

Status: Point in time view as at 26/12/2023. This version of this schedule contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Financial Services and Markets Act 2023, SCHEDULE 2. (See end of Document for details)

SCHEDULES

SCHEDULE 2

Section 2

TRANSITIONAL AMENDMENTS

PART 1

AMENDMENTS TO THE MARKETS IN FINANCIAL INSTRUMENTS REGULATION

PROSPECTIVE

Introductory

- 1 [Regulation \(EU\) No 600/2014](#) of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments is amended in accordance with this Part of this Schedule.

Commencement Information

- I1** Sch. 2 para. 1 not in force at Royal Assent, see [s. 86\(3\)](#)

PROSPECTIVE

Transparency requirements for equities

- 2 In Article 3 (pre-trade transparency requirements), after paragraph 3 insert—
- “4. The FCA may make technical standards to specify—
- (a) the range of bid and offer prices, or designated market-maker quotes, to be made public for each class of financial instrument concerned in accordance with paragraph 1, and
 - (b) the depth of trading interest at those prices.
5. In making technical standards under paragraph 4 the FCA must take into account the necessary calibration for the different types of trading systems referred to in paragraph 2.”

Commencement Information

- I2** Sch. 2 para. 2 not in force at Royal Assent, see [s. 86\(3\)](#)

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PROSPECTIVE

3 For Article 4 substitute—

“Article 4

Waivers for equity instruments

1. The FCA may by rules provide for the obligation for market operators and investment firms operating a trading venue to make public the information referred to in Article 3(1) to be waived in such cases as the rules may specify.
2. The power to make rules under paragraph 1 is exercisable only if the FCA considers that the rules are necessary or expedient for the purpose of advancing one or more of its operational objectives referred to in section 1B(3) of FSMA.
3. Rules under paragraph 1 may impose whatever conditions on the application of the waiver the FCA considers appropriate.
4. The FCA must monitor the application of waivers conferred by rules under paragraph 1 (in particular the effect of such waivers on price formation and compliance with any conditions imposed under paragraph 3).
5. The FCA may by notice given to a market operator, or an investment firm operating a trading venue, withdraw a waiver granted by rules made under this Article if the FCA considers that the waiver is being used—
 - (a) in a way that deviates from its original purpose, or
 - (b) to avoid requirements imposed by the rules.”

Commencement Information

I3 Sch. 2 para. 3 not in force at Royal Assent, see [s. 86\(3\)](#)

4 After Article 4 insert—

“Article 4a

Suspension of waivers

1. The FCA may direct that a waiver provided for by Article 4 is suspended (whether entirely or to such an extent as may be specified in the direction) if it considers that continued use of the waiver would unduly harm price formation.
2. The suspension of a waiver by virtue of a direction under paragraph 1 may not have effect for a period longer than six months, but this does not prevent the giving of a further direction under that paragraph by which the suspension is renewed for a period no longer than six months.
3. The FCA may give a direction under paragraph 1 only if it considers that the direction is necessary to advance the FCA’s integrity objective under section 1D of FSMA.

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4. In deciding whether to give a direction under paragraph 1 to suspend (or renew the suspension of) a waiver the FCA must have regard to—
 - (a) its consumer protection objective under section 1C of FSMA and its competition objective under section 1E of FSMA,
 - (b) relevant information produced under Article 3, or under equivalent pre-trading transparency requirements in other jurisdictions, about the use of the waiver in the United Kingdom, or under equivalent waiver arrangements in any other country, in relation to the financial instrument concerned, and
 - (c) any other relevant information available in relation to trading volumes in the financial instrument concerned, whether in the United Kingdom or elsewhere.
5. The FCA must consult the Treasury before giving a direction under paragraph 1.
6. The requirement to consult under paragraph 5 does not apply if the FCA considers it necessary by reason of urgency to give the direction before such consultation can be carried out in order to protect—
 - (a) the transparency of the price formation process, or
 - (b) the interests of consumers (within the meaning of section 1G of FSMA).”

Commencement Information

- I4** Sch. 2 para. 4 not in force at Royal Assent, see **s. 86(3)**
I5 Sch. 2 para. 4 in force at 14.12.2023 by S.I. 2023/1382, **reg. 6(b)**

- 5 Omit Article 5 (volume cap mechanism).

Commencement Information

- I6** Sch. 2 para. 5 not in force at Royal Assent, see **s. 86(3)**
I7 Sch. 2 para. 5 in force at 29.8.2023 by S.I. 2023/779, **reg. 4(zz)(i)(aa)**

- 6 (1) Article 14 (obligation for systematic internalisers to make public firm quotes in respect of shares etc) is amended as follows.
- (2) In paragraph 6A, omit “referred to in Article 5(3A)”.
 - (3) After paragraph 6C insert—
 - “6D. The reference in paragraph 6A to the “transitional period” is a reference to—
 - (a) the period of four years beginning with IP completion day; or
 - (b) the period ending on such day as the Treasury may direct, if that period ends earlier than the period mentioned in sub-paragraph (a).
 - 6E. In deciding whether to issue a direction under paragraph 6D(b), the Treasury must take into account whether the FCA is able to carry out its functions relating to transparency under this Regulation and its implementing measures.”

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Commencement Information

- 18** Sch. 2 para. 6 not in force at Royal Assent, see **s. 86(3)**
19 Sch. 2 para. 6 in force at 29.8.2023 by S.I. 2023/779, **reg. 4(zz)(i)(aa)**

PROSPECTIVE

Transparency requirements for fixed income instruments and derivatives etc

7 For Articles 8 to 11 substitute—

“Article 8

Pre-trade transparency requirements for fixed income instruments and derivatives etc

1. The FCA must by rules impose pre-trade transparency requirements on relevant persons in respect of the trading of such relevant instruments as the FCA determines should be subject to the requirements for the purposes of furthering—
 - (a) efficient price formation, and
 - (b) the fair evaluation of financial assets.
2. The power to make rules under paragraph 1 is exercisable only if the FCA considers that the rules are necessary or expedient for the purpose of advancing one or more of its operational objectives referred to in section 1B(3) of FSMA.
3. In making rules under paragraph 1 the FCA must (in particular) have regard to the impact that requirements imposed by the rules will have on market liquidity.
4. The reference in paragraph 1 to “pre-trade transparency requirements” is a reference to whatever kinds of requirements relating to transparency before trading that the rules may specify, for example—
 - (a) requirements to make public matters specified in the rules in respect of the trading of relevant instruments;
 - (b) requirements about the means by which, and the times at which, such matters are to be made public;
 - (c) requirements for the giving of access to the arrangements employed for the making of such matters public;
 - (d) requirements in respect of relevant instruments that are traded in a standardised and frequent way, if not subject to disclosure requirements of the kind mentioned in sub-paragraph (a).
5. Rules under paragraph 1 may—
 - (a) impose requirements by reference to the types of trading system used;
 - (b) impose different requirements in relation to different types of trading system;
 - (c) provide for the criteria by which the determination referred to in that paragraph is to be made.

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6. In this Article and in Article 9—
- “relevant instruments” means bonds, structured finance products, emission allowances, derivatives and instruments included within package orders;
- “relevant persons” means market operators and investment firms operating a trading venue.

Article 9

Article 8: waivers or suspensions for fixed income instruments and derivatives etc

1. Rules under Article 8 may include provision for any requirements imposed by the rules to be waived in such cases, and to such extent, as may be determined by or under the rules.
2. Rules that include provision under paragraph 1 may impose whatever conditions on the application of a waiver the FCA considers appropriate.
3. The FCA may by notice given to a relevant person withdraw a waiver granted by virtue of paragraph 1 if the FCA considers that the waiver is being used—
 - (a) in a way that deviates from its original purpose, or
 - (b) to avoid requirements provided for in the rules.
4. The FCA may by notice suspend requirements imposed by rules under Article 8 in the case of such relevant instruments, or class of relevant instruments, as may be specified in the notice.
5. A notice under paragraph 4 suspending requirements—
 - (a) may be given subject to conditions;
 - (b) must specify the period for which the suspension has effect;
 - (c) must be published in the manner appearing to the FCA to be best calculated to bring it to the attention of persons likely to be affected by it;
 - (d) may be varied or withdrawn by the giving of a further notice (and sub-paragraph (c) applies to any such notice).
6. The power under paragraph 4 to suspend requirements is exercisable only if the FCA considers that it is necessary to do so to advance the FCA’s integrity objective under section 1D of FSMA.
7. In deciding whether to exercise the power under paragraph 4 to suspend requirements the FCA must also have regard to—
 - (a) its consumer protection objective under section 1C of FSMA, and
 - (b) its competition objective under section 1E of FSMA.

