b) retained direct EU legislation,
- (c) an enactment comprised in, or in an instrument made under, a Measure or Act of Senedd Cymru,
- (d) an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament, and
- (e) an enactment comprised in, or in an instrument made under, Northern Ireland legislation;

“subordinate legislation” has the same meaning as in the Interpretation Act 1978 (see section 21 of that Act) but does not include rules of either regulator.”

(3) Omit section 144F (power to consequentially amend enactments).

(4) In section 429 (Parliamentary control of statutory instruments), in subsection (2), in the list of sections beginning with “90B”—

- (a) insert at the appropriate place “141B,”;
- (b) omit “144F.”

66 Ambulatory references

(1) FSMA 2000 is amended as follows.

(2) In section 137T (regulator rules: general supplementary powers), after paragraph (a) insert—

“(aa) may make provision for any reference in the rules to an enactment (including an enactment comprised in subordinate legislation) to be read as a reference to that enactment as it has effect from time to time.”

(3) In section 428 (regulations and orders)—

- (a) in subsection (3) before paragraph (a) insert—
 - “(za) make provision by reference to any rules or other instruments as they have effect from time to time;”;
- (b) after subsection (3) insert—

“(4) In subsection (3)(za) “rules” includes rules made by the Bank of England under this Act.”

67 Power to amend or repeal certain provisions of FSMA 2000

(1) The Treasury may by regulations amend or repeal the following provisions in Part 9C of FSMA 2000—

- (a) section 143C (duty to make rules applying to FCA investment firms);
- (b) section 143D (duty to make rules applying to parent undertakings);
- (c) section 143G (matters to consider when making Part 9C rules).

(2) In consequence of provision made in regulations under subsection (1), the Treasury may by regulations amend or repeal other provisions of FSMA 2000.

(3) Regulations under this section are subject to the affirmative procedure.

68 Power under FSMA 2000 to make transitional provisions

(1) FSMA 2000 is amended as follows.

(2) In section 427 (transitional provisions)—

- (a) in subsection (2)(a) to (c), for “the Authority”, in each place, substitute “a regulator”;
- (b) in subsection (2)(f), for “the Authority’s” substitute “the FCA’s”;
- (c) in subsection (3)(a), for “the Authority” substitute “a regulator”.

(3) In Schedule 17A, after paragraph 31A (inserted by section 50), insert—

“Transitional provisions

31B Section 427 (transitional provisions), so far as it relates to an order under section 426 which makes provision in connection with this Part of this Act, applies in relation to the Bank.”

69 Cryptoassets

(1) FSMA 2000 is amended as follows.

(2) In section 21 (restrictions on financial promotion), in subsection (14) at end insert “(including where an asset, right or interest is, or comprises or represents, a cryptoasset)”.

(3) In section 22 (regulated activities), in subsection (4) at end insert “(including where an asset, right or interest is, or comprises or represents, a cryptoasset)”.

(4) In section 417 (definitions)—

- (a) in subsection (1), insert at the appropriate place—
 - ““cryptoasset” means any cryptographically secured digital representation of value or contractual rights that—
 - (a) can be transferred, stored or traded electronically, and
 - (b) that uses technology supporting the recording or storage of data (which may include distributed ledger technology).”;
- (b) at end insert—

“(5) The Treasury may by regulations amend the definition of “cryptoasset” in subsection (1).”

(5) In section 429 (Parliamentary control of statutory instruments), in subsection (2) leave out “or 333T” and insert “, 333T or 417(5)”.