

*Status: Point in time view as at 19/02/2013.*

*Changes to legislation: Financial Services Act 2012 is up to date with all changes known to be in force on or before 12 July 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 1

Section 4

#### BANK OF ENGLAND FINANCIAL POLICY COMMITTEE

### PART 1

SCHEDULE TO BE INSERTED AS SCHEDULE 2A TO BANK OF ENGLAND ACT 1998

#### Commencement Information

**II** [Sch. 1 Pt. 1](#) in force at 19.2.2013 for specified purposes by [S.I. 2013/113](#), [art. 2\(2\)](#), [Sch. Pt. 4](#)

PROSPECTIVE

This is the Schedule to be inserted in the Bank of England Act 1998 after Schedule 2—

#### “SCHEDULE 2A

Section 9B

#### FINANCIAL POLICY COMMITTEE

##### *Terms of office of appointed members*

- 1 (1) Appointment under section 9B(1)(d) or (e) as a member of the Financial Policy Committee is to be for a period of 3 years, but this is subject to sub-paragraph (2) and to paragraph 3.  
(2) Initially some appointments may be for shorter and different periods so as to secure that appointments expire at different times.
- 2 (1) A person may not be appointed as a member of the Committee under section 9B(1)(e) more than twice.  
(2) For this purpose an appointment which by virtue of paragraph 1(2) is for a period of less than 3 years is to be disregarded.
- 3 (1) If it appears to the Chancellor of the Exchequer that in the circumstances it is desirable to do so, the Chancellor may, before the end of the term for which a person is appointed as a member of the Committee under section 9B(1)(e), extend the person's term of office on one occasion for a specified period of not more than 6 months.  
(2) The term being extended may be the person's first or second term or, in a case where paragraph 2(2) allows a third term, the person's third term.  
(3) If a person whose first term of office is extended is subsequently re-appointed under section 9B(1)(e)—

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- (a) the length of the second term is to be reduced by a period equal to the extension of the first term, but
  - (b) the second term may itself subsequently be extended under sub-paragraph (1).
- (4) In a case where a person's second term of office is extended and paragraph 2(2) allows a third term, sub-paragraph (3) is to be read as if the references to first and second terms were references to second and third terms respectively.
- 4 (1) A person appointed under section 9B(1)(d) or (e) may resign the office by written notice to the Bank.
- (2) Where the notice relates to a person appointed under section 9B(1)(e), the Bank must give a copy of the notice to the Treasury.
- 5 The terms and conditions on which a person holds office as a member of the Committee appointed under section 9B(1)(e) are to be such as the Oversight Committee may determine.

#### *Qualification for appointment*

- 6 (1) The following persons are disqualified for appointment under section 9B(1)(d) or (e) —
- (a) a Minister of the Crown;
  - (b) a person serving in a government department in employment in respect of which remuneration is paid out of money provided by Parliament.
- (2) A member of the Monetary Policy Committee of the Bank appointed under section 13(2)(c) is disqualified for appointment under section 9B(1)(e).

#### *Removal of appointed members*

- 7 A person appointed under section 9B(1)(d) or (e) vacates office on becoming a person to whom paragraph 6(1)(a) or (b) applies.
- 8 A person appointed under section 9B(1)(d) vacates office on ceasing to have executive responsibility within the Bank for the analysis of threats to financial stability.
- 9 (1) The Oversight Committee may, with the consent of the Chancellor of the Exchequer, remove a member appointed under section 9B(1)(d) or (e) (“M”) if it is satisfied—
- (a) that M has been absent from 3 or more meetings of the Financial Policy Committee without the Committee's consent,
  - (b) that M has become bankrupt, that a debt relief order (under Part 7A of the Insolvency Act 1986) has been made in respect of M, that M's estate has been sequestrated or that M has made an arrangement with or granted a trust deed for M's creditors, or
  - (c) that M is unable or unfit to discharge M's functions as a member.
- (2) The Oversight Committee may, with the consent of the Chancellor of the Exchequer, also remove a member appointed under section 9B(1)(e) (“M”) if it is satisfied that in all the circumstances M's financial or other interests are such as substantially to affect the functions as member which it would be proper for M to discharge.

#### *Meetings*

- 10 (1) The Committee shall meet at least 4 times in each calendar year.

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- (2) The Governor of the Bank (or in the Governor's absence the Bank's Deputy Governor for financial stability) may summon a meeting at any time on giving such notice as the person giving the notice thinks the circumstances require.