Article 10

Post-trade transparency requirements for fixed income instruments and derivatives etc

1. The FCA must by rules impose post-trade transparency requirements on relevant persons in respect of the trading of such relevant instruments as

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- the FCA determines should be subject to the requirements for the purposes of furthering—
- (a) efficient price formation, and
 - (b) the fair evaluation of financial assets.
2. The power to make rules under paragraph 1 is exercisable only if the FCA considers that the rules are necessary or expedient for the purpose of advancing one or more of its operational objectives referred to in section 1B(3) of FSMA.
 3. In making rules under paragraph 1 the FCA must (in particular) have regard to the impact that requirements imposed by the rules will have on market liquidity.
 4. The reference in paragraph 1 to “post-trade transparency requirements” is a reference to whatever kinds of requirements relating to transparency after the execution of trades that the rules may specify, for example—
 - (a) requirements to make public matters specified in the rules in respect of the trading of relevant instruments (including the price, volume and time of transactions);
 - (b) requirements about the means by which, and the times at which, such matters are to be made public;
 - (c) requirements for the giving of access to the arrangements employed for the making of such matters public.
 5. Rules under paragraph 1 may—
 - (a) impose requirements by reference to the types of trading system used;
 - (b) impose different requirements in relation to different types of trading system;
 - (c) provide for the criteria by which the determination referred to in that paragraph is to be made.
 6. In this Article and in Article 11—

“relevant instruments” means bonds, structured finance products, emission allowances, derivatives and instruments included within package transactions;

“relevant persons” means market operators and investment firms operating a trading venue.

Article 11

Article 10: deferrals and suspensions for fixed income instruments and derivatives etc

1. Rules under Article 10 may include provision authorising relevant persons to defer complying with requirements imposed by the rules in such cases and to such extent as the rules may specify.
2. Rules made by virtue of paragraph 1 may impose whatever conditions on the application of a deferral the FCA considers appropriate.
3. The FCA may by notice suspend any requirements imposed by rules under Article 10 in the case of such relevant instruments, or class of relevant instruments, as may be specified in the notice.

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4. A notice under paragraph 3 suspending requirements—
 - (a) may be given subject to conditions;
 - (b) must specify the period for which the suspension has effect;
 - (c) must be published in the manner appearing to the FCA to be best calculated to bring it to the attention of persons likely to be affected by it;
 - (d) may be varied or withdrawn by the giving of a further notice (and sub-paragraph (c) applies to any such notice).
5. The power under paragraph 3 to suspend requirements is exercisable only if the FCA considers that it is necessary to do so to advance the FCA's integrity objective under section 1D of FSMA.
6. In deciding whether to exercise the power under paragraph 3 to suspend requirements the FCA must also have regard to—
 - (a) its consumer protection objective under section 1C of FSMA, and
 - (b) its competition objective under section 1E of FSMA.”

Commencement Information

I10 Sch. 2 para. 7 not in force at Royal Assent, see [s. 86\(3\)](#)

PROSPECTIVE

Systematic internalisers and other investment firms

- 8 In Article 2(1) (definitions), for points (12) and (12A) substitute—
- “(12) “systematic internaliser” means an investment firm which deals on own account when executing client orders outside a UK regulated market, UK MTF or UK OTF without operating a multilateral system and which—
- (a) does so on an organised, frequent, systematic and substantial basis, or
 - (b) has chosen to opt in to the systematic internaliser regime;
- (12A) for the purposes of point (12), whether dealing is taking place on a basis that is organised, frequent, systematic and substantial is to be determined in accordance with rules made by the FCA (but the power to make such rules is subject to any provision contained in regulations in respect of point (12) under paragraph 2 of this Article);”.

Commencement Information

I11 Sch. 2 para. 8 not in force at Royal Assent, see [s. 86\(3\)](#)

- 9 In Article 17a (tick sizes), in the second paragraph, omit “large in scale”.

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Commencement Information

I12 Sch. 2 para. 9 not in force at Royal Assent, see **s. 86(3)**

I13 Sch. 2 para. 9 in force at 29.8.2023 by S.I. 2023/779, **reg. 4(zz)(i)(bb)**

PROSPECTIVE

10 For Article 18 substitute—

“Article 18

Systematic internalisers: pre-trade transparency requirements for fixed income instruments and derivatives etc

1. The FCA may by rules impose pre-trade transparency requirements on systematic internalisers in respect of the trading of such relevant instruments as the FCA determines should be subject to the requirements for the purposes of furthering—
 - (a) efficient price formation, and
 - (b) the fair evaluation of financial assets.
2. The power to make rules under paragraph 1 is exercisable only if the FCA considers that the rules are necessary or expedient for the purposes of advancing one or more of its operational objectives referred to in section 1B(3) of FSMA.
3. In making rules under paragraph 1 the FCA must (in particular) have regard to the impact that requirements imposed by the rules will have on market liquidity.
4. The reference in paragraph 1 to “pre-trade transparency requirements” is a reference to whatever kinds of requirements relating to transparency before trading that the rules may specify, for example—
 - (a) requirements to make public matters specified in the rules in respect of the trading of relevant instruments (for example, quotes);
 - (b) requirements about the means by which, and the times at which, such matters are to be made public or otherwise disclosed;
 - (c) requirements relating to the determination of quotes in relation to relevant instruments;
 - (d) requirements in relation to the entering of transactions on the basis of such quotes.
5. Rules under paragraph 1 may include provision for quotes issued by systematic internalisers to be updated or withdrawn in such cases as the rules may determine.
6. In this Article and in Article 18a “relevant instruments” means bonds, structured finance products, emission allowances, derivatives and instruments included within package orders.

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Changes to legislation: There are currently no known outstanding effects for the Financial Services and Markets Act 2023, SCHEDULE 2. (See end of Document for details)

Article 18a

Article 18: waivers and suspensions for fixed income instruments and derivatives etc

1. Rules under Article 18 may include provision for any requirements imposed by those rules to be waived in such cases, and to such extent, as may be determined by or under the rules.
2. Rules that include provision under paragraph 1 may impose whatever conditions on the application of a waiver as the FCA considers appropriate.
3. The FCA may by notice given to a systematic internaliser withdraw a waiver granted by virtue of paragraph 1 if the FCA considers that the waiver is being used—
 - (a) in a way that deviates from its original purpose, or
 - (b) to avoid requirements imposed by the rules.
4. The FCA may by notice suspend requirements imposed by rules under Article 18 in the case of such relevant instruments, or class of relevant instruments, as may be specified in the notice.
5. A notice under paragraph 4 suspending requirements—
 - (a) may be given subject to conditions;
 - (b) must specify the period for which the suspension has effect;
 - (c) must be published in the manner appearing to the FCA to be best calculated to bring it to the attention of persons likely to be affected by it;
 - (d) may be varied or withdrawn by the giving of a further notice (and sub-paragraph (c) applies to any such notice).
6. The power under paragraph 4 to suspend requirements is exercisable only if the FCA considers that it is necessary to do so to advance the FCA's integrity objective under section 1D of FSMA.
7. In deciding whether to exercise the power under paragraph 4 to suspend requirements the FCA must also have regard to—
 - (a) its consumer protection objective under section 1C of FSMA, and
 - (b) its competition objective under section 1E of FSMA.

Article 18b

Notification and publication requirements

1. Firms meeting the definition of systematic internaliser must notify the FCA of that fact in accordance with rules made by the FCA.
2. The FCA must publish, and keep up to date, a list of the systematic internalisers for which it has received notification under paragraph 1.”

Commencement Information

I14 Sch. 2 para. 10 not in force at Royal Assent, see [s. 86\(3\)](#)

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Changes to legislation: There are currently no known outstanding effects for the Financial Services and Markets Act 2023, SCHEDULE 2. (See end of Document for details)

PROSPECTIVE

11 For Article 21 substitute—

“Article 21

Investment firms (including systematic internalisers): post-trade transparency requirements for fixed income instruments and derivatives etc

1. The FCA must by rules impose post-trade transparency requirements on relevant persons in respect of the trading of such relevant instruments as the FCA determines should be subject to the requirements for the purposes of furthering—
 - (a) efficient price formation, and
 - (b) the fair evaluation of financial assets.
2. The power to make rules under paragraph 1 is exercisable only if the FCA considers that the rules are necessary or expedient for the purpose of advancing one or more of its operational objectives referred to in section 1B(3) of FSMA.
3. In making rules under paragraph 1 the FCA must (in particular) have regard to the impact that requirements imposed by the rules will have on market liquidity.
4. The reference in paragraph 1 to “post-trade transparency requirements” is a reference to whatever kinds of requirements relating to transparency after the conclusion of trades that the rules may specify, for example—
 - (a) requirements to make public matters specified in the rules in respect of the trading of relevant instruments (including the price, volume and time of transactions);
 - (b) requirements about the means by which, and the times at which, such matters are to be made public.
5. Rules under paragraph 1 may—
 - (a) provide for the criteria by which the determination referred to in that paragraph is to be made;
 - (b) in cases where both parties to a transaction are relevant persons, provide for which of those parties is to comply with the requirements imposed by the rules.
6. Rules under paragraph 1 may include provision authorising relevant persons to defer complying with requirements imposed by the rules in such cases and to such extent as the rules may specify.
7. Rules made by virtue of paragraph 6 may impose whatever conditions on the application of a deferral as the FCA considers appropriate.
8. The FCA may by notice suspend requirements imposed by rules under paragraph 1 in the case of such relevant instruments, or class of relevant instruments, as may be specified in the notice.
9. A notice under paragraph 8 suspending requirements—
 - (a) may be given subject to conditions;
 - (b) must specify the period for which the suspension has effect;

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- (c) must be published in the manner appearing to the FCA to be best calculated to bring it to the attention of persons likely to be affected by it;
 - (d) may be varied or withdrawn by the giving of a further notice (and sub-paragraph (c) applies to any such notice).
10. The power under paragraph 8 to suspend requirements is exercisable only if the FCA considers that it is necessary to do so to advance the FCA's integrity objective under section 1D of FSMA.
11. In deciding whether to exercise the power under paragraph 8 to suspend requirements the FCA must also have regard to—
- (a) its consumer protection objective under section 1C of FSMA, and
 - (b) its competition objective under section 1E of FSMA.
12. In this Article—
- “relevant instruments” means bonds, structured finance products, emission allowances, derivatives and instruments included within package transactions;
 - “relevant persons” means investment firms which, either on own account or on behalf of clients, conclude transactions in relevant instruments.”

