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Changes to legislation: Financial Services Act 2012, SCHEDULE 9 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

SCHEDULE 9

Section 37

DISCIPLINE AND ENFORCEMENT

PART 1

INTRODUCTORY

1 FSMA 2000 is amended as follows.

Commencement Information

II Sch. 9 para. 1 in force at 1.4.2013 by S.I. 2013/423, art. 3, Sch.

PART 2

AUTHORISED PERSONS ACTING WITHOUT PERMISSION

- 2 (1) Section 20 (authorised persons acting without permission) is amended as follows.
- (2) In subsection (1)—
- (a) in the opening words, after “an authorised person” insert “ other than a PRA-
authorised person ”,
 - (b) for paragraph (a) substitute—
“(a) given to that person under Part 4A, or”, and
 - (c) in the words after paragraph (b), for “Authority” substitute “ FCA ”.
- (3) After that subsection insert—
- “(1A) If a PRA-
authorised person carries on a regulated activity in the United Kingdom, or purports to do so, otherwise than in accordance with permission given to the person under Part 4A or resulting from any other provision of this Act, the person is to be taken to have contravened—
- (a) a requirement imposed by the FCA, and
 - (b) a requirement imposed by the PRA.”
- (4) For subsection (2) substitute—
- “(2) A contravention within subsection (1) or (1A)—
- (a) does not, except as provided by section 23(1A), make a person guilty of an offence,
 - (b) does not, except as provided by section 26A, make any transaction void or unenforceable, and

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- (c) does not, except as provided by subsection (3), give rise to any right of action for breach of statutory duty.”
- (5) In subsection (3), for “the contravention”, in the first place, substitute “ a contravention within subsection (1) or (1A) ”.
- (6) After subsection (3) insert—
 - “(4) Subsections (1) and (1A) are subject to section 39(1D).
 - (5) References in this Act to an authorised person acting in contravention of this section are references to the person acting in a way that results in a contravention within subsection (1) or (1A).”

Commencement Information

I2 Sch. 9 para. 2 in force at 1.4.2013 by S.I. 2013/423, art. 3, Sch.

- 3 (1) Section 23 (contravention of the general prohibition) is amended as follows.
 - (2) After subsection (1) insert—
 - “(1A) An authorised person (“A”) is guilty of an offence if A carries on a credit-related regulated activity in the United Kingdom, or purports to do so, otherwise than in accordance with permission—
 - (a) given to that person under Part 4A, or
 - (b) resulting from any other provision of this Act.
 - (1B) In this Act “credit-related regulated activity” means a regulated activity of a kind designated by the Treasury by order.
 - (1C) The Treasury may designate a regulated activity under subsection (1B) only if the activity involves a person—
 - (a) entering into or administering an agreement under which the person provides another person with credit,
 - (b) exercising or being able to exercise the rights of the lender under an agreement under which another person provides a third party with credit, or
 - (c) taking steps to procure payment of debts due under an agreement under which another person is provided with credit.
 - (1D) But a regulated activity may not be designated under subsection (1B) if the agreement in question is one under which the obligation of the borrower is secured on land.
 - (1E) “Credit” includes any cash loan or other financial accommodation.
 - (1F) A person guilty of an offence under subsection (1A) is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding the applicable maximum term or a fine not exceeding the statutory maximum, or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine, or both.
 - (1G) The “applicable maximum term” is—

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- (a) in England and Wales, 12 months (or 6 months, if the offence was committed before the commencement of section 154(1) of the Criminal Justice Act 2003);
- (b) in Scotland, 12 months;
- (c) in Northern Ireland, 6 months.”

(3) After subsection (3) insert—

“(4) Subsection (1A) is subject to section 39(1D).

(5) No proceedings may be brought against a person in respect of an offence under subsection (1A) in a case where either regulator has taken action under section 205, 206 or 206A in relation to the alleged contravention within section 20(1) or (1A).”

(4) In the heading to the section, at the end insert “ or section 20(1) or (1A) ”.

Commencement Information

I3 Sch. 9 para. 3 in force at 1.4.2013 by S.I. 2013/423, art. 3, Sch.

4 After section 23 insert—

“23A Parliamentary control in relation to certain orders under section 23

- (1) This section applies to the first order made under section 23(1B).
- (2) This section also applies to any subsequent order made under section 23(1B) which contains a statement by the Treasury that, in their opinion, the effect (or one of the effects) of the proposed order would be that an activity would become a credit-related regulated activity.
- (3) An order to which this section applies may not be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House.”

Commencement Information

I4 Sch. 9 para. 4 in force at 1.4.2013 by S.I. 2013/423, art. 3, Sch.

5 After section 26 insert—

“26A Agreements relating to credit

- (1) An agreement that is made by an authorised person in contravention of section 20 is unenforceable against the other party if the agreement is entered into in the course of carrying on a credit-related regulated activity involving matters falling within section 23(1C)(a).
- (2) The other party is entitled to recover—
 - (a) any money or other property paid or transferred by that party under the agreement, and
 - (b) compensation for any loss sustained by that party as a result of having parted with it.

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- (3) In subsections (1) and (2) “agreement” means an agreement—
- (a) which is made after this section comes into force, and
 - (b) the making or performance of which constitutes, or is part of, the credit-related regulated activity.
- (4) If the administration of an agreement involves the carrying on of a credit-related regulated activity, the agreement may not be enforced by a person for the time being exercising the rights of the lender under the agreement unless that person has permission, given under Part 4A or resulting from any other provision of this Act, in relation to that activity.
- (5) If the taking of steps to procure payment of debts due under an agreement involves the carrying on of a credit-related regulated activity, the agreement may not be enforced by a person for the time being exercising the rights of the lender under the agreement unless the agreement is enforced in accordance with permission—
- (a) given under Part 4A to the person enforcing the agreement, or
 - (b) resulting from any other provision of this Act.”

