

SCHEDULE 6

Application and modification of legislation

PART 1

Application and modification of the 2000 Act

Disciplinary powers

1. Sections 66 (disciplinary powers) to 70 (statements of policy: procedure) of the 2000 Act⁽¹⁾ apply but as if for section 66A (misconduct: action by the FCA) there were substituted—

“**66A.**—(1) For the purposes of action by the FCA, a person is guilty of misconduct if, while a relevant person, the person has been knowingly concerned in a contravention of the Payment Services Regulations 2017 by a payment service provider.

(2) “Relevant person” means any person responsible for the management of the payment service provider or, where relevant, any person responsible for the management of the payment service provider’s payment services activities.”.

The Upper Tribunal

2. Part 9 of the 2000 Act (hearings and appeals)⁽²⁾ applies in respect of references to the Upper Tribunal made under these Regulations as it applies in respect of references made to the Upper Tribunal under that Act, with the following modifications—

(a) section 133 (proceedings before Tribunal: general provision) is to be read as if 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 any of the following decisions under the Payment Services Regulations 2017—

(a) a decision to publish a statement under regulation 110;

(b) a decision to impose a penalty under regulation 111.”;

(b) subsection (1) of section 133A (proceedings before Tribunal: decision and supervisory notices, etc.) is to be read as if “, as a result of section 388(2)” were omitted; and

(c) section 133A is to be read as if subsection (5) were omitted.

FCA rules

3.—(1) Section 137A of the 2000 Act (the FCA’s general rules)⁽³⁾ applies as if—

(a) references to authorised persons were references to authorised payment institutions, small payment institutions, registered account information service providers, EEA authorised

(1) 2000 c. 8. Section 66 was amended by section 12 of, and paragraph 8 of Schedule 2 to, the Financial Services Act 2010 (c. 28), paragraph 14 of Schedule 5 to the Financial Services Act 2012 (c. 21), sections 28 and 32 of, and paragraph 5 of Schedule 3 to, the Financial Services (Banking Reform) Act 2013 (c. 33). Sections 66A and 66B were inserted by section 32 of the Financial Services (Banking Reform) Act 2013 and amended by section 25 of, and paragraphs 16 and 17 of Schedule 4 to, the Bank of England and Financial Services Act 2016 (c. 14), and by S.I. 1015/1864 and 2016/225 and 627. Sections 67 to 70 were amended by paragraphs 9 and 10 of Schedule 2 to the Financial Services Act 2010, paragraphs 15 to 18 of Schedule 5 to the Financial Services Act 2012, paragraphs 6 and 7 of Schedule 3 to the Financial Services (Banking Reform) Act 2013.

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

(3) Part 9A was substituted by section 24 of the Financial Services Act 2012.

payment institutions, EEA registered account information service providers and electronic money institutions;

(b) in subsection (1)—

- (i) the reference in paragraph (a) to the carrying on of regulated activities were to the provision of payment services, and
- (ii) the reference in paragraph (b) to the carrying on of activities which are not regulated activities were to the carrying on of activities in connection with the provision of payment services;

(c) in subsection (5)—

- (i) references to an EEA firm were to an EEA authorised payment institution or EEA registered account information service provider;
- (ii) in paragraph (a), reference to permission conferred by Part 2 of Schedule 3 to FSMA were to permission conferred by regulation 29(2) of these Regulations;
- (iii) in paragraph (b), reference to any of the single market directives or the emission allowance auctioning regulation were to the payment services directive;

(d) after subsection (5) there were inserted—

“(6) The FCA may make a rule pursuant to paragraph (1) only if the FCA is also making, or has made, a rule under this section or section 137R (financial promotion rules)(4) concerning the same matter which applies to authorised persons in connection with the provision of payment services.”.

(2) Sections 137T (general supplementary powers) and 141A (power to make consequential amendments of references to rules) and Chapter 2 of Part 9A (rules: modification, waiver, contravention and procedural provisions) of the 2000 Act(5) apply in relation to rules made pursuant to sub-paragraph (1) as they do in relation to other rules made by the FCA under section 137A of the 2000 Act, subject to sub-paragraph (3).

(3) Section 138D (actions for damages) applies as if in that section subsection (6) were omitted and “private person” had the meaning given in regulation 148(3) of these Regulations (actions for breach of requirements).

Information gathering and investigations

4. Part 11 of the 2000 Act (information gathering and investigations)(6) applies with the following modifications—

(a) section 165 (regulators’ power to require information) is to be read as if—

- (i) references to an authorised person were references to a payment service provider;
- (ii) in subsection (4), for “this Act” there were substituted “the Payment Services Regulations 2017”; and
- (iii) in subsection (7), paragraphs (b) to (e) were omitted;

(4) Section 137R was amended by [S.I. 2015/910](#).

