

## SCHEDULES

### SCHEDULE 9

#### WHOLESALE CASH DISTRIBUTION

##### PART 1

###### NEW PART 5A OF THE BANKING ACT 2009

1 After Part 5 of the Banking Act 2009 (payment systems) insert—

##### “PART 5A

#### WHOLESALE CASH DISTRIBUTION

##### *Introduction*

##### **206C Overview and purpose**

- (1) This Part enables the Bank of England to oversee certain persons involved in wholesale cash distribution (as defined in section 206E).
- (2) The Bank must exercise its powers under this Part for the purpose of managing risks to the effectiveness, resilience and sustainability of wholesale cash distribution—
  - (a) throughout the United Kingdom, or
  - (b) throughout any part of the United Kingdom.

##### **206D Policy statement**

- (1) The Bank of England—
  - (a) must prepare a statement of its policy with respect to the exercise of its powers under this Part,
  - (b) must from time to time review the statement, and
  - (c) may prepare a revised statement.
- (2) When preparing a statement under this section, the Bank must consult such persons as appear to the Bank to be representative of persons likely to be affected by the statement.
- (3) After preparing a statement under this section the Bank must—
  - (a) provide the statement to the Treasury, and
  - (b) publish the statement.

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- (4) The Treasury must lay a copy of each statement received under this section before Parliament.
- (5) No power conferred on the Bank by this Part may be exercised before a statement under this section has been published.

**206E Interpretation: “wholesale cash distribution”**

- (1) In this Part—

“wholesale cash distribution” means the arrangements (taken as a whole) by which banknotes issued by an issuing authority, or coins made by the Mint, are—

- (a) made available for retail cash distribution, and
- (b) removed from circulation;

“wholesale cash distribution activities” are activities intended to facilitate or control wholesale cash distribution and include (but are not limited to)—

- (a) purchasing cash from issuing authorities or the Mint;
- (b) storing cash;
- (c) transporting cash;
- (d) undertaking authentication processes;
- (e) facilitating the return of cash to issuing authorities or the Mint.

- (2) For these purposes—

“authorised bank” has the meaning given by section 210;

“banknote” has the meaning given by section 208;

“cash” means—

- (a) banknotes issued by the Bank of England, or an authorised bank in its capacity as an issuer of banknotes in Scotland or Northern Ireland, or
- (b) coins made by the Mint, within the meaning of the Coinage Act 1971 (see section 11 of that Act);

“issue”, in relation to banknotes, has the meaning given by section 209;

“issuing authority” means—

- (a) the Bank of England, or
- (b) an authorised bank in its capacity as an issuer of banknotes in Scotland or Northern Ireland;

“retail cash distribution” means arrangements for the provision of cash to end users of cash.

**206F Interpretation: other terms**

- (1) In this Part—

“FCA” means the Financial Conduct Authority;

“FCA-regulated person” means—

- (a) a person who has Part 4A permission,

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- (b) an authorised payment institution or small payment institution, within the meaning of the Payment Services Regulations 2017 (S.I. 2017/752), or
  - (c) an authorised electronic money institution or small electronic money institution, within the meaning of the Electronic Money Regulations 2011 (S.I. 2011/99);
- “Part 4A permission” has the meaning given by section 55A of the Financial Services and Markets Act 2000;
- “the Payment Systems Regulator” means the Payment Systems Regulator established under section 40 of the Financial Services (Banking Reform) Act 2013;
- “PRA” means the Prudential Regulation Authority;
- “PRA-regulated activity” has the meaning given by section 22A of the Financial Services and Markets Act 2000;
- “the UK financial system” has the meaning given by section 11 of the Financial Services and Markets Act 2000.
- (2) For the purposes of this Part, a company (within the meaning of the Companies Act 2006) is wholly owned by the Crown if, and only if, every member of the company is—
- (a) a Minister of the Crown, government department or company wholly owned by the Crown, or
  - (b) a person acting on behalf of a Minister of the Crown, government department or company wholly owned by the Crown.