Commencement Information

I5 Sch. 9 para. 5 in force at 1.4.2013 by S.I. 2013/423, art. 3, Sch.

- 6 In section 27 (agreements made through unauthorised persons) for subsection (1) substitute—

- “(1) This section applies to an agreement that—
- (a) is made by an authorised person (“the provider”) in the course of carrying on a regulated activity,
 - (b) is not made in contravention of the general prohibition,
 - (c) if it relates to a credit-related regulated activity, is not made in contravention of section 20, and
 - (d) is made in consequence of something said or done by another person (“the third party”) in the course of—
 - (i) a regulated activity carried on by the third party in contravention of the general prohibition, or
 - (ii) a credit-related regulated activity carried on by the third party in contravention of section 20.

(1A) The agreement is unenforceable against the other party.”

Commencement Information

I6 Sch. 9 para. 6 in force at 1.4.2013 by S.I. 2013/423, art. 3, Sch.

- 7 In section 28 (agreements made unenforceable by section 26 or 27)—
- (a) at the end of subsection (1) insert “, other than an agreement entered into in the course of carrying on a credit-related regulated activity”, and
 - (b) in the heading to the section, at the end insert “: general cases”.

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Commencement Information

I7 Sch. 9 para. 7 in force at 1.4.2013 by S.I. 2013/423, art. 3, Sch.

8 After section 28 insert—

“28A Credit-related agreements made unenforceable by section 26, 26A or 27

- (1) This section applies to an agreement that—
 - (a) is entered into in the course of carrying on a credit-related regulated activity, and
 - (b) is unenforceable because of section 26, 26A or 27.
- (2) The amount of compensation recoverable as a result of that section is—
 - (a) the amount agreed by the parties, or
 - (b) on the application of either party, the amount specified in a written notice given by the FCA to the applicant.
- (3) If on application by the relevant firm the FCA is satisfied that it is just and equitable in the circumstances of the case, it may by written notice to the applicant allow—
 - (a) the agreement to be enforced, or
 - (b) money paid or property transferred under the agreement to be retained.
- (4) In considering whether to allow the agreement to be enforced or (as the case may be) the money or property paid or transferred under the agreement to be retained the FCA must—
 - (a) if the case arises as a result of section 26 or 26A, have regard to the issue mentioned in subsection (5), or
 - (b) if the case arises as a result of section 27, have regard to the issue mentioned in subsection (6).
- (5) The issue is whether the relevant firm reasonably believed that by making the agreement the relevant firm was neither contravening the general prohibition nor contravening section 20.
- (6) The issue is whether the provider knew that the third party was (in carrying on the credit-related regulated activity) either contravening the general prohibition or contravening section 20.
- (7) An application to the FCA under this section by the relevant firm may relate to specified agreements or to agreements of a specified description or made at a specified time.
- (8) “The relevant firm” means—
 - (a) in a case falling within section 26, the person in breach of the general prohibition;
 - (b) in a case falling within section 26A or 27, the authorised person concerned.
- (9) If the FCA thinks fit, it may when acting under subsection (2)(b) or (3)—

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- (a) limit the determination in its notice to specified agreements, or agreements of a specified description or made at a specified time;
- (b) make the determination in its notice conditional on the doing of specified acts by the applicant.

28B Decisions under section 28A: procedure

- (1) A notice under section 28A(2)(b) or (3) must—
 - (a) give the FCA's reasons for its determination, and
 - (b) give an indication of—
 - (i) the right to have the matter referred to the Tribunal that is conferred by subsection (3), and
 - (ii) the procedure on such a reference.
- (2) The FCA must, so far as it is reasonably practicable to do so, give a copy of the notice to any other person who appears to it to be affected by the determination to which the notice relates.
- (3) A person who is aggrieved by the determination of an application under section 28A(2)(b) or (3) may refer the matter to the Tribunal.”

Commencement Information

18 Sch. 9 para. 8 in force at 1.4.2013 by S.I. 2013/423, art. 3, Sch.

PART 3

MARKET ABUSE

- 9 (1) In the provisions of Part 8 (market abuse) mentioned in sub-paragraph (2), for “Authority” or “Authority's”, in each place, substitute “FCA ” or “FCA's”.
- (2) The provisions are: sections 119, 120 (including the heading), 121 to 130A and 131A.
- (3) In section 121 (codes: procedure), for subsection (10) substitute—
 - “(10) Cost benefit analysis” means—
 - (a) an analysis of the costs together with an analysis of the benefits that will arise—
 - (i) if the proposed code is issued, or
 - (ii) if subsection (5)(b) applies, from the code that has been issued, and
 - (b) subject to subsection (10A), an estimate of those costs and of those benefits.
 - (10A) If, in the opinion of the FCA—
 - (a) the costs or benefits referred to in subsection (10) cannot reasonably be estimated, or
 - (b) it is not reasonably practicable to produce an estimate,
 the cost benefit analysis need not estimate them, but must include a statement of the FCA's opinion and an explanation of it.”

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- (4) In section 130 (guidance), in subsection (1)(b), for “section 397 of this Act” substitute “Part 7 of the Financial Services Act 2012”.

Commencement Information

I9 Sch. 9 para. 9 in force at 1.4.2013 by S.I. 2013/423, art. 3, Sch.