Commencement Information

I15 Sch. 2 para. 11 not in force at Royal Assent, see [s. 86\(3\)](#)

PROSPECTIVE

Systematic internalisers and other investment firms

- 12 In Article 22 (providing information for the purposes of transparency and other calculations), in paragraph 1 omit “and for determining whether an investment firm is a systematic internaliser”.

Commencement Information

I16 Sch. 2 para. 12 not in force at Royal Assent, see [s. 86\(3\)](#)

Share trading obligation

- 13 (1) Article 23 (trading obligation for investment firms) is amended as follows.
- (2) Omit paragraphs 1, 1A, 3, 4, 5 and 6.
 - (3) In the title, for “Trading obligation for investment firms” substitute “Investment firms operating internal matching systems”.

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Commencement Information

- I17** Sch. 2 para. 13 not in force at Royal Assent, see [s. 86\(3\)](#)
I18 [Sch. 2 para. 13](#) in force at 29.8.2023 by [S.I. 2023/779](#), [reg. 4\(zz\)\(i\)\(cc\)](#)

- 14 In Article 1(2E), omit “Article 23,”.

Commencement Information

- I19** Sch. 2 para. 14 not in force at Royal Assent, see [s. 86\(3\)](#)
I20 [Sch. 2 para. 14](#) in force at 29.8.2023 by [S.I. 2023/779](#), [reg. 4\(zz\)\(i\)\(cc\)](#)

Commencement Information

- I17** Sch. 2 para. 13 not in force at Royal Assent, see [s. 86\(3\)](#)
I18 [Sch. 2 para. 13](#) in force at 29.8.2023 by [S.I. 2023/779](#), [reg. 4\(zz\)\(i\)\(cc\)](#)
I19 Sch. 2 para. 14 not in force at Royal Assent, see [s. 86\(3\)](#)
I20 [Sch. 2 para. 14](#) in force at 29.8.2023 by [S.I. 2023/779](#), [reg. 4\(zz\)\(i\)\(cc\)](#)

Derivatives trading obligation

- 15 In Article 1(3) (subject matter and scope), for “financial counterparties” to the end substitute “counterparties that are relevant financial counterparties, or relevant non-financial counterparties, for the purposes of Article 28 (see paragraph 1A of that Article)”.

Commencement Information

- I21** Sch. 2 para. 15 not in force at Royal Assent, see [s. 86\(3\)](#)
I22 [Sch. 2 para. 15](#) in force at 29.8.2023 by [S.I. 2023/779](#), [reg. 4\(zz\)\(i\)\(cc\)](#)

- 16 (1) Article 28 (obligation to trade on regulated markets, MTFs or OTFs) is amended as follows.
- (2) In paragraph 1, for the words from the beginning to “Article 10(1)(b) of [Regulation \(EU\) No 648/2012](#)” substitute “Relevant financial counterparties and relevant non-financial counterparties shall conclude transactions which are neither intragroup transactions as defined in Article 3 of [Regulation \(EU\) No 648/2012](#) nor transactions covered by the transitional provisions in Article 89 of that Regulation with other relevant financial counterparties or other relevant non-financial counterparties”.
- (3) After paragraph 1 insert—
- “1A. For the purposes of this Article—
- (a) “financial counterparty” and “non-financial counterparty” have the same meanings as in [Regulation \(EU\) No 648/2012](#) (see Article 2(8) and (9) of that Regulation);
- (b) a financial counterparty is a “relevant” financial counterparty if it is subject to the clearing obligation referred to in Article 4 of [Regulation \(EU\) No 648/2012](#);

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- (c) a non-financial counterparty is a “relevant” non-financial counterparty in respect of derivative contracts pertaining to any asset classes if it is subject to that clearing obligation in respect of derivative contracts pertaining to those asset classes.”

Commencement Information

I23 Sch. 2 para. 16 not in force at Royal Assent, see [s. 86\(3\)](#)

I24 Sch. 2 para. 16 in force at 29.8.2023 by [S.I. 2023/779](#), [reg. 4\(zz\)\(i\)\(cc\)](#)

PROSPECTIVE

17 After Article 28 insert—

“Article 28a

Suspension or modification of Article 28

1. The FCA may direct that the trading obligation imposed by Article 28(1) and (2) (the “DTO”) is suspended or modified in accordance with the direction if it considers that the suspension or modification—
 - (a) is necessary for the purpose of preventing or mitigating disruption to financial markets, and
 - (b) advances one or more of the FCA’s operational objectives referred to in section 1B(3) of FSMA.
2. A direction under this Article may provide for the DTO to be suspended or modified—
 - (a) in the case of all persons to whom the DTO applies or only to such persons or descriptions of persons as are specified in the direction;
 - (b) in the case of all derivatives to which the DTO applies or only to such derivatives, or classes of derivatives, as are specified in the direction;
 - (c) by reference to the venues on which derivative transactions are concluded under the DTO;
 - (d) subject to conditions.
3. In giving a direction under this Article the FCA must have regard to its competitiveness and growth objective in section 1EB of FSMA.
4. Before giving a direction under this Article the FCA must consult—
 - (a) the Bank of England, and
 - (b) the PRA, if the PRA has an interest in the proposed direction.

The PRA has an interest in a proposed direction if the direction—

 - (a) might affect the PRA’s discharge of its functions conferred by or under FSMA or any other enactment, or
 - (b) would apply to a PRA-authorized person or to a person connected with a PRA-authorized person (and for this purpose “PRA authorised person” has the same meaning as in FSMA and “connected” is to be read in accordance with section 165(11) of FSMA).

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5. A direction under this Article may be given only with the consent of the Treasury.

The Treasury must notify the FCA in writing whether or not consent is given before the end of four weeks beginning with the day on which the proposed direction is submitted to the Treasury for consent (and if the notice is not given before the end of that period the Treasury are deemed to have consented).
6. Where the FCA gives a direction under this Article it must also prepare a statement setting out—
 - (a) an explanation of the purpose of the direction, including (where relevant) the ways in which the direction will further the purpose mentioned in paragraph 1(a) and advance one or more of the objectives mentioned in paragraph 1(b), and
 - (b) such guidance in connection with the direction that the FCA considers appropriate.
7. The FCA must publish a direction given under this Article together with the statement mentioned in paragraph 6.
8. The Treasury must lay before Parliament a copy of a direction given under this Article and the statement mentioned in paragraph 6.
9. If a direction under this Article has effect for a period lasting longer than 6 months, the FCA must publish, as soon as reasonably practicable after the end of each applicable 6 month period, a statement with an explanation as to why the conditions in paragraph 1(a) and (b) continue to be met.

The reference to each “applicable 6 month period” is to—
 - (a) the period of 6 months beginning with the day on which the direction is given, and
 - (b) each subsequent 6 month period during which the direction continues in effect.
10. Publication under paragraph 7 or 9 is to be in whatever way appears to the FCA to be best calculated to bring the publication to the attention of the public.
11. A direction under this Article may be varied or revoked by the giving of a further direction under this Article.
12. For the purposes of this Article—
 - (a) the variation of a direction by virtue of paragraph 11 is not to be treated as the giving of a new direction for the purposes of paragraph 9;
 - (b) paragraphs 6(b) and 9 do not apply to the revocation of a direction by virtue of paragraph 11.
13. The functions of the FCA under this Article are not “relevant functions” for the purposes of section 84 of the Financial Services Act 2012 (arrangements for the investigation of complaints relating to exercise of relevant functions of regulators).”

