

SCHEDULES

SCHEDULE 10

PERFORMANCE OF FUNCTIONS RELATING TO FINANCIAL MARKET INFRASTRUCTURE

PART 2

RELATED AMENDMENTS

Amendments to FSMA 2000

- 2 FSMA 2000 is amended as follows.
- 3 (1) Section 56 (prohibition orders) is amended as follows—
- (2) After subsection (7C) insert—
- “**(7D)** If—
- (a) the FCA proposes to vary or revoke a prohibition order which makes provision in relation to a recognised body, and
- (b) the FCA is not the appropriate regulator in relation to recognised bodies of that type,
- the FCA must consult the appropriate regulator.
- (7E) If the PRA proposes to vary or revoke a prohibition order which makes provision in relation to a recognised body, the PRA must consult the appropriate regulator in relation to recognised bodies of that type.”
- (3) For subsection (9) substitute—
- “**(9)** In this section—
- “the appropriate regulator”, in relation to a recognised body, has the meaning given by section 285A;
- “recognised body” has the meaning given by section 313;
- “specified” means specified in the prohibition order.”
- 4 (1) Section 57 (prohibition orders: procedure and right to refer to Tribunal) is amended as follows.
- (2) After subsection (8) insert—
- “**(9)** If—
- (a) the FCA proposes to make a prohibition order which makes provision in relation to a recognised body, and
- (b) the FCA is not the appropriate regulator in relation to recognised bodies of that type,

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the FCA must consult the appropriate regulator before giving a warning notice under this section.

(10) If the PRA proposes to make a prohibition order which makes provision in relation to a recognised body, the PRA must consult the appropriate regulator in relation to recognised bodies of that type before giving a warning notice under this section.

(11) In this section—

“the appropriate regulator”, in relation to a recognised body, has the meaning given by section 285A;

“recognised body” has the meaning given by section 313;”.

5 In section 59AB(1) (specifying functions as controlled functions: transitional provision), after “this Part”, in both places, insert “or Chapter 2A of Part 18”.

6 In section 133(7A) (proceedings before Tribunal: general provision), after paragraph (l) insert—

“(la) a decision to impose a penalty under section 309U;

(lb) a decision to take action under section 309Z2;”.

7 In section 138A (modification or waiver of rules), in subsection (2), after paragraph (b) insert—

“(c) rules made by the FCA under section 309Z1 (rules of conduct).”

8 (1) Section 168 (appointment of persons to carry out investigations in particular cases) is amended as follows.

(2) After subsection (4) insert—

“(4A) Subsection (5) applies if it appears to the investigating authority that there are circumstances suggesting that—

(a) an individual may not be a fit and proper person to perform functions in relation to an activity carried on by a relevant recognised body;

(b) an individual may have performed, or agreed to perform, a function in breach of a Part 18 prohibition order;

(c) a person may have failed to comply with section 309F(1);

(d) a relevant recognised body may have failed to comply with section 309G(1);

(e) a person in relation to whom the FCA has given approval under section 309G may not be a fit and proper person to perform the function to which that approval relates;

(f) a person may have performed a designated senior management function without approval under section 309G (see section 309U(3));

(g) a person may be guilty of misconduct for the purposes of section 309Z2.”

(3) In subsection (6), after paragraph (b) insert—

“(c) in subsection (4A), the FCA.”

(4) After subsection (6), insert—

“(7) “Relevant recognised body” has the same meaning as in Chapter 2A of Part 18 (see section 309A).”

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- 9 In the heading of Chapter 3B of Part 18, at the end insert “in respect of recognised bodies”.
- 10 Section 312FA is omitted.
- 11 In section 313 (interpretation of Part 18), in subsection (1)—
- (a) omit the definition of “application”;
 - (b) omit the definition of “applicant”.
- 12 (1) Section 347 (the record of authorised persons etc) is amended as follows.
- (2) In subsection (1)—
- (a) in paragraph (g), for “or Part 9C prohibition order” substitute “, Part 9C prohibition order or Part 18 prohibition order”;
 - (b) after paragraph (h), insert—
“(hza) Part 18 approved person;”.
- (3) In subsection (2)—
- (a) in paragraph (f), after “prohibition order” insert “, Part 9C prohibition order or Part 18 prohibition order”;
 - (b) after paragraph (h) insert—
“(ha) in the case of a person who is a Part 18 approved person—
 - (i) the person’s name;
 - (ii) the name of the relevant recognised body concerned;
 - (iii) if the Part 18 approved person is performing a designated senior management function under an arrangement with a contractor of the relevant recognised body concerned, the name of the contractor;
 - (iv) whether a final notice has been given to the person under section 390;
 - (v) if so, any information about the matter to which the notice relates which has been published under section 391(4);”.
- (4) In subsection (8), after ““Approved person”” insert “(except in the expression “Part 18 approved person”)”.
- (5) After subsection (8) insert—
“(8ZA) “Part 18 approved person” means a person in relation to whom the FCA has given its approval under section 309G.”
- (6) In subsection (8A)—
- (a) in the definition of “designated senior management function”, for the words after “function” substitute “—
 - (a) in relation to an authorised person, has the meaning given by section 59ZB;
 - (b) in relation to a relevant recognised body, has the meaning given by section 309G(3);”.
 - (b) at the end insert—

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““relevant recognised body” has the same meaning as in Chapter 2A of Part 18 (see section 309A).”

