

*Status: Point in time view as at 19/02/2013.*

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## SCHEDULES

### [F1]SCHEDULE 1ZB

Section 2A

#### THE PRUDENTIAL REGULATION AUTHORITY

##### Textual Amendments

- F1** Schs. 1ZA, 1ZB substituted for Sch. 1 (24.1.2013 for specified purposes, 19.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 3](#) (with [Sch. 20](#)); [S.I. 2013/113](#), art. 2(1)(b)(c)(2), [Sch. Pts. 2, 3, 4](#); [S.I. 2013/423](#), art. 3, [Sch.](#)

### PART 1

#### GENERAL

##### *Interpretation*

- 1 In this Schedule—
- “the Bank” means the Bank of England;
  - “functions”, in relation to the PRA, means functions conferred on the PRA by or under any provision of this Act (see section 2A(6) which affects the meaning of references to such functions).

##### *Constitution*

- 2 The constitution of the PRA must provide—
- (a) for the Governor of the Bank to be the chair of the PRA,
  - (b) for the Bank's Deputy Governor for prudential regulation to be the chief executive of the PRA, and
  - (c) for the PRA to have a governing body.
- 3 The governing body must consist of —
- (a) the chair,
  - (b) the chief executive,
  - (c) the Bank's Deputy Governor for financial stability,
  - (d) the chief executive of the FCA, and
  - (e) other members (in this Schedule referred to as “appointed members”).
- 4 The validity of any act of the PRA is not affected—
- (a) by any vacancy resulting from a vacancy in the office of Governor of the Bank, Deputy Governor of the Bank for prudential regulation, Deputy Governor of the Bank for financial stability, or chief executive of the FCA, or
  - (b) by a defect in the appointment of a person—

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- (i) to any of those offices, or
- (ii) as an appointed member.

- 5 The chief executive of the FCA must not take part in any discussion by or decision of the PRA which relates to—
- (a) the exercise of the PRA's functions in relation to a particular person, or
  - (b) a decision not to exercise those functions.

*Appointed members of governing body*

- 6 The appointed members must be appointed by the court of directors of the Bank with the approval of the Treasury.

- 7 Paragraphs 8 to 12 apply to the exercise by the court of directors of the Bank of its power to appoint appointed members.

- 8 The court of directors must secure that the majority of the members of the governing body of the PRA are non-executive members.

- 9 For the purposes of paragraph 8, and for the purposes of the PRA's duty in section 3C (duty to follow principles of good governance) none of the following is a non-executive member—

- (a) the members referred to in paragraph 3(a), (b) and c), and
- (b) a member who is an employee of the PRA or of the Bank.

- 10 The court of directors must have regard to generally accepted principles of good practice relating to the making of public appointments.

- 11 (1) Before appointing a person as an appointed member, the court of directors must consider whether the person has any financial or other interests that could have a material effect on the extent of the functions as member that it would be proper for the person to discharge.

- (2) The terms on which an appointed member (“M”) is appointed must be such as—
- (a) to secure that M is not subject to direction by the Bank,
  - (b) to require M not to act in accordance with the directions of any other person, and
  - (c) to prohibit M from acquiring any financial or other interests that have a material effect on the extent of the functions as member that it would be proper for M to discharge.

- (3) If M is an employee of the PRA, M's interest as employee is to be disregarded for the purposes of sub-paragraphs (1) and (2)(c) and paragraph 14.

- 12 An employee of the FCA is disqualified for appointment as an appointed member.

- 13 The PRA must pay to the Bank the amount of any expenses incurred by the Bank in connection with the appointment of appointed members.

- 14 The court of directors of the Bank may, with the approval of the Treasury, remove an appointed member from office—

- (a) on the grounds of incapacity or serious misconduct, or
- (b) on the grounds that in all the circumstances the member's financial or other interests are such as to have a material effect on the extent of the functions as member that it would be proper for the person to discharge.

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#### *Terms of service*

- 15 (1) The terms of service of the members of the governing body are to be determined by the Oversight Committee of the Bank.
- (2) The PRA must pay to the members of its governing body such remuneration as may be determined by that Committee.