Status: Point in time view as at 26/12/2023. This version of this schedule contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Financial Services and Markets Act 2023, SCHEDULE 2. (See end of Document for details)

Commencement Information

I25 Sch. 2 para. 17 not in force at Royal Assent, see **s. 86(3)**

PROSPECTIVE

18 For Article 31 substitute—

“Article 31

Risk reduction services

1. The FCA may by rules provide for one or more relevant obligations not to apply—
 - (a) in relation to activities or transactions of a specified description carried out as part of a risk reduction service, or
 - (b) to persons of a specified description in the provision of such services.
2. The power to make rules under paragraph 1 is exercisable only if the FCA considers that the rules are necessary or expedient for the purpose of advancing one or more of its operational objectives referred to in section 1B(3) of FSMA.
3. The risk reduction services to which the rules relate may only be post-trade services that do not give rise to any transactions that contribute to the price discovery process.
4. The rules—
 - (a) may describe the risk reduction services to which they relate in whatever way the FCA considers appropriate (subject to paragraph 3);
 - (b) may provide for whatever conditions or exceptions the FCA considers appropriate.
5. Before making rules under paragraph 1 the FCA must consult the Bank of England.
6. In this Article—
 - “relevant obligation” means—
 - (a) the best execution obligation in section 11.2A of the Conduct of Business sourcebook;
 - (b) the obligation in rule 5AA.1.1 in the Market Conduct sourcebook;
 - (c) the trading obligation imposed by Article 28 of this Regulation;
 - “risk reduction service” means a service provided to two or more counterparties to derivatives transactions for the purpose of reducing non-market risks in derivatives portfolios (including, for example, portfolio compression);
 - “specified” means specified in the rules.”

Status: Point in time view as at 26/12/2023. This version of this schedule contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Financial Services and Markets Act 2023, SCHEDULE 2. (See end of Document for details)

Commencement Information

I26 Sch. 2 para. 18 not in force at Royal Assent, see [s. 86\(3\)](#)

Commencement Information

I21 Sch. 2 para. 15 not in force at Royal Assent, see [s. 86\(3\)](#)

I22 [Sch. 2 para. 15](#) in force at 29.8.2023 by [S.I. 2023/779](#), [reg. 4\(zz\)\(i\)\(cc\)](#)

I23 Sch. 2 para. 16 not in force at Royal Assent, see [s. 86\(3\)](#)

I24 [Sch. 2 para. 16](#) in force at 29.8.2023 by [S.I. 2023/779](#), [reg. 4\(zz\)\(i\)\(cc\)](#)

I25 Sch. 2 para. 17 not in force at Royal Assent, see [s. 86\(3\)](#)

I26 Sch. 2 para. 18 not in force at Royal Assent, see [s. 86\(3\)](#)

Consequential amendments relating to this Part

19 In Article 2(1) (definitions), in point (17) (“liquid market”)—

(a) omit paragraph (a);

(b) in paragraph (b), for “Articles 4, 5 and 14” substitute “Article 14”.

Commencement Information

I27 Sch. 2 para. 19 not in force at Royal Assent, see [s. 86\(3\)](#)

I28 [Sch. 2 para. 19](#) in force at 29.8.2023 for specified purposes by [S.I. 2023/779](#), [reg. 4\(zz\)\(i\)\(dd\)](#)

PROSPECTIVE

20 In Article 12(1) after “accordance with” insert “, or with rules made under,”.

Commencement Information

I29 Sch. 2 para. 20 not in force at Royal Assent, see [s. 86\(3\)](#)

PROSPECTIVE

21 In Article 13(1) after “accordance with” insert “, or with rules made under,”.

Commencement Information

I30 Sch. 2 para. 21 not in force at Royal Assent, see [s. 86\(3\)](#)

PROSPECTIVE

22 Omit Article 19.

Status: Point in time view as at 26/12/2023. This version of this schedule contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Financial Services and Markets Act 2023, SCHEDULE 2. (See end of Document for details)

Commencement Information

I31 Sch. 2 para. 22 not in force at Royal Assent, see [s. 86\(3\)](#)

PROSPECTIVE

23 In Article 26(3), omit “and Article 21(5)(a)”.

Commencement Information

I32 Sch. 2 para. 23 not in force at Royal Assent, see [s. 86\(3\)](#)

PROSPECTIVE

24 In Article 47(1A)(a), after “Regulation” insert “or in rules made by the FCA under this Regulation”.

Commencement Information

I33 Sch. 2 para. 24 not in force at Royal Assent, see [s. 86\(3\)](#)

25 In Article 50B (FCA directions), omit “Article 5, Article 9 or”.

Commencement Information

I34 Sch. 2 para. 25 not in force at Royal Assent, see [s. 86\(3\)](#)

I35 [Sch. 2 para. 25](#) in force at 29.8.2023 for specified purposes by [S.I. 2023/779](#), [reg. 4\(zz\)\(i\)\(ee\)](#)

PROSPECTIVE

26 (1) Article 50C (other FCA directions) is amended as follows.

(2) In paragraph 2 after “Article” insert “4a or”.

(3) In paragraph 3 after “Article” insert “4a or”.

(4) In paragraph 4 after “Article” insert “4a or”.

Commencement Information

I36 Sch. 2 para. 26 not in force at Royal Assent, see [s. 86\(3\)](#)

PROSPECTIVE

27 (1) Article 50D (FCA rules) is amended as follows.

(2) In paragraph 1—

Status: Point in time view as at 26/12/2023. This version of this schedule contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Financial Services and Markets Act 2023, SCHEDULE 2. (See end of Document for details)

- (a) for “Article 46(6B) or 48A” substitute “this Regulation”;
 - (b) for “modification in paragraph 3” substitute “modifications in paragraphs 2A and 3”.
- (3) In paragraph 2(b) after “damages)” insert “and section 138EA (matters to consider when making rules)”.
- (4) After paragraph 2 insert—
- “2A. In its application to rules made under Article 31, section 138I has effect as if the reference to the PRA in subsection (1)(a) were a reference to the Bank of England.”
- (5) In paragraph 3, for the words after “authorised persons” substitute “included a reference to persons who are not authorised persons but to whom any of the rules made by the FCA under this Regulation apply”.

Commencement Information

I37 Sch. 2 para. 27 not in force at Royal Assent, see [s. 86\(3\)](#)

PART 2

AMENDMENTS TO THE EUROPEAN MARKET INFRASTRUCTURE REGULATION

- 28 [Regulation \(EU\) No 648/2012](#) on OTC derivatives, central counterparties and trade repositories is amended in accordance with this Part of this Schedule.

Commencement Information

I38 Sch. 2 para. 28 not in force at Royal Assent, see [s. 86\(3\)](#)

I39 [Sch. 2 para. 28](#) in force at 29.8.2023 by [S.I. 2023/779](#), [reg. 4\(zz\)\(ii\)](#)

- 29 After Article 6a insert—

“Article 6b

Risk reduction services

1. The Bank of England may by rules provide for the clearing obligation referred to in Article 4(1) in respect of a class or classes of OTC derivatives not to apply—
 - (a) in relation to activities or transactions of a specified description carried out as part of a risk reduction service, or
 - (b) to persons of a specified description in the provision of such services.
2. The power to make rules under paragraph 1 is exercisable only if the Bank of England considers that the rules are necessary or expedient for the purpose of advancing the financial stability objective under section 2A of the Bank of England Act 1998.

Status: Point in time view as at 26/12/2023. This version of this schedule contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Financial Services and Markets Act 2023, SCHEDULE 2. (See end of Document for details)

3. The risk reduction services to which the rules relate may only be post-trade services that do not give rise to any transactions that contribute to the price discovery process.
4. The rules—
 - (a) may describe the risk reduction services to which they relate in whatever way the Bank of England considers appropriate (subject to paragraph 3);
 - (b) may provide for whatever conditions or exceptions the Bank of England considers appropriate.
5. In this Article—

“risk reduction service” means a service provided to two or more counterparties to derivatives transactions for the purpose of reducing non-market risks in derivatives portfolios (including, for example, portfolio compression);

“specified” means specified in the rules.”

Commencement Information

I40 Sch. 2 para. 29 not in force at Royal Assent, see **s. 86(3)**

I41 Sch. 2 para. 29 in force at 29.8.2023 by S.I. 2023/779, **reg. 4(zz)(ii)**

30 After Article 84b insert—

“Article 84c

Bank of England rules

1. The provisions of Part 9A of FSMA (rules and guidance) listed in paragraph 2 apply in relation to rules made by the Bank of England under Article 6b, subject to the modifications in paragraphs 3 to 5.
2. The provisions are—
 - (a) section 137T (general supplementary powers);
 - (b) sections 138A and 138B (modification or waiver of rules), but with the omission of subsection (4)(b) of section 138A and subsection (4) of section 138B;
 - (c) section 138C (evidential provisions);
 - (d) section 138E (limits on effect of contravening rules);
 - (e) section 138F (notification of rules);
 - (f) section 138G (rule-making instruments);
 - (g) section 138H (verification of rules);
 - (h) section 138J (consultation by the PRA), but with the omission of subsections (2)(c) and (5)(b);
 - (i) section 138L (consultation: general exceptions), but with the omission of subsection (1).
3. Any reference in any of those provisions to an authorised person is to be read as a reference to a person to whom the clearing obligation referred to in Article 4(1) applies.

Status: Point in time view as at 26/12/2023. This version of this schedule contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Financial Services and Markets Act 2023, SCHEDULE 2. (See end of Document for details)

4. Section 138J(2)(d) has effect in relation to rules proposed to be made by the Bank of England as if the reference to the compatibility of the proposed rules with the provisions mentioned in section 138J(2)(d) were a reference to their compatibility with the Bank of England’s financial stability objective under section 2A of the Bank of England Act 1998.
5. Section 138L(2) has effect as if for paragraphs (a) and (b) there were substituted “be prejudicial to financial stability”.

