

SCHEDULES

SCHEDULE 12

AMENDMENTS OF PARTS 11 AND 23 OF FSMA 2000

PART 1

PART 11 OF FSMA 2000: INFORMATION GATHERING AND INVESTIGATIONS

- 1 (1) Section 165 (power to require information) is amended as follows.
- (2) In subsection (1), for “The Authority” substitute “Either regulator”.
- (3) In subsection (3), for “Authority” substitute “regulator”.
- (4) In subsection (4), for “the Authority” substitute “either regulator”.
- (5) In subsections (5) and (6) for “The Authority”, in each place, substitute “The regulator in question”.
- (6) In subsection (7), for the words from “exercised” to the end substitute “exercised—
- (a) by either regulator, to impose requirements on a person who is connected with an authorised person;
 - (b) by the FCA, to impose requirements on an operator, trustee or depositary of a scheme recognised under section 270 or 272 who is not an authorised person;
 - (c) by the FCA, to impose requirements on a recognised investment exchange;
 - (d) by the FCA, to impose requirements on a person who is connected with a recognised investment exchange.”.
- (7) In subsection (9)—
- (a) for “the Authority”, in the first place, substitute “the regulator exercising the power”,
 - (b) for “the Authority's” substitute “that regulator's”, and
 - (c) for “the Authority”, in the second place, substitute “that regulator”.
- (8) In subsection (11)—
- (a) in the opening words, for “an authorised person” substitute “another person”, and
 - (b) in paragraph (d), at the end insert “(reading references in that Part to the authorised person as references to A)”.
- (9) In the heading, for “Authority's” substitute “Regulators”.
- 2 In section 165A (power to require information relevant to financial stability)—
- (a) for “Authority”, in each place, substitute “PRA”, and
 - (b) in the heading, for “Authority's” substitute “PRA's”.

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- 3 In section 165B (safeguards relating to section 165A)—
- (a) for “Authority”, in each place, substitute “PRA”, and
 - (b) for “Authority's”, in each place, substitute “PRA's”.
- 4 In section 165C (orders under section 165A(2)(d)) for subsection (1) substitute—
- “(1) The Treasury may make an order under section 165A(2)(d) only if either or both of the following conditions is met in relation to the provision made by the order.
- (1A) Condition A is that the Treasury consider that—
- (a) the activities carried on by the prescribed person or persons of the prescribed description, or the way in which those activities (or any part of them) are carried on, or
 - (b) any failure to carry on those activities (or any part of them),
- pose, or would be likely to pose, a serious threat to the stability of the UK financial system.
- (1B) Condition B is that the provision implements all or part of a recommendation made by the Financial Policy Committee of the Bank of England under section 9P of the Bank of England Act 1998.”
- 5 For section 166 (reports by skilled persons) substitute—

“166 Reports by skilled persons

- (1) This section applies where either regulator has required or could require a person to whom subsection (2) applies (“the person concerned”) to provide information or produce documents with respect to any matter (“the matter concerned”).
- (2) This subsection applies to—
 - (a) an authorised person (“A”),
 - (b) any other member of A's group,
 - (c) a partnership of which A is a member, or
 - (d) a person who has at any relevant time been a person falling within paragraph (a), (b) or (c),
 who is, or was at the relevant time, carrying on a business.
- (3) The regulator mentioned in subsection (1) may either—
 - (a) by notice in writing given to the person concerned, require the person concerned to provide the regulator with a report on the matter concerned, or
 - (b) itself appoint a person to provide the regulator with a report on the matter concerned.
- (4) When acting under subsection (3)(a), the regulator may require the report to be in such form as may be specified in the notice.
- (5) The regulator must give notice of an appointment under subsection (3)(b) to the person concerned.
- (6) The person appointed to make a report—