PART 4

DISCIPLINARY MEASURES

- 10 In Part 14 (disciplinary measures), before section 205 insert—

Meaning of “relevant requirement” and “appropriate regulator”

“204A1) The following definitions apply for the purposes of this Part.

- (2) “Relevant requirement” means a requirement imposed—
- (a) by or under this Act, or
 - (b) by a qualifying EU provision specified, or of a description specified, for the purposes of this subsection by the Treasury by order.
- (3) The PRA is “the appropriate regulator” in the case of a contravention of—
- (a) a requirement that is imposed under any provision of this Act by the PRA;
 - (b) a requirement under section 56(6) where the authorised person concerned is a PRA-authorised person and the prohibition order concerned is made by the PRA;
 - (c) a requirement under section 59(1) or (2) where the authorised person concerned is a PRA-authorised person and the approval concerned falls to be given by the PRA.
- (4) In the case of a contravention of a requirement that is imposed by a qualifying EU provision, “the appropriate regulator” for the purpose of any provision of this Part is whichever of the PRA or the FCA (or both) is specified by the Treasury by order in relation to the qualifying EU provision for the purposes of that provision of this Part.
- (5) In the case of a contravention of a requirement where the contravention constitutes an offence, the “appropriate regulator” is whichever of the PRA or the FCA has power to prosecute the offence (see section 401).
- (6) The FCA is “the appropriate regulator” in the case of a contravention of any other requirement imposed by or under this Act.
- (7) The Treasury may by order amend the provisions defining “the appropriate regulator”.

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I10 Sch. 9 para. 10 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2

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I11 Sch. 9 para. 10 in force at 1.4.2013 in so far as not already in force by S.I. 2013/423, art. 3, Sch.

- 11 In section 205 (public censure)—
- (a) for “Authority”, in the first place, substitute “ appropriate regulator ”, and
 - (b) for the words from “a requirement” to “may” substitute “ a relevant requirement imposed on the person, it may ”.

Commencement Information

I12 Sch. 9 para. 11 in force at 1.4.2013 by S.I. 2013/423, art. 3, Sch.

- 12 (1) Section 206 (financial penalties) is amended as follows.
- (2) In subsection (1)—
- (a) for “Authority” substitute “ appropriate regulator ”, and
 - (b) for the words from “a requirement” to “auctioning regulation” substitute “ a relevant requirement imposed on the person, ”.
- (3) In subsection (3), for “Authority” substitute “ regulator that imposed the penalty ”.

Commencement Information

I13 Sch. 9 para. 12 in force at 1.4.2013 by S.I. 2013/423, art. 3, Sch.

- 13 (1) Section 206A (suspending permission to carry on regulated activities etc.) is amended as follows.
- (2) In subsection (1), for “Authority” substitute “ appropriate regulator ”.
- (3) After that subsection insert—
- “(1A) The power conferred by subsection (1) is also exercisable by the FCA if it considers that an authorised person has contravened a requirement imposed on the person by—
- (a) the Payment Services Regulations 2009, or
 - (b) the Electronic Money Regulations 2011.”
- (4) In subsection (2)—
- (a) in the definition of “permission”, for “the Authority” substitute “ the FCA or the PRA ”, and
 - (b) omit the definition of “relevant requirement”.
- (5) In subsection (6), for “Authority” substitute “ appropriate regulator ”.

Commencement Information

I14 Sch. 9 para. 13 in force at 1.4.2013 by S.I. 2013/423, art. 3, Sch.

- 14 In section 207(1) (proposal to take disciplinary measures), for “the Authority” substitute “ a regulator ”.

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I15 Sch. 9 para. 14 in force at 1.4.2013 by S.I. 2013/423, art. 3, Sch.

- 15 In section 208(1) and (4) (decision notice), for “the Authority”, in each place, substitute “ a regulator ”.

Commencement Information

I16 Sch. 9 para. 15 in force at 1.4.2013 by S.I. 2013/423, art. 3, Sch.

- 16 In section 209 (publication), for “the Authority” substitute “ the regulator concerned ”.

Commencement Information

I17 Sch. 9 para. 16 in force at 1.4.2013 by S.I. 2013/423, art. 3, Sch.

- 17 (1) Section 210 (statements of policy) is amended as follows.
- (2) In subsection (1), for “The Authority” substitute “ Each regulator ”.
- (3) After subsection (1) insert—
- “(1A) Each regulator's policy with respect to the imposition of penalties, suspensions or restrictions under this Part must include policy with respect to their imposition in relation to conduct which constitutes or may constitute an offence by virtue of section 23(1A) (authorised persons carrying on credit-related regulated activities otherwise than in accordance with permission).”
- (4) In subsection (2), for “The Authority's” substitute “A regulator's”.
- (5) In subsection (3)—
- (a) for “The Authority” substitute “ A regulator ”, and
- (b) after “issued” insert “ by it ”.
- (6) In subsection (4), for “replaced, the Authority” substitute “ replaced by a regulator, the regulator ”.
- (7) In subsection (5), for “The Authority” substitute “ A regulator ”.
- (8) In subsection (6)—
- (a) after “section” insert “ by a regulator ”, and
- (b) for “Authority”, in both places, substitute “ regulator ”.
- (9) In subsection (7)—
- (a) for “the Authority” substitute “ a regulator ”, and
- (b) after “published” insert “ by it ”.
- (10) In subsection (8), for “Authority” substitute “ regulator ”.

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I18 Sch. 9 para. 17 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

I19 Sch. 9 para. 17 in force at 1.4.2013 in so far as not already in force by S.I. 2013/423, art. 3, Sch.