(5) Chapter 2 was amended by paragraphs 8 and 9 of Schedule 3 to the Financial Services (Banking Reform) Act 2013, paragraph 69 of Schedule 4 to the Co-operative and Community Benefit Societies Act 2014 ([c. 14](#)), paragraphs 7 and 8 of Schedule 3 to the Pension Schemes Act 2015 ([c. 8](#)), sections 29, 33 and 35 of, and paragraph 35 of Schedule 2 to, the Bank of England and Financial Services Act 2016, [S.I. 2013/1388](#).

(6) 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, section 18 of, and paragraphs 15 to 17 of Schedule 2 to, the Financial Services Act 2010, paragraphs 1 to 14 of Schedule 12 and paragraph 8 of Schedule 18 to the Financial Services Act 2012, paragraph 11 of Schedule 3 to the Pension Schemes Act 2015, paragraphs 36 and 37 of Schedule 2 to the Bank of England and Financial Services Act 2016 and paragraph 9 of Schedule 2 to the Investigatory Powers Act 2016 ([c.25](#)), and by [S.I. 2001/1090](#), [2005/1433](#), [2007/126](#), [2011/1043](#), [2012/2554](#), [2013/1773](#), [2015/575](#) and [2016/225](#) and [680](#)

- (b) section 166 (reports by skilled persons) is to be read as if—
 - (i) references to an authorised person were references to a payment service provider;
and
 - (ii) subsections (10) and (11) were omitted;
- (c) section 166A (appointment of skilled person to collect and update information) is to be read as if references to an authorised person were to a payment service provider;
- (d) section 167 (appointment of persons to carry out general investigations) is to be read as if—
 - (i) references to a recognised investment exchange, an authorised person or an appointed representative were references to a payment service provider;
 - (ii) in subsection (4), references to a former authorised person or appointed representative were to a former payment service provider;
 - (iii) in subsection (5) for “regulated activities” there were substituted “payment services”; and
 - (iv) for subsection (5A) there were substituted—
“(5A) “Investigating authority” means the FCA.”;
 - (v) subsection (6) were omitted;
- (e) section 168 (appointment of persons to carry out investigations in particular cases) is to be read as if—
 - (i) in subsection (1)—
 - (aa) after paragraph (b) there were inserted—
 - “(c) a person may have contravened any requirement of or imposed under the Payment Services Regulations 2017;
 - (d) an EEA authorised payment institution exercising passport rights in the United Kingdom may have contravened, or may be likely to contravene, a prohibition or restriction within the meaning of paragraph 3 (interpretation) of Schedule 5 to the Payment Services Regulations 2017 (credit agreements);
 - (e) paragraph 1(4) of that Schedule 5 (power to prohibit the entry into credit agreements) may have been contravened, or may be likely to be contravened, as respects an EEA authorised payment institution exercising passport rights in the United Kingdom.”;
 - (bb) in paragraph (b) for “191F” to the end there were substituted “or under regulation 138, 139, 141 or 142 of the Payment Services Regulations 2017”;
 - (ii) for subsection (2) there were substituted—
“(2) Subsection (3) also applies if it appears to an investigating authority that there are circumstances suggesting that a person may be guilty of an offence under, or has contravened a requirement of, the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017(7).”;
 - (iii) subsections (4) and (5) were omitted; and
 - (iv) for subsection (6) there were substituted—
“(6) “Investigating Authority” means the FCA.”;
- (f) section 169 (investigations etc in support of overseas regulator) is to be read as if—

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- (i) in subsection (8) for “Part XXIII” there were substituted “sections 348, 349 and 352, as applied with modifications by the Payment Services Regulations 2017”; and
- (ii) in subsection (13) for “has the same meaning as in section 195” there were substituted “means a competent authority in another EEA State designated in accordance with Article 22 of the payment services directive”;
- (g) section 170 (investigations: general) is to be read as if—
 - (i) in subsection (1) “or (5)” were omitted;
 - (ii) in subsection (3)(a) “or (4)” were omitted; and
 - (iii) for subsection (10) there were substituted—
 - “(10) “Investigating authority” in relation to an investigator means the FCA.”;
- (h) section 171 (powers of persons appointed under section 167) is to be read as if subsections (3A) and (7) were omitted;
- (i) section 172(4) (additional power of persons appointed as a result of section 168(1) or (4)) is to be read as if “or (4)” were omitted;
- (j) section 174 (admissibility of statements made to investigators) is to be read as if—
 - (i) in subsection (2) “or in proceedings in relation to action to be taken against that person under section 123 to which this section applies” were omitted;
 - (ii) in subsection (3)(a) for “398” there were substituted “regulation 142 of the Payment Services Regulations 2017”;
 - (iii) subsection (3A) were omitted; and
 - (iv) in subsection (4) “or (5)” were omitted;
- (k) section 175(8) (information and documents: supplemental provisions) is to be read as if “or (5)” were omitted;
- (l) section 176 (entry of premises under warrant) is to be read as if—
 - (i) in subsection (3)(a) for “an authorised person or an appointed representative” there were substituted “a payment service provider”;
 - (ii) in subsection (10) “or (5)” were omitted;
 - (iii) for subsection (11)(a) there were substituted—
 - “(a) by the FCA under section 165 or 175; or”;
- (m) 177(5)(a) (offences) is to be read as if for “six months” there were substituted “three months”.