#### *Arrangements for discharging functions*

- 16 (1) The PRA may make arrangements for any of its functions to be discharged by a committee, sub-committee, officer or member of staff of the PRA, but subject to the following provision.
- (2) In exercising its legislative functions or its functions under section 2E (strategy), the PRA must act through its governing body.
- (3) For that purpose, the following are the PRA's legislative functions—
- (a) making rules;
  - (b) issuing codes under section 64;
  - (c) issuing statements under—
    - (i) section 63C, 64, 69, 192H, 192N, 210 or 345D, or
    - (ii) section 80 of the Financial Services Act 2012;
  - (d) giving directions under section 316 or 318;
  - (e) issuing guidance under section 2I.

#### *Records*

- 17 The PRA must maintain satisfactory arrangements for—
- (a) recording decisions made in the exercise of its functions, and
  - (b) the safe-keeping of those records which it considers ought to be preserved.

#### *Budget*

- 18 (1) The PRA must, for each of its financial years, adopt an annual budget which has been approved by the Bank.
- (2) The budget must be adopted before the start of the financial year to which it relates, except that the first budget must be adopted as soon as reasonably practicable after the coming into force of this paragraph.
- (3) The PRA may, with the approval of the Bank, vary the budget for a financial year at any time after its adoption.
- (4) The PRA must publish each budget, and each variation of a budget, in such manner as the PRA thinks fit.

#### *Annual report*

- 19 (1) At least once a year the PRA must make a report to the Treasury on—
- (a) the discharge of its functions,
  - (b) the extent to which, in its opinion, its objectives have been advanced,

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- (c) its consideration of the principles in section 3B and of the matter mentioned in section 2H(1)(b),
  - (d) how it has complied with section 3D,
  - (e) any direction given under section 3I or 3J during the period to which the report relates,
  - (f) how it has complied with section 354B(1) so far as relating to co-operation with persons outside the United Kingdom, and
  - (g) such other matters as the Treasury may from time to time direct.
- (2) Sub-paragraph (1) does not require the inclusion in the report of any information whose publication would in the opinion of the PRA be against the public interest.
- (3) The report must be accompanied by—
- (a) a statement of the remuneration of the members of the governing body of the PRA during the period to which the report relates, and
  - (b) such other reports or information, prepared by such persons, as the Treasury may from time to time direct.
- (4) The Treasury must lay before Parliament a copy of each report received by them under this paragraph.

#### *Consultation about annual report*

- 20 (1) In relation to each report made under paragraph 19, the PRA must publish at the same time as the report an invitation to members of the public to make representations to the PRA, within the 3 months beginning with the date of publication—
- (a) about the report,
  - (b) about the way in which the PRA has discharged, or failed to discharge, its functions during the period to which the report relates, and
  - (c) about the extent to which, in their opinion, the PRA's objectives have been advanced and the PRA has considered the regulatory principles in section 3B and the matter mentioned in section 2H(1)(b).
- (2) The invitation must be published in the way appearing to it to be best calculated to bring the invitation to the attention of the public.

#### *Report on consultation*

- 21 (1) The PRA must publish a report about its consultation in accordance with paragraph 20.
- (2) The report must contain an account, in general terms, of any representations received in pursuance of the invitation published under that paragraph.
- (3) The report must be published not later than 4 months after the date on which the report under paragraph 19 was published.

#### *Accounts and audit*

- 22 (1) The Treasury may—
- (a) require the PRA to comply with any provisions of the Companies Act 2006 about accounts and their audit which would not otherwise apply to it, or

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- (b) direct that any provision of that Act about accounts and their audit is to apply to the PRA with such modifications as are specified in the direction, whether or not the provision would otherwise apply to the PRA.
- (2) Compliance with any requirement under sub-paragraph (1)(a) or (b) is enforceable by injunction or, in Scotland, an order for specific performance under section 45 of the Court of Session Act 1988.
- (3) Proceedings under sub-paragraph (2) may be brought only by the Treasury.
- 23 (1) The PRA must send a copy of its annual accounts to the Comptroller and Auditor General as soon as is reasonably practicable.
- (2) The Comptroller and Auditor General must—
  - (a) examine, certify and report on accounts received under this paragraph, and
  - (b) send a copy of the certified accounts and the report to the Treasury.
- (3) The Treasury must lay the copy of the certified accounts and the report before Parliament.
- (4) The PRA must send a copy of the certified accounts and the report to the Bank.
- (5) Except as provided by paragraph 22(1), the PRA is exempt from the requirements of Part 16 of the Companies Act 2006 (audit), and its balance sheet must contain a statement to that effect.
- (6) In this paragraph “annual accounts” has the meaning given in section 471 of the Companies Act 2006.

