



# Financial Services (Banking Reform) Act 2013

## 2013 CHAPTER 33

### PART 7

#### MISCELLANEOUS

#### *Competition*

#### **129 Functions of FCA under competition legislation**

Schedule 8 (which contains provision conferring on the FCA functions under competition legislation) has effect.

#### **130 Competition as a secondary objective of the PRA**

(1) For section 2H of FSMA 2000 substitute—

**“2H Secondary competition objective and duty to have regard to regulatory principles**

(1) When discharging its general functions in a way that advances its objectives (see section 2F), the PRA must so far as is reasonably possible act in a way which, as a secondary objective, facilitates effective competition in the markets for services provided by PRA-authorized persons in carrying on regulated activities.

(2) In discharging its general functions, the PRA must also have regard to the regulatory principles in section 3B.”

(2) In section 3B (regulatory principles to be applied by both regulators), in subsection (1), for “2H(1)(a)” substitute “2H(2)”.

(3) In Schedule 1ZB to FSMA 2000 (the Prudential Regulation Authority)—

- (a) in paragraph 19 (annual report), in sub-paragraph (1)—
  - (i) after paragraph (b) insert—
    - “(ba) how it has complied with section 2H(1),” and
  - (ii) in paragraph (c), omit the words from “and of” onwards, and
- (b) in paragraph 20 (consultation about annual report), in sub-paragraph (1) (c), for the words from “and the PRA” onwards substitute “and the PRA has facilitated effective competition in accordance with section 2H and has considered the regulatory principles in section 3B”.

### *Consumers*

#### **131 Duty of FCA to make rules restricting charges for high-cost short-term credit**

- (1) In section 137C of FSMA 2000 (FCA general rules: cost of credit and duration of credit agreements), after subsection (1) insert—
  - “(1A) The FCA must make rules by virtue of subsection (1)(a)(ii) and (b) in relation to one or more specified descriptions of regulated credit agreement appearing to the FCA to involve the provision of high-cost short-term credit, with a view to securing an appropriate degree of protection for borrowers against excessive charges.
  - (1B) Before the FCA publishes a draft of any rules to be made by virtue of subsection (1)(a)(ii) or (b), it must consult the Treasury.”
- (2) In Schedule 1ZA to FSMA 2000, in paragraph 11 (FCA’s annual report), in sub-paragraph (1), after paragraph (h) insert—
  - “(ha) any rules that it has made as a result of section 137C during the period to which the report relates and the kinds of regulated credit agreement (within the meaning of that section) to which the rules apply,”.
- (3) The FCA must ensure any rules that it is required to make as a result of the amendment made by subsection (1) are made not later than 2 January 2015 and apply (at least) to agreements entered into on or after that date.

#### **132 Role of FCA Consumer Panel in relation to PRA**

In section 1Q of FSMA 2000 (the Consumer Panel), after subsection (5) insert—

- “(5A) If it appears to the Consumer Panel that any matter being considered by it is relevant to the extent to which the general policies and practices of the PRA are consistent with the PRA’s general duties under sections 2B to 2H, it may communicate to the PRA any views relating to that matter.
- (5B) The PRA may arrange to meet any of the FCA’s expenditure on the Consumer Panel which is attributable to the Panel’s functions under subsection (5A).”

### *Parent undertakings*

#### **133 Power of FCA and PRA to make rules applying to parent undertakings**

- (1) After section 192J of FSMA 2000 insert—

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*“Rules applying to parent undertakings of ring-fenced bodies*

**192JA Rules applying to parent undertakings of ring-fenced bodies**

- (1) The appropriate regulator may make such rules applying to bodies corporate falling within subsection (2) as appear to the regulator to be necessary or expedient for the group ring-fencing purposes.
- (2) A body corporate falls within this subsection if—
  - (a) it is incorporated in the United Kingdom or has a place of business in the United Kingdom,
  - (b) it is a parent undertaking of a ring-fenced body, and
  - (c) it is not itself an authorised person.
- (3) The “group ring-fencing purposes” are the purposes set out in section 142H(4).
- (4) “The appropriate regulator” means—
  - (a) in relation to the parent undertaking of a ring-fenced body that is a PRA-authorised person, the PRA;
  - (b) in any other case, the FCA.

