

SCHEDULE 1

Regulation 11

Application and modification of the Financial Services and Markets Act 2000 and secondary legislation

The Tribunal

1.—(1) Part 9 of the Act⁽¹⁾ (hearings and appeals), and secondary legislation made under that Part, applies in respect of references made to the Tribunal under these Regulations as it applies in respect of references and appeals made to the Tribunal under the Act in respect of a decision of the FCA, with the modifications set out in this paragraph.

(2) Section 133 (proceedings before Tribunal: general provision) applies as if—

(a) in subsection (1)—

(i) “(whether made under this or any other Act)” were omitted;

(ii) in paragraph (a) “or the PRA” were omitted;

(iii) paragraphs (b) and (c) were omitted;

(b) in subsection (2) “, (b) or (c)” were omitted;

(c) in subsection (5) the reference to section 393(11) were a reference to section 393(11) as applied by these Regulations;

(d) for subsection (7A) there were substituted—

“(7A) A reference is a “disciplinary reference” for the purposes of this section if it is in respect of a decision to publish a statement or impose a penalty under regulation 6 of the Packaged Retail and Insurance-based Investment Products Regulations 2017.”.

(3) Section 133A (proceedings before Tribunal: decision and supervisory notices, etc.) applies as if—

(a) for subsection (1) there were substituted—

“(1) In determining in accordance with section 133(5) (as applied by the Packaged Retail and Insurance-based Investment Products Regulations 2017) a reference made as a result of a decision notice given by the FCA, the Tribunal may not direct the FCA to take action which it would not, under the Packaged Retail and Insurance-based Investment Products Regulations 2017, have had power to take when giving the notice.”;

(b) in subsection (5) “or the PRA” were omitted.

(4) Section 133B(1) (offences) applies as if—

(a) in paragraph (a) “or the PRA” were omitted;

(b) paragraphs (b) and (c) were omitted.

Information gathering and investigations

2.—(1) Part 11 of the Act⁽²⁾ (information gathering and investigations) applies in respect of the FCA’s functions under the PRIIPs regulation in relation to an unauthorised person as it applies in

(1) Part 9 was amended by section 23 of the Financial Services Act 2012, section 4 of the Financial Services (Banking Reform) Act 2013, paragraph 83 of Schedule 9 to the Crime and Courts Act 2013 (c.22), S.I. 2010/22, 2013/1388, 2014/3329 and 2016/680.

(2) Part 11 was amended by paragraph 54 of Schedule 26 to the Criminal Justice Act 2003 (c.44), paragraph 33 of Schedule 7 to the Counter Terrorism Act 2008 (c.28), section 18 of and Schedule 2 to the Financial Services Act 2010 (c.28), Schedule 12 to and paragraph 8 of Schedule 18 to the Financial Services Act 2012, paragraph 11 of Schedule 3 to the Pension Schemes Act 2015 (c.8), paragraphs 36 and 37 of Schedule 2 to the Bank of England and Financial Services Act 2016 (c.14), paragraph 9 of Schedule 2 to the Investigatory Powers Act 2016 (c.25), S.I. 2001/1090, 2005/1433, 2007/126, 2011/1043, 2012/2554, 2013/1773, 2015/575, 2016/225 and 2016/680. There are other amendments but none is relevant.

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respect of its functions under the Act in relation to an authorised person, with the modifications set out in this paragraph.

(2) Part 11 applies as if—

- (a) each reference to the Act included a reference to these Regulations;
- (b) each reference to a section or Part of, or Schedule to, the Act were a reference to that section, Part or Schedule as applied by these Regulations;
- (c) each reference to an authorised person were a reference to an unauthorised person;
- (d) each reference to the PRA were omitted;
- (e) each reference to a regulator were a reference to the FCA, and each reference to either regulator were a reference to the FCA only.

(3) Section 165 (regulators’ power to require information: authorised persons etc.) applies as if subsections (4)(b), (7)(b) to (d) and (8A) were omitted.

(4) Sections 165A (PRA’s power to require information: financial stability), 165B (safeguards etc. in relation to exercise of power under section 165A) and 165C (orders under section 165A(2) (d)) do not apply.

(5) Section 166 (reports by skilled persons) applies as if subsections (10) and (11) were omitted.

(6) Section 166A (appointment of skilled person to collect and update information) does not apply.

(7) Section 167 (appointment of persons to carry out general investigations) applies as if—

(a) for subsection (1) there were substituted—

“(1) If it appears to the FCA that there is good reason for doing so, the FCA may appoint one or more competent persons to conduct an investigation on its behalf into—

- (a) the nature, conduct or state of the business of an unauthorised person;
- (b) a particular aspect of that business; or
- (c) the ownership or control of an unauthorised person.”;

(b) in subsection (5) for “regulated activities” there were substituted “the activities of manufacturing, advising on, selling or marketing of a PRIIP”;

(c) subsections (5A) and (6) were omitted.