- (7) In subsection (9), after “approval” insert “under section 59”.
- (8) After subsection (9) insert—
- “(10) “The relevant recognised body concerned”, in relation to a Part 18 approved person, means the relevant recognised body on whose application approval under section 309G was given.”
- 13 In section 391 (publication of notices), in subsection (1ZB), after paragraph (k) insert—
- “(ka) section 309V;
 (kb) section 309Z4;”.
- 14 (1) Section 392 (application of sections 393 and 394) is amended as follows.
- (2) In paragraph (a) (warning notices), after “282B(3),” insert “309C(1)(b), 309P(1)(b), 309V(1), 309Z4(1),”.
- (3) In paragraph (b) (decision notices), after “282B(4),” insert “309C(3), 309P(2), 309V(3), 309Z4(6),”.
- 15 In section 395 (the FCA’s and PRA’s procedures), in subsection (13), after paragraph (fa) insert—
- “(fb) 309R(5), (8) or (10)(b);”.
- 16 (1) Section 417(1) (interpretation) is amended as follows.
- (2) In the appropriate place insert—
- ““Part 18 prohibition order” has the meaning given in section 309B;”.
- (3) In the definition of “prohibition order”, after ““Part 9C prohibition order”” insert “or ““Part 18C prohibition order””.
- 17 In section 429 (Parliamentary control of statutory instruments)
- (a) in subsection (2), in the list of sections beginning with “90B” insert at the appropriate place “309Z8;”;
- (b) in subsection (2B), after paragraph (ba) insert—
- “(bb) provision made under section 309H(2) which modifies, excludes or applies with modifications any provision of primary legislation;”.
- 18 (1) Schedule 1ZA (the Financial Conduct Authority) is amended as follows.
- (2) In paragraph 20(4), after paragraph (ba) insert—
- “(bb) its powers under section 309B (Part 18 prohibition orders);”.
- (3) In paragraph 24, after paragraph (b) insert—
- “(c) a fee to be paid by any person whose application under section 309I for approval under section 309G has been granted.”
- 19 In Schedule 2A (Gibraltar-based persons carrying on activities in the UK), in paragraph 19 (power to reject: prohibition order in respect of senior manager), in sub-paragraph (2)(b)—
- (a) omit the “or” at the end of paragraph (ii) and insert—

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- “(ia) an order under section 309B, or”;
- (b) in paragraph (iii) for “or 143S” substitute “, 143S or 309B”.
- 20 (1) Schedule 17A (further provision in relation to exercise of Part 18 functions by Bank of England) is amended as follows.
- (2) After paragraph 6 insert—
- “6A (1) If the Bank makes a Part 18 prohibition order relating to an individual, the Bank must—
- (a) provide the FCA with information falling within section 347(2)(f) in relation to the order, and
- (b) where the FCA has notified the Bank that it considers it appropriate to include in the record maintained under section 347 information of a certain description, disclose to the FCA such information of that description relating to the order or the individual as the Bank has in its possession.
- (2) The duty to provide information under sub-paragraph (1)—
- (a) does not apply to information which the Bank reasonably believes is in the possession of the FCA;
- (b) does not require or authorise the disclosure of information whose disclosure is prohibited by or under section 348;
- (c) is without prejudice to any other power of the Bank to disclose information.”
- (3) In paragraph 14(2) (investigations)—
- (a) in paragraph (b), for “clearing house or central securities depository” substitute “person”;
- (b) at the end insert—
- “(i) an individual may not be a fit and proper person to perform functions in relation to an activity carried on by a relevant recognised body;
- (j) an individual may have performed, or agreed to perform, a function in breach of a Part 18 prohibition order;
- (k) a relevant recognised body may have failed to comply with section 309F(1);
- (l) a relevant recognised body may have failed to comply with section 309G(1);
- (m) a person in relation to whom the Bank has given approval under section 309G may not be a fit and proper person to perform the function to which that approval relates;
- (n) a person may have performed a designated senior management function without approval under section 309G (see section 309U(3));
- (o) a person may be guilty of misconduct for the purposes of section 309Z2.”
- (4) In paragraph 22 (application of section 347 to the Bank)—
- (a) the words after “etc)” become paragraph (a);
- (b) after that paragraph insert—

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“(b) so far as it relates to approved persons, applies in relation to the Bank as if references in that section to an approved person were to a person in relation to whom the Bank has given approval under section 309G.”

(5) In paragraph 29 (notices)—

- (a) the words after “(notices) apply” become paragraph (a);
- (b) in that paragraph, after “192L,” insert “309C, 309D, 309M, 309P, 309V, 309Z4,”;
- (c) after that paragraph insert—
 - “(b) in relation to a notice under section 309R(5), (8) or (10)(b) as they apply in relation to such a notice given by the FCA under those provisions.”

(6) In paragraph 31(1) (proceedings for an offence), after paragraph (c) insert—

“(ca) an offence under section 309E;”.

(7) In paragraph 36 (fees), after sub-paragraph (4) insert—

“(5) The power conferred by this paragraph may not be used to require a fee to be paid by any person whose application under section 309I for approval under section 309G has been granted.”

Financial Services Act 2012

- 21 (1) Section 110 of the Financial Services Act 2012 (payment to Treasury of penalties received by Bank of England) is amended as follows.
- (2) In subsection (2)(a), after “192K” insert “, 309U, 309Z2”.
 - (3) In subsection (5), after paragraph (a) insert—
 - “(aa) sections 309B, 309U and 309Z2 of that Act (Part 18 prohibition orders),”.