*Rules requiring parent undertakings to facilitate resolution*

**192JB Rules requiring parent undertakings to facilitate resolution**

- (1) The appropriate regulator may make rules requiring a qualifying parent undertaking to make arrangements that would in the opinion of the regulator allow or facilitate the exercise of the resolution powers in relation to the qualifying parent undertaking or any of its subsidiary undertakings in the event of a situation arising where all or part of the business of the parent undertaking or the subsidiary undertaking encounters or is likely to encounter financial difficulties.
- (2) The “resolution powers” are—
  - (a) the powers conferred on the Treasury and the Bank of England by or under Parts 1 to 3 of the Banking Act 2009, and
  - (b) any similar powers exercisable by an authority outside the United Kingdom.
- (3) The arrangements that may be required include arrangements relating to—
  - (a) the issue of debt instruments by the parent undertaking;
  - (b) the provision to a subsidiary undertaking (“S”) or a transferee by the parent undertaking, or by any other subsidiary undertaking of the parent undertaking, of such services and facilities as would be required to enable S or the transferee to operate the business, or part of the business, effectively.
- (4) In subsection (3)(b) “transferee” means a person to whom all or part of the business of the parent undertaking or the subsidiary undertaking could be transferred as a result of the exercise of the resolution powers.

- (5) “Debt instrument” has the same meaning as in section 142Y.
- (6) “The appropriate regulator” means—
- (a) where the subsidiary undertakings of the qualifying parent undertaking include a ring-fenced body that is a PRA-authorized person, the PRA;
  - (b) where the subsidiary undertakings of the qualifying parent undertaking include one or more PRA-authorized persons but do not include any authorized person that is not a PRA-authorized person, the PRA;
  - (c) where the subsidiary undertakings of the qualifying parent undertaking do not include any PRA-authorized person, the FCA;
  - (d) in any other case, the PRA or the FCA.”
- (2) In section 192K of FSMA 2000 (power to impose penalty or issue censure)—
- (a) in subsection (1), after “section 192J” insert “or 192JB”, and
  - (b) after that subsection insert—
- “(1A) This section also applies if a regulator is satisfied that a person (“P”) who is or has been a parent undertaking of a ring-fenced body has contravened a provision of rules made by that regulator under section 192JA.”

#### *Meetings with auditors*

### **134 Duty to meet auditors of certain institutions**

- (1) Part 22 of FSMA 2000 (auditors and actuaries) is amended as follows.
- (2) After section 339A insert—

#### **“339B Duty to meet auditors of certain institutions**

- (1) The FCA must make arrangements for meetings to take place at least once a year between—
  - (a) the FCA, and
  - (b) the auditor of any PRA-authorized person to which section 339C applies.
- (2) The PRA must make arrangements for meetings to take place at least once a year between—
  - (a) the PRA, and
  - (b) the auditor of any PRA-authorized person to which section 339C applies.
- (3) The annual report of each regulator must include the number of meetings that have taken place during the period to which the report relates between the regulator and auditors of PRA-authorized persons to which section 339C applies.
- (4) In subsection (3) “the annual report” means—

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- (a) in relation to the FCA, every report which it is required by paragraph 11 of Schedule 1ZA to make to the Treasury, and
- (b) in relation to the PRA, every report which it is required by paragraph 19 of Schedule 1ZB to make to the Treasury.

(5) In this section “auditor” means an auditor appointed under or as a result of a statutory provision.

### **339C PRA-authorised persons to which this section applies**

- (1) This section applies to a PRA-authorised person which—
    - (a) is a UK institution,
    - (b) meets condition A or B,
    - (c) is not an insurer or a credit union, and
    - (d) is, in the opinion of the PRA, important to the stability of the UK financial system.
  - (2) Condition A is that the person has permission under Part 4A to carry on the regulated activity of accepting deposits.
  - (3) Condition B is that—
    - (a) the person is an investment firm that has permission under Part 4A to carry on the regulated activity of dealing in investments as principal, and
    - (b) when carried on by the person, that activity is a PRA-regulated activity.
  - (4) In this section—
    - (a) “UK institution” means an institution which is incorporated in, or formed under the law of any part of, the United Kingdom;
    - (b) “insurer” means an institution which is authorised under this Act to carry on the regulated activity of effecting or carrying out contracts of insurance as principal;
    - (c) “credit union” means a credit union as defined by section 31 of the Credit Unions Act 1979 or a credit union as defined by Article 2(2) of the Credit Unions (Northern Ireland) Order 1985.
  - (5) Subsections (2), (3) and (4)(b) are to be read in accordance with Schedule 2, taken together with any order under section 22.”
- (3) The italic cross-heading before section 339A becomes “*General duties of regulator*”.