#### *Proceedings*

- 11 (1) At a meeting of the Committee, the proceedings are to be regulated as follows.
- (2) The quorum is to be 6 (excluding the Treasury's representative) and of the 6—
- (a) one must be the Governor of the Bank or the Bank's Deputy Governor for financial stability,
  - (b) unless both those mentioned in paragraph (a) are present, one must be either of the other Deputy Governors of the Bank, and
  - (c) one must be a member appointed under section 9B(1)(e).
- (3) The chair is to be taken by the Governor of the Bank or, if the Governor is not present, by the Bank's Deputy Governor for financial stability.
- (4) The person chairing the meeting must seek to secure that decisions of the Committee are reached by consensus wherever possible.
- (5) Where that person forms the opinion that consensus cannot be reached, a decision is to be taken by a vote of all those members present at the meeting.
- (6) In the event of a tie, the person chairing the meeting is to have a second casting vote.
- (7) At a meeting of the Committee—
- (a) the Treasury's representative may not vote, and
  - (b) any view expressed by the Treasury's representative is to be disregarded in determining under sub-paragraph (4) or (5) whether there is a consensus.
- (8) Subject to sub-paragraphs (2) to (7) and paragraph 14, the Committee is to determine its own procedure.
- 12 The Committee may, in relation to sub-paragraph (2), (3), (4) or (5) of paragraph 11, determine circumstances in which a member who is not present at, but is in communication with, a meeting is to be treated for the purposes of that sub-paragraph as present at it.
- 13 The Committee may invite other persons to attend, or to attend and speak at, any meeting of the Committee.
- 14 If a member of the Committee (“M”) has any direct or indirect interest (including any reasonably likely future interest) in any dealing or business which falls to be considered by the Committee—
- (a) M must disclose that interest to the Committee when it considers the dealing or business, and
  - (b) the Committee must decide whether M is to be permitted to participate in any proceedings of the Committee relating to any question arising from its consideration of the dealing or business, and if so to what extent and subject to what conditions (if any).”

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VALID FROM 01/04/2013

## PART 2

### OTHER AMENDMENTS RELATING TO FINANCIAL POLICY COMMITTEE

#### *Bank of England Act 1998 (c. 11)*

1 In section 4 of the Bank of England Act 1998 (annual report by Bank), in subsection (2), for the “and” at the end of paragraph (a) substitute—

“(aa) a report by the court of directors on the activities of the Financial Policy Committee of the Bank, and”.

2 In section 15 of the Bank of England Act 1998 (publication of minutes of meetings of Monetary Policy Committee) after subsection (4) insert—

“(4A) The Bank shall exclude from minutes published under this section information which relates to proceedings of the Financial Policy Committee if the Bank considers that publication of that information would be against the public interest.”

3 In section 40 of the Bank of England Act 1998 (orders), after subsection (4) insert—

“(4A) Section 9N contains its own provisions about parliamentary procedure in relation to an order under section 9L.”

#### *House of Commons Disqualification Act 1975 (c. 24)*

4 In Part 3 of Schedule 1 to the House of Commons Disqualification Act 1975 (other disqualifying offices), at the appropriate place insert— “ Member of the Financial Policy Committee of the Bank of England appointed under section 9B(1)(d) or (e) of the Bank of England Act 1998. ”

#### *Northern Ireland Assembly Disqualification Act 1975 (c. 25)*

5 In Part 3 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (other disqualifying offices), at the appropriate place insert— “ Member of the Financial Policy Committee of the Bank of England appointed under section 9B(1)(d) or (e) of the Bank of England Act 1998. ”

## SCHEDULE 2

Section 5

### FURTHER AMENDMENTS RELATING TO BANK OF ENGLAND

#### *Court of directors*

1 (1) Schedule 1 to the Bank of England Act 1998 (which makes further provision about the court of directors) is amended as follows.

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(2) For paragraph 1 substitute—

- “1 (1) Appointment as Governor of the Bank shall be for a period of 8 years.
- (2) Appointment as Deputy Governor of the Bank shall be for a period of 5 years.
- (3) A person may not be appointed—
- (a) as Governor, more than once, or
- (b) as Deputy Governor, more than twice.
- (4) A person appointed as Governor or Deputy Governor of the Bank shall work exclusively for the Bank; and for this purpose work in an office that an enactment requires to be held by the Governor or a Deputy Governor is to be taken to be work for the Bank.”

(3) In paragraph 2—

- (a) for “director” substitute “ non-executive director ”, and
- (b) for the words from “3 years” to the end substitute “ 4 years, or such shorter period as may be specified in the appointment ”.