- 18 (1) Section 211 (statements of policy: procedure) is amended as follows.
- (2) In subsection (1)—
- (a) for “issuing” substitute “ a regulator issues ”, and
 - (b) for “Authority”, in both places, substitute “ regulator ”.
- (3) In subsections (2) to (4) and (5) (in both places), for “Authority” substitute “ regulator ”.
- (4) In subsection (6), for “The Authority” substitute “ A regulator ”.

Commencement Information

I20 Sch. 9 para. 18 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

I21 Sch. 9 para. 18 in force at 1.4.2013 in so far as not already in force by S.I. 2013/423, art. 3, Sch.

PART 5

INJUNCTIONS AND RESTITUTION

- 19 (1) Section 380 (injunctions) is amended as follows.
- (2) In subsections (1) to (3), for “Authority” substitute “ appropriate regulator ”.
- (3) In subsection (6)(a)—
- (a) in the opening words, for “Authority” substitute “ appropriate regulator ”,
 - (b) for sub-paragraph (i) (but not the “or” following it) substitute—
 - “(i) which is imposed by or under this Act or by a qualifying EU provision specified, or of a description specified, for the purposes of this subsection by the Treasury by order”, and
 - (c) in sub-paragraph (ii), for the words from “which the Authority” to the end substitute “ mentioned in section 402(1) ”.
- (4) In subsection (7), omit paragraph (a) (and the “and” at the end of it).
- (5) After subsection (7) insert—
- “(8) The PRA is the “appropriate regulator” in the case of a contravention of—
 - (a) a requirement that is imposed by the PRA under any provision of this Act,
 - (b) a requirement under section 56(6) where the authorised person concerned is a PRA-authorised person and the prohibition order concerned is made by the PRA, or
 - (c) a requirement under section 59(1) or (2) where the authorised person concerned is a PRA-authorised person and the approval concerned falls to be given by the PRA.

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- (9) In the case of a contravention of a requirement that is imposed by a qualifying EU provision, “the appropriate regulator” is whichever of the PRA or the FCA (or both) is specified by the Treasury by order in relation to the qualifying EU provision for the purposes of this section.
- (10) In the case of a contravention of a requirement where the contravention constitutes an offence under this Act, the “appropriate regulator” is whichever of the PRA or the FCA has power to prosecute the offence (see section 401).
- (11) The FCA is the “appropriate regulator” in the case of a contravention of any other requirement.
- (12) The Treasury may by order amend the definition of “appropriate regulator”.

Commencement Information

- I22** Sch. 9 para. 19 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2
I23 Sch. 9 para. 19 in force at 1.4.2013 in so far as not already in force by S.I. 2013/423, art. 3, Sch.

- 20 (1) Section 381 (injunctions in case of market abuse) is amended as follows.
- (2) In subsections (1) to (3), for “Authority” substitute “ FCA ”.
 - (3) In subsection (4), after “The court” insert “ may ”.

Commencement Information

- I24** Sch. 9 para. 20 in force at 1.4.2013 by S.I. 2013/423, art. 3, Sch.

- 21 (1) Section 382 (restitution orders) is amended as follows.
- (2) In subsection (1), for “Authority” substitute “ appropriate regulator ”.
 - (3) In subsections (2) and (3), for “Authority” substitute “ regulator concerned ”.
 - (4) In subsection (7), for “Authority” substitute “ appropriate regulator ”.
 - (5) In subsection (9)(a)—
 - (a) in the opening words, for “Authority” substitute “ appropriate regulator ”,
 - (b) for sub-paragraph (i) (but not the “or” following it) substitute—

“(i) which is imposed by or under this Act or by a qualifying EU provision specified, or of a description specified, for the purposes of this subsection by the Treasury by order”, and
 - (c) in sub-paragraph (ii), for the words from “which the Authority” to the end substitute “ mentioned in section 402(1) ”.
 - (6) In subsection (10), omit paragraph (a) (and the “and” at the end of it).
 - (7) After subsection (10) insert—

“(11) The PRA is the “appropriate regulator” in the case of a contravention of—

 - (a) a requirement that is imposed by the PRA under any provision of this Act,

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- (b) a requirement under section 56(6) where the authorised person concerned is a PRA-authorised person and the prohibition order concerned is made by the PRA, or
 - (c) a requirement under section 59(1) or (2) where the authorised person concerned is a PRA-authorised person and the approval concerned falls to be given by the PRA.
- (12) In the case of a contravention of a requirement that is imposed by a qualifying EU provision, “the appropriate regulator” is whichever of the PRA or the FCA (or both) is specified by the Treasury by order in relation to the qualifying EU provision for the purposes of this section.
- (13) In the case of a contravention of a requirement where the contravention constitutes an offence under this Act, the “appropriate regulator” is the regulator which has power to prosecute the offence (see section 401).
- (14) The FCA is the “appropriate regulator” in the case of a contravention of any other requirement.
- (15) The Treasury may by order amend the definition of “appropriate regulator”.

Commencement Information

I25 Sch. 9 para. 21 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2

I26 Sch. 9 para. 21 in force at 1.4.2013 in so far as not already in force by S.I. 2013/423, art. 3, Sch.

- 22 In section 383(1), (4), (5) and (9) (restitution orders in case of market abuse), for “Authority” substitute “ FCA ”.

Commencement Information

I27 Sch. 9 para. 22 in force at 1.4.2013 by S.I. 2013/423, art. 3, Sch.

