
Changes to legislation: There are currently no known outstanding effects for the
Financial Services and Markets Act 2023, PART 6. (See end of Document for details)

SCHEDULES

SCHEDULE 11

CENTRAL COUNTERPARTIES

PART 6

INFORMATION, INVESTIGATION AND ENFORCEMENT

Information

- 119 (1) This paragraph applies only to information and documents reasonably required in connection with the exercise by the Bank of functions conferred by or under this Schedule.
- (2) The Bank may, by notice in writing given to a CCP or CCP group company, require the CCP or CCP group company—
- (a) to provide specified information or information of a specified description, or
 - (b) to produce specified documents or documents of a specified description.
- (3) The information or documents must be provided or produced—
- (a) before the end of such reasonable period as may be specified, and
 - (b) at such place as may be specified.
- (4) An officer who has written authorisation from the Bank to do so may require a CCP or CCP group company without delay—
- (a) to provide the officer with specified information or information of a specified description, or
 - (b) to produce to the officer specified documents or documents of a specified description.
- (5) The Bank may require any information provided under this paragraph to be provided in such form as it may reasonably require.
- (6) The Bank may require—
- (a) any information provided, whether in a document or otherwise, to be verified in such manner, or
 - (b) any document produced to be authenticated in such manner,
- as it may reasonably require.
- (7) The powers conferred by sub-paragraphs (2) and (4) may also be exercised by the Bank to impose requirements on a person who is connected with a CCP.
- (8) “Officer” means an officer of the Bank, and includes a member of the Bank’s staff or an agent of the Bank.
- (9) “Specified” means—

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- (a) in sub-paragraphs (2) and (3), specified in the notice, and
 - (b) in sub-paragraph (4), specified in the authorisation.
- (10) For the purposes of this paragraph, a person is connected with a CCP if that person is or has at any relevant time been—
- (a) a member of that CCP’s group,
 - (b) a controller of that CCP (within the meaning of section 422 of FSMA 2000), or
 - (c) in relation to that CCP, a person mentioned in Part 1 of Schedule 15 to FSMA 2000 (reading references in that Part to the authorised person as references to the CCP).

Commencement Information

- I1** Sch. 11 para. 119 not in force at Royal Assent, see **s. 86(3)**
- I2** Sch. 11 para. 119 in force at 31.12.2023 by **S.I. 2023/1382, reg. 8(b)**

Reports by skilled persons

- 120 (1) This paragraph applies where the Bank has required or could require a person to whom sub-paragraph (2) applies (“the person concerned”) to provide information or produce documents with respect to any matter (“the matter concerned”) under paragraph 119.
- (2) This sub-paragraph applies to—
- (a) a CCP,
 - (b) a member of a CCP’s group, or
 - (c) a person who has at any relevant time been a person falling within paragraph (a) or (b),
- who is, or was at the relevant time, carrying on a business.
- (3) The Bank may either—
- (a) by notice in writing given to the person concerned, require that person to provide the Bank with a report on the matter concerned, or
 - (b) itself appoint a person to provide the Bank with a report on the matter concerned.
- (4) When acting under sub-paragraph (3)(a), the Bank may require the report to be in such form as may be specified in the notice.
- (5) The Bank must give notice of an appointment under sub-paragraph (3)(b) to the person concerned.
- (6) The person appointed to make a report—
- (a) must be a person appearing to the Bank to have the skills necessary to make a report on the matter concerned, and
 - (b) where the appointment is to be made by the person concerned, must be a person nominated or approved by the Bank.
- (7) It is the duty of—
- (a) the person concerned, and

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- (b) any person who is providing (or who has at any time provided) services to the person concerned in relation to the matter concerned,
to give the person appointed to prepare a report all such assistance as the appointed person may reasonably require.
- (8) The obligation imposed by sub-paragraph (7) is enforceable, on the application of the Bank, by an injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.
- (9) The Bank may, in relation to an appointment under sub-paragraph (3)(b), require a CCP to pay to the Bank a fee to cover the expenses incurred by the Bank in relation to the appointment.

Commencement Information

- I3** Sch. 11 para. 120 not in force at Royal Assent, see [s. 86\(3\)](#)
I4 Sch. 11 para. 120 in force at 31.12.2023 by [S.I. 2023/1382, reg. 8\(b\)](#)

Appointment of persons to carry out general investigations

- 121 (1) This paragraph applies only for the purposes of the functions of the Bank conferred by or under this Schedule.
- (2) If it appears to the Bank that there is a good reason for doing so, the Bank 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 a CCP,
 - (b) a particular aspect of that business, or
 - (c) the ownership or control of a CCP.
- (3) If a person appointed under sub-paragraph (2) thinks it necessary for the purposes of the investigation, that person may also investigate the business of a person who is or has at any relevant time been a member of a group of which the CCP under investigation is part.
- (4) A person appointed under sub-paragraph (2) who decides to investigate the business of any person under sub-paragraph (3) must give that person written notice of that decision.
- (5) In this paragraph, “business” includes any part of a business.