#### *Recognised persons*

### **206G Wholesale cash oversight orders**

- (1) The Treasury may by order (a “wholesale cash oversight order”) specify a person as a recognised person for the purposes of this Part.
- (2) A person may be specified only if the person—
  - (a) performs a relevant function in relation to a wholesale cash distribution activity, and
  - (b) is recognised as having market significance (see section 206H).
- (3) The following are relevant functions in relation to a wholesale cash distribution activity—
  - (a) undertaking the activity;
  - (b) managing the activity;
  - (c) providing a service in relation to the activity;
  - (d) providing financial assistance in relation to the activity.
- (4) A wholesale cash oversight order must specify in as much detail as is reasonably practicable—
  - (a) each wholesale cash distribution activity in relation to which the specified person performs a relevant function, and
  - (b) each relevant function the person performs.

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- (5) The Treasury may not make a wholesale cash oversight order in respect of an issuing authority or the Mint.

#### **206H “Market significance” and “systemic significance”**

- (1) A wholesale cash oversight order must specify whether the person in respect of whom the order is made is recognised—
- (a) as having market significance only, or
  - (b) as also having systemic significance.
- (2) The Treasury may recognise a person as having market significance only if satisfied that any significant deficiency in, or disruption to, the performance of the person’s relevant functions in relation to wholesale cash distribution activities would be likely to undermine the effectiveness, resilience, or sustainability of wholesale cash distribution—
- (a) throughout the United Kingdom, or
  - (b) throughout any part of the United Kingdom.
- (3) The Treasury may recognise a person as having systemic significance only if satisfied that any significant deficiency in, or disruption to, the performance of the person’s relevant functions in relation to wholesale cash distribution activities would be likely (in addition to the consequences mentioned in subsection (2))—
- (a) to threaten the stability of, or confidence in, the UK financial system, or
  - (b) to have serious consequences for business or other interests throughout the United Kingdom or any part of the United Kingdom.
- (4) Where a person is part of a group, the Treasury may have regard to functions performed by other members of the group when determining matters mentioned in subsection (2) or (3).
- (5) In subsection (4), “group” has the meaning given by section 421 of the Financial Services and Markets Act 2000.
- (6) The Treasury must not recognise a company wholly owned by the Crown as having systemic significance.

#### **206I Procedure**

- (1) Before making a wholesale cash oversight order in respect of a person the Treasury must—
- (a) consult the Bank of England,
  - (b) notify the person, and
  - (c) consider any representations made.
- (2) In addition, the Treasury must—
- (a) consult the FCA before making a wholesale cash oversight order in respect of a person who is, or has applied to be, an FCA-regulated person;

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- (b) consult the PRA before making a wholesale cash oversight order in respect of a person who has, or has applied for, Part 4A permission for the carrying on of a PRA-regulated activity;
  - (c) consult the Payment Systems Regulator before making a wholesale cash oversight order in respect of a person who is a participant in a regulated payment system.
- (3) In subsection (2)(c), “participant” and “regulated payment system” have the same meanings as in Part 5 of the Financial Services (Banking Reform) Act 2013 (see section 110 of that Act).
- (4) In considering whether to make the order, the Treasury may rely on information provided by—
- (a) the Bank of England;
  - (b) the FCA;
  - (c) the PRA;
  - (d) the Payment Systems Regulator.

#### **206J Amendment or revocation of a wholesale cash oversight order**

- (1) The Treasury may amend or revoke a wholesale cash oversight order.
- (2) The Treasury must revoke a wholesale cash oversight order if no longer satisfied that the person specified in the order—
  - (a) performs a relevant function in relation to a wholesale cash distribution activity, and
  - (b) has market significance.
- (3) If a person is specified in a wholesale cash oversight order as having systemic significance, the Treasury must amend the order (so that the person is specified as having market significance only) if—
  - (a) satisfied that the person continues to have market significance, but
  - (b) no longer satisfied that the person has systemic significance.
- (4) Subject to subsections (2) and (3), the Treasury must consider any request by a person specified in a wholesale cash oversight order for the amendment or revocation of the order.
- (5) Section 206I (procedure) applies to the amendment or revocation of a wholesale cash oversight order as it applies to the making of the order.

#### *Regulation*

#### **206K Principles**

- (1) The Bank of England may publish principles to which recognised persons must have regard in performing relevant functions in relation to wholesale cash distribution activities.
- (2) Different principles may be published in relation to—
  - (a) different wholesale cash distribution activities;
  - (b) different relevant functions;

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- (c) persons recognised as having market significance only and persons recognised as also having systemic significance.
- (3) Before publishing such principles, the Bank must—
  - (a) consult such persons as appear to the Bank to be representative of persons likely to be affected by the principles, and
  - (b) obtain the approval of the Treasury.