- 23 (1) Section 384 (power of Authority to require restitution) is amended as follows.
- (2) In subsection (1)—
- (a) for “The Authority” substitute “ The appropriate regulator ”, and
 - (b) after “authorised person” insert “ or recognised investment exchange ”.
- (3) In subsections (2) and (4), for “Authority” substitute “ FCA ”.
- (4) In subsection (5)—
- (a) for “Authority”, in the first place, substitute “ regulator exercising the power (“the regulator concerned”) ”, and
 - (b) for “Authority”, in each of the other places, substitute “ regulator concerned ”.
- (5) In subsection (6), for “Authority” substitute “ regulator concerned ”.
- (6) In subsection (7)—
- (a) in paragraph (a), for the words from “any directly applicable” to “auctioning regulation” substitute “ a qualifying EU provision specified, or of a description specified, for the purposes of this subsection by the Treasury by order ”, and

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- (b) in paragraph (b), for the words from “in relation to which” to the end substitute “ mentioned in section 402(1) ”.
- (7) Omit subsection (8).
- (8) After subsection (8) insert—
- “(9) The PRA is the “appropriate regulator” in the case of a contravention of—
- (a) a requirement that is imposed by the PRA under any provision of this Act,
 - (b) a requirement under section 56(6) where the authorised person concerned is a PRA-authorised person and the prohibition order concerned is made by the PRA, or
 - (c) a requirement under section 59(1) or (2) where the authorised person concerned is a PRA-authorised person and the approval concerned falls to be given by the PRA.
- (10) In the case of a contravention of a requirement that is imposed by a qualifying EU provision, “the appropriate regulator” is whichever of the PRA or the FCA (or both) is specified by the Treasury by order in relation to the qualifying EU provision for the purposes of this section.
- (11) In the case of a contravention of a requirement where the contravention constitutes an offence under this Act, the “appropriate regulator” is the regulator which has power to prosecute the offence (see section 401).
- (12) The FCA is the “appropriate regulator” in the case of a contravention of any other requirement.
- (13) The Treasury may by order amend the definition of “appropriate regulator”.
- (9) In the heading, for “Authority” substitute “ FCA or PRA ”.
- (10) In the italic heading before section 384, for “Authority” substitute “ FCA or PRA ”.

Commencement Information

- I28** Sch. 9 para. 23 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2
- I29** Sch. 9 para. 23 in force at 1.4.2013 in so far as not already in force by S.I. 2013/423, art. 3, Sch.

- 24 (1) Section 385 (warning notices) is amended as follows.
- (2) In subsection (1), for “the Authority” substitute “ a regulator ”.
- (3) In subsection (2), for “the Authority” substitute “ the regulator ”.

Commencement Information

- I30** Sch. 9 para. 24 in force at 1.4.2013 by S.I. 2013/423, art. 3, Sch.

- 25 In section 386(1) and (3) (decision notices), for “Authority” substitute “ regulator ”.

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Commencement Information

I31 Sch. 9 para. 25 in force at 1.4.2013 by S.I. 2013/423, art. 3, Sch.

PART 6

NOTICE PROCEDURES

- 26 (1) Section 387 (warning notices) is amended as follows.
- (2) In subsection (1)(a), for “Authority” substitute “ regulator giving the notice (“the regulator concerned”) ”.
- (3) After subsection (1) insert—
- “(1A) Where the PRA is the regulator concerned and the FCA proposes to refuse consent for the purposes of section 55F, 55I or 59 or to give conditional consent as mentioned in section 55F(5) or 55I(8), the warning notice given by the PRA must—
- (a) state that fact, and
- (b) give the reasons for the FCA's proposal.”
- (4) In subsection (2)—
- (a) for “The warning” substitute “ A warning ”,
- (b) for “28 days” substitute “ 14 days ”, and
- (c) for “Authority” substitute “ regulator concerned ”.
- (5) In subsection (3), for “The Authority” substitute “ The regulator concerned ”.
- (6) After subsection (3) insert—
- “(3A) Where the PRA receives any representations in response to a warning notice given by it under section 55X(1) or (2) or 62(2) in a case falling within subsection (1A) it must—
- (a) if the representations are in writing, give a copy to the FCA, or
- (b) if they are not in writing and have not been given directly to the FCA by the person making them, provide the FCA with a record of them.”
- (7) In subsection (4), for “The Authority” substitute “ The regulator concerned ”.

Commencement Information

I32 Sch. 9 para. 26 in force at 1.4.2013 by S.I. 2013/423, art. 3, Sch.

- 27 (1) Section 388 (decision notices) is amended as follows.
- (2) In subsection (1)(b), for “the Authority's reasons” substitute “ the reasons of the regulator giving the notice (“the regulator concerned”) ”.
- (3) After subsection (1) insert—
- “(1A) Where the PRA is the regulator concerned and the FCA has decided to refuse consent for the purposes of section 55F, 55I or 59 or to give conditional

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consent as mentioned in section 55F(5) or 55I(8), the decision notice given by the PRA must—

- (a) state that fact, and
- (b) give the reasons for the FCA's decision.”

(4) In subsections (3) and (4), for “The Authority” substitute “ The regulator concerned ”.

Commencement Information

I33 Sch. 9 para. 27 in force at 1.4.2013 by S.I. 2013/423, art. 3, Sch.

28 In section 389(1) (notices of discontinuance)—

- (a) for “the Authority” substitute “ a regulator ”, and
- (b) in paragraphs (a) and (b), after “notice” insert “ given by it ”.

Commencement Information

I34 Sch. 9 para. 28 in force at 1.4.2013 by S.I. 2013/423, art. 3, Sch.

29 (1) Section 390 (final notices) is amended as follows.