Commencement Information

I42 Sch. 2 para. 30 not in force at Royal Assent, see [s. 86\(3\)](#)

I43 [Sch. 2 para. 30](#) in force at 29.8.2023 by [S.I. 2023/779](#), [reg. 4\(zz\)\(ii\)](#)

PART 3

AMENDMENTS TO THE EU SECURITISATION REGULATION

Introductory

- 31 [Regulation \(EU\) 2017/2402](#) of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending [Directives 2009/65/EC](#), [2009/138/EC](#) and [2011/61/EU](#) and Regulations (EC) No 1060/2009 and (EU) No 648/2012 (“the EU Securitisation Regulation 2017”) is amended in accordance with this Part of this Schedule.

Commencement Information

I44 Sch. 2 para. 31 not in force at Royal Assent, see [s. 86\(3\)](#)

I45 [Sch. 2 para. 31](#) in force at 29.8.2023 by [S.I. 2023/779](#), [reg. 4\(zz\)\(iii\)](#)

STS equivalent non-UK securitisations

- 32 (1) Article 2 (definitions) is amended as follows.
 - (2) Omit point (A8) (definition of “third country”).
 - (3) Before point (1) insert—
 - “(A9) ‘STS equivalent non-UK securitisation’ means a securitisation of a description in relation to which a country or territory outside the United Kingdom is designated by regulations under Article 28A;
 - (A10) ‘territory’ includes the European Union and any other international organisation or authority comprising countries or territories;”.
 - (4) In point (5) (definition of “sponsor”), for “third country” substitute “country or territory outside the United Kingdom”.

Status: Point in time view as at 26/12/2023. This version of this schedule contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Financial Services and Markets Act 2023, SCHEDULE 2. (See end of Document for details)

Commencement Information

I46 Sch. 2 para. 32 not in force at Royal Assent, see **s. 86(3)**

I47 Sch. 2 para. 32 in force at 29.8.2023 by **S.I. 2023/779, reg. 4(zz)(iii)**

33 After Article 28 (third party verifying STS compliance) insert—

“CHAPTER 4A

STS EQUIVALENT NON-UK SECURITISATIONS

Designation of country or territory in relation to securitisations

1. The Treasury may by regulations designate a country or territory in relation to securitisations of descriptions specified in the regulations.
2. The power in paragraph 1 is exercisable only if the Treasury are satisfied that the law and practice which applies in the country or territory, in relation to securitisations of the descriptions specified, has equivalent effect (taken as a whole) to applicable UK law.
3. “Applicable UK law” means:
 - (a) this Regulation, as it applies to STS securitisations, and
 - (b) the Securitisation Regulations 2018 (**S.I. 2018/2188**), as those regulations apply to STS securitisations.
4. In making regulations under paragraph 1, the Treasury must have regard, in addition to any other matters they consider relevant, to whether the FCA (and, where relevant, the PRA) have established effective cooperation arrangements with the competent authorities of the country or territory.
5. When considering whether to make, vary or revoke regulations under paragraph 1, the Treasury may, by making a request in writing to the FCA, require the FCA to prepare a report on the law and practice of a country or territory outside the United Kingdom, or particular aspects of such law and practice, in relation to securitisations of descriptions specified in the request.
6. If the Treasury request a report under paragraph 5, the FCA must:
 - (a) consult the PRA when preparing the report, and
 - (b) provide the Treasury with the report within such reasonable period as may be specified in the request (or such other period as may be agreed with the Treasury).
7. Regulations under paragraph 1 may—
 - (a) specify matters that a person carrying out a due-diligence assessment required by Article 5(3) must consider with regard to an STS equivalent non-UK securitisation;
 - (b) in relation to a matter specified, specify the extent to which the person may rely on the matter.
8. Regulations under this Article are to be made by statutory instrument.
9. Such regulations may—

Status: Point in time view as at 26/12/2023. This version of this schedule contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Financial Services and Markets Act 2023, SCHEDULE 2. (See end of Document for details)

(a) contain incidental, supplemental, consequential and transitional provision; and

(b) make different provision for different purposes.

>10.. Regulations under this Article are subject to annulment in pursuance of a resolution of either House of Parliament.”

Commencement Information

I48 Sch. 2 para. 33 not in force at Royal Assent, see **s. 86(3)**

I49 Sch. 2 para. 33 in force at 29.8.2023 by S.I. 2023/779, **reg. 4(zz)(iii)**

Commencement Information

I46 Sch. 2 para. 32 not in force at Royal Assent, see **s. 86(3)**

I47 Sch. 2 para. 32 in force at 29.8.2023 by S.I. 2023/779, **reg. 4(zz)(iii)**

I48 Sch. 2 para. 33 not in force at Royal Assent, see **s. 86(3)**

I49 Sch. 2 para. 33 in force at 29.8.2023 by S.I. 2023/779, **reg. 4(zz)(iii)**

Minor and consequential amendments

34 The EU Securitisation Regulation 2017 is amended in accordance with paragraphs 35 to 37.

Commencement Information

I50 Sch. 2 para. 34 not in force at Royal Assent, see **s. 86(3)**

I51 Sch. 2 para. 34 in force at 29.8.2023 by S.I. 2023/779, **reg. 4(zz)(iii)**

35 In Article 4 (requirements for securitisation special purpose entities)—

(a) in the words before point (a), for “third country” substitute “country or territory outside the United Kingdom”;

(b) in point (a), for “third country” substitute “country or territory”;

(c) in point (b), for “third country”, in both places, substitute “country or territory”.

Commencement Information

I52 Sch. 2 para. 35 not in force at Royal Assent, see **s. 86(3)**

I53 Sch. 2 para. 35 in force at 29.8.2023 by S.I. 2023/779, **reg. 4(zz)(iii)**

36 (1) Article 5 (due-diligence requirements for institutional investors) is amended as follows.

(2) In paragraph 1, for “third country”, in each place, substitute “country or territory outside the United Kingdom”.

(3) In paragraph 3, after point (d) insert—

“(da) with regard to an STS equivalent non-UK securitisation, such matters as may be specified in regulations under Article 28A (and may rely on such matters to such extent as may be specified).”

Status: Point in time view as at 26/12/2023. This version of this schedule contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Financial Services and Markets Act 2023, SCHEDULE 2. (See end of Document for details)

Commencement Information

I54 Sch. 2 para. 36 not in force at Royal Assent, see [s. 86\(3\)](#)

I55 [Sch. 2 para. 36](#) in force at 29.8.2023 by [S.I. 2023/779](#), [reg. 4\(zz\)\(iii\)](#)

37 (1) Article 46 (Treasury review) is amended as follows.

(2) In paragraph 1, omit the second subparagraph.

(3) In paragraph 2—

(a) in point (a), omit “in the Union”;

(b) omit point (e).

Commencement Information

I56 Sch. 2 para. 37 not in force at Royal Assent, see [s. 86\(3\)](#)

I57 [Sch. 2 para. 37](#) in force at 29.8.2023 by [S.I. 2023/779](#), [reg. 4\(zz\)\(iii\)](#)

38 In [Regulation \(EU\) No 575/2013](#) of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending [Regulation \(EU\) No 648/2012](#), in Article 242 (definitions), in point (10) (meaning of “simple, transparent and standardised securitisation” or “STS securitisation”)—

(a) the words from “a securitisation” to the end become paragraph (a);

(b) at the end of that paragraph, insert “; or

(b) an STS equivalent non-UK securitisation as defined in point (A9) of Article 2 of [Regulation \(EU\) 2017/2402](#);”.

Commencement Information

I58 Sch. 2 para. 38 not in force at Royal Assent, see [s. 86\(3\)](#)

I59 [Sch. 2 para. 38](#) in force at 29.8.2023 by [S.I. 2023/779](#), [reg. 4\(zz\)\(iii\)](#)

39 In [Commission Delegated Regulation \(EU\) 2015/35](#) of 10 October 2014 supplementing [Directive 2009/138/EC](#) of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), in Article 1 (definitions), in point 18b (meaning of “STS securitisation”)—

(a) the words from “a securitisation” to the end become paragraph (a);

(b) at the end of that paragraph, insert “; or

(b) an STS equivalent non-UK securitisation within the meaning of Article 2(A9) of [Regulation \(EU\) 2017/2402](#);”.

Commencement Information

I60 Sch. 2 para. 39 not in force at Royal Assent, see [s. 86\(3\)](#)

I61 [Sch. 2 para. 39](#) in force at 29.8.2023 by [S.I. 2023/779](#), [reg. 4\(zz\)\(iii\)](#)

Status: Point in time view as at 26/12/2023. This version of this schedule contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Financial Services and Markets Act 2023, SCHEDULE 2. (See end of Document for details)

- 40 In Article 11(1) of [Regulation \(EU\) 2017/1131](#) of the European Parliament and of the Council of 14 June 2017 on money market funds (eligible securitisations and ABCPs), after paragraph (c) insert—
- “(d) an STS equivalent non-UK securitisation as defined in point (A9) of Article 2 of [Regulation \(EU\) 2017/2402](#).”