### **206L Codes of practice**

- (1) The Bank of England may publish codes of practice about the performance by recognised persons of relevant functions in relation to wholesale cash distribution activities.
- (2) Different codes of practice may be published in relation to—
  - (a) different wholesale cash distribution activities;
  - (b) different relevant functions;
  - (c) persons recognised as having market significance only and persons recognised as also having systemic significance.
- (3) Before publishing a code of practice, the Bank of England must consult such persons as appear to the Bank to be representative of persons likely to be affected by the code.

### **206M Directions**

- (1) The Bank of England may give directions in writing to a recognised person.
- (2) A direction may—
  - (a) require or prohibit the taking of specified action in relation to the performance of a specified relevant function in relation to a specified wholesale cash distribution activity;
  - (b) set standards to be met in the performance of a specified relevant function in relation to a specified wholesale cash distribution activity.
- (3) Subsection (4) applies if a direction is given to a recognised person for the purpose of resolving or reducing a threat to the stability of the UK financial system.
- (4) The recognised person (including the recognised person's officers and staff) has immunity from liability in damages in respect of action or inaction in accordance with the direction.
- (5) A direction given for the purpose mentioned in subsection (3) must—
  - (a) include a statement that it is given for that purpose, and
  - (b) inform the recognised person of the effect of subsection (4).
- (6) The Treasury may by regulations confer immunity on any person from liability in damages in respect of action or inaction in accordance with a direction under this section (including a direction given for the purpose mentioned in subsection (3)).
- (7) Regulations under subsection (6)—

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- (a) are to be made by statutory instrument, and
  - (b) are subject to annulment in pursuance of a resolution of either House of Parliament.
- (8) An immunity conferred by or under this section does not extend to action or inaction—
- (a) in bad faith, or
  - (b) in contravention of section 6(1) of the Human Rights Act 1998.
- (9) In this section, “specified” means specified in the direction.

### **206N Role of the FCA, PRA and Payment Systems Regulator**

- (1) In exercising powers under this Part, the Bank of England must have regard to any action that the FCA, PRA or Payment Systems Regulator has taken or could take.
- (2) The Bank of England must—
- (a) consult the FCA before taking action under this Part in respect of a person who is, or has applied to be, an FCA-regulated person;
  - (b) consult the PRA before taking action under this Part in respect of a person who has, or has applied for, Part 4A permission for the carrying on of a PRA-regulated activity;
  - (c) consult the Payment Systems Regulator before taking action under this Part in respect of a participant in a regulated payment system.
- (3) In subsection (2)(c), “participant” and “regulated payment system” have the same meanings as in Part 5 of the Financial Services (Banking Reform) Act 2013 (see section 110 of that Act).
- (4) If the FCA, PRA or Payment Systems Regulator gives the Bank of England notice that it is considering taking action in respect of a person mentioned in subsection (2), the Bank may not take action under this Part in respect of the person unless—
- (a) the FCA, PRA or Payment Systems Regulator (as the case may be) consents, or
  - (b) the notice is withdrawn.

### *Enforcement*

### **206O Inspection**

- (1) The Bank of England may appoint one or more persons to inspect the performance by a recognised person of a relevant function in relation to a wholesale cash distribution activity.
- (2) A recognised person who performs a relevant function in relation to a wholesale cash distribution activity must—
- (a) grant an inspector access, on request and at any reasonable time, to premises on or from which any part of the function is performed, and
  - (b) otherwise co-operate with an inspector.