(2) In subsection (1)—

- (a) for “the Authority”, in the first place, substitute “ a regulator ”, and
- (b) for “the Authority”, in the second place, substitute “ the regulator ”.

(3) In subsection (2)—

- (a) for “the Authority”, in the first place, substitute “ a regulator ”,
- (b) for “the Authority”, in the second place, substitute “ the regulator ”, and
- (c) for “a final notice” substitute “ the notice required by subsection (2A) ”.

(4) After that subsection insert—

“(2A) The notice required by this subsection is—

- (a) in a case where the regulator is acting in accordance with a direction given by the Tribunal under section 133(6)(b), or by the court on an appeal from a decision by the Tribunal under section 133(6), a further decision notice, and
- (b) in any other case, a final notice.”.

(5) In subsections (9) and (10), for “the Authority” substitute “ the regulator giving the notice ”.

Commencement Information

I35 Sch. 9 para. 29 in force at 1.4.2013 by S.I. 2013/423, art. 3, Sch.

30 (1) Section 391 (publication) is amended as follows.

(2) For subsection (1) substitute—

“(1) In the case of a warning notice falling within subsection (1ZB)—

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- (a) neither the regulator giving the notice nor a person to whom it is given or copied may publish the notice,
 - (b) a person to whom the notice is given or copied may not publish any details concerning the notice unless the regulator giving the notice has published those details, and
 - (c) after consulting the persons to whom the notice is given or copied, the regulator giving the notice may publish such information about the matter to which the notice relates as it considers appropriate.
- (1ZA) In the case of a warning notice not falling within subsection (1ZB), neither the regulator giving the notice nor a person to whom it is given or copied may publish the notice or any details concerning it.
- (1ZB) A warning notice falls within this subsection if it is given under—
- (a) section 63B;
 - (b) section 67;
 - (c) section 87M;
 - (d) section 88B;
 - (e) section 89K;
 - (f) section 89R;
 - (g) section 92;
 - (h) section 126;
 - (i) section 131H;
 - (j) section 192L;
 - (k) section 207;
 - (l) section 312G;
 - (m) section 345B (whether as a result of section 345(2) or 345A(3) or section 249(1)).”
- (3) In subsections (1A), (2) and (3), for “Authority” substitute “ regulator giving the notice ”.
- (4) In subsection (4)—
- (a) for “The Authority” substitute “ The regulator giving a decision or final notice ”, and
 - (b) for “a decision notice or final notice” substitute “ the notice ”.
- (5) In subsection (5), for “Authority” substitute “ regulator giving the notice ”.
- (6) For subsection (6) substitute—
- “(6) The FCA may not publish information under this section if, in its opinion, publication of the information would be—
- (a) unfair to the person with respect to whom the action was taken (or was proposed to be taken),
 - (b) prejudicial to the interests of consumers, or
 - (c) detrimental to the stability of the UK financial system.
- (6A) The PRA may not publish information under this section if, in its opinion, publication of the information would be—
- (a) unfair to the person with respect to whom the action was taken (or was proposed to be taken),

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- (b) prejudicial to the safety and soundness of PRA-authorised persons, or
- (c) in a case where section 2C applies, prejudicial to securing the appropriate degree of protection for policyholders.”

(7) In subsection (7), for “Authority” substitute “ regulator ”.

(8) In subsection (7A), for “the Authority” substitute “ a regulator ”.

Commencement Information

I36 Sch. 9 para. 30 in force at 1.4.2013 by S.I. 2013/423, art. 3, Sch.

31 (1) Section 392 (application of sections 393 and 394) is amended as follows.

(2) In paragraph (a)—

- (a) for “54(1)” substitute “ 55Z(1) ”, and
- (b) after “131H(1),” insert “ 192L(1), ”.

(3) In paragraph (b)—

- (a) for “54(2)” substitute “ 55Z(2) ”, and
- (b) after “131H(4),” insert “ 192L(4), ”.

Commencement Information

I37 Sch. 9 para. 31 in force at 1.4.2013 by S.I. 2013/423, art. 3, Sch.

32 (1) Section 393 (third party rights) is amended as follows.

(2) In subsections (1)(b) and (2), for “Authority” substitute “ regulator giving the notice ”.

(3) In subsection (3)—

- (a) for “28 days” substitute “ 14 days ”, and
- (b) for “the Authority” substitute “ the regulator giving the notice ”.

(4) In subsections (4)(b), (6), (7), (9)(b) and (11)(b), for “the Authority” substitute “ the regulator giving the notice ”.

(5) In subsection (12), for “which the Authority must disclose” substitute “ to which access must be given ”.

Commencement Information

I38 Sch. 9 para. 32 in force at 1.4.2013 by S.I. 2013/423, art. 3, Sch.

33 (1) Section 394 (access to Authority material) is amended as follows.

(2) In subsection (1)—

- (a) in the opening words, for “the Authority” substitute “ a regulator ”, and
- (b) in paragraph (b), for “, in the opinion of the Authority,” substitute “ , in the regulator’s opinion, ”.

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- (3) In subsection (2), for “the Authority”, in both places, substitute “ the regulator giving the notice ”.
- (4) In subsection (3), for “The Authority” substitute “ The regulator giving the notice ”.
- (5) In subsection (4)—
 - (a) for “the Authority” substitute “ the regulator giving the notice ”, and
 - (b) for “the Authority's” substitute “the regulator's”.
- (6) In subsection (5), for “the Authority” substitute “ the regulator giving the notice ”.
- (7) In subsection (6)—
 - (a) in paragraph (a), for “the Authority” substitute “ the regulator giving the notice ”, and
 - (b) in paragraph (b), for “the Authority in connection with the matter to which the notice to which this section applies” substitute “ the regulator giving the notice in connection with the matter to which that notice ”.
- (8) In the heading, for “Authority” substitute “ FCA or PRA ”.