(4) Omit paragraph 3.

(5) In paragraph 4, for “director” substitute “ non-executive director ”.

(6) In paragraph 5—

- (a) in sub-paragraph (1), for “director” substitute “ non-executive director ”, and
- (b) for sub-paragraph (2) substitute—

“(2) An officer or employee of the Bank, other than a person holding office under section 9B(1)(e), is disqualified for appointment as non-executive director of the Bank.”

(7) For paragraph 6 substitute—

- “6 (1) The fact that a person has held office as Governor of the Bank does not disqualify that person from appointment as Deputy Governor or non-executive director of the Bank.
- (2) The fact that a person has held office as Deputy Governor or non-executive director of the Bank does not disqualify that person from re-appointment to that office or for appointment to the other office or as Governor of the Bank, but this is subject to paragraph 1(3)(b).”

(8) In paragraph 7(2), for “director” substitute “ non-executive director ”.

(9) In paragraph 8—

- (a) the existing provision becomes sub-paragraph (1),
- (b) in that provision, for “director” substitute “ non-executive director ”, and
- (c) after that provision insert—

“(2) In relation to the Deputy Governor for prudential regulation, the reference in sub-paragraph (1)(c) to inability or unfitness to discharge functions as member of the court of directors is to be read as including a reference to inability or unfitness to discharge functions as Chief Executive of the Prudential Regulation Authority.”

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(10) In paragraph 11—

- (a) the existing provision becomes sub-paragraph (1),
- (b) in sub-paragraph (1)(b), for “servant” substitute “ employee ”,
- (c) in sub-paragraph (1)(c)(ii), for “servants” substitute “ employees ”, and
- (d) after sub-paragraph (1) insert—

“(2) The duties and powers that may be delegated under this paragraph do not include duties and powers that are by any enactment expressly imposed or conferred on the court of directors.”

(11) After paragraph 12 insert—

*“Publication of record of meetings*

12A(1) The Bank must publish a record of each meeting of the court—

- (a) before the end of the period of 6 weeks beginning with the day of the meeting, or
  - (b) if no meeting of the court is subsequently held during that period, before the end of the period of 2 weeks beginning with the day of the next meeting.
- (2) The record must specify any decisions taken at the meeting (including decisions to take no action) and must set out, in relation to each decision, a summary of the court's deliberations.
- (3) Sub-paragraphs (1) and (2) do not require the publication of information whose publication within the time required by sub-paragraph (1) would in the opinion of the court be against the public interest.
- (4) Publication under this section is to be in such manner as the Bank thinks fit.”

(12) In paragraph 13, after sub-paragraph (3), insert—

“(3A) But a member of the court who is the Governor or a Deputy Governor of the Bank may not be designated under paragraph (a) or (b) of sub-paragraph (3).”

(13) In paragraph 14(1), for “it” substitute “ the Oversight Committee ”.

(14) In paragraph 15, for “director” substitute “ non-executive director ”.

(15) Nothing in sub-paragraphs (2) to (7) affects the term of any appointment made before the commencement of that provision.

**Commencement Information**

**I2** Sch. 2 para. 1 in force at 19.2.2013 for specified purposes by [S.I. 2013/113, art. 2\(2\)](#), [Sch. Pt. 4](#)

*Monetary Policy Committee*

2 (1) Schedule 3 to the Bank of England Act 1998 (Monetary Policy Committee) is amended as follows.

(2) In paragraph 1, for the words from “except that” to the end substitute “ but this is subject to paragraph 2B ”.

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- (3) Omit paragraph 2.
- (4) After paragraph 2A insert—
  - “2B (1) If it appears to the Chancellor of the Exchequer that in the circumstances it is desirable to do so, the Chancellor may, before the end of the 3 years for which a person is appointed as a member of the Committee under section 13(2)(c), extend the persons's term of office on one occasion for a specified period of not more than 6 months.
  - (2) The term being extended may be the person's first or second term.
  - (3) If a person whose first term of office is extended is subsequently re-appointed under section 13(2)(c)—
    - (a) the length of the second term is to be reduced by a period equal to the extension of the first term, but
    - (b) the second term may itself subsequently be extended under sub-paragraph (1).”
- (5) In paragraph 3—
  - (a) the existing provision becomes sub-paragraph (1), and
  - (b) after that provision insert—
    - “(2) Where the notice relates to a person appointed under section 13(2)(c), the Bank must give a copy of the notice to the Treasury.”
- (6) In paragraph 4—
  - (a) omit sub-paragraph (1),
  - (b) for sub-paragraph (2) substitute—
    - “(2) The terms and conditions on which a person holds office as a member of the Committee appointed under section 13(2)(c) are to be such as the Oversight Committee may determine.”, and
  - (c) omit sub-paragraph (3).
- (7) After paragraph 5 insert—
  - “5A A member of the Financial Policy Committee of the Bank appointed under section 9B(1)(e) is disqualified for appointment under section 13(2)(c).”
- (8) In paragraph 9—
  - (a) in sub-paragraph (1)—
    - (i) for “Bank” substitute “Oversight Committee”, and
    - (ii) in paragraph (a), for “the Committee's meetings” and “the Committee's consent” substitute “meetings of the Monetary Policy Committee” and “that Committee's consent”, and
  - (b) omit sub-paragraph (2).
- (9) In paragraphs 10(2) and 11(3), leave out “with executive responsibility”.
- (10) After paragraph 13 insert—
  - “13A The Committee may invite other persons to attend, or to attend and speak at, any meeting of the Committee.”