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- (a) must be a person appearing to the regulator to have the skills necessary to make a report on the matter concerned, and
 - (b) where the appointment is to be made by the person concerned, must be a person nominated or approved by the regulator.
- (7) It is the duty of—
- (a) the person concerned, and
 - (b) any person who is providing (or who has at any time provided) services to the person concerned in relation to the matter concerned, to give the person appointed to prepare a report all such assistance as the appointed person may reasonably require.
- (8) The obligation imposed by subsection (7) is enforceable, on the application of the regulator in question, by an injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.
- (9) A regulator may make rules providing for expenses incurred by it in relation to an appointment under subsection (3)(b) to be payable as a fee by the person concerned.
- (10) The powers conferred by this section may also be exercised by the FCA in relation to a person to whom subsection (11) applies, (and references to the person concerned are to be read accordingly).
- (11) This subsection applies to—
- (a) a recognised investment exchange (“A”),
 - (b) any other member of A's group,
 - (c) a partnership of which A is a member, or
 - (d) a person who has at any time been a person falling within paragraph (a), (b) or (c),
- who is, or was at the relevant time, carrying on a business.”

6 After section 166 insert—

“166A Appointment of skilled person to collect and update information

- (1) This section applies if either regulator considers that an authorised person has contravened a requirement in rules made by that regulator to collect, and keep up to date, information of a description specified in the rules.
- (2) The regulator may either—
 - (a) require the authorised person to appoint a skilled person to collect or update the information, or
 - (b) itself appoint a skilled person to do so.
- (3) References in this section to a skilled person are to a person—
 - (a) appearing to the regulator to have the skills necessary to collect or update the information in question, and
 - (b) where the appointment is to be made by the authorised person, nominated or approved by the regulator.
- (4) The regulator must give notice of an appointment under subsection (2)(b) to the authorised person.

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- (5) The skilled person may require any person to provide all such assistance as the skilled person may reasonably require to collect or update the information in question.
 - (6) A requirement imposed under subsection (5) is enforceable, on the application of the regulator in question, by an injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.
 - (7) A contractual or other requirement imposed on a person (“P”) to keep any information in confidence does not apply if—
 - (a) the information is or may be relevant to anything required to be done as a result of this section,
 - (b) an authorised person or a skilled person requests or requires P to provide the information for the purpose of securing that those things are done, and
 - (c) the regulator in question has approved the making of the request or the imposition of the requirement before it is made or imposed.
 - (8) An authorised person may provide information (whether received under subsection (7) or otherwise) that would otherwise be subject to a contractual or other requirement to keep it in confidence if it is provided for the purposes of anything required to be done as a result of this section.
 - (9) A regulator may make rules providing for expenses incurred by it in relation to an appointment under subsection (2)(b) to be payable as a fee by the authorised person.
 - (10) In this section “authorised person”, in relation to the PRA, means PRA-authorised person.”
- 7 (1) Section 167 (appointment of investigator in general cases) is amended as follows.
- (2) In subsection (1), for “the Authority or the Secretary of State (“the investigating authority”)” substitute “an investigating authority”.
 - (3) After subsection (5) insert—
 - “(5A) Investigating authority” means—
 - (a) in relation to a recognised investment exchange, the Secretary of State or the FCA;
 - (b) in relation to an authorised person or former authorised person, the FCA or the PRA;
 - (c) in relation to an appointed representative or former appointed representative, the FCA or the PRA.”
- 8 (1) Section 168 (appointment of investigator in specific cases) is amended as follows.
- (2) In subsection (1)—
 - (a) omit paragraph (a), and
 - (b) in paragraph (b), for “191” substitute “191F”.
 - (3) In subsection (2)—
 - (a) in paragraph (a), for “or 397” substitute “or under Part 7 of the Financial Services Act 2012”, and