Commencement Information

I39 Sch. 9 para. 33 in force at 1.4.2013 by S.I. 2013/423, art. 3, Sch.

- 34 (1) Section 395 (the Authority's procedures) is amended as follows.
- (2) For subsection (1) substitute—

“(1) Each regulator must determine the procedure that it proposes to follow in relation to the following—

 - (a) a decision which gives rise to an obligation to give a supervisory notice,
 - (b) in the case of the FCA, a decision which—
 - (i) gives rise to an obligation for it to give a warning notice or decision notice, or
 - (ii) gives rise to an obligation for the PRA to include a statement under section 387(1A) in a warning notice or a statement under section 388(1A) in a decision notice,
 - (c) in the case of the PRA, a decision which gives rise to an obligation for it to give a warning notice or decision notice, other than a decision which depends entirely on a decision of the FCA of the kind mentioned in paragraph (b)(ii), and
 - (d) a decision under section 391(1)(c) to publish information about the matter to which a warning notice relates.”
 - (3) In subsection (2), omit the words from “, that the decision” to the end and insert “that—
 - (a) a decision falling within any of paragraphs (a) to (c) of subsection (1) is taken—
 - (i) by a person not directly involved in establishing the evidence on which the decision is based, or

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- (ii) by 2 or more persons who include a person not directly involved in establishing that evidence,
 - (b) a decision falling within paragraph (d) of subsection (1) is taken—
 - (i) by a person other than the person by whom the decision was first proposed, or
 - (ii) by 2 or more persons not including the person by whom the decision was first proposed, and
 - (c) a decision falling within paragraph (d) of subsection (1) is taken in accordance with a procedure which is, as far as possible, the same as that applicable to a decision which gives rise to an obligation to give a warning notice and which falls within paragraph (b) or (c) of subsection (1).”
- (4) In subsection (3), for the words from “taken” to the end substitute “taken otherwise than as mentioned in subsection (2) if the person taking the decision is of a level of seniority laid down by the procedure and—
 - (a) in the case of procedure proposed by the FCA, the FCA considers that, in the particular case, it is necessary in order to advance one or more of its operational objectives, or
 - (b) in the case of procedure proposed by the PRA, the PRA considers that, in the particular case, it is necessary in order to advance any of its objectives.”
- (5) In subsection (5)—
 - (a) for “The Authority” substitute “ Each regulator ”, and
 - (b) for “the procedure” substitute “ its procedure ”.
- (6) In subsection (6)—
 - (a) for “the Authority” substitute “ the regulator issuing it ”, and
 - (b) for “it” substitute “ the statement ”.
- (7) In subsection (7), for “The Authority” substitute “ The regulator issuing the statement ”.
- (8) In subsection (8)—
 - (a) for “The Authority” substitute “ The regulator issuing a statement under this section ”, and
 - (b) for “any statement which it issues under this section” substitute “ the statement ”.
- (9) In subsection (9)—
 - (a) for “giving” substitute “ a regulator gives ”,
 - (b) after “decision notice,” insert “ other than a warning notice or decision notice relating to a decision of the PRA that is required by a a decision of the FCA of the kind mentioned in subsection (1)(b)(ii) ”, and
 - (c) for “the Authority” substitute “ the regulator ”.
- (10) After subsection (9) insert—
 - “(9A) When the FCA takes a decision falling within subsection (1)(b)(ii), it must follow its stated procedure.”
- (11) In subsection (10)—

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- (a) for “the Authority” substitute “ a regulator ”, and
 - (b) for “the procedure” substitute “ its procedure ”.
- (12) In subsection (11), for “The Authority's” substitute “A regulator's”.
- (13) In subsection (13), for paragraph (a) substitute—
“(a) 55Y(4), (7) or (8)(b);”.
- (14) In the heading, for “Authority's” substitute “FCA's and PRA's”.
- (15) In the italic heading before that section, for “Authority's” substitute “FCA's and PRA's”.

Commencement Information

- I40** Sch. 9 para. 34 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3
- I41** Sch. 9 para. 34 in force at 1.4.2013 in so far as not already in force by S.I. 2013/423, art. 3, Sch.

- 35 (1) Section 396 (statements under s.395: consultation) is amended as follows.
- (2) In subsection (1)—
 - (a) after “a statement of” insert “ its ”,
 - (b) for “the Authority”, in the first place, substitute “ the regulator ”,
 - (c) for “the Authority”, in the second place, substitute “ it ”, and
 - (d) for “it” substitute “ the draft ”.
 - (3) In subsection (2), for “Authority” substitute “ regulator publishing the draft ”.
 - (4) In subsection (3), for “Before issuing the proposed statement of procedure, the Authority” substitute “ Before a regulator issues the proposed statement of its procedure, it ”.
 - (5) In subsection (4), for “Authority issues the proposed statement of procedure” substitute “ regulator issues the proposed statement of its procedure, ”.
 - (6) In subsection (5)—
 - (a) for “statement of procedure differs from the draft published” substitute “ statement of the regulator's procedure differs from the draft published by it ”,
 - (b) for “, in the opinion of the Authority,” substitute “ , in its opinion, ”, and
 - (c) for “the Authority must” substitute “ it must ”.
 - (7) In subsection (6)—
 - (a) for “The Authority” substitute “ The regulator publishing a draft under subsection (1) ”, and
 - (b) for “a draft published under subsection (1)” substitute “ the draft ”.