Commencement Information

- I5** Sch. 11 para. 121 not in force at Royal Assent, see [s. 86\(3\)](#)
I6 Sch. 11 para. 121 in force at 31.12.2023 by [S.I. 2023/1382, reg. 8\(b\)](#)

Appointment of person to carry out investigations in particular cases

- 122 (1) This paragraph applies if it appears to the Bank that there are circumstances suggesting that a person may have failed to comply with any relevant requirement.
- (2) The Bank may appoint one or more competent persons to conduct an investigation on its behalf.

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- (3) In this paragraph “relevant requirement” means a requirement imposed by or under this Schedule.

Commencement Information

- I7** Sch. 11 para. 122 not in force at Royal Assent, see **s. 86(3)**
I8 Sch. 11 para. 122 in force at 31.12.2023 by S.I. 2023/1382, **reg. 8(b)**

Investigations etc in support of foreign resolution authorities

- 123 (1) On receiving a request to which sub-paragraph (3) applies from a foreign resolution authority, the Bank may—
- (a) exercise the power conferred by paragraph 119, or
 - (b) appoint one or more competent persons to investigate any matter.
- (2) Accordingly, for the purposes of sub-paragraph (1)(a), paragraph 119 has effect as if it also referred to information and documents reasonably required by the Bank to meet such a request.
- (3) This sub-paragraph applies to a request if the request is made by a foreign resolution authority in connection with the exercise by that authority of functions in relation to third-country resolution action (within the meaning of paragraph 145) corresponding to the stabilisation powers of the Bank under this Schedule.
- (4) An investigator appointed under sub-paragraph (1)(b) has the same powers as an investigator appointed under paragraph 122.
- (5) In deciding whether or not to exercise its investigative power, the Bank may take into account in particular—
- (a) whether, in the territory of the foreign resolution authority concerned, corresponding assistance would be given to the Bank,
 - (b) whether the case concerns the breach of a law, or other requirement, which has no close parallel in the United Kingdom or involves the assertion of a jurisdiction not recognised by the United Kingdom,
 - (c) the seriousness of the case and its importance to persons in the United Kingdom, and
 - (d) whether it is otherwise appropriate in the public interest to give the assistance sought.
- (6) The Bank may decide that it will not exercise its investigative power unless the foreign resolution authority undertakes to make such contribution towards the cost of its exercise as the Bank considers appropriate.
- (7) “Foreign resolution authority” means an authority, in a country or territory outside the United Kingdom, which exercises functions referred to in sub-paragraph (3).
- (8) “Investigative power” means one of the powers mentioned in sub-paragraph (1).

Commencement Information

- I9** Sch. 11 para. 123 not in force at Royal Assent, see **s. 86(3)**
I10 Sch. 11 para. 123 in force at 31.12.2023 by S.I. 2023/1382, **reg. 8(b)**

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Investigations: general

- 124 (1) This paragraph applies if the Bank appoints one or more competent persons (“investigators”) under paragraph 121 or 122 to conduct an investigation on its behalf.
- (2) The Bank must give written notice of the appointment of an investigator to the person who is the subject of the investigation (“the person under investigation”).
- (3) A notice under sub-paragraph (2) must—
- (a) specify the provisions under which, and as a result of which, the investigator was appointed, and
 - (b) state the reason for the investigator’s appointment.
- (4) Nothing prevents the Bank from appointing a person who is a member of its staff as an investigator.
- (5) An investigator must make a report of the investigation to the Bank.
- (6) The Bank may, by a direction to an investigator, control—
- (a) the scope of the investigation,
 - (b) the period during which the investigation is to be conducted,
 - (c) the conduct of the investigation, and
 - (d) the reporting of the investigation.
- (7) A direction may, in particular—
- (a) confine the investigation to particular matters;
 - (b) extend the investigation to additional matters;
 - (c) require the investigator to discontinue the investigation or to take only such steps as are specified in the direction;
 - (d) require the investigator to make such interim reports as are so specified.
- (8) If there is a change in the scope or conduct of the investigation and, in the opinion of the Bank, the person under investigation is likely to be significantly prejudiced by not being made aware of it, that person must be given written notice of the change.
- (9) If the appointment is under paragraph 122, sub-paragraphs (2) and (8) do not apply if the Bank believes that the notice required by the sub-paragraph in question would be likely to result in the investigation being frustrated.