#### *Fees to meet Treasury expenditure*

### **135 Fees to meet Treasury expenditure relating to international organisations**

- (1) After section 410 of FSMA 2000 insert—

*“Fees to meet Treasury expenses*

**410A Fees to meet certain expenses of the Treasury**

- (1) The Treasury may by regulations—
  - (a) enable the Treasury from time to time by direction to require the FCA, the PRA or the Bank of England (each a “regulator”) to require the payment of fees by relevant persons, or such class of relevant person as may be specified in, or determined by the regulator in accordance with, the direction, for the purpose of meeting relevant expenses incurred by the Treasury;
  - (b) make provision about how the regulator to which a direction is given is to comply with the direction;
  - (c) require the regulator to pay to the Treasury, by such time or times as may be specified in the direction, the amount of any fees received by the regulator.
- (2) “Relevant expenses” are expenses (including any expenses of a capital nature) which are attributable to United Kingdom membership of, or Treasury participation in, a prescribed international organisation so far as those expenses—
  - (a) represent a contribution (by way of subscription or otherwise) to the resources of the international organisation, and
  - (b) are in the opinion of the Treasury attributable to functions of the organisation which relate to financial stability or financial services.
- (3) The regulations must provide for the charging of fees in pursuance of a direction given under the regulations to the FCA or the PRA to be by rules made by that regulator.
- (4) The provisions of Chapter 2 of Part 9A apply to rules of the FCA or the PRA providing for the charging of fees in pursuance of a direction given under the regulations—
  - (a) in the case of the FCA, as they apply to rules relating to the payment of fees under paragraph 23 of Schedule 1ZA;
  - (b) in the case of the PRA, as they apply to rules relating to the payment of fees under paragraph 31 of Schedule 1ZB.
- (5) Paragraph 36(1) of Schedule 17A applies to the charging of fees by the Bank of England in pursuance of a direction given to the Bank under the regulations.
- (6) The regulations may in particular—
  - (a) make provision about what is, or is not, to be regarded as an expense;
  - (b) specify requirements that the Treasury must comply with before giving a direction;
  - (c) enable a direction to be varied or revoked by a subsequent direction;
  - (d) confer functions on a regulator.
- (7) An amount payable to a regulator as a result of—
  - (a) any provision of rules made by the FCA or the PRA as a result of the regulations, or

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(b) the imposition of fees by the Bank of England as a result of a direction given under the regulations to the Bank, may be recovered as a debt due to the regulator.

- (8) “Relevant persons” means—
- (a) in the case of a direction given to the PRA, PRA-authorised persons;
  - (b) in the case of a direction given to the FCA, authorised persons and recognised investment exchanges who (in either case) are not PRA-authorised persons;
  - (c) in the case of a direction given to the Bank of England, recognised clearing houses, other than those falling within paragraph (a) or (b).
- (9) This section is subject to section 410B.

#### **410B Directions in pursuance of section 410A**

- (1) In this section “a fees direction” means a direction given by the Treasury as a result of regulations under section 410A.
- (2) Before giving a fees direction to the FCA, the PRA or the Bank of England (each a “regulator”), the Treasury must consult the regulator concerned.
- (3) A fees direction must—
- (a) be in writing;
  - (b) except in the case of a direction that revokes a previous direction or a direction that varies a previous direction without affecting the total amount intended to be raised by the fees, specify the total amount intended to be raised by the fees to be charged by the regulator and explain how that amount is calculated;
  - (c) contain such other information as may be prescribed.
- (4) As soon as practicable after giving a fees direction, the Treasury must lay before Parliament a copy of the direction.”
- (2) In section 3A of FSMA 2000 (meaning of “regulator”), in subsection (3)—
- (a) omit the “or” at the end of paragraph (a), and
  - (b) after paragraph (b) insert “or
  - (c) the meaning of “regulator” in sections 410A and 410B (fees to meet certain expenses of Treasury).”