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- (b) after paragraph (b) insert—
 - “(ba) an authorised person may have contravened section 20 in relation to a credit-related regulated activity;”.
- (4) In subsection (4)—
 - (a) in the opening words, for “the Authority” substitute “an investigating authority”;
 - (b) in paragraph (c), for “Authority” substitute “investigating authority”;
 - (c) after that paragraph insert—
 - “(ca) a recognised investment exchange may have contravened the recognition requirements (within the meaning of Part 18);”;
 - (d) in paragraph (f), for “an authorised or exempt person” substitute “a person”;
 - (e) in paragraph (h), for “the Authority” substitute “a regulator”;
 - (f) in paragraph (j), omit the words from “or by any” to the end, and
 - (g) for paragraph (k) substitute—
 - “(k) a person may have contravened a qualifying EU provision that is specified, or of a description specified, for the purposes of this subsection by the Treasury by order.”
- (5) In subsection (5), for “Authority” substitute “investigating authority”.
- (6) For subsection (6) substitute—
 - “(6) Investigating authority” means—
 - (a) in subsections (1) to (3), the FCA, the PRA or the Secretary of State;
 - (b) in subsections (4) and (5), the FCA or the PRA.”
- 9 (1) Section 169 (investigations at the request of an overseas regulator) is amended as follows.
 - (2) In subsection (1), for “the Authority” substitute “a regulator”.
 - (3) In subsections (3) and (4), in each place, for “Authority” substitute “regulator”.
 - (4) In subsection (5), in each place, for “Authority” substitute “regulator”.
 - (5) In subsection (6), for “Authority” substitute “regulator”.
 - (6) In subsection (7), for “the Authority” substitute “a regulator”.
 - (7) In subsection (8), for “Authority” substitute “regulator”.
 - (8) In subsection (9), for “The Authority” substitute “Each regulator”.
 - (9) In subsection (11), for “Authority” substitute “regulator”.
- 10 In section 169A (supporting an overseas regulator regarding financial stability), in subsection (1), for “Authority” substitute “PRA”.
- 11 In section 170 (investigations: general), in subsection (10), for paragraphs (a) and (b) substitute—
 - “(a) the FCA, if the FCA appointed the investigator;
 - (aa) the PRA, if the PRA appointed the investigator;
 - (b) the Secretary of State, if the Secretary of State appointed the investigator.”

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- 12 In section 174 (admissibility of statements to investigators), in subsection (2), for
 “the Authority” substitute “a regulator”.
- 13 (1) Section 175 (information and documents: supplemental) is amended as follows.
- (2) In subsection (1), for “the Authority” substitute “either regulator”.
- (3) After subsection (2) insert—
- “(2A) A document so produced may be retained for so long as the person to whom
 it is produced considers that it is necessary to retain it (rather than copies of
 it) for the purposes for which the document was requested.
- (2B) If the person to whom a document is so produced has reasonable grounds
 for believing—
- (a) that the document may have to be produced for the purposes of any
 legal proceedings, and
- (b) that it might otherwise be unavailable for those purposes,
 it may be retained until the proceedings are concluded.”
- (4) In subsection (3), for “Authority” substitute “regulator”.
- 14 (1) Section 176 (entry of premises under warrant) is amended as follows.
- (2) In subsection (1), for “the Authority” substitute “either regulator”.
- (3) After subsection (5) insert—
- “(5A) A warrant under this section may be executed by any constable.
- (5B) The warrant may authorise persons to accompany any constable who is
 executing it.
- (5C) The powers in subsection (5) may be exercised by a person authorised by
 the warrant to accompany a constable; but that person may exercise those
 powers only in the company of, and under the supervision of, a constable.”
- (4) In subsection (6), for “16” substitute “16(3) to (12)”.
- (5) In subsection (7), for “18” substitute “18(3) to (12)”.
- (6) Omit subsection (8).
- (7) In subsection (11), in paragraph (a), for “the Authority” substitute “a regulator”.
- 15 After section 176 insert—

“176A Retention of documents taken under section 176

- (1) Any document of which possession is taken under section 176 (“a seized document”) may be retained so long as it is necessary to retain it (rather than copies of it) in the circumstances.
- (2) A person claiming to be the owner of a seized document may apply to a magistrates' court or (in Scotland) the sheriff for an order for the delivery of the document to the person appearing to the court or sheriff to be the owner.

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

- (3) If on an application under subsection (2) the court or (in Scotland) the sheriff cannot ascertain who is the owner of the seized document the court or sheriff (as the case may be) may make such order as the court or sheriff thinks fit.
- (4) An order under subsection (2) or (3) does not affect the right of any person to take legal proceedings against any person in possession of a seized document for the recovery of the document.
- (5) Any right to bring proceedings (as described in subsection (4)) may only be exercised within 6 months of the date of the order made under subsection (2) or (3).”