Commencement Information

- I62** Sch. 2 para. 40 not in force at Royal Assent, see [s. 86\(3\)](#)
I63 Sch. 2 para. 40 in force at 29.8.2023 by S.I. 2023/779, [reg. 4\(zz\)\(iii\)](#)

- 41 The Securitisation Regulations 2018 (S.I. 2018/1288) are amended in accordance with paragraphs [42](#) and [43](#).

Commencement Information

- I64** Sch. 2 para. 41 not in force at Royal Assent, see [s. 86\(3\)](#)
I65 Sch. 2 para. 41 in force at 29.8.2023 by S.I. 2023/779, [reg. 4\(zz\)\(iii\)](#)

- 42 In regulation 2 (interpretation), in the definition of “SRUP”, in paragraph (c), for “third country” substitute “country or territory outside the United Kingdom”.

Commencement Information

- I66** Sch. 2 para. 42 not in force at Royal Assent, see [s. 86\(3\)](#)
I67 Sch. 2 para. 42 in force at 29.8.2023 by S.I. 2023/779, [reg. 4\(zz\)\(iii\)](#)

- 43 In regulation 4 (designation of competent authorities), in paragraph (1)(b), for “third country” substitute “country or territory outside the United Kingdom”.

Commencement Information

- I68** Sch. 2 para. 43 not in force at Royal Assent, see [s. 86\(3\)](#)
I69 Sch. 2 para. 43 in force at 29.8.2023 by S.I. 2023/779, [reg. 4\(zz\)\(iii\)](#)

Commencement Information

- I50** Sch. 2 para. 34 not in force at Royal Assent, see [s. 86\(3\)](#)
I51 Sch. 2 para. 34 in force at 29.8.2023 by S.I. 2023/779, [reg. 4\(zz\)\(iii\)](#)
I52 Sch. 2 para. 35 not in force at Royal Assent, see [s. 86\(3\)](#)
I53 Sch. 2 para. 35 in force at 29.8.2023 by S.I. 2023/779, [reg. 4\(zz\)\(iii\)](#)
I54 Sch. 2 para. 36 not in force at Royal Assent, see [s. 86\(3\)](#)
I55 Sch. 2 para. 36 in force at 29.8.2023 by S.I. 2023/779, [reg. 4\(zz\)\(iii\)](#)
I56 Sch. 2 para. 37 not in force at Royal Assent, see [s. 86\(3\)](#)
I57 Sch. 2 para. 37 in force at 29.8.2023 by S.I. 2023/779, [reg. 4\(zz\)\(iii\)](#)
I58 Sch. 2 para. 38 not in force at Royal Assent, see [s. 86\(3\)](#)
I59 Sch. 2 para. 38 in force at 29.8.2023 by S.I. 2023/779, [reg. 4\(zz\)\(iii\)](#)
I60 Sch. 2 para. 39 not in force at Royal Assent, see [s. 86\(3\)](#)
I61 Sch. 2 para. 39 in force at 29.8.2023 by S.I. 2023/779, [reg. 4\(zz\)\(iii\)](#)
I62 Sch. 2 para. 40 not in force at Royal Assent, see [s. 86\(3\)](#)

Status: Point in time view as at 26/12/2023. This version of this schedule contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Financial Services and Markets Act 2023, SCHEDULE 2. (See end of Document for details)

- I63** Sch. 2 para. 40 in force at 29.8.2023 by S.I. 2023/779, reg. 4(zz)(iii)
- I64** Sch. 2 para. 41 not in force at Royal Assent, see s. 86(3)
- I65** Sch. 2 para. 41 in force at 29.8.2023 by S.I. 2023/779, reg. 4(zz)(iii)
- I66** Sch. 2 para. 42 not in force at Royal Assent, see s. 86(3)
- I67** Sch. 2 para. 42 in force at 29.8.2023 by S.I. 2023/779, reg. 4(zz)(iii)
- I68** Sch. 2 para. 43 not in force at Royal Assent, see s. 86(3)
- I69** Sch. 2 para. 43 in force at 29.8.2023 by S.I. 2023/779, reg. 4(zz)(iii)

PROSPECTIVE

PART 4

AMENDMENTS TO THE FINANCIAL SERVICES AND MARKETS ACT 2000 (MARKETS IN FINANCIAL INSTRUMENTS) REGULATIONS 2017

Introductory

- 44 The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (S.I. 2017/701) is amended in accordance with this Part of this Schedule.

Commencement Information

- I70** Sch. 2 para. 44 not in force at Royal Assent, see s. 86(3)

Position limits for commodity derivatives

- 45 In Part 3 (position limits and position management controls in commodity derivatives), before regulation 16 insert—

FCA rules relating to position limits

- “15A(1) The FCA may by rules require relevant persons to establish and apply—
- (a) position limits in respect of specified commodity derivatives, or commodity derivatives of a specified class, that are traded on a trading venue, and
 - (b) position management controls in relation to the trading of commodity derivatives.
- (2) The power to make rules under paragraph (1) is exercisable only if the FCA considers that the rules are necessary or expedient for the purpose of advancing one or more of its operational objectives referred to in section 1B(3) of the Act.
- (3) In making rules under paragraph (1) the FCA must have regard to its competitiveness and growth objective in section 1EB of the Act.
- (4) Rules under paragraph (1) may provide for matters that relevant persons must have regard to when establishing position limits, or position management controls, under requirements imposed by the rules.
- ”

Status: Point in time view as at 26/12/2023. This version of this schedule contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Financial Services and Markets Act 2023, SCHEDULE 2. (See end of Document for details)

- (5) Rules under paragraph (1) may provide for exemptions from the requirements imposed by the rules to such extent, and in such cases, as the rules may specify.
- (6) The reference in paragraph (1)(b) to position management controls includes (for example) arrangements under which—
 - (a) the open interest positions of persons can be monitored;
 - (b) information and documentation can be obtained from persons about the size of positions entered into;
 - (c) requirements can be imposed on persons to terminate or reduce positions or to provide liquidity.
- (7) The following provisions of Part 9A of the Act (rules and guidance) apply in relation to rules made by the FCA under this regulation as they apply in relation to rules made by the FCA under that Part of the Act, subject to the modification in paragraph (8)—
 - (a) section 137T (general supplementary powers);
 - (b) Chapter 2 (modification, waiver, contravention and procedural provisions), with the exception of sections 138D (actions for damages) and 138EA (matters to consider when making rules);
 - (c) section 141A (power to make consequential amendments of references to rules etc).
- (8) Section 137T applies as if the reference to authorised persons were a reference to relevant persons to whom rules under this regulation apply.
- (9) A requirement imposed by rules under this regulation is, for the purposes of section 296 of the Act (regulator’s power to give directions), to be treated as an obligation imposed under the Act.
- (10) In this Part “relevant persons” means market operators and investment firms operating a trading venue.”

Commencement Information

I71 Sch. 2 para. 45 not in force at Royal Assent, see **s. 86(3)**

- 46 (1) Regulation 16 (FCA duty to establish position limits) is amended as follows.
- (2) In the title, for “duty” substitute “power”.
 - (3) In paragraph (1)—
 - (a) for “must” substitute “may”;
 - (b) for the words from “traded” to the end substitute “to which requirements imposed by rules under regulation 15A apply”.
 - (4) After that paragraph insert—
 - “(1A) The power to give a direction under paragraph (1) is exercisable only if the FCA considers that it is necessary to give the direction for the purpose of advancing one or more of its operational objectives referred to in section 1B(3) of the Act.

Status: Point in time view as at 26/12/2023. This version of this schedule contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Financial Services and Markets Act 2023, SCHEDULE 2. (See end of Document for details)

(1B) Position limits established by virtue of regulation 15A do not apply to the extent that position limits established by virtue of this regulation apply instead.”

(5) Omit paragraphs (2), (3) and (5).

Commencement Information

I72 Sch. 2 para. 46 not in force at Royal Assent, see [s. 86\(3\)](#)

- 47 (1) Regulation 27 (FCA power to require information) is amended as follows.
- (2) In paragraph (1), in both of sub-paragraphs (a) and (b) omit “or over the counter contract”.
- (3) In paragraph (2) omit “or over the counter contract”.
- (4) “(3) For the purposes of this regulation a commodity derivative is a “relevant” commodity derivative if—
- (a) requirements imposed by rules under regulation 15A apply to the commodity derivative (or to commodity derivatives of that class), or
 - (b) it is a commodity derivative (or falls within a class of commodity derivatives) to which the FCA is considering making such requirements apply.”

Commencement Information

I73 Sch. 2 para. 47 not in force at Royal Assent, see [s. 86\(3\)](#)

- 48 (1) Regulation 28 (FCA power to intervene) is amended as follows.
- (2) In paragraph (1), in the words before sub-paragraph (a), for the words from “the exercise” to “regulation” substitute “advancing one or more of its operational objectives referred to in section 1B(3) of the Act”.
- (3) In paragraph (2) after “established” insert “in accordance with rules made under regulation 15A or”.
- (4) In paragraph (3) omit “or an economically equivalent over the counter contract”.