#### *Parliamentary control of statutory instruments under FSMA 2000*

### **136 Amendments of section 429 of FSMA 2000**

- (1) Section 429 of FSMA 2000 (Parliamentary control of statutory instruments) is amended as follows.
- (2) In subsection (1)(a) (orders subject to affirmative procedure)—
- (a) after “55C,” insert “71A(4),” and
  - (b) for “144(4), 192(b) or (e), 138K(6)(c)” substitute “138K(6)(c), 144(4), 192(b) or (e)”.

- (3) In subsection (2) (regulations subject to affirmative procedure), after “90B,” insert “142W.”
- (4) After subsection (2) insert—
- “(2A) Regulations to which subsection (2B) applies are not to be made unless a draft of the regulations has been laid before Parliament and approved by a resolution of each House.
- (2B) This subsection applies to regulations which contain provision made under section 410A, other than provision made only by virtue of subsection (2) of that section.”
- (5) In subsection (8), for “or 23A” substitute “, 23A or 142Z”.

*Bank of England*

**137 Accounts of Bank of England and its wholly-owned subsidiaries**

- (1) The Bank of England Act 1998 is amended as follows.
- (2) In section 7 (accounts), in subsection (4), for the words from “appropriate” to the end substitute “necessary to do so having regard to the Financial Stability Objective”.
- (3) After section 7 insert—

**“7A Accounts of companies wholly owned by the Bank**

- (1) If the Bank considers it necessary to do so having regard to the Financial Stability Objective, the Bank may by direction to a qualifying company exclude the application to the qualifying company of any of the relevant Companies Act requirements.
- (2) The relevant Companies Act requirements are the requirements to which the directors of the qualifying company would otherwise be subject under the Companies Act 2006 (except sections 412 and 413 (directors’ benefits)) in relation to the preparation of accounts under section 394 of that Act.
- (3) A direction under subsection (1) may relate to one or more specified accounting periods of the qualifying company, or to a specified accounting period and all subsequent accounting periods of the qualifying company.
- (4) The Bank must consult the Treasury before giving a direction under subsection (1).
- (5) The Treasury may by notice in writing to the Bank require it to publish in such manner as it thinks fit such information relating to the accounts of a qualifying company as the Treasury may specify in the notice.
- (6) The information specified in a notice under subsection (5) may include information which as a result of a direction under subsection (1) was excluded from accounts prepared in accordance with the Companies Act 2006.
- (7) The Treasury must consult the Bank before giving a notice under subsection (5).



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- (8) A direction under subsection (1) or a notice under subsection (5) may be revoked by a subsequent direction or notice (as the case may be).
- (9) “Qualifying company” means any company which is wholly owned by the Bank other than—
  - (a) the Prudential Regulation Authority, or
  - (b) a company which is a bridge bank for the purposes of section 12(3) of the Banking Act 2009.
- (10) For the purposes of subsection (9), a company is wholly owned by the Bank if—
  - (a) it is a company of which no person other than the Bank or a nominee of the Bank is a member, or
  - (b) it is a wholly-owned subsidiary of a company within paragraph (a).”

#### *Building societies*

### **138 Building societies**

Schedule 9 (which contains provision about building societies) has effect.

#### *Claims management services*

### **139 Power to impose penalties on persons providing claims management services**

- (1) The Schedule to the Compensation Act 2006 (claims management regulations) is amended as follows.
- (2) In paragraph 8 (rules about conduct of authorised persons), in sub-paragraph (2)(b), after sub-paragraph (i) insert—
  - “(ia) provision enabling the Regulator to require an authorised person to pay a penalty;”.
- (3) In paragraph 9 (codes of practice about conduct of authorised persons), in sub-paragraph (2)(b), after sub-paragraph (i) insert—
  - “(ia) enable the Regulator to require an authorised person to pay a penalty;”.
- (4) In paragraph 10 (complaints about conduct of authorised persons), after sub-paragraph (2) insert—
  - “(3) Regulations under sub-paragraph (1) may enable the Regulator to require an authorised person to pay a penalty.”
- (5) In paragraph 11 (requirement to have indemnity insurance), in sub-paragraph (2)(b), after “Regulator” insert “to require the payment of a penalty by an authorised person or”.
- (6) In paragraph 14 (enforcement), in sub-paragraph (4), for the words from “impose” to “authorisation” substitute “require an authorised person to pay a penalty, or to impose conditions on, suspend or cancel a person’s authorisation,”.
- (7) After paragraph 15 insert—