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- (11) Sub-paragraph (3) does not affect the term of any appointment made before the commencement of that sub-paragraph, and sub-paragraph (6) does not affect the status of a person appointed before the commencement of that sub-paragraph during the remainder of the term for which the person had been appointed.

**Commencement Information**

**I3** [Sch. 2 para. 2](#) in force at 19.2.2013 for specified purposes by [S.I. 2013/113, art. 2\(2\)](#), [Sch. Pt. 4](#)

*Immunity*

- 3 (1) Section 244 of the Banking Act 2009 (immunity) is amended as follows.
- (2) In subsection (2)—
- (a) in paragraph (a), for “servant” substitute “ employee ”, and
  - (b) in paragraph (c), for “functions exercised” substitute “ the exercise or purported exercise of the Bank's functions under the Financial Services and Markets Act 2000, of its other regulatory functions or of functions undertaken ”.
- (3) After subsection (2) insert—
- “(2A) The Bank's functions under the Financial Services and Markets Act 2000 are to be taken to include any functions that it may exercise as a result of an appointment under any of sections 97, 166 to 169 and 284 of that Act.”

**Commencement Information**

**I4** [Sch. 2 para. 3](#) in force at 19.2.2013 for specified purposes by [S.I. 2013/113, art. 2\(2\)](#), [Sch. Pt. 4](#)

*Changes in terminology*

- 4 In section 4 of the Bank of England Act 1998 (Bank's annual report), in subsection (4)(a), for “directors” substitute “ non-executive directors ”.

**Commencement Information**

**I5** [Sch. 2 para. 4](#) in force at 19.2.2013 for specified purposes by [S.I. 2013/113, art. 2\(2\)](#), [Sch. Pt. 4](#)

- 5 In Schedule 7 to the Bank of England Act 1998 (restriction on disclosure of information), in paragraph 1(3)(a), for “servant” substitute “ employee ”.

**Commencement Information**

**I6** [Sch. 2 para. 5](#) in force at 19.2.2013 for specified purposes by [S.I. 2013/113, art. 2\(2\)](#), [Sch. Pt. 4](#)

- 6 In Part 3 of Schedule 1 to the House of Commons Disqualification Act 1975 (other disqualifying offices), in the entry relating to the Bank of England, for “Director” substitute “ non-executive director ”.

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#### Commencement Information

**I7** Sch. 2 para. 6 in force at 19.2.2013 for specified purposes by S.I. 2013/113, art. 2(2), Sch. Pt. 4

- 7 In Part 3 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (other disqualifying offices), in the entry relating to the Bank of England, for “Director” substitute “non-executive director”.

#### Commencement Information

**I8** Sch. 2 para. 7 in force at 19.2.2013 for specified purposes by S.I. 2013/113, art. 2(2), Sch. Pt. 4

## SCHEDULE 3

Section 6

### FINANCIAL CONDUCT AUTHORITY AND PRUDENTIAL REGULATION AUTHORITY: SCHEDULES TO BE SUBSTITUTED AS SCHEDULES 1ZA AND 1ZB TO FSMA 2000

#### Commencement Information

**I9** Sch. 3 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

**I10** Sch. 3 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2

**I11** Sch. 3 in force at 19.2.2013 for specified purposes by S.I. 2013/113, art. 2(2), Sch. Pt. 4

These are the Schedules 1ZA and 1ZB to be substituted for Schedule 1 to FSMA 2000—