Commencement Information

I74 Sch. 2 para. 48 not in force at Royal Assent, see [s. 86\(3\)](#)

- 49 In regulation 29 (interpretation of Part 3), in paragraph (2)—
- (a) before the definition of “position” insert—
““market operator” has the same meaning as in the markets in financial instruments regulation;”;
 - (b) after the definition of “position limit” insert—
““relevant person” has the meaning given by regulation 15A(10)”.

Status: Point in time view as at 26/12/2023. This version of this schedule contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Financial Services and Markets Act 2023, SCHEDULE 2. (See end of Document for details)

Commencement Information

I75 Sch. 2 para. 49 not in force at Royal Assent, see [s. 86\(3\)](#)

Commencement Information

I71 Sch. 2 para. 45 not in force at Royal Assent, see [s. 86\(3\)](#)

I72 Sch. 2 para. 46 not in force at Royal Assent, see [s. 86\(3\)](#)

I73 Sch. 2 para. 47 not in force at Royal Assent, see [s. 86\(3\)](#)

I74 Sch. 2 para. 48 not in force at Royal Assent, see [s. 86\(3\)](#)

I75 Sch. 2 para. 49 not in force at Royal Assent, see [s. 86\(3\)](#)

Consequential revocations relating to this Part

- 50 The following provisions are revoked—
- (a) paragraph 7BA of the Schedule to the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges, Clearing Houses and Central Securities Depositories) Regulations 2001 ([S.I. 2001/995](#));
 - (b) in the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017—
 - (i) regulation 17;
 - (ii) regulation 18;
 - (iii) regulation 19;
 - (iv) regulation 25;
 - (v) regulation 29(1);
 - (c) in [Regulation \(EU\) No 600/2014](#) of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments—
 - (i) in Article 26(3), the last sentence;
 - (ii) in Schedule 3, paragraphs 31 and 32;
 - (d) [Commission Delegated Regulation \(EU\) 2017/591](#) of 1 December 2016 supplementing [Directive 2014/65/EU](#) of the European Parliament and of the Council with regard to regulatory technical standards for the application of position limits to commodity derivatives.

Commencement Information

I76 Sch. 2 para. 50 not in force at Royal Assent, see [s. 86\(3\)](#)

PART 5

AMENDMENTS TO THE CENTRAL COUNTERPARTIES (AMENDMENT, ETC., AND TRANSITIONAL PROVISION) (EU EXIT) REGULATIONS 2018

- 51 (1) Regulation 19B of the Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018 ([S.I. 2018/1184](#)) is amended as follows.

Status: Point in time view as at 26/12/2023. This version of this schedule contains provisions that are prospective.

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- (2) In paragraph (2) for “one year” substitute “3 years and 6 months”.
- (3) After paragraph (3) insert—
- “(4) The period determined by the Bank of England in a particular case under paragraph (2) (whenever determined) may be varied by the making of a subsequent determination.
- (5) Paragraph (6) applies where—
- (a) a central counterparty (A) was taken to be recognised pursuant to Article 25 of the EMIR regulation in accordance with regulation 19A(3), and
- (b) A ceased to be taken to be so recognised by virtue of the relevant period in the case of A having expired before the commencement day.
- (6) The Bank of England—
- (a) may determine that the relevant period in the case of A is (in spite of its expiry) to be treated, as from the making of the determination, as not having expired, and
- (b) may accordingly exercise its power under this regulation to vary the relevant period on or after the commencement day.
- (7) In paragraphs (5) and (6) “the commencement day” means the day on which Part 5 of Schedule 2 to the Financial Services and Markets Act 2023 comes into force.
- (8) Paragraphs (5) to (7) expire at the end of 31 December 2025 (but without affecting any variation of a relevant period made under this regulation by virtue of paragraph (6)(b) before that time).”

Commencement Information

I77 Sch. 2 para. 51 in force at Royal Assent, see [s. 86\(1\)\(b\)](#)

PART 6

AMENDMENTS RELATING TO CRITICAL THIRD PARTIES

- 52 The Electronic Money Regulations 2011 (S.I. 2011/99) are amended in accordance with paragraphs 53 to 62.

Commencement Information

I78 Sch. 2 para. 52 not in force at Royal Assent, see [s. 86\(3\)](#)

I79 Sch. 2 para. 52 in force at 29.8.2023 by S.I. 2023/779, [reg. 4\(zz\)\(iv\)](#)

- 53 In regulation 48 (monitoring and enforcement), after paragraph (1)(a) insert—
- “(aa) electronic money institutions on whom requirements are imposed by or under section 312R of the 2000 Act are complying with them;”.

Status: Point in time view as at 26/12/2023. This version of this schedule contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Financial Services and Markets Act 2023, SCHEDULE 2. (See end of Document for details)

Commencement Information

I80 Sch. 2 para. 53 not in force at Royal Assent, see [s. 86\(3\)](#)

I81 [Sch. 2 para. 53](#) in force at 29.8.2023 by [S.I. 2023/779](#), [reg. 4\(zz\)\(iv\)](#)

54 In regulation 49 (reporting requirements), after paragraph (1) insert—

“(1A) An electronic money institution must give the Authority such information in respect of its compliance with requirements imposed by or under section 312R of the 2000 Act as the Authority may direct.”

Commencement Information

I82 Sch. 2 para. 54 not in force at Royal Assent, see [s. 86\(3\)](#)

I83 [Sch. 2 para. 54](#) in force at 29.8.2023 by [S.I. 2023/779](#), [reg. 4\(zz\)\(iv\)](#)

55 In regulation 50 (public censure), after “Regulations” insert “or, in the case of an electronic money institution, section 312R of the 2000 Act”.

Commencement Information

I84 Sch. 2 para. 55 not in force at Royal Assent, see [s. 86\(3\)](#)

I85 [Sch. 2 para. 55](#) in force at 29.8.2023 by [S.I. 2023/779](#), [reg. 4\(zz\)\(iv\)](#)

56 In regulation 51 (financial penalties)—

(a) omit “or” at the end of paragraph (1)(a), and

(b) after that paragraph insert—

“(aa) an electronic money institution who has contravened a requirement imposed on it by or under section 312R of the 2000 Act; or”.

Commencement Information

I86 Sch. 2 para. 56 not in force at Royal Assent, see [s. 86\(3\)](#)

I87 [Sch. 2 para. 56](#) in force at 29.8.2023 by [S.I. 2023/779](#), [reg. 4\(zz\)\(iv\)](#)

57 In regulation 52 (suspending authorisation etc), in paragraph (1) after “Regulations” insert “or by or under section 312R of the 2000 Act”.

Commencement Information

I88 Sch. 2 para. 57 not in force at Royal Assent, see [s. 86\(3\)](#)

I89 [Sch. 2 para. 57](#) in force at 29.8.2023 by [S.I. 2023/779](#), [reg. 4\(zz\)\(iv\)](#)

58 In regulation 54 (injunctions)—

(a) omit “or” at the end of paragraph (1)(a);

(b) after paragraph (1)(b) insert—

“(c) that there is a reasonable likelihood that an electronic money institution will contravene a requirement imposed on it by or under section 312R of the 2000 Act; or

Status: Point in time view as at 26/12/2023. This version of this schedule contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Financial Services and Markets Act 2023, SCHEDULE 2. (See end of Document for details)

- (d) that an electronic money institution has contravened such a requirement and that there is a reasonable likelihood that the contravention will continue or be repeated,”;
- (c) in paragraph (2)(a) after “Regulations” insert “or an electronic money institution has contravened a requirement imposed on it by or under section 312R of the 2000 Act”;
- (d) in the words after paragraph (2)(b), after “that person” insert “or institution”;
- (e) omit “or” at the end of paragraph (3)(a);
- (f) after that paragraph insert—
 - “(aa) in the case of an electronic money institution, contravened a requirement imposed on it by or under section 312R of the 2000 Act; or”;
- (g) in paragraph (3)(b) for “such a requirement” substitute “a requirement described in sub-paragraph (a) or (aa)”.

Commencement Information

I90 Sch. 2 para. 58 not in force at Royal Assent, see [s. 86\(3\)](#)

I91 Sch. 2 para. 58 in force at 29.8.2023 by [S.I. 2023/779](#), [reg. 4\(zz\)\(iv\)](#)

- 59 In regulation 55 (power to require restitution), in paragraph (1) after “requirement,” insert “or, where the electronic money issuer is an electronic money institution, has contravened a requirement imposed on it by or under section 312R of the 2000 Act, or been knowingly concerned in the contravention of such a requirement,”.

Commencement Information

I92 Sch. 2 para. 59 not in force at Royal Assent, see [s. 86\(3\)](#)

I93 Sch. 2 para. 59 in force at 29.8.2023 by [S.I. 2023/779](#), [reg. 4\(zz\)\(iv\)](#)

- 60 In regulation 57 (restitution orders), in paragraph (1) after “requirement,” insert “or, where the electronic money issuer is an electronic money institution, has contravened a requirement imposed on it by or under section 312R of the 2000 Act, or been knowingly concerned in the contravention of such a requirement,”.