*“Penalties: supplementary provision*

- 16 (1) This paragraph applies in any case where regulations include provision enabling the Regulator to require an authorised person to pay a penalty.
- (2) The regulations—
- (a) shall include provision about how the Regulator is to determine the amount of a penalty, and
  - (b) may, in particular, include provision specifying a minimum or maximum amount.
- (3) The regulations—
- (a) shall provide for income from penalties imposed by the Regulator to be paid into the Consolidated Fund, but
  - (b) may provide that such income is to be paid into the Consolidated Fund after the deduction of costs incurred by the Regulator in collecting, or enforcing the payment of, such penalties.
- (4) The regulations may also include, in particular—
- (a) provision for a penalty imposed by the Regulator to be enforced as a debt;
  - (b) provision specifying conditions that must be met before any action to enforce a penalty may be taken.”
- (8) In section 13 of the Compensation Act 2006 (appeals and references to Tribunal)—
- (a) in subsection (1), omit the “or” at the end of paragraph (d) and after paragraph (e) insert “, or  
(f) imposes a penalty on the person.”;
  - (b) after subsection (1) insert—
 

“(1A) A person who is appealing to the Tribunal against a decision to impose a penalty may appeal against—

    - (a) the imposition of the penalty,
    - (b) the amount of the penalty, or
    - (c) any date by which the penalty, or any part of it, is required to be paid.”;
  - (c) in subsection (3), after paragraph (d) insert—
 

“(da) may require a person to pay a penalty (which may be of a different amount from that of any penalty imposed by the Regulator);

(db) may vary any date by which a penalty, or any part of a penalty, is required to be paid;”.

**140 Recovery of expenditure incurred by Office for Legal Complaints**

- (1) The Schedule to the Compensation Act 2006 (claims management regulations) is amended as set out in subsections (2) and (3).
- (2) The provision in paragraph 7 becomes sub-paragraph (1) of that paragraph.
- (3) In paragraph 7, after sub-paragraph (1) insert—

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“(2) The fees that may be charged by the Regulator by virtue of subparagraph (1) include fees in respect of costs incurred by the Regulator for the purposes of meeting any leviable OLC expenditure.”

(4) The Legal Services Act 2007 is amended as set out in subsections (5) and (6).

(5) After section 174 insert—

*“OLC expenditure relating to claims management services*

**174A OLC expenditure relating to claims management services**

(1) This section has effect at any time when no person is designated under section 5(1) of the Compensation Act 2006 (the Regulator in relation to claims management services).

(2) In determining the leviable OLC expenditure for the purposes of section 173, any expenditure incurred, or income received, by the OLC in connection with the exercise of its functions in relation to claims management services is to be disregarded.

(3) The Lord Chancellor may by regulations charge periodic fees for authorised persons for the purposes of meeting any costs incurred by the Lord Chancellor in respect of relevant OLC expenditure.

(4) “Relevant OLC expenditure” means the difference between—

- (a) any expenditure of the OLC incurred in connection with the exercise of its functions in relation to claims management services, and
- (b) the aggregate of the amounts which the OLC pays into the Consolidated Fund under section 175(1)(g), (h) or (n), so far as relating to the exercise of its functions in relation to such services.

(5) Regulations made under subsection (3) may, in particular—

- (a) permit the charging of different fees for different cases or circumstances (which may, in particular, be defined wholly or partly by reference to turnover or other criteria relating to an authorised person’s business);
- (b) enable the person exercising functions of the Regulator under section 5(9) of the Compensation Act 2006 to collect fees on behalf of the Lord Chancellor;
- (c) specify the consequences of failure to pay fees (which may include anything which could be specified in regulations under section 9 of that Act as a consequence of a failure to pay fees charged under those regulations).

(6) In this section “authorised person” and “claims management services” have the same meaning as in Part 2 of the Compensation Act 2006 (see section 4 of that Act).”

(6) In section 206 (Parliamentary control of orders and regulations), in subsection (4), after paragraph (o) insert—

“(oa) section 174A(3) (power to charge fees on persons providing claims management services);”.

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

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*Minor amendments*

**141 Minor amendments**

Schedule 10 (which contains amendments of, or connected with, the Financial Services Act 2012 and amendments of provisions amended by that Act) has effect.