## “SCHEDULE 1ZA

Section 1A

### THE FINANCIAL CONDUCT AUTHORITY

#### PART 1

#### GENERAL

##### *Interpretation*

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

##### *Constitution*

- 2 (1) The constitution of the FCA must provide for the FCA to have a governing body.
- (2) The governing body must consist of—
- (a) a chair appointed by the Treasury,

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- (b) a chief executive appointed by the Treasury,
  - (c) the Bank's Deputy Governor for prudential regulation,
  - (d) 2 members appointed jointly by the Secretary of State and the Treasury, and
  - (e) at least one other member appointed by the Treasury.
- (3) The members referred to in sub-paragraph (2)(a), (c) and (d) are to be non-executive members.
- (4) In exercising its powers under sub-paragraph (2)(e) to appoint executive or non-executive members, the Treasury must secure that the majority of members of the governing body are non-executive members.
- (5) An employee of the FCA may not be appointed as a non-executive member.
- (6) In the following provisions of this Schedule an "appointed member" means a member of the governing body appointed under sub-paragraph (2)(a), (b), (d) or (e).
- 3 (1) The terms of service of the appointed members are to be determined by the Treasury.
- (2) In the case of a member appointed under paragraph 2(2)(d), the Treasury must consult the Secretary of State about the terms of service.
- (3) Before appointing a person as an appointed member, the Treasury (or as the case requires the Treasury and the Secretary of State) 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.
- (4) The terms of service of an appointed member ("M") must be such as—
- (a) to secure that M is not subject to direction by the Treasury or the Secretary of State,
  - (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.
- (5) If an appointed member is an employee of the FCA, the member's interest as employee is to be disregarded for the purposes of sub-paragraphs (3) and (4)(c) and paragraph 4(1)(b).
- (6) A person who is an employee of the PRA is disqualified for appointment as an appointed member.
- (7) The FCA may pay expenses to the Bank's Deputy Governor for prudential regulation in respect of that person's service as a member.
- 4 (1) The Treasury may 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.
- (2) Before removing from office a member appointed under paragraph 2(2)(d), the Treasury must consult the Secretary of State.
- 5 The validity of any act of the FCA is not affected—

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- (a) by any vacancy in any of the offices mentioned in paragraph 2(2)(a), (b) or (c), or
  - (b) by a defect in the appointment of a person—
    - (i) to any of those offices, or
    - (ii) as an appointed member.
- 6 The Bank's Deputy Governor for prudential regulation must not take part in any discussion by or decision of the FCA which relates to—
- (a) the exercise of the FCA's functions in relation to a particular person, or
  - (b) a decision not to exercise those functions.

#### *Remuneration*

- 7 The FCA must pay to the appointed members such remuneration as may be determined—
- (a) in the case of the non-executive members, by the Treasury;
  - (b) in the case of the executive members, by the FCA.

#### *Arrangements for discharging functions*

- 8 (1) The FCA may make arrangements for any of its functions to be discharged by a committee, sub-committee, officer or member of staff of the FCA, but subject to the following provisions.
- (2) In exercising its legislative functions, the FCA must act through its governing body.
- (3) For that purpose, the following are the FCA's legislative functions—
- (a) making rules;
  - (b) issuing codes under section 64 or 119;
  - (c) issuing statements under—
    - (i) section 63C, 64, 69, 88C, 89S, 93, 124, 131J, 138N, 192H, 192N, 210 or 312J,
    - (ii) section 345D (whether as a result of section 345(2) or section 249(1)), or
    - (iii) section 80 of the Financial Services Act 2012;
  - (d) giving directions under section 316, 318 or 328.
- (4) The function of issuing general guidance (as defined in section 139B(5)) may not be discharged by an officer or member of staff of the FCA.

#### *Records*

- 9 The FCA 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.

#### *Publication of record of meetings of governing body*

- 10 (1) The FCA must publish a record of each meeting of its governing body—
- (a) before the end of the period of 6 weeks beginning with the day of the meeting, or

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- (b) if no meeting of the governing body is subsequently held during that period, before the end of the period of 2 weeks beginning with the day of the next meeting.
- (2) The record must specify any decision taken at the meeting (including decisions to take no action) and must set out, in relation to each decision, a summary of the deliberations of the governing body.
- (3) Sub-paragraphs (1) and (2) do not require the publication of information whose publication within the time required by sub-paragraph (1) would in the opinion of the governing body be against the public interest.
- (4) Publication under this section is to be in such manner as the FCA thinks fit.