(8) Section 168 (appointment of persons to carry out investigations in particular cases) applies as if—

(a) in subsection (1) for paragraph (b) there were substituted—

“(b) a person may be guilty of an offence under this Act as applied by the Packaged Retail and Insurance-based Investment Products Regulations 2017.”;

(b) subsection (2) were omitted;

(c) in subsection (4) after paragraph (k) there were inserted—

“(l) a person may have contravened the PRIIPs regulation.”;

(d) for subsection (6) there were substituted—

“(6) “Investigating authority” means the FCA.”.

(9) Section 169 (investigations etc. in support of overseas regulator) applies as if—

(a) subsection (2A) were omitted;

(b) for subsection (13) there were substituted—

“(13) “Overseas regulator” means an authority in a country or territory outside the United Kingdom which has functions corresponding to those of the FCA under the PRIIPs

regulation and the Packaged Retail and Insurance-based Investment Products Regulations 2017.”.

(10) Section 169A (support of overseas regulator with respect to financial stability) does not apply.

(11) Section 170 (investigations: general) applies as if—

(a) each reference to the investigating authority were a reference to the FCA;

(b) subsection (3)(b) were omitted;

(c) subsection (10) were omitted.

(12) Section 171 (powers of persons appointed under section 167) applies as if subsections (3A) and (7) were omitted.

(13) Section 173 (powers of persons appointed as a result of section 168(2)) does not apply.

(14) Section 174 (admissibility of statements made to investigators) applies as if—

(a) in subsection (2) “or in proceedings in relation to action to be taken against that person under section 123” were omitted;

(b) subsection (3A) were omitted;

(c) in subsection (4) the words from “, or a person” to the end were omitted;

(d) in subsection (5) “, 173” were omitted.

(15) Section 175 (information and documents: supplemental provisions) applies as if in subsection (8) “(3) or” were omitted.

(16) Section 176 (entry of premises under a warrant) applies as if—

(a) in subsection (1) “the Secretary of State,” were omitted;

(b) in subsection (3)(a) “or an appointed representative” were omitted;

(c) in subsection (11)—

(i) in paragraph (a) for “87C, 87J, 165, 165A, 169A” there were substituted “165”;

(ii) in paragraph (b) “, 173” were omitted.

Statements of policy

3. Sections 210 (statements of policy) and 211 (statements of policy: procedure) of the Act⁽³⁾ apply in respect of the imposition of penalties under regulation 6 and the amount of such penalties as they apply in respect of the imposition of penalties under Part 14 of the Act (disciplinary measures) and the amount of penalties under that Part, as if—

(a) references to a regulator were references to the FCA;

(b) in section 210—

(i) subsection (1A) were omitted;

(ii) in subsection (2), the “and” at the end of paragraph (b) were omitted and after paragraph (c) there were inserted—

“(d) any other matters referred to in Article 25 of Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products.”;

(3) Section 210 was amended by paragraph 20 of Schedule 2 to the Financial Services Act 2010 and paragraph 17 of Schedule 9 to the Financial Services Act 2012. Section 211 was amended by paragraph 18 of Schedule 9 to the Financial Services Act 2012.

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- (iii) in subsection (7) the reference to the power under section 206 or 206A were a reference to the power under regulation 6.

Restrictions on disclosure of information

4.—(1) Sections 348 (restrictions on disclosure of confidential information by FCA, PRA etc.), 349 (exceptions from section 348) and 352 (offences) of the Act(4) apply in respect of information received in connection with the FCA’s functions under these Regulations as they apply in respect of information received in connection with the FCA’s functions under the Act, as if—

- (a) each reference to the Act included a reference to these Regulations;
- (b) each reference to a section or Part of the Act were a reference to that section or Part as applied by these Regulations;
- (c) in section 348(2), for “In this Part” there were substituted “In sections 348, 349 and 352 as applied by the Packaged Retail and Insurance-based Investment Products Regulations 2017”;
- (d) in section 352—
 - (i) in subsection (1) “or 350(5)” were omitted;
 - (ii) subsection (4) were omitted;
 - (iii) in subsection (5) “or (4)” were omitted;
 - (iv) in subsection (6)(a) “or that it had been disclosed in accordance with section 350” were omitted.

Injunctions and restitution

5.—(1) Part 25 of the Act(5) (injunctions and restitution) applies in respect of a requirement imposed under these Regulations as it applies in respect of a relevant requirement, with the modifications set out in this paragraph.