Commencement Information

I11 Sch. 11 para. 124 not in force at Royal Assent, see **s. 86(3)**

I12 Sch. 11 para. 124 in force at 31.12.2023 by **S.I. 2023/1382, reg. 8(b)**

Powers of persons appointed under paragraph 121

- 125 (1) This paragraph applies to an investigator appointed under paragraph 121 to conduct an investigation on behalf of the Bank.
- (2) The investigator may require the person who is the subject of the investigation (“the person under investigation”) or any person connected with the person under investigation—

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- (a) to attend before the investigator at a specified time and place and answer questions, or
 - (b) otherwise to provide such information as the investigator may require for the purposes of the investigation.
- (3) The investigator may also require any person to produce at a specified time and place any specified documents or documents of a specified description.
- (4) A requirement under sub-paragraph (2) or (3) may be imposed only so far as the investigator reasonably considers the question, provision of information or production of the document to be relevant to the purposes of the investigation.
- (5) For the purposes of this paragraph, a person (“B”) is connected with the person under investigation (“A”) if B is or has at any relevant time been—
- (a) a member of A’s group;
 - (b) a controller of A;
 - (c) in relation to A, a person mentioned in Part 1 or 2 of Schedule 15 to FSMA 2000 (reading references in those Parts to the authorised person or the person under investigation as references to A).
- (6) In this paragraph—
“controller” has the meaning given in section 422 of FSMA 2000;
“specified” means specified in a notice in writing.

Commencement Information

I13 Sch. 11 para. 125 not in force at Royal Assent, see s. 86(3)

I14 Sch. 11 para. 125 in force at 31.12.2023 by S.I. 2023/1382, reg. 8(b)

Powers of persons appointed as a result of paragraph 122

- 126 (1) This paragraph applies to an investigator appointed under paragraph 122 to conduct an investigation on behalf of the Bank.
- (2) The investigator has—
- (a) the powers conferred by paragraph 125 on an investigator appointed under paragraph 121, and
 - (b) the powers conferred by sub-paragraphs (3) and (4).
- (3) The investigator may require the person who is the subject of the investigation (“the person under investigation”) to give the investigator all assistance in connection with the investigation which that person is reasonably able to give.
- (4) The investigator may require a person who is neither the person under investigation nor a person connected with the person under investigation—
- (a) to attend before the investigator at a specified time and place and answer questions, or
 - (b) otherwise to provide such information as the investigator may require for the purposes of the investigation.
- (5) A requirement may only be imposed under sub-paragraph (4) if the investigator is satisfied that the requirement is necessary or expedient for the purposes of the investigation.

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(6) Paragraph 125(5) and (6) applies for the purposes of this paragraph.

Commencement Information

I15 Sch. 11 para. 126 not in force at Royal Assent, see s. 86(3)

I16 Sch. 11 para. 126 in force at 31.12.2023 by S.I. 2023/1382, reg. 8(b)

Admissibility of statements made to investigators

- 127 (1) A statement made to an investigator appointed under paragraph 121 or 122 by a person in compliance with an information requirement is admissible in evidence in any proceedings, so long as it also complies with any requirement governing the admissibility of evidence in the circumstances in question.
- (2) But in criminal proceedings in which that person is charged with an offence to which this sub-paragraph applies—
- (a) no evidence relating to the statement may be adduced, and
 - (b) no question relating to it may be asked—
- by or on behalf of the prosecution, or the Bank (as the case may be), unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.
- (3) Sub-paragraph (2) applies to any offence other than one under—
- (a) paragraph 132,
 - (b) section 398 of FSMA 2000 (misleading FCA or PRA: residual cases),
 - (c) section 5 of the Perjury Act 1911 (false statements made otherwise than on oath),
 - (d) section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made otherwise than on oath), or
 - (e) Article 10 of the Perjury (Northern Ireland) Order 1979 (false declarations etc).
- (4) “Information requirement” means a requirement imposed by an investigator under paragraph 125, 126 or 128.

Commencement Information

I17 Sch. 11 para. 127 not in force at Royal Assent, see s. 86(3)

I18 Sch. 11 para. 127 in force at 31.12.2023 by S.I. 2023/1382, reg. 8(b)

Information and documents: supplemental provision

- 128 (1) If the Bank has power under this Schedule to require a person to produce a document but if it appears that the document is in the possession of a third person, that power may be exercised in relation to the third person.
- (2) If a document is produced in response to a requirement imposed under this Schedule, the person to whom it is produced may—
- (a) take copies or extracts from the document, or