Control over payment institutions

5. Part 12 of the 2000 Act (control over authorised persons)(8) applies with the following modifications—

- (a) references to a UK authorised person are to be read as references to an authorised payment institution or small payment institution other than one included in the register pursuant to regulation 153(1) (transitional provisions);
- (b) section 178 (obligation to notify the appropriate regulator) is to be read as if for subsection (2A) there were substituted—
 - “(2A) In this Part, “the appropriate regulator” means the FCA.”;

(8) Part 12 was amended by section 26 of the Financial Services Act 2012 and paragraphs 38 to 40 of Schedule 2 to the Bank of England and Financial Services Act 2016, and by [S.I. 2009/534](#), [2011/1043](#) and [1613](#), [2013/3115](#), [2014/3329](#), [2015/534](#), [575](#) and [1755](#) and [2016/1239](#).

- (c) section 187(2)(b) (approval with conditions) is to be read as if “section 187A(3)(b) or” were omitted;
- (d) section 187A (assessment: consultation by PRA with FCA) is to be disregarded;
- (e) section 187C (variation etc of conditions) is to be read as if subsection (1) were omitted;
- (f) section 188(1), (2) and (3) (assessment: consultation with EC competent authorities) are to be read as if after “home state regulator” there were inserted “or home state competent authority”;
- (g) section 191A (objection by the appropriate regulator) is to be read as if subsection (4A) were omitted;
- (h) section 191B (restriction notices) is to be read as if—
 - (i) subsection (2A) were omitted;
 - (ii) after subsection (2B) there were inserted—

“(2C) In a restriction notice, the FCA must direct that voting power to which the notice relates is, until further notice, not to be exercisable.”;
 - (iii) for subsection (3)(b) there were substituted—

“(b) voting power that has been exercised as a result of the acquisition is void.”;
- (i) section 191C (orders for sale of shares) is to be read as if subsection (2A) were omitted;
- (j) section 191D (obligation to notify the appropriate regulator: dispositions of control) is to be read as if subsection (1A) were omitted;
- (k) section 191F (offences) is to be read as if in subsections (8)(a) and (9)(a), for “to a fine not exceeding the statutory maximum” there were substituted in each case “to a fine, which in Scotland or Northern Ireland may not exceed the statutory maximum”;
- (l) section 191G (interpretation) is to be read as if, in subsection (1), the definition of “UK authorised person” were omitted; and
- (m) section 192 (power to change definitions of control etc) is to be disregarded.

Incoming firms: interventions by the FCA

6.—(1) Part 13 of the 2000 Act (incoming firms: intervention by FCA or PRA)⁽⁹⁾ applies with the following modifications.

(2) References to—

- (a) “the regulator” or “the appropriate regulator” are to be read as references to the FCA;
- (b) requirements imposed by or under the 2000 Act are to be read as references to requirements imposed by or under these Regulations.

(3) Section 193 (interpretation) is to be read as if—

- (a) in subsection (1), for the definition of “incoming firm” there were substituted—

““incoming firm” means an EEA authorised payment institution or EEA registered account information service provider which is exercising, or has exercised, its right to provide payment services in the United Kingdom in accordance with the Payment Services Regulations 2017.”;
- (b) subsection (1A) were omitted; and

⁽⁹⁾ Part 13 was amended by section 3 of the Financial Services Act 2010 and paragraphs 30 to 43 of Schedule 4 to the Financial Services Act 2012, and by [S.I. 2007/126](#), [2194](#) and [3253](#), [2011/1043](#) and [1613](#), [2012/916](#) and [2015](#), [2013/1773](#), [1797](#), [1881](#) and [3115](#), [2015/575](#), [910](#) and [1882](#).