- (2) Part 25 applies as if—
 - (a) each reference to the Act included a reference to these Regulations;
 - (b) each reference to a section of the Act were a reference to that section as applied by these Regulations;
 - (c) each reference to a regulator, the regulator concerned or the appropriate regulator were a reference to the FCA;
 - (d) references to the Secretary of State were omitted;
 - (e) each reference to a relevant requirement were a reference to a requirement which is imposed by or under these Regulations, or the Act as applied by these Regulations;
 - (f) each reference to an authorised person included a reference to an unauthorised person.
- (3) Section 380 (injunctions) applies as if subsections (6) to (12) were omitted.
- (4) Section 381 (injunctions in cases of market abuse) does not apply.

(4) Section 348 was amended by paragraph 26 of Schedule 2 to the Financial Services Act 2010 (c.28), paragraph 18 of Schedule 12 to the Financial Services Act 2012, paragraph 5 of Schedule 8 to the Financial Services (Banking Reform) Act 2013, paragraph 45 of Schedule 2 to the Bank of England and Financial Services Act 2016 and S.I. 2016/1239. Section 349 was amended by section 964 of the Companies Act 2006 (c.46), paragraph 19 of Schedule 12 to the Financial Services Act 2012, S.I. 2006/1183, 2007/1093 and 2011/1043. Section 352 was amended by paragraph 54 of Schedule 26 to the Criminal Justice Act 2003 (c.44).

(5) Part 25 was amended by paragraphs 19 to 25 of Schedule 9 to the Financial Services Act 2012, paragraph 3 of Schedule 10 to the Financial Services (Banking Reform) Act 2013 and S.I. 2007/126, 2013/1773, 2015/1755, 2016/225 and 680. There are other amendments but none is relevant.

- (5) Section 382 (restitution orders) applies as if subsections (9) to (15) were omitted.
- (6) Section 383 (restitution orders in cases of market abuse) does not apply.
- (7) Section 384 (power of FCA or PRA to require restitution) applies as if—
 - (a) subsections (2) and (3) and references to those subsections were omitted;
 - (b) subsections (7) to (13) were omitted.

Notices

6.—(1) Part 26 of the Act(**6**) (notices) applies in respect of notices given by the FCA under these Regulations and under the Act as applied by these Regulations as it applies in respect of notices given by the FCA under the Act, with the modifications set out in this paragraph.

(2) In paragraph (1), “notices given by the FCA under these Regulations” does not include notices given under regulation 9(7)(a) or (c).

- (3) Part 26 applies as if—
 - (a) each reference to the Act included a reference to these Regulations;
 - (b) each reference to a section of the Act were a reference to that section as applied by these Regulations;
 - (c) each reference to a regulator or to the regulator concerned were a reference to the FCA;
 - (d) references to the PRA were omitted.
- (4) Section 387 (warning notices) applies as if subsections (1A) and (3A) were omitted.
- (5) Section 388 (decision notices) applies as if subsections (1A) and (2) were omitted.
- (6) Section 391 (publication) (as amended by these Regulations) applies as if—
 - (a) references to a consumer were references to a retail investor;
 - (b) references to a supervisory notice were references to a notice under regulation 9(3), (6) or (7)(b);
 - (c) for subsection (1ZB) there were substituted—

“(1ZB) A warning notice falls within this section if it is given under regulation 10 of the Packaged Retail and Insurance-based Investment Products Regulations 2017.”;
 - (d) subsections (4A), (5A), (6A), (8A), (8B) and (8C), (10) and (11) were omitted;
- (7) Sections 391A (publication: special provisions relating to the capital requirements directive), 391B (publication: special provisions relating to the transparency obligations directive), 391C (publication: special provisions relating to the UCITS directive) and 391D (publication: special provisions relating to the markets in financial instruments directive) do not apply.
- (8) For section 392 (application of sections 393 and 394) there were substituted—

“Application of sections 393 and 394

392. Sections 393 and 394 apply to warning notices and decision notices given in accordance with regulation 10 of the Packaged Retail and Insurance-based Investment

(6) Part 26 was amended by paragraph 11 of Schedule 4 to the Regulation of Investigatory Powers Act 2000 (c.23), sections 13 and 24 of, and paragraphs 28 and 29 of Schedule 2 to, the Financial Services Act 2010, sections 17, 18, 19 and 24 of, and paragraph 37 of Schedule 8, Schedule 9 and paragraph 8 of Schedule 13 to, the Financial Services Act 2012, section 4 of, and Schedule 3 to, the Financial Services (Banking Reform) Act 2013, paragraph 43 of Schedule 10 to the Investigatory Powers Act 2016, S.I. 2005/381, 2005/1433, 2007/126, 2007/1973, 2009/534, 2010/22, 2010/747, 2012/916, 2013/1388, 2013/3115, 2014/2879, 2015/1755, 2016/225, 2016/680, 2016/715, 2016/1239 and 2017/701. There are other amendments but none is relevant.