#### *Annual report*

- 11 (1) At least once a year the FCA must make a report to the Treasury on—
  - (a) the discharge of its functions,
  - (b) the extent to which, in its opinion, its operational objectives have been advanced,
  - (c) the extent to which, in its opinion, it has acted compatibly with its strategic objective,
  - (d) how, in its opinion, it has complied with the duty in section 1B(4),
  - (e) its consideration of the matter mentioned in section 1B(5)(b),
  - (f) its consideration of the principles in section 3B,
  - (g) how it has complied with section 3D,
  - (h) any direction received under section 3I or 3J during the period to which the report relates,
  - (i) how it has complied with section 354A(1) so far as relating to co-operation with persons outside the United Kingdom, and
  - (j) 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 FCA be against the public interest.
- (3) The report must be accompanied by—
  - (a) a statement of the remuneration of the appointed members of the governing body of the FCA 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.

#### *Annual public meeting*

- 12 (1) Not later than 3 months after making a report under paragraph 11, the FCA must hold a public meeting (“the annual meeting”) for the purposes of enabling that report to be considered.
- (2) The FCA must organise the annual meeting so as to allow—
  - (a) a general discussion of the contents of the report which is being considered, and

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- (b) a reasonable opportunity for those attending the meeting to put questions to the FCA about the way in which it discharged, or failed to discharge, its functions during the period to which the report relates.
- (3) But otherwise the annual meeting is to be organised and conducted in such a way as the FCA considers appropriate.
- (4) The FCA must give reasonable notice of its annual meeting.
- (5) That notice must—
  - (a) give details of the time and place at which the meeting is to be held,
  - (b) set out the proposed agenda for the meeting,
  - (c) indicate the proposed duration of the meeting,
  - (d) give details of the FCA's arrangements for enabling persons to attend, and
  - (e) be published by the FCA in the way appearing to it to be best calculated to bring the notice to the attention of the public.
- (6) If the FCA proposes to alter any of the arrangements which have been included in the notice given under sub-paragraph (5), it must—
  - (a) give reasonable notice of the alteration, and
  - (b) publish that notice in the way appearing to the FCA to be best calculated to bring it to the attention of the public.

#### *Report of annual meeting*

- 13 Not later than one month after its annual meeting, the FCA must publish a report of the proceedings of the meeting.

#### *Accounts and audit*

- 14 (1) The Treasury may—
- (a) require the FCA to comply with any provisions of the Companies Act 2006 about accounts and their audit which would not otherwise apply to it, or
  - (b) direct that any provision of that Act about accounts and their audit is to apply to the FCA with such modifications as are specified in the direction, whether or not the provision would otherwise apply to the FCA.
- (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.
- 15 (1) The FCA 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.

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- (4) Except as provided by paragraph 14(1), the FCA 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.
- (5) In this paragraph “annual accounts” has the meaning given in section 471 of the Companies Act 2006.

## PART 2

### STATUS

#### *Status*

- 16 In relation to any of its functions—
- (a) the FCA 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 FCA*

- 17 The FCA is to continue to be exempt from the requirements of the Companies Act 2006 relating to the use of “limited” as part of its name.
- 18 If the Secretary of State is satisfied that any action taken by the FCA makes it inappropriate for the exemption given by paragraph 17 to continue, the Secretary of State may, after consulting the Treasury, give a direction removing it.

## PART 3

### PENALTIES AND FEES

#### *Penalties*

- 19 In determining its policy with respect to the amounts of penalties to be imposed by it under this Act, the FCA must take no account of the expenses which it incurs, or expects to incur, in discharging its functions.
- 20 (1) The FCA must in respect of each of its financial years pay to the Treasury its penalty receipts after deducting its enforcement costs.
- (2) The FCA'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 FCA'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 FCA'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),

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- (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,
  - (c) offences falling within section 402(1) of that Act,
  - (d) offences under Part 7 of the Financial Services Act 2012, and
  - (e) any other offences specified by the Treasury by order.
- (6) The Treasury may give directions to the FCA as to how the FCA 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 FCA'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 FCA to provide the Treasury at specified times with specified information relating to—
- (a) penalties that the FCA has imposed under this Act, or
  - (b) the FCA's enforcement costs.
- (9) The Treasury must pay into the Consolidated Fund any sums received by them under this paragraph.
- 21 (1) The FCA 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 20(1) provides, are retained by the FCA in respect of amounts paid to it by way of penalties imposed under this Act are applied for the benefit of regulated persons.
- (2) “Regulated persons” means—
- (a) authorised persons,
  - (b) recognised investment exchanges,
  - (c) issuers of securities admitted to the official list, and
  - (d) issuers who have requested or approved the admission of financial instruments to trading on a regulated market.
- (3) The financial penalty scheme may, in particular, make different provision with respect to different classes of regulated person.
- (4) The financial penalty scheme must ensure that those who have become liable to pay a penalty to the FCA in any financial year of the FCA do not receive any benefit under the scheme in the following financial year.
- (5) Up-to-date details of the financial penalty scheme must be set out in a document (“the scheme details”).