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- (b) require the person producing the document, or any relevant person to provide an explanation of the document.
- (3) A document so produced may be retained for so long as the person to whom it is produced considers that it is necessary to retain it (rather than copies of it) for the purposes for which the document was requested.
- (4) If the person to whom a document is so produced has reasonable grounds for believing—
- (a) that the document may have to be produced for the purposes of any legal proceedings, and
 - (b) that it might otherwise be unavailable for those purposes,
- it may be retained until the proceedings are concluded.
- (5) If a person who is required under this Schedule to produce a document fails to do so, the Bank or an investigator may require that person to state, to the best of that person’s knowledge and belief, where the document is.
- (6) A lawyer may be required under this Schedule to furnish the name and address of the lawyer’s client.
- (7) No person may be required under this Schedule to disclose information or produce a document in respect of which the person (“A”) owes an obligation of confidence unless—
- (a) A is the person under investigation or a member of that person’s group,
 - (b) the person to whom the obligation of confidence is owed is the person under investigation or a member of that person’s group,
 - (c) the person to whom the obligation of confidence is owed consents to the disclosure or production, or
 - (d) the imposing on A of a requirement with respect to such information or document has been specifically authorised by the Bank.
- (8) If a person claims a lien on a document, its production under this Schedule does not affect the lien.
- (9) In this paragraph—
- “controller” has the meaning given by section 422 of FSMA 2000;
- “investigator” means a person appointed under paragraph 121 or 122;
- “relevant person”, in relation to a person who is required to produce a document, means a person who—
- (a) has been or is or is proposed to be a director or controller of that person,
 - (b) has been or is an auditor of that person,
 - (c) has been or is an actuary, accountant or lawyer appointed or instructed by that person, or
 - (d) has been or is an employee of that person.

Commencement Information

I19 Sch. 11 para. 128 not in force at Royal Assent, see **s. 86(3)**

I20 Sch. 11 para. 128 in force at 31.12.2023 by **S.I. 2023/1382, reg. 8(b)**

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Protected items

- 129 (1) A person may not be required under this Schedule to produce, disclose or permit the inspection of protected items.
- (2) “Protected items” means—
- (a) communications between a professional legal adviser and that adviser’s client or any person representing such a client which fall within sub-paragraph (3),
 - (b) communications between a professional legal adviser, that adviser’s client or any person representing such a client and any other person which fall within sub-paragraph (3) (as a result of paragraph (b) of that sub-paragraph), and
 - (c) items which—
 - (i) are enclosed with, or referred to in, such communications,
 - (ii) fall within sub-paragraph (3), and
 - (iii) are in the possession of a person entitled to be in possession of them.
- (3) A communication or item falls within this sub-paragraph if it is made—
- (a) in connection with the giving of legal advice to the client, or
 - (b) in connection with, or in contemplation of, legal proceedings and for the purposes of those proceedings.
- (4) A communication or item is not a protected item if it is held with the intention of furthering a criminal purpose.

Commencement Information

I21 Sch. 11 para. 129 not in force at Royal Assent, see **s. 86(3)**

I22 Sch. 11 para. 129 in force at 31.12.2023 by **S.I. 2023/1382, reg. 8(b)**

Entry of premises under warrant

- 130 (1) A justice of the peace may issue a warrant under this paragraph if satisfied on information on oath given by or on behalf of the Secretary of State, the Bank or an investigator that there are reasonable grounds for believing that the first, second or third set of conditions is satisfied.
- (2) The first set of conditions is—
- (a) that a person on whom an information requirement has been imposed has failed (wholly or in part) to comply with it, and
 - (b) that on the premises specified in the warrant—
 - (i) there are documents which have been required, or
 - (ii) there is information which has been required.
- (3) The second set of conditions is—
- (a) that the premises specified in the warrant are premises of a CCP or a member of the same group as a CCP,
 - (b) that there are on the premises documents or information in relation to which an information requirement could be imposed, and
 - (c) that if such a requirement were to be imposed—
 - (i) it would not be complied with, or

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- (ii) the documents or information to which it related would be removed, tampered with or destroyed.
- (4) The third set of conditions is—
 - (a) that an offence mentioned in paragraph 132 has been (or is being) committed by any person,
 - (b) that there are on the premises specified in the warrant documents or information relevant to whether that offence has been (or is being) committed,
 - (c) that an information requirement could be imposed in relation to those documents or that information, and
 - (d) that if such a requirement were to be imposed—
 - (i) it would not be complied with, or
 - (ii) the documents or information to which it related would be removed, tampered with or destroyed.
- (5) A warrant under this paragraph authorises a constable—
 - (a) to enter the premises specified in the warrant,
 - (b) to search the premises and take possession of any documents or information appearing to be documents or information of a kind in respect of which a warrant under this paragraph was issued (“the relevant kind”) or to take, in relation to any such documents or information, any such steps which may appear to be necessary for preserving them or preventing interference with them,
 - (c) to take copies of, or extracts from, any documents or information appearing to be of the relevant kind,
 - (d) to require any person on the premises to provide an explanation of any document or information appearing to be of the relevant kind or to state where it may be found, and
 - (e) to use such force as may be reasonably necessary.
- (6) A warrant under this paragraph may be executed by any constable.
- (7) The warrant may authorise persons to accompany any constable who is executing it.
- (8) The powers in sub-paragraph (5) may be exercised by a person authorised by the warrant to accompany a constable; but that person may exercise those powers only in the company of, and under the supervision of, a constable.
- (9) In England and Wales, sections 15(5) to (8) and 16(3) to (12) of the Police and Criminal Evidence Act 1984 (execution of search warrants and safeguards) apply to warrants issued under this paragraph.
- (10) In Northern Ireland, Articles 17(5) to (8) and 18(3) to (12) of the Police and Criminal Evidence (Northern Ireland) Order 1989 apply to warrants issued under this paragraph.
- (11) In the application of this paragraph to Northern Ireland the reference to a justice of the peace is a reference to a lay magistrate.
- (12) In the application of this paragraph to Scotland—
 - (a) for the reference to a justice of the peace substitute references to a justice of the peace or a sheriff, and