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- (c) for subsection (2) there were substituted—
 - “(2) Expressions used in this Part and in the Payment Services Regulations 2017 have the same meaning in this Part as they have in those Regulations.”.
- (4) Section 194 (general grounds on which power of intervention is exercisable) is to be read as if subsections (1)(c)(ii) and (1AA) to (5) were omitted.
- (5) Sections 194A to 194C, 195A, 195B, 198 to 199A and 201 are to be disregarded.
- (6) Section 195 (exercise of power in support of overseas regulator) is to be read as if—
 - (a) subsection (2A) were omitted; and
 - (b) in subsection (5)(b), the reference to an EEA firm’s EEA authorisation were a reference to an EEA authorised payment institution’s authorisation under the payment services directive.
- (7) Section 196 (the power of intervention) is to be read as if—
 - (a) in subsection (1), for paragraphs (a) and (b) there were substituted—
 - “(a) the firm were an authorised payment institution; and
 - (b) the FCA were entitled to exercise its power under regulation 12 of the Payment Services Regulations 2017 (variation of authorisation on FCA’s own initiative) by imposing a requirement such as may, under regulation 7 of those Regulations (imposition of requirements), be included in an authorisation under those Regulations.”; and
 - (b) subsection (3) were omitted.
- (8) Section 202 (contravention of requirement) is to be read as if for subsection (2) there were substituted—
 - “(2) Regulation 148 of the Payment Services Regulations 2017 (actions for breach of requirements) applies to the contravention as if it were a contravention of Part 6 or 7 of those Regulations.”.

Auditors and actuaries

7. Sections 341 (access to books etc) to 346 (provision of false or misleading information to auditor or actuary) of the 2000 Act⁽¹⁰⁾ apply with the following modifications—
- (a) references to a regulator are to be read as references to the FCA and references to the PRA are to be disregarded;
 - (b) references to an authorised person are to be read as an authorised payment institution or a person required by regulation 39 to provide an audit opinion to the FCA;
 - (c) section 344 (duty of auditor or actuary resigning etc. to give notice) is to be read as if for subsection (4) there were substituted—
 - “(4) In this section “the appropriate regulator” means the FCA.”.

Restriction on disclosure of information

- 8.—(1) Sections 348 (restrictions on disclosure of confidential information by FCA, PRA etc)⁽¹¹⁾, 349 (exceptions from section 348)⁽¹²⁾ and 352 (offences)⁽¹³⁾ of the 2000 Act apply with the following modifications—

(10) Sections 341 to 346 were amended by paragraphs 4 to 7 of Schedule 13 to the Financial Services Act 2012 and paragraph 44 of Schedule 2 to the Bank of England and Financial Services Act 2016, and by [S.I. 2013/3115](#).

(11) Section 348 was amended by paragraph 26 of Schedule 2 to the Financial Services Act 2010, paragraph 18 of Schedule 12 to the Financial Services Act 2012, paragraph 5 of Schedule 8 to the Financial Services (Banking Reform) Act 2013 and paragraph 45 of Schedule 2 to the Bank of England and Financial Services Act 2016, and by [S.I. 2016/1239](#).

- (a) section 348 is to be read as if—
 - (i) in subsection (2)(b) for the words from “, the PRA” to the end there were substituted “under the Payment Services Regulations 2017”;
 - (ii) in subsection (3)(a) for “this Act” there were substituted “the Payments Services Regulations 2017”;
 - (iii) in subsection (5)—
 - (aa) for “this Part”, there were substituted “the Payment Services Regulations 2017”;
 - (bb) paragraphs (aa), (c) and (zd) were omitted;
 - (cc) in paragraph (e) for “paragraphs (a) to (c)” there were substituted “paragraph (a)”;
 - (iv) for subsection (6) there were substituted—

“(6) In subsection (5)(f), “expert” includes any body or person appointed under regulation 108 of the Payment Services Regulations 2017 to perform a function on behalf of the FCA.”;
 - (v) subsection (8) were omitted.
- (b) section 349 is to be read as if subsections (3A) and (3B) were omitted.