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- 22 (1) The scheme details must be published by the FCA 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 FCA must publish a draft of the proposed scheme in the way appearing to the FCA 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 FCA within a specified time.
- (4) Before making the scheme, the FCA must have regard to any representations made to it in accordance with sub-paragraph (3).
- (5) If the FCA 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 FCA, significant, the FCA must (in addition to complying with sub-paragraph (5)) publish details of the difference.
- (7) The FCA must, without delay, give the Treasury a copy of any scheme details published by it.
- (8) The FCA 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*

- 23 (1) The FCA 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—
- (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 FCA are—
- (a) its functions under or as a result of this Act or any of the other Acts mentioned in section 1A(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)—

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“relevant borrowing” means any money borrowed by the FCA 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 FCA—

- (a) in preparation for the exercise of functions by the FCA under this Act, or
- (b) for the purpose of facilitating the exercise by the FCA of those functions or otherwise in connection with their exercise by it.

- (4) Neither section 1A(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 any of those things were done at a time when the FCA was known as the Financial Services Authority).
- (6) In the case of rules made under Part 6 of this Act, the rules may, in particular, require the payment of fees in respect of—
  - (a) the continued inclusion of securities or persons in any list or register required to be kept by the FCA as a result of any provision made by or under that Part,
  - (b) access to any list or register within paragraph (a), and
  - (c) the continued admission of financial instruments to trading on a regulated market.
- (7) In fixing the amount of any fee which is to be payable to the FCA, no account is to be taken of any sums which the FCA receives, or expects to receive, by way of penalties imposed by it under this Act.
- (8) Any fee which is owed to the FCA under any provision made by or under this Act may be recovered as a debt due to the FCA.

#### *Services for which fees may not be charged*

- 24 The power conferred by paragraph 23 may not be used to require—
  - (a) a fee to be paid in respect of the discharge of any of the FCA'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.

## PART 4

### MISCELLANEOUS

#### *Exemption from liability in damages*

- 25 (1) None of the following is to be liable in damages for anything done or omitted in the discharge, or purported discharge, of the FCA's functions—
  - (a) the FCA;
  - (b) any person (“P”) who is, or is acting as, a member, officer or member of staff of the FCA;

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- (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 166 to 169 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 FCA'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*

- 26 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 FCA, or
  - (b) is appointed by the FCA under section 97, 167 or 168 to conduct an investigation,
- is to be treated as done in the exercise or discharge of a function of the FCA.

*Amounts required by rules to be paid to the FCA*

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

SCHEDULE 1ZB

Section 2A

THE PRUDENTIAL REGULATION AUTHORITY

**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,

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- (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—
    - (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

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- (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.

#### *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.

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### *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,
  - (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).

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- (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
  - (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—

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- (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.

### 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—

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- (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.
- (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—

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- (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—
- (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—

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- (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.

## 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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## SCHEDULE 4

Section 12

### EEA PASSPORT RIGHTS AND TREATY RIGHTS

#### PART 1

##### AMENDMENTS OF SCHEDULE 3 TO FSMA 2000: EEA PASSPORT RIGHTS

VALID FROM 27/02/2013

#### *Introductory*

- 1 Schedule 3 to FSMA 2000 (EEA passport rights) is amended as follows.

#### *Exercise of passport rights by EEA firms*

VALID FROM 27/02/2013

- 2 (1) Paragraph 13 (establishment) is amended as follows.
- (2) In sub-paragraphs (1) and (1A), for “Authority”, in each place, substitute “appropriate UK regulator”.
- (3) After sub-paragraph (1A) insert—
- “(1B) Where the PRA receives a consent notice, it must give a copy to the FCA without delay.
- (1C) Where the FCA receives a consent notice it must in prescribed cases give a copy to the PRA without delay.
- (1D) In a case where the FCA is the appropriate UK regulator, the consent of the PRA is required for any notice by the FCA for the purposes of sub-paragraph (1)(ba) which relates to—
- (a) a PRA-regulated activity,
- (b) a PRA-authorised person, or
- (c) a person whose immediate group includes a PRA-authorised person.
- (1E) If the FCA—
- (a) receives a consent notice, or
- (b) receives under sub-paragraph (1B) a copy of a consent notice, it must prepare for the firm's supervision.
- (1F) If the PRA—
- (a) receives a consent notice, or
- (b) receives under sub-paragraph (1C) a copy of a consent notice which identifies PRA-regulated activities or relates to a PRA-authorised person, it must prepare for the firm's supervision.”