## PART 2

### STATUS

#### *Status*

- 24 In relation to any of its functions—
  - (a) the PRA is not to be regarded as acting on behalf of the Crown, and
  - (b) its members, officers and staff are not to be regarded as Crown servants.

#### *Exemption from requirement for use of “limited” in name of PRA*

- 25 The PRA is to be exempt from the requirements of the Companies Act 2006 relating to the use of “limited” as part of its name.
- 26 If the Secretary of State is satisfied that any action taken by the PRA makes it inappropriate for the exemption given by paragraph 25 to continue, the Secretary of State may, after consulting the Treasury, give a direction removing it.

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### PART 3

#### PENALTIES AND FEES

##### *Penalties*

- 27 In determining its policy with respect to the amounts of penalties to be imposed by it under this Act, the PRA must take no account of the expenses which it incurs, or expects to incur, in discharging its functions.
- 28 (1) The PRA must in respect of each of its financial years pay to the Treasury its penalty receipts after deducting its enforcement costs.
- (2) The PRA's "penalty receipts" in respect of a financial year are any amounts received by it during the year by way of penalties imposed under this Act.
- (3) The PRA's "enforcement costs" in respect of a financial year are the expenses incurred by it during the year in connection with—
- (a) the exercise, or consideration of the possible exercise, of any of its enforcement powers in particular cases, or
  - (b) the recovery of penalties imposed under this Act.
- (4) For this purpose the PRA's enforcement powers are—
- (a) its powers under any of the provisions mentioned in section 133(7A),
  - (b) its powers under section 56 (prohibition orders),
  - (c) its powers under Part 25 of this Act (injunctions and restitution),
  - (d) its powers under any other enactment specified by the Treasury by order,
  - (e) its powers in relation to the investigation of relevant offences, and
  - (f) its powers in England and Wales or Northern Ireland in relation to the prosecution of relevant offences.
- (5) "Relevant offences" are—
- (a) offences under FSMA 2000,
  - (b) offences under subordinate legislation made under that Act, and
  - (c) any other offences specified by the Treasury by order.
- (6) The Treasury may give directions to the PRA as to how the PRA is to comply with its duty under sub-paragraph (1).
- (7) The directions may in particular—
- (a) specify descriptions of expenditure that are, or are not, to be regarded as incurred in connection with either of the matters mentioned in sub-paragraph (3),
  - (b) relate to the calculation and timing of the deduction in respect of the PRA's enforcement costs, and
  - (c) specify the time when any payment is required to be made to the Treasury.
- (8) The directions may also require the PRA to provide the Treasury at specified times with information relating to—
- (a) penalties that the PRA has imposed under FSMA 2000, or
  - (b) the PRA's enforcement costs.

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- (9) The Treasury must pay into the Consolidated Fund any sums received by them under this paragraph.
- 29 (1) The PRA must prepare and operate a scheme (“the financial penalty scheme”) for ensuring that the amounts that, as a result of the deduction for which paragraph 28(1) provides, are retained by the PRA in respect of amounts paid to it by way of penalties imposed under this Act are applied for the benefit of PRA-authorised persons.
- (2) The financial penalty scheme may, in particular, make different provision with respect to different classes of PRA-authorised person.
- (3) The financial penalty scheme must ensure that those who have become liable to pay a penalty to the PRA in any financial year of the PRA do not receive any benefit under the scheme in the following financial year.
- (4) Up-to-date details of the financial penalty scheme must be set out in a document (“the scheme details”).
- 30 (1) The scheme details must be published by the PRA in the way appearing to it to be best calculated to bring them to the attention of the public.
- (2) Before making the financial penalty scheme, the PRA must publish a draft of the proposed scheme in the way appearing to the PRA to be best calculated to bring it to the attention of the public.
- (3) The draft must be accompanied by notice that representations about the proposals may be made to the PRA within a specified time.
- (4) Before making the scheme, the PRA must have regard to any representations made to it in accordance with sub-paragraph (3).
- (5) If the PRA makes the proposed scheme, it must publish an account, in general terms, of—
- (a) the representations made to it in accordance with sub-paragraph (3), and
  - (b) its response to them.
- (6) If the scheme differs from the draft published under sub-paragraph (2) in a way which is, in the opinion of the PRA, significant, the PRA must (in addition to complying with sub-paragraph (5)) publish details of the difference.
- (7) The PRA must, without delay, give the Treasury a copy of any scheme details published by it.
- (8) The PRA may charge a reasonable fee for providing a person with a copy of—
- (a) a draft published under sub-paragraph (2);
  - (b) scheme details.
- (9) Sub-paragraphs (2) to (6) and (8)(a) also apply to a proposal to alter or replace the financial penalty scheme.