Insolvency

9. Sections 359 (administration order)(**14**), 367 (winding-up petitions) and 368 (winding-up petitions: EEA and Treaty firms)(**15**) of the 2000 Act apply with the following modifications—

- (a) references to an authorised person are to be read as references to an authorised payment institution or an EEA authorised payment institution;
- (b) section 359 is to be read as if—
 - (i) subsections (1)(b), (1A), (3)(b) and (c) and (5) were omitted;
 - (ii) for subsection (1)(c) there were substituted—

“(c) is providing or has provided payment services in contravention of regulation 138(1) of the Payment Services Regulations 2017.”;
 - (iii) in subsection (3)(a) there were omitted “or partnership” and for “an agreement” there were substituted “a contract for payment services”; and
 - (iv) in subsection (4) the definitions of “agreement”, “authorised deposit taker”, “authorised reclaim fund” and “relevant deposit” were omitted;
- (c) section 367 is to be read as if—
 - (i) subsections (1)(b), (1A), (2), (5), (6) and (7) were omitted;
 - (ii) for subsection (1)(c) there were substituted—

“(c) is providing or has provided payment services in contravention of regulation 138(1) of the Payment Services Regulations 2017.”; and

(12) Section 349 was amended by section 964 of the Companies Act 2006 (c. 46) and paragraph 19 of Schedule 12 to the Financial Services Act 2012, and by S.I. 2006/1183, 2007/1093 and 2011/1043.

(13) Section 352 was amended by paragraph 54 of Schedule 26 to the Criminal Justice Act 2003.

(14) Section 359 was substituted by paragraph 55 of Schedule 17 to the Enterprise Act 2002 (c. 40) and amended by paragraph 6 of Schedule 2 to the Dormant Bank and Building Society Accounts Act 2008 (c. 31) and paragraph 6 of Schedule 14 to the Financial Services Act 2012, and by S.I. 2005/1455.

(15) Sections 367 and 368 were amended by paragraphs 14 and 15 of Schedule 14 to the Financial Services Act 2012, and by S.I. 2005/575

- (iii) in subsection (4) for “an agreement” there were substituted “a contract for payment services”; and
- (d) section 368 is to be read as if—
 - (i) in subsection (1) for the words from “winding up” to the end substitute “winding up of an EEA authorised payment institution unless it has been asked to do so by the home state competent authority.”; and
 - (ii) subsection (2) were omitted.

Warning notices and decision notices

10. Part 26 of the 2000 Act (notices)(**16**) applies with the following modifications—

- (a) section 388 (decision notices) is to be read as if subsection (2) were omitted;
- (b) section 390 (final notices) is to be read as if the reference in subsection (6) to section 384(5) were a reference to regulation 114(2) of these Regulations;
- (c) subsection 391 (publication) is to be read as if—
 - (i) for subsection (1ZB) there were substituted—

“(1ZB) A warning notice falls within this subsection if it is given under regulation 112 of the Payment Services Regulations 2017.”;
 - (ii) in subsection (10), for “has the same meaning as in section 395” there were substituted “means a notice given under regulation 12(6), (9) or (10)(b) (including as applied by regulation 15 or 19) of, or paragraph 4 of Schedule 5 to, the Payment Services Regulations 2017)”;
- (d) section 392 (application of sections 393 and 394) is to be read as if for paragraphs (a) and (b) there were substituted—
 - “(a) a warning notice given in accordance with regulations 10(2) (including as applied by regulation 15 or 19), 28(1) (in relation to the cancellation of a registration), 35(2), 112(1) or 115(1) of the Payment Services Regulations 2017;
 - (b) a decision notice given in accordance with regulations 10(3)(a) (including as applied by regulation 15 or 19), 28(2)(a)(i) (in relation to the cancellation of a registration), 35(3)(a), 112(3) or 115(3) of the Payment Services Regulations 2017.”; and
- (e) section 395 (the FCA’s and PRA’s procedures) is to be read as if in subsection (13) for “in accordance with” to the end there were substituted “under regulation 12(6), (9) or (10) (b) (including as applied by regulation 15 or 19) of, or paragraph 4 of Schedule 5 to, the Payment Services Regulations 2017”.

Limitation on power to require documents

11. Section 413 of the 2000 Act (protected items) applies for the purposes of these Regulations as it applies for the purposes of that Act.

(16) Part 26 was amended by paragraph 11 of Schedule 4 to the Regulation of Investigatory Powers Act 2000 (c. 23), section 13 of, and paragraphs 28 and 29 of Schedule 2 to, the Financial Services Act 2010, sections 17 to 19 and 24 of, and paragraph 37 of Schedule 8, paragraphs 26 to 35 of Schedule 9 and paragraph 8 of Schedule 13 to, the Financial Services Act 2012, section 4 of, and paragraphs 12 to 14 of Schedule 3 to, the Financial Services (Banking Reform) Act 2013, and paragraph 43 of Schedule 10 to the Investigatory Powers Act 2016 (c. 25), and by S.I. 2006/381 and 1433, 2007/126 and 1973, 2009/534, 2010/22, 2012/916, 2013/1388 and 3115, 2014/2879, 2015/1755 and 2016/225, 680, 715 and 1239.