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### **206P Inspection: warrant**

- (1) A justice of the peace may, on the application of an inspector appointed under section 206O, issue a warrant entitling an inspector or a constable to enter premises if—
  - (a) there is performed on the premises any part of a relevant function in relation to a wholesale cash distribution activity, and
  - (b) any of the following conditions is satisfied.
- (2) Condition 1 is that—
  - (a) a requirement under section 206Z3 (information) in relation to the relevant function has not been complied with, and
  - (b) there is reason to believe that information relevant to the requirement is on the premises.
- (3) Condition 2 is that there is reason to suspect that if a requirement under section 206Z3 were imposed in relation to the relevant function in respect of information on the premises—
  - (a) the requirement would not be complied with, and
  - (b) the information would be destroyed or otherwise tampered with.
- (4) Condition 3 is that an inspector—
  - (a) gave reasonable notice of a wish to enter the premises, and
  - (b) was refused entry.
- (5) Condition 4 is that a person occupying or managing the premises has failed to co-operate with an inspector.
- (6) A warrant—
  - (a) permits an inspector or a constable to enter the premises,
  - (b) permits an inspector or a constable to search the premises and copy or take possession of information or documents, and
  - (c) permits a constable to use reasonable force.
- (7) Sections 15(5) to (8) and 16 of the Police and Criminal Evidence Act 1984 (warrants: procedure) apply to warrants under this section.
- (8) In the application of this section to Scotland—
  - (a) the reference to a justice of the peace includes a reference to a sheriff, and
  - (b) ignore subsection (7).
- (9) In the application of this section to Northern Ireland—
  - (a) the reference to a justice of the peace is a reference to a lay magistrate, and
  - (b) the reference to sections 15(5) to (8) and 16 of the Police and Criminal Evidence Act 1984 is a reference to the equivalent provisions of the Police and Criminal Evidence (Northern Ireland) Order 1989.



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### **206Q Independent report**

- (1) The Bank of England may require a recognised person who performs a relevant function in relation to a wholesale cash distribution activity to appoint an expert to report on the performance of the function.
- (2) The Bank may impose a requirement only if it thinks—
  - (a) the person is not having sufficient regard to principles published by the Bank under section 206K,
  - (b) the person is failing to comply with a code of practice under section 206L, or
  - (c) the report is likely for any other reason to assist the Bank in the performance of its functions under this Part.
- (3) The Bank may impose requirements about—
  - (a) the nature of the expert to be appointed;
  - (b) the content of the report;
  - (c) treatment of the report (including disclosure and publication);
  - (d) timing.

### **206R Compliance failure**

In this Part “compliance failure” means a failure by a recognised person to—

- (a) comply with a code of practice under section 206L,
- (b) comply with a direction under section 206M, or
- (c) ensure compliance with a requirement under section 206Q (independent reports).

### **206S Publication**

The Bank of England may publish details of—

- (a) a compliance failure by a recognised person;
- (b) a sanction imposed under sections 206T to 206V.

### **206T Penalty**

- (1) The Bank of England may require a recognised person to pay a penalty in respect of a compliance failure.
- (2) A penalty—
  - (a) must be paid to the Bank, and
  - (b) may be enforced by the Bank as a civil debt owed to the Bank.
- (3) The Bank must prepare a statement of the principles which it will apply in determining—
  - (a) whether to impose a penalty, and
  - (b) the amount of a penalty.
- (4) The Bank must—
  - (a) publish the statement on its website,

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- (b) send a copy to the Treasury,
- (c) review the statement from time to time and revise it if necessary (and paragraphs (a) and (b) apply to a revision), and
- (d) in applying the statement to a compliance failure, apply the version in force when the failure occurred.

### **206U Closure**

- (1) This section applies if the Bank of England thinks that a compliance failure by a person recognised for the purposes of this Part as having systemic significance—
  - (a) threatens the stability of, or confidence in, the UK financial system, or
  - (b) has serious consequences for business or other interests throughout the United Kingdom.
- (2) The Bank may give the person an order (a “closure order”) to stop performing specified relevant functions in relation to specified wholesale cash distribution activities—
  - (a) for a specified period,
  - (b) until further notice, or
  - (c) permanently.
- (3) Before giving a closure order to a recognised person, the Bank must have regard to the public interest in the continued performance by the person of relevant functions (whether or not specified) in relation to wholesale cash distribution activities (whether or not specified).
- (4) A recognised person who fails to comply with a closure order commits an offence.
- (5) A person who commits an offence under this section is liable—
  - (a) on summary conviction in England and Wales, to a fine;
  - (b) on summary conviction in Scotland, to a fine not exceeding the statutory maximum;
  - (c) on summary conviction in Northern Ireland, to a fine not exceeding the statutory maximum;
  - (d) on conviction on indictment, to a fine.
- (6) In this section, “specified” means specified in the closure order.