#### *Fees*

- 31 (1) The PRA may make rules providing for the payment to it of such fees, in connection with the discharge of any of its qualifying functions, as it considers will (taking account of its expected income from fees and charges provided for by any other provision of this Act) enable it—

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- (a) to meet expenses incurred in carrying out its functions or for any incidental purpose,
  - (b) to repay the principal of, and pay any interest on, any relevant borrowing and to meet relevant commencement expenses, and
  - (c) to maintain adequate reserves.
- (2) The “qualifying functions” of the PRA are—
- (a) its functions under or as a result of this Act or any of the other Acts mentioned in section 2A(6), and
  - (b) its functions under or as a result of a qualifying EU provision that is specified, or of a description specified, for the purposes of this sub-paragraph by the Treasury by order.
- (3) In sub-paragraph (1)(b)—
- “relevant borrowing” means any money borrowed by the PRA which has been used for the purpose of meeting expenses incurred in relation to its assumption of functions under this Act, and
- “relevant commencement expenses” means expenses incurred by the PRA, the FCA or the Bank—
- (a) in preparation for the exercise of functions by the PRA under this Act, or
  - (b) for the purpose of facilitating the exercise by the PRA of those functions or otherwise in connection with their exercise by it.
- (4) Neither section 2A(6)(d) nor the definition of “functions” in paragraph 1 applies for the purposes of sub-paragraph (2).
- (5) For the purposes of sub-paragraph (3) it is irrelevant when the borrowing of the money, the incurring of the expenses or the assumption of functions took place (and, in particular, it is irrelevant if expenses were incurred by the FCA at a time when it was known as the Financial Services Authority).
- (6) In fixing the amount of any fee which is to be payable to the PRA, no account is to be taken of any sums which the PRA receives, or expects to receive, by way of penalties imposed by it under this Act.
- (7) Any fee which is owed to the PRA under any provision made by or under this Act may be recovered as a debt due to the PRA.

*Services for which fees may not be charged*

- 32 The power conferred by paragraph 31 may not be used to require—
- (a) a fee to be paid in respect of the discharge of any of the PRA's functions under paragraph 13, 14, 19 or 20 of Schedule 3, or
  - (b) a fee to be paid by any person whose application for approval under section 59 has been granted.

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## PART 4

### MISCELLANEOUS

#### *Exemption from liability in damages*

- 33 (1) None of the following is to be liable in damages for anything done or omitted in the discharge, or purported discharge, of the PRA's functions—
- (a) the PRA;
  - (b) any person (“P”) who is, or is acting as, a member, officer or member of staff of the PRA;
  - (c) any person who could be held vicariously liable for things done or omitted by P, but only in so far as the liability relates to P's conduct.
- (2) Anything done or omitted by a person mentioned in sub-paragraph (1)(a) or (b) while acting, or purporting to act, as a result of an appointment under any of sections 97, 166 to 169 and 284 is to be taken for the purposes of sub-paragraph (1) to have been done or omitted in the discharge, or as the case may be purported discharge, of the PRA's functions.
- (3) Sub-paragraph (1) does not apply—
- (a) if the act or omission is shown to have been in bad faith, or
  - (b) so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful as a result of section 6(1) of the Human Rights Act 1998.

#### *Accredited financial investigators*

- 34 For the purposes of this Act anything done by an accredited financial investigator within the meaning of the Proceeds of Crime Act 2002 who—
- (a) is, or is acting as, an officer of, or member of the staff of, the PRA, or
  - (b) is appointed by the PRA under section 167 or 168 to conduct an investigation,
- is to be treated as done in the exercise or discharge of a function of the PRA.

#### *Amounts required by rules to be paid to the PRA*

- 35 Any amount (other than a fee) which is required by rules to be paid to the PRA may be recovered as a debt due to the PRA.]

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