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Products Regulations 2017 and sections 385 and 386 of the Act as applied by those Regulations.”.

(9) Section 395 (the FCA’s and the PRA’s procedures) applies as if references to a supervisory notice were references to a notice under regulation 9(3), (6) or (7)(b).

Offences

7.—(1) Section 398 of the Act(7) (misleading FCA or PRA: residual cases) applies in respect of requirements imposed by or under these Regulations as it applies in respect of requirements imposed by or under the Act as if the reference in subsection (1) to a regulator were a reference to the FCA.

(2) Sections 400 (offences by bodies corporate etc.) and 403 (jurisdiction and procedure in respect of offences) of the Act(8) apply in respect of offences under the Act as applied by these Regulations as they apply in respect of offences under the Act.

(3) Section 401 of the Act(9) (proceedings for offences) applies in respect of offences under the Act as applied by these Regulations as it applies in respect of offences under the Act, as if—

- (a) references to the appropriate regulator were references to the FCA;
- (b) references to the Secretary of State were omitted;
- (c) subsections (3A), (3AB) and (3B) were omitted.

Limitation on powers to require documents

8. Section 413 of the Act (protected items) applies for the purposes of these Regulations as it applies for the purposes of the Act.

Penalties and fees

9.—(1) Paragraphs 19 to 23 of Schedule 1ZA to the Act(10) (penalties and fees) apply with respect to the discharge by the FCA of its functions under these Regulations as they apply with respect to the discharge by it of its functions under the Act, with the following modifications.

- (2) Those paragraphs apply as if—
 - (a) each reference to penalties imposed under the Act included a reference to penalties imposed under these Regulations;
 - (b) each reference to a section or Part of the Act included a reference to that section or Part as applied by these Regulations;
 - (c) each reference to the functions of the FCA included a reference to its functions under these Regulations.
- (3) Paragraph 20 applies as if references to the FCA’s enforcement powers included—
 - (a) its powers under these Regulations and under Part 25 of the Act as applied by these Regulations;
 - (b) its powers in relation to the investigation of offences under the Act as applied by these Regulations;

(7) Section 398 was amended by paragraph 36 of Schedule 9 to the Financial Services Act 2012 and [S.I. 2013/1773](#), [2015/1882](#), [2016/680](#) and [2017/701](#).

(8) Section 400 was amended by paragraph 37 of Schedule 9 to the Financial Services Act 2012. Section 403 was amended by paragraph 40 of that Schedule.

(9) Section 401 was amended by paragraph 38 of Schedule 9 to the Financial Services Act 2012 and [S.I. 2013/1881](#) and [2016/1239](#).

(10) Schedule 1ZA was inserted by Schedule 3 to the Financial Services Act 2012 and is amended by section 109 of, paragraph 7 of Schedule 8 to and paragraph 4 of Schedule 10 to the Financial Services (Banking Reform) Act 2013, section 29 of the Bank of England and Financial Services Act 2016 and [S.I. 2013/1773](#). There are other amendments but none is relevant.

- (c) its powers in England and Wales or Northern Ireland in relation to the prosecution of offences under the Act as applied by these Regulations.
- (4) Paragraph 21 applies as if regulated persons included unauthorised persons.
- (5) Paragraph 23 applies as if references to qualifying functions included references to the functions of the FCA under these Regulations and under the Act as applied by these Regulations.

Exemption from liability in damages

10. The functions of the FCA under these Regulations are to be treated for the purposes of paragraph 25 of Schedule 1ZA to the Act⁽¹¹⁾ (exemption from liability in damages) as functions conferred on the FCA under the Act.

The Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001

11.—(1) The Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001⁽¹²⁾ (“Notice Regulations”) apply in respect of a notice or document given by the FCA under these Regulations or the Act as applied by these Regulations as they apply in respect of a notice or document given by the FCA under the Act, as if—

- (a) that notice or document were “a relevant document” under the Notice Regulations;
- (b) each reference to the Act included a reference to these Regulations and to the Act as applied by these Regulations;
- (c) each reference to a section of the Act were a reference to that section as applied by these Regulations.
- (d) each reference to an investigating authority were a reference to the FCA.

The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001

12. The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 (as amended by these Regulations) apply in respect of information received in connection with the FCA’s functions under these Regulations as they apply in respect of information received in connection with the FCA’s functions under the Act.

⁽¹¹⁾ Paragraph 25 of Schedule 1ZA was amended by section 109 of the Financial Services (Banking Reform) Act 2013.

⁽¹²⁾ S.I. 2001/1420.