Commencement Information

- I42** Sch. 9 para. 35 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3
- I43** Sch. 9 para. 35 in force at 1.4.2013 in so far as not already in force by S.I. 2013/423, art. 3, Sch.

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PART 7

OFFENCES

- 36 (1) Section 398 (misleading the Authority: residual cases) is amended as follows.
- (2) In subsection (1), for “the Authority” substitute “ a regulator ”.
- (3) In the heading, for “the Authority” substitute “ FCA or PRA ”.

Commencement Information

I44 Sch. 9 para. 36 in force at 1.4.2013 by S.I. 2013/423, art. 3, Sch.

- 37 In section 400 (offences by a body corporate etc) after subsection (6) insert—
- “(6A) References in this section to an offence under this Act include a reference to an offence under Part 7 of the Financial Services Act 2012 (offences relating to financial services).”

Commencement Information

I45 Sch. 9 para. 37 in force at 1.4.2013 by S.I. 2013/423, art. 3, Sch.

- 38 (1) Section 401 (proceedings for offences) is amended as follows.
- (2) For subsection (1) substitute—
- “(1) In this section “offence” means—
- (a) an offence under this Act,
 - (b) an offence under subordinate legislation made under this Act, or
 - (c) an offence under Part 7 of the Financial Services Act 2012 (offences relating to financial services).”
- (3) In subsections (2)(a) and (3)(a), for “Authority” substitute “ appropriate regulator ”.
- (4) After subsection (3) insert—
- “(3A) For the purposes of subsections (2)(a) and (3)(a), the PRA is the “appropriate regulator” in respect of each of the following offences—
- (a) an offence under section 55P(10) where the contravention is of a requirement imposed by the PRA;
 - (b) an offence under section 56(4) where the prohibition order is made by the PRA;
 - (c) an offence under section 177(3) where the investigation is being, or is likely to be, conducted on behalf of the PRA;
 - (d) an offence under section 177(4) where the requirement is imposed by the PRA;
 - (e) an offence under section 177(6) where the warrant is issued as a result of information on oath given by the PRA or a person appointed by the PRA to conduct an investigation on its behalf;
 - (f) an offence under section 191F(1) where the notice should have been given to the PRA;

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- (g) an offence under any of section 191F(2) to (7) where the notice, approval or information was given to or by the PRA;
- (h) an offence under section 366(3), unless the activity of effecting or carrying out long-term contracts of insurance is not to any extent a PRA-regulated activity;
- (i) an offence under section 398(1) where the information was given to the PRA.

(3B) For the purposes of subsections (2)(a) and (3)(a), the FCA is the “appropriate regulator” in respect of any other offence.”

(5) In subsection (5), for “Authority” substitute “ appropriate regulator ”.

Commencement Information

I46 Sch. 9 para. 38 in force at 1.4.2013 by S.I. 2013/423, art. 3, Sch.

39 (1) Section 402 (power of the Authority to institute proceedings for certain other offences) is amended as follows.

(2) In subsections (1) and (2), for “Authority” substitute “ FCA ”.

(3) In the heading, for “the Authority” substitute “ FCA ”.

Commencement Information

I47 Sch. 9 para. 39 in force at 1.4.2013 by S.I. 2013/423, art. 3, Sch.

40 In section 403 (jurisdiction and procedure in respect of offences), in subsection (7), at the end insert “ or an offence under Part 7 of the Financial Services Act 2012 (offences relating to financial services) ”.

Commencement Information

I48 Sch. 9 para. 40 in force at 1.4.2013 by S.I. 2013/423, art. 3, Sch.

PART 8

CO-OPERATION

41 After section 415A insert—

“Consultation

415B Consultation in relation to taking certain enforcement action

- (1) The FCA must consult the PRA before taking a qualifying step in relation to a person who—
- (a) is a PRA-authorised person, or
 - (b) has a qualifying relationship with a PRA-authorised person.

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- (2) The PRA must consult the FCA before taking a qualifying step.
- (3) In this section any reference to the taking of a qualifying step is a reference to—
- (a) the giving of a warning notice or decision notice under section 63B (performance of controlled functions without approval),
 - (b) the giving of a warning notice or decision notice under section 67 (disciplinary powers in relation to approved person),
 - (c) the giving of a warning notice under section 126 or a decision notice under section 127 (market abuse),
 - (d) the giving of a warning notice or decision notice under section 131H (short selling),
 - (e) the giving of a warning notice under section 207 or a decision notice under section 208 (breaches of requirements imposed by or under Act etc.),
 - (f) the giving of a warning notice under section 312G or a decision notice under section 312H (recognised bodies),
 - (g) the making of an application to the court under section 380, 381, 382 or 383 (injunctions or restitution), or
 - (h) the giving of a warning notice under section 385 or a decision notice under section 386 (power of FCA or PRA to require restitution).
- (4) A person has a qualifying relationship with a PRA-authorised person (“A”) for the purposes of this section if—
- (a) the person is a member of A's immediate group, or
 - (b) in the case of a qualifying step within subsection (3)(a) or (b), the person performs a significant-influence function under an arrangement entered into by A, or by a contractor of A, in relation to the carrying on by A of a regulated activity.
- “Significant-influence function” and “arrangement” have the same meanings as in section 59.”

Commencement Information

I49 Sch. 9 para. 41 in force at 1.4.2013 by S.I. 2013/423, art. 3, Sch.

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Point in time view as at 01/01/2015.

Changes to legislation:

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