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- (b) for the references to information on oath substitute references to evidence on oath.
- (13) “Investigator” means an investigator appointed under paragraph 121 or 122.
- (14) “Information requirement” means a requirement imposed—
 - (a) by the Bank under paragraph 119 or 128, or
 - (b) by an investigator under paragraph 125, 126 or 128.

Commencement Information

- I23** Sch. 11 para. 130 not in force at Royal Assent, see s. 86(3)
- I24** Sch. 11 para. 130 in force at 31.12.2023 by S.I. 2023/1382, reg. 8(b)

Retention of documents obtained under paragraph 130

- 131 (1) Any document of which possession is taken under paragraph 130 (“a seized document”) may be retained for so long as it is necessary to retain it (rather than copies of it) in the circumstances.
- (2) A person claiming to be the owner of a seized document may apply to a magistrates’ court, or in Scotland the sheriff, for an order for the delivery of the document to the person appearing to the court or sheriff to be the owner.
 - (3) If on an application under sub-paragraph (2) the court, or in Scotland the sheriff, cannot ascertain who is the owner of the seized document the court or sheriff (as the case may be) may make such order as the court or sheriff thinks fit.
 - (4) An order under sub-paragraph (2) or (3) does not affect the right of any person to take legal proceedings against any person in possession of a seized document for the recovery of the document.
 - (5) Any right to bring proceedings (as described in sub-paragraph (4)) may only be exercised within 6 months of the date of the order made under sub-paragraph (2) or (3).

Commencement Information

- I25** Sch. 11 para. 131 not in force at Royal Assent, see s. 86(3)
- I26** Sch. 11 para. 131 in force at 31.12.2023 by S.I. 2023/1382, reg. 8(b)

Offences etc

- 132 (1) If a person other than the investigator (“the defaulter”) fails to comply with a requirement imposed on the defaulter under paragraph 125, 126 or 128, the person imposing the requirement may certify that fact in writing to the court.
- (2) If the court is satisfied that the defaulter has failed without reasonable excuse to comply with the requirement, it may deal with the defaulter (and, in the case of a body corporate, any director or other officer) as if that person were in contempt.
 - (3) “Officer”, in relation to a limited liability partnership, means a member of the limited liability partnership.

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- (4) A person who knows or suspects that an investigation is being or is likely to be conducted under paragraph 121, 122 or 123 is guilty of an offence if—
- (a) that person falsifies, conceals, destroys or otherwise disposes of a document which that person knows or suspects is or would be relevant to such an investigation, or
 - (b) that person causes or permits the falsification, concealment, destruction or disposal of such a document,
- unless that person shows that that person had no intention of concealing facts disclosed by the document from the investigator.
- (5) A person who, in purported compliance with a requirement imposed on that person by any relevant requirement—
- (a) provides information which that person knows to be false or misleading in a material particular, or
 - (b) recklessly provides information which is false or misleading in a material particular,
- is guilty of an offence.
- (6) Any person who intentionally obstructs the exercise of any rights conferred by a warrant under paragraph 130 is guilty of an offence.
- (7) A person guilty of an offence under sub-paragraph (4), (5) or (6) is liable, on summary conviction—
- (a) in England and Wales, to imprisonment for a term not exceeding 3 months or a fine, or both;
 - (b) In Scotland and Northern Ireland, to imprisonment for a term not exceeding 3 months or a fine not exceeding level 5 on the standard scale, or both.
- (8) In this paragraph—
- “court” means—
- (a) the High Court,
 - (b) in Scotland, the Court of Session;
- “relevant requirement” has the meaning given in paragraph 122.

Commencement Information

I27 Sch. 11 para. 132 not in force at Royal Assent, see **s. 86(3)**

I28 Sch. 11 para. 132 in force at 31.12.2023 by S.I. 2023/1382, **reg. 8(b)**

Prosecution of offences under paragraph 132

- 133 (1) Proceedings for an offence under paragraph 132 may be instituted—
- (a) in England and Wales, only by the Bank or by or with the consent of the Director of Public Prosecutions, and
 - (b) in Northern Ireland, only by the Bank or by or with the consent of the Director of Public Prosecutions for Northern Ireland.
- (2) In exercising its power to institute proceedings for an offence under paragraph 132, the Bank must comply with any conditions or restrictions imposed in writing by the Treasury.

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- (3) Conditions or restrictions may be imposed under sub-paragraph (2) in relation to proceedings generally, or such proceedings or categories of proceedings as the Treasury may direct.

