

FINANCIAL SERVICES ACT 2012

EXPLANATORY NOTES

COMMENTARY

Part 2 - Amendments of Financial Services and Markets Act 2000

Financial Services Compensation Scheme

Section 38 and Schedule 10: The Financial Services Compensation Scheme

434. *Section 38 and Schedule 10* amend Parts 15 and 15A of FSMA (the Financial Services Compensation Scheme and other schemes). The amendments to section 213 provide for the regulators to make rules covering persons who have assumed responsibility for liabilities arising from acts or omissions of relevant persons (“successors”) in cases where they are unable, or likely to be unable, to satisfy claims against them that are based on those acts or omissions. They also provide for the Treasury to make an order specifying the cases in which the FCA may, or may not, make rules and the cases in which the PRA may, or may not, make rules. The order must be approved in draft by each House of Parliament (see section 429 of FSMA).
435. Each regulator must consult the other before making scheme rules. And *new section 3E(3)(c)*, inserted by *section 6*, requires the regulators to set out in their memorandum how they will exercise their functions in relation to the Financial Services Compensation Scheme (FSCS).
436. *New section 217A* provides for the FCA, PRA and the scheme manager of the FSCS to cooperate with each other in relation to the FSCS. The regulators and the scheme manager must also prepare and maintain a memorandum describing how they will do this. The memorandum must be published by the scheme manager.
437. *New section 217B* requires the scheme manager to prepare and publish an annual plan.
438. The amendments to section 218 of FSMA (annual report) allows the Treasury to direct the scheme manager to comply with provisions of the Companies Act 2006 dealing with accounts and audit which would otherwise not apply to it. The direction may modify provisions of the Companies Act 2006 dealing with accounts and audit in their application to the scheme manager.
439. *New section 218ZA* provides for the accounts of the FSCS to be audited by the National Audit Office. The National Audit Office carries out audit functions of the Comptroller and Auditor General. The Treasury must lay before Parliament the certified accounts of the FSCS and the report of the Comptroller and Auditor General on them.
440. *Section 38(2)* makes a consequential amendment to section 224F of FSMA, in respect of the power to make rules in connection with the exercise by the FSCS scheme manager of functions in respect of relevant schemes (as defined in section 224B).