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

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- (4) In sub-paragraph (2)—
- (a) for “Authority” substitute “ appropriate UK regulator ”, and
  - (b) omit paragraph (a).
- (5) In sub-paragraph (3), for “Authority” substitute “ appropriate UK regulator ”.
- (6) In sub-paragraph (4), after the definition of “applicable provisions” insert—
- ““the appropriate UK regulator” means whichever of the FCA and the PRA is the competent authority for the purposes of the relevant single market directive;”.

VALID FROM 27/02/2013

- 3 (1) Paragraph 14 (services) is amended as follows.
- (2) In sub-paragraph (1), for “Authority”, in each place, substitute “ appropriate UK regulator ”.
- (3) After sub-paragraph (1) insert—
- “(1A) Relevant notice” means—
- (a) a regulator's notice, or
  - (b) where none is required by sub-paragraph (1), a notice informing the appropriate UK regulator of the firm's intention to provide services in the United Kingdom.
- (1B) Where the PRA receives a relevant notice, it must give a copy to the FCA without delay.
- (1C) Where the FCA receives a relevant notice, it must in prescribed cases give a copy to the PRA without delay.
- (1D) If the FCA—
- (a) receives a relevant notice, or
  - (b) receives under sub-paragraph (1B) a copy of a relevant notice,
- it must prepare for the firm's supervision.
- (1E) If the PRA—
- (a) receives a relevant notice, or
  - (b) receives under sub-paragraph (1C) a copy of a relevant notice which identifies PRA-regulated activities or relates to a PRA-  
authorised person,
- it must, unless the firm falls within paragraph 5(e), prepare for the firm's supervision.”
- (4) For sub-paragraph (2) substitute—
- “(2) If the appropriate UK regulator has received a relevant notice, it must, unless the firm falls within paragraph 5(a) or (e), notify the firm of the applicable provisions (if any).”
- (5) Omit sub-paragraph (2A).

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- (6) In sub-paragraph (3)—
- (a) for “(2)(b)” substitute “ (2) ”, and
  - (b) for the words from “Authority” to the end substitute “ appropriate UK regulator received the relevant notice ”.
- (7) In sub-paragraph (4), after the definition of “applicable provisions” insert—
- ““the appropriate UK regulator” means whichever of the FCA and the PRA is the competent authority for the purposes of the relevant single market directive;”.

VALID FROM 27/02/2013

- 4
- (1) Paragraph 15A (application for approval to manage UCITS) is amended as follows.
- (2) For “Authority” or “Authority's”, in each place, substitute “ appropriate UK regulator ” or “appropriate UK regulator's”.
- (3) After sub-paragraph (6) insert—
- “(6A) If—
- (a) the FCA is the appropriate UK regulator, and
  - (b) the firm is, or the firm's immediate group includes, a PRA-  
authorised person,
- the FCA must give the PRA a copy of the notice under sub-paragraph (4).”
- (4) In sub-paragraph (7), before the definition of “specified” insert—
- ““the appropriate UK regulator” means whichever of the FCA and the PRA is the competent authority for the purposes of the UCITS directive;”.

VALID FROM 27/02/2013

- 5
- (1) Paragraph 15B (representations and references to the Tribunal) is amended as follows.
- (2) For “Authority”, in both places, substitute “ appropriate UK regulator ”.
- (3) After sub-paragraph (3) insert—
- “(4) In this paragraph “the appropriate UK regulator” has the same meaning as in paragraph 15A.”

VALID FROM 27/02/2013

- 6
- In paragraph 15C (information to home state regulator), in sub-paragraph (1), for “Authority” substitute “ appropriate UK regulator, as defined in paragraph 15A(7), ”.

- 7
- In paragraph 17 (continuing regulation of EEA firms)—
- (a) before paragraph (a) insert—

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“(za) require the FCA and the PRA to notify each other about EEA firms qualifying for authorisation;”,  
and

(b) in paragraph (c), for “the Authority” substitute “ the FCA or the PRA ”.

#### Commencement Information

**I12** Sch. 4 para. 7 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2

VALID FROM 27/02/2013

8 In paragraph 18 (giving up right to authorisation), in paragraph (b