Commencement Information

- I29** Sch. 11 para. 133 not in force at Royal Assent, see **s. 86(3)**
I30 Sch. 11 para. 133 in force at 31.12.2023 by S.I. 2023/1382, **reg. 8(b)**

Offences under paragraph 132 by bodies corporate etc

- 134 (1) If an offence under paragraph 132 committed by a body corporate is shown—
- (a) to have been committed with the consent or connivance of an officer, or
 - (b) to be attributable to any neglect on the part of an officer,
- the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.
- (2) If the affairs of a body corporate are managed by its members, sub-paragraph (1) applies in relation to the acts and defaults of a member in connection with that member's functions of management as if that member were a director of the body.
- (3) If an offence under paragraph 132 committed by a partnership is shown—
- (a) to have been committed with the consent or connivance of a partner, or
 - (b) to be attributable to any neglect on the part of a partner,
- the partner as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.
- (4) In sub-paragraph (3) "partner" includes a person purporting to act as partner.
- (5) "Officer" in relation to a body corporate means—
- (a) a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity, and
 - (b) an individual who is a controller of the body (and for these purposes, "controller" has the meaning given in section 422 of FSMA 2000).
- (6) If an offence under paragraph 132 committed by an unincorporated association (other than a partnership) is shown—
- (a) to have been committed with the consent or connivance of an officer of the association or a member of its governing body, or
 - (b) to be attributable to any neglect on the part of such an officer or member,
- the officer or member as well as the association is guilty of the offence and liable to be proceeded against and punished accordingly.

Commencement Information

- I31** Sch. 11 para. 134 not in force at Royal Assent, see **s. 86(3)**
I32 Sch. 11 para. 134 in force at 31.12.2023 by S.I. 2023/1382, **reg. 8(b)**

Changes to legislation: There are currently no known outstanding effects for the
Financial Services and Markets Act 2023, PART 6. (See end of Document for details)

Injunctions to prevent failure to comply with relevant requirement

- 135 (1) If, on the application of the Bank, the court is satisfied that there is a reasonable likelihood that any person will contravene a relevant requirement, the court may make an order restraining, or in Scotland an interdict prohibiting, the contravention.
- (2) The jurisdiction conferred by this paragraph is exercisable—
- (a) in England and Wales, and Northern Ireland, by the High Court, and
 - (b) in Scotland, by the Court of Session.
- (3) In this paragraph “relevant requirement” has the meaning given in paragraph 122.

Commencement Information

I33 Sch. 11 para. 135 not in force at Royal Assent, see **s. 86(3)**

I34 Sch. 11 para. 135 in force at 31.12.2023 by **S.I. 2023/1382, reg. 8(b)**

Regulatory sanctions

- 136 (1) If the Bank considers that a person has failed to comply with a relevant requirement imposed on the person, it may do one or more of the following—
- (a) publish a statement to that effect;
 - (b) impose on that person a penalty, in respect of the failure, of such amount as it considers appropriate;
 - (c) with a view to ensuring that the failure ceases or is not repeated or the consequences of the failure are mitigated, direct that person to refrain from any conduct;
 - (d) prohibit that person from holding an office or position involving responsibility for taking decisions about the management of—
 - (i) a named CCP,
 - (ii) a CCP of a specified description, or
 - (iii) any CCP.
- (2) A prohibition under sub-paragraph (1)(d) may apply—
- (a) for a specified period,
 - (b) until further notice, or
 - (c) permanently.
- (3) If the Bank considers that a failure by a person to comply with a relevant requirement occurred with the consent or connivance of, or was attributable to any neglect on the part of, an officer of that person, it may do one or more of the following—
- (a) publish a statement to that effect;
 - (b) impose on that officer a penalty, in respect of the failure, of such amount as it considers appropriate;
 - (c) with a view to ensuring that the failure ceases or is not repeated or the consequences of the failure are mitigated, direct that person to refrain from any conduct specified in the direction.
- (4) A penalty under this paragraph—
- (a) must be paid to the Bank, and
 - (b) may be enforced by the Bank as a debt.

Changes to legislation: There are currently no known outstanding effects for the Financial Services and Markets Act 2023, PART 6. (See end of Document for details)

(5) In this paragraph “relevant requirement” has the meaning given in paragraph 122.

Commencement Information

I35 Sch. 11 para. 136 not in force at Royal Assent, see s. 86(3)

I36 Sch. 11 para. 136 in force at 31.12.2023 by S.I. 2023/1382, reg. 8(b)

Determination of sanctions

- 137 When determining the type of sanction, and level of any penalty, to be imposed on a person under paragraph 136, the Bank must take into account all relevant circumstances, including where appropriate—
- (a) the gravity and the duration of the failure,
 - (b) the degree of responsibility of the person,
 - (c) the financial strength of the person,
 - (d) the amount of profits gained or losses avoided by the person,
 - (e) the losses for third parties caused by the failure,
 - (f) the level of co-operation of the person with the Bank,
 - (g) previous failures by the person, and
 - (h) any potential systemic consequences of the failure.

Commencement Information

I37 Sch. 11 para. 137 not in force at Royal Assent, see s. 86(3)

I38 Sch. 11 para. 137 in force at 31.12.2023 by S.I. 2023/1382, reg. 8(b)

Procedure: warning notice

- 138 (1) If the Bank proposes to impose a sanction on a person under paragraph 136(1) or (3) it must give that person a warning notice.
- (2) Section 387 of FSMA 2000 applies in relation to a warning notice given under sub-paragraph (1) and to the Bank as it applies in relation to a warning notice given under that Act and to the regulator which gave that notice, subject to sub-paragraphs (3) and (4).
- (3) In complying with section 387(1)(a) of that Act, a warning notice must in particular—
- (a) if it is about a proposal to publish a statement, set out the terms of the statement,
 - (b) if it is about a proposal to impose a penalty, specify the amount of the penalty,
 - (c) if it is about a proposal to direct a person to refrain from certain conduct, specify the conduct, and
 - (d) if it is about a proposal to impose a prohibition on holding an office or other position, specify the extent of the prohibition.
- (4) For the purposes of sub-paragraph (2), section 387 of that Act has effect as if subsections (1A) and (3A) were omitted.

Changes to legislation: There are currently no known outstanding effects for the Financial Services and Markets Act 2023, PART 6. (See end of Document for details)

Commencement Information

- I39** Sch. 11 para. 138 not in force at Royal Assent, see **s. 86(3)**
I40 Sch. 11 para. 138 in force at 31.12.2023 by S.I. 2023/1382, **reg. 8(b)**

Procedure: decision notice

- 139 (1) If the Bank decides to impose a sanction on a person under paragraph 136(1) or (3) it must without delay give that person a decision notice.
- (2) If the decision is to publish a statement, the decision notice must set out the terms of the statement.
- (3) If the decision is to impose a penalty, the decision notice must specify the amount of the penalty.
- (4) If the decision is to refrain from certain conduct, the decision notice must specify the conduct.
- (5) If the decision is to impose a prohibition on holding an office or other position, the decision notice must specify the extent of the prohibition.
- (6) Section 388 of FSMA 2000 applies in relation to a decision notice given under sub-paragraph (1) and the Bank as it applies in relation to a decision notice given under that Act and the regulator which gave that notice, subject to sub-paragraph (7).
- (7) Section 388 of that Act has effect for the purposes of sub-paragraph (6) as if—
- in subsection (1)(e)(i) for “this Act” there were substituted “paragraph 141 of Schedule 11 to the Financial Services and Markets Act 2023”, and
 - subsections (1A) and (2) were omitted.

Commencement Information

- I41** Sch. 11 para. 139 not in force at Royal Assent, see **s. 86(3)**
I42 Sch. 11 para. 139 in force at 31.12.2023 by S.I. 2023/1382, **reg. 8(b)**

Procedure: general

- 140 (1) Sections 389, 390 and 392 to 394 of FSMA 2000 apply in relation to a warning notice given under paragraph 138, a decision notice given under paragraph 139 and the Bank as they apply in relation to a warning notice or decision notice given under that Act and the regulator which gave that notice, subject to sub-paragraphs (2) to (4).
- (2) Section 389 of that Act has effect as if subsection (2) were omitted.
- (3) Section 390 has effect as if—
- in subsection (2A), in paragraph (a), for “133(6)(b)” there were substituted “133(5)(b)”,
 - in that paragraph, for “133(6)” there were substituted “133(5)”,
 - for subsection (4) there were substituted—

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- “(4) A final notice about a direction under paragraph 136(1)(c) or (3)(c) of Schedule 11 to the Financial Services and Markets Act 2023 or a prohibition under paragraph 136(1)(d) of that Schedule must—
- (a) specify the conduct to which the direction relates or the extent of the prohibition, and
 - (b) give details of the date on which the direction or prohibition has effect.”

- (4) Section 392 has effect as if for paragraphs (a) and (b) there were substituted—
- “(a) a warning notice given under paragraph 138 of Schedule 11 to the Financial Services and Markets Act 2023;
 - (b) a decision notice given under paragraph 139 of Schedule 11 to the Financial Services and Markets Act 2023.”

Commencement Information

I43 Sch. 11 para. 140 not in force at Royal Assent, see **s. 86(3)**

I44 Sch. 11 para. 140 in force at 31.12.2023 by S.I. 2023/1382, **reg. 8(b)**

Appeals

- 141 (1) If the Bank decides to impose a sanction on a person under paragraph 136, the person may appeal to the Upper Tribunal.
- (2) The Bank may not impose a sanction while an appeal under this paragraph could be brought or is pending.

Commencement Information

I45 Sch. 11 para. 141 not in force at Royal Assent, see **s. 86(3)**

I46 Sch. 11 para. 141 in force at 31.12.2023 by S.I. 2023/1382, **reg. 8(b)**

Injunctions: failure to comply with certain paragraph 136 sanctions

- 142 (1) If, on the application of the Bank, 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.
- (2) If, on the application of the Bank, the court is satisfied—
- (a) that there has been a compliance failure, and
 - (b) that there are steps which could be taken for remedying the failure,
- the court may make an order requiring anyone 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, the court is satisfied—
- (a) that there may have been a compliance failure by any person, or
 - (b) that a person may have been knowingly concerned in a compliance failure,

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the court may make an order restraining that person from dealing with any assets which it is satisfied the person is reasonably likely to deal with.

- (4) “Compliance failure” means—
- (a) a failure to comply with a direction under paragraph 136(1)(c) or (3)(c), or
 - (b) a breach of a prohibition imposed under paragraph 136(1)(d).
- (5) The jurisdiction conferred by this paragraph is exercisable—
- (a) in England and Wales and Northern Ireland, by the High Court, and
 - (b) in Scotland, by the Court of Session.
- (6) In this paragraph—
- (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, and
 - (d) references to dealing with assets include disposing of them.

Commencement Information

I47 Sch. 11 para. 142 not in force at Royal Assent, see **s. 86(3)**

I48 Sch. 11 para. 142 in force at 31.12.2023 by **S.I. 2023/1382, reg. 8(b)**

Publication

- 143 (1) In the case of a warning notice under paragraph 138—
- (a) neither the Bank nor a person to whom it is given or copied may publish the notice,
 - (b) a person to whom the notice is given or copied may not publish any details concerning the notice unless the Bank has published those details, and
 - (c) after consulting the persons to whom the notice is given or copied, the Bank may publish such information about the matter to which the notice relates as it considers appropriate.
- (2) A person to whom a decision notice under paragraph 139 is given or copied may not publish the notice or any details concerning it unless the Bank has published the notice or those details.
- (3) A notice of discontinuance must state that, if the person to whom the notice is given consents, the Bank may publish such information as it considers appropriate about the matter to which the discontinued proceedings related.
- (4) A copy of a notice of discontinuance must be accompanied by a statement that, if the person to whom the notice is copied consents, the Bank may publish such information as it considers appropriate about the matter to which the discontinued proceedings related, so far as relevant to that person.
- (5) Subject to sub-paragraph (8), where the Bank gives a decision notice it may publish such information about the matter to which the notice relates as it considers appropriate.

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- (6) Where the Bank publishes information under sub-paragraph (5) and the person to whom the decision notice is given refers the matter to the Upper Tribunal, the Bank must, without undue delay, publish on its website information about the status of the appeal and its outcome.
- (7) Subject to sub-paragraph (8), where the Bank gives a final notice—
- (a) it must, without undue delay, publish details of any sanction to which the notice relates on its website, and
 - (b) it may publish such other information about the matter to which the notice relates as it considers appropriate.
- (8) Information about a matter to which a decision notice or a final notice relates must be published anonymously where—
- (a) the sanction is imposed (or proposed to be imposed) on an individual and following an obligatory prior assessment publication of personal data is found to be disproportionate, or
 - (b) were it not published anonymously, publication would—
 - (i) jeopardise the stability of financial markets or an ongoing criminal investigation, or
 - (ii) cause, in so far as it can be determined, disproportionate damage to the persons involved.
- (9) Where sub-paragraph (8) applies, the person publishing the information may make such arrangements as to the publication of information (including as to the timing of publication) as are necessary to preserve the anonymity of the person on whom the sanction is imposed.
- (10) Where the Bank publishes information in accordance with sub-paragraphs (6) to (9), it must ensure the information remains on its website for at least five years, unless the information is personal data and the data protection legislation requires the information to be retained for a different period.
- (11) In this paragraph—
- “the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act);
 - “notice of discontinuance” and “final notice” have the same meaning as in sections 389 and 390 of FSMA 2000 (which are applied (with modifications) by paragraph 140).

Commencement Information

I49 Sch. 11 para. 143 not in force at Royal Assent, see **s. 86(3)**

I50 Sch. 11 para. 143 in force at 31.12.2023 by **S.I. 2023/1382, reg. 8(b)**

Co-operation

- 144 In connection with the exercise of its powers to impose sanctions under paragraph 136, the Bank must take such steps as it considers appropriate to co-operate with—
- (a) the FCA, and

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- (b) any person who exercises functions outside the United Kingdom equivalent to those exercisable by the Bank under this Schedule.

Commencement Information

I51 Sch. 11 para. 144 not in force at Royal Assent, see **s. 86(3)**

I52 Sch. 11 para. 144 in force at 31.12.2023 by S.I. 2023/1382, **reg. 8(b)**

Changes to legislation:

There are currently no known outstanding effects for the Financial Services and Markets Act 2023, PART 6.