### **206V Management disqualification**

- (1) The Bank of England may by order prohibit a specified person from holding an office or position involving responsibility for taking decisions about the management of a recognised person—
  - (a) for a specified period,
  - (b) until further notice, or
  - (c) permanently.
- (2) A person who breaches a prohibition under subsection (1) commits an offence.

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- (3) A person who commits an offence under this section is liable—
- (a) on summary conviction in England and Wales, to a fine;
  - (b) on summary conviction in Scotland, to a fine not exceeding the statutory maximum;
  - (c) on summary conviction in Northern Ireland, to a fine not exceeding the statutory maximum;
  - (d) on conviction on indictment, to a fine.
- (4) In this section, “specified” means specified in the order.

### **206W Warning**

- (1) Before imposing a sanction on a person the Bank of England must—
- (a) give the person a notice (“a warning notice”),
  - (b) give the person at least 21 days from the date of the notice to make representations,
  - (c) consider any representations made, and
  - (d) as soon as reasonably practicable, give the person a notice stating whether the Bank intends to impose the sanction.
- (2) In subsection (1), “imposing a sanction” means—
- (a) publishing details under section 206S;
  - (b) requiring the payment of a penalty under section 206T;
  - (c) giving a closure order under section 206U;
  - (d) making an order under section 206V.
- (3) Despite subsection (1), if satisfied that it is necessary, the Bank may without notice—
- (a) give a closure order under section 206U, or
  - (b) make an order under section 206V.

### **206X Appeal**

- (1) Where the Bank of England notifies a person under section 206W(1) that it intends to impose a sanction, the person may appeal to the Upper Tribunal.
- (2) Where the Bank imposes a sanction on a person without notice in reliance on section 206W(3), the person may appeal to the Upper Tribunal.
- (3) The Bank of England may not impose a sanction while an appeal under this section could be brought or is pending.

### **206Y Injunctions**

- (1) If, on the application of the Bank of England, the court is satisfied—
- (a) that there is a reasonable likelihood that there will be a compliance failure, or
  - (b) that there has been a compliance failure and there is a reasonable likelihood that it will continue or be repeated,
- the court may make an order restraining the conduct constituting the failure.

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- (2) If, on the application of the Bank of England, the court is satisfied—
- (a) that there has been a compliance failure by a recognised person, and
  - (b) that there are steps which could be taken for remedying the failure,
- the court may make an order requiring the recognised person, and any other person who appears to have been knowingly concerned in the failure, to take such steps as the court may direct to remedy it.
- (3) If, on the application of the Bank of England, the court is satisfied—
- (a) that there may have been a compliance failure by a recognised person, or
  - (b) that any other person may have been knowingly concerned in a compliance failure,
- the court may make an order restraining the person from dealing with any assets which it is satisfied the person is reasonably likely to deal with.
- (4) The jurisdiction conferred by this section is exercisable—
- (a) in England and Wales and Northern Ireland, by the High Court;
  - (b) in Scotland, by the Court of Session.
- (5) In this section—
- (a) references to an order restraining anything are, in Scotland, to be read as references to an interdict prohibiting that thing;
  - (b) references to an order requiring steps to be taken are, in Scotland, to be read as references to an order for specific performance under section 45 of the Court of Session Act 1988;
  - (c) references to remedying a failure include mitigating its effect;
  - (d) references to dealing with assets include disposing of them.

#### *Miscellaneous*

#### **206Z Fees**

- (1) The Bank of England may require a recognised person to pay fees.
- (2) A requirement under subsection (1) must relate to a scale of fees approved by the Treasury by regulations.
- (3) Regulations under subsection (2)—
  - (a) are to be made by statutory instrument, and
  - (b) are subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) A requirement under subsection (1) may be enforced by the Bank as a civil debt owed to the Bank.

#### **206Z1 Records**

- The Bank of England must maintain satisfactory arrangements for—
- (a) recording decisions made in the exercise of functions under this Part, and

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- (b) the safe-keeping of those records which it considers ought to be preserved.