Commencement Information

I94 Sch. 2 para. 60 not in force at Royal Assent, see [s. 86\(3\)](#)

I95 Sch. 2 para. 60 in force at 29.8.2023 by [S.I. 2023/779](#), [reg. 4\(zz\)\(iv\)](#)

- 61 In regulation 58 (complaints), in paragraph (1)—
- (a) the words from “a requirement” to the end become sub-paragraph (a), and
 - (b) after that sub-paragraph insert “, or
 - (b) a requirement imposed by or under section 312R of the 2000 Act has been breached by an electronic money institution.”

Status: Point in time view as at 26/12/2023. This version of this schedule contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Financial Services and Markets Act 2023, SCHEDULE 2. (See end of Document for details)

Commencement Information

I96 Sch. 2 para. 61 not in force at Royal Assent, see [s. 86\(3\)](#)

I97 Sch. 2 para. 61 in force at 29.8.2023 by [S.I. 2023/779](#), [reg. 4\(zz\)\(iv\)](#)

- 62 In Schedule 3 (application and modification of legislation)—
- (a) in paragraph 1(b), in the inserted text substituting section 66A of the 2000 Act—
- (i) in subsection (1), the words from “a contravention” to the end become sub-paragraph (a),
- (ii) after that paragraph insert “, or
- (b) a contravention of a requirement imposed by or under section 312R of the 2000 Act by an electronic money institution.”, and
- (iii) for subsection (2) substitute—
- “(2) “Relevant person” means—
- (a) in relation to subsection (1)(a), any person responsible for the management of the electronic money issuer or, where relevant, any person responsible for the management of electronic money issuance by the electronic money issuer, or
- (b) in relation to subsection (1)(b), any person responsible for the management of the electronic money institution or, where relevant, any person responsible for the management of electronic money issuance by the electronic money institution.”;
- (b) in paragraph 3(d)(i), in the inserted subsection (1)(ab), after “2011” insert “or section 312R”.

Commencement Information

I98 Sch. 2 para. 62 not in force at Royal Assent, see [s. 86\(3\)](#)

I99 Sch. 2 para. 62 in force at 29.8.2023 by [S.I. 2023/779](#), [reg. 4\(zz\)\(iv\)](#)

- 63 The Payment Services Regulations 2017 ([S.I. 2017/752](#)) are amended in accordance with paragraphs [64](#) to [72](#).

Commencement Information

I100 Sch. 2 para. 63 not in force at Royal Assent, see [s. 86\(3\)](#)

I101 Sch. 2 para. 63 in force at 29.8.2023 by [S.I. 2023/779](#), [reg. 4\(zz\)\(iv\)](#)

- 64 In regulation 108 (monitoring and enforcement), after paragraph (1)(a) insert—
- “(aa) authorised payment institutions, small payment institutions or registered account information services providers on whom requirements are imposed by or under section 312R of the 2000 Act are complying with them.”.

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Changes to legislation: There are currently no known outstanding effects for the Financial Services and Markets Act 2023, SCHEDULE 2. (See end of Document for details)

Commencement Information

I102 Sch. 2 para. 64 not in force at Royal Assent, see **s. 86(3)**

I103 Sch. 2 para. 64 in force at 29.8.2023 by S.I. 2023/779, **reg. 4(zz)(iv)**

65 In regulation 109 (reporting requirements), after paragraph (1) insert—

“(1A) An authorised payment institution, small payment institution, or registered account information services provider must give the FCA such information as the FCA may direct in respect of its compliance with requirements imposed by or under section 312R of the 2000 Act.”

Commencement Information

I104 Sch. 2 para. 65 not in force at Royal Assent, see **s. 86(3)**

I105 Sch. 2 para. 65 in force at 29.8.2023 by S.I. 2023/779, **reg. 4(zz)(iv)**

66 In regulation 110 (public censure), after “Regulations” insert “or, in the case of an authorised payment institution, small payment institution, or registered account information services provider, section 312R of the 2000 Act”.

Commencement Information

I106 Sch. 2 para. 66 not in force at Royal Assent, see **s. 86(3)**

I107 Sch. 2 para. 66 in force at 29.8.2023 by S.I. 2023/779, **reg. 4(zz)(iv)**

67 In regulation 111 (financial penalties)—

- (a) omit “or” at the end of paragraph (1)(a), and
- (b) after that paragraph insert—

“(aa) an authorised payment institution, small payment institution, or registered account information services provider who has contravened a requirement imposed on it by or under section 312R of the 2000 Act; or”.

Commencement Information

I108 Sch. 2 para. 67 not in force at Royal Assent, see **s. 86(3)**

I109 Sch. 2 para. 67 in force at 29.8.2023 by S.I. 2023/779, **reg. 4(zz)(iv)**

68 In regulation 113 (injunctions)—

- (a) omit “or” at the end of paragraph (1)(a);
- (b) after paragraph (1)(b) insert—

“(c) that there is a reasonable likelihood that an authorised payment institution, small payment institution, or registered account information services provider will contravene a requirement imposed on it by or under section 312R of the 2000 Act; or

- (d) that an authorised payment institution, small payment institution, or registered account information services provider has contravened such a requirement and that

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there is a reasonable likelihood that the contravention will continue or be repeated,”;

- (c) in paragraph (2)(a) after “Regulations” insert “or an authorised payment institution, small payment institution, or registered account information services provider has contravened a requirement imposed on it by or under section 312R of the 2000 Act”;
- (d) in the words after paragraph (2)(b), after “that person” insert “or institution or provider”;
- (e) omit “or” at the end of paragraph (3)(a);
- (f) after that paragraph insert—
 - “(aa) in the case of an authorised payment institution, small payment institution, or registered account information services provider contravened a requirement imposed on it by or under section 312R of the 2000 Act; or”;
- (g) in paragraph (3)(b) for “such a requirement” substitute “a requirement described in sub-paragraph (a) or (aa)”.

Commencement Information

I110 Sch. 2 para. 68 not in force at Royal Assent, see [s. 86\(3\)](#)

I111 Sch. 2 para. 68 in force at 29.8.2023 by [S.I. 2023/779](#), [reg. 4\(zz\)\(iv\)](#)

- 69 In regulation 114 (power to require restitution), in paragraph (1) after “requirement,” insert “or, where the payment service provider is an authorised payment institution, small payment institution, or registered account information services provider, has contravened a requirement imposed on it by or under section 312R of the 2000 Act, or been knowingly concerned in the contravention of such a requirement,”.

Commencement Information

I112 Sch. 2 para. 69 not in force at Royal Assent, see [s. 86\(3\)](#)

I113 Sch. 2 para. 69 in force at 29.8.2023 by [S.I. 2023/779](#), [reg. 4\(zz\)\(iv\)](#)

- 70 In regulation 116 (restitution orders), in paragraph (1) after “requirement,” insert “or, where the payment service provider is an authorised payment institution, small payment institution, or registered account information services provider, has contravened a requirement imposed on it by or under section 312R of the 2000 Act, or been knowingly concerned in the contravention of such a requirement,”.

Commencement Information

I114 Sch. 2 para. 70 not in force at Royal Assent, see [s. 86\(3\)](#)

I115 Sch. 2 para. 70 in force at 29.8.2023 by [S.I. 2023/779](#), [reg. 4\(zz\)\(iv\)](#)

- 71 In regulation 117 (complaints), in paragraph (1)—
- (a) the words from “a requirement” to the end become sub-paragraph (a), and
 - (b) after that sub-paragraph insert “or
 - (b) a requirement imposed by or under section 312R of the 2000 Act has been breached by an authorised payment

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institution, small payment institution, or registered account information services provider.”

Commencement Information

I116 Sch. 2 para. 71 not in force at Royal Assent, see **s. 86(3)**

I117 Sch. 2 para. 71 in force at 29.8.2023 by S.I. 2023/779, **reg. 4(zz)(iv)**

72 In Schedule 6 (application and modification of legislation)—

(a) in paragraph 1, in the inserted text substituting section 66A of the 2000 Act—

(i) in subsection (1), the words from “a contravention” to the end become sub-paragraph (a), and

(ii) after that paragraph insert “or

(b) a contravention of a requirement imposed by or under section 312R of the 2000 Act by an authorised payment institution, small payment institution, or registered account information services provider.”;

(iii) for subsection (2) substitute—

“(2) “Relevant person” means—

(a) in relation to subsection (1)(a), 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, or

(b) in relation to subsection (1)(b), any person responsible for the management of the authorised payment institution, small payment institution, or registered account information services provider or, where relevant, any person responsible for the management of the authorised payment institution’s, small payment institution’s, or registered account information services provider’s payment services activities.”;

(b) in paragraph 4(e), in the inserted subsection (1)(c), after “2017” insert “or section 312R”.

Commencement Information

I118 Sch. 2 para. 72 not in force at Royal Assent, see **s. 86(3)**

I119 Sch. 2 para. 72 in force at 29.8.2023 by S.I. 2023/779, **reg. 4(zz)(iv)**

Status:

Point in time view as at 26/12/2023. This version of this schedule contains provisions that are prospective.

Changes to legislation:

There are currently no known outstanding effects for the Financial Services and Markets Act 2023, SCHEDULE 2.