### **206Z2 Annual report**

- (1) At least once a year the Bank of England must make a report to the Treasury on—
  - (a) the discharge of its functions under this Part, and
  - (b) such other matters as the Treasury may from time to time direct.
- (2) A report on the discharge of the Bank's functions under this Part must, in particular, include the Bank's opinion as to—
  - (a) the extent to which risks to the effectiveness, resilience and sustainability of wholesale cash distribution throughout the United Kingdom, or throughout any part of the United Kingdom, have been managed, and
  - (b) the extent to which, in relation to the exercise of functions in relation to persons recognised as having systemic significance, risks to the stability of the UK financial system have been managed.
- (3) This section does not require the inclusion in a report of any information the publication of which would, in the opinion of the Bank, be against the public interest.
- (4) The Treasury must lay before Parliament a copy of each report received under this section.

### **206Z3 Requirement to provide information**

- (1) The Bank of England may by notice in writing require a person to provide information—
  - (a) which the Bank thinks will help the Treasury in determining whether to make a wholesale cash oversight order, or
  - (b) which the Bank otherwise requires in connection with its functions under this Part.
- (2) The Bank of England may by notice in writing require a person who performs a relevant function in relation to wholesale cash distribution activity to provide information which the Bank requires in connection with the exercise of its functions (whether under this Part or otherwise) in pursuance of—
  - (a) the purpose mentioned in section 206C(2), or
  - (b) the Bank's Financial Stability Objective (see section 2A of the Bank of England Act 1998).
- (3) In particular, a notice under subsection (1) or (2) may require the person to notify the Bank if events of a specified kind occur.
- (4) A notice under subsection (1) or (2) may require information to be provided—
  - (a) in a specified form or manner;
  - (b) at, or by, a specified time;
  - (c) in respect of a specified period.

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- (5) It is an offence—
- (a) to fail without reasonable excuse to comply with a requirement under this section;
  - (b) knowingly or recklessly to give false information in pursuance of this section.
- (6) A person who commits an offence under this section is liable—
- (a) on summary conviction in England and Wales, to a fine;
  - (b) on summary conviction in Scotland, to a fine not exceeding the statutory maximum;
  - (c) on summary conviction in Northern Ireland, to a fine not exceeding the statutory maximum;
  - (d) on conviction on indictment, to a fine.
- (7) In this section, “specified” means specified in the notice.

#### **206Z4 Disclosure of information**

- (1) The Bank of England may disclose information obtained by virtue of section 206Z3 to—
- (a) the Treasury;
  - (b) the FCA;
  - (c) the PRA;
  - (d) the Mint.
- (2) Subsection (1)—
- (a) overrides a contractual or other requirement to keep information in confidence, and
  - (b) is without prejudice to any other power to disclose information.
- (3) The Treasury may by regulations—
- (a) permit the disclosure by the Bank of information obtained by virtue of section 206Z3 to specified persons;
  - (b) permit the publication of specified information and make provision about the manner and extent of publication.
- (4) In subsection (3), “specified” means specified in the regulations.
- (5) Regulations under subsection (3)—
- (a) are to be made by statutory instrument, and
  - (b) are subject to annulment in pursuance of a resolution of either House of Parliament.

#### **206Z5 Saving for informal oversight**

Nothing in this Part prevents the Bank of England—

- (1) from having dealings with persons who are not recognised persons for the purposes of this Part;
- (a) from having dealings with recognised persons other than through the provisions of this Part.

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*Companies wholly owned by the Crown*

**206Z6 Power to disapply regulation and enforcement provisions**

- (1) The Treasury may by regulations provide for any provision of sections 206K to 206Z4 not to apply (insofar as it would otherwise do so), or to apply with modifications, in relation to recognised persons that are companies wholly owned by the Crown.
- (2) Regulations under subsection (1) may modify legislation (including any provision of, or made under, this Act).
- (3) In subsection (2)—
  - “legislation” means primary legislation, subordinate legislation (within the meaning of the Interpretation Act 1978) and retained direct EU legislation, but does not include rules or other instruments made by any regulator;
  - “modify” includes amend, repeal or revoke.
- (4) Before making regulations under this section, the Treasury must consult the Bank of England.
- (5) Regulations under subsection (1)—
  - (a) are to be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before, and approved by a resolution of, each House of Parliament.”

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**Commencement Information**

**II** Sch. 9 para. 1 in force at 29.8.2023, see s. 86(2)(d)

**Changes to legislation:**

There are currently no known outstanding effects for the Financial Services and Markets Act 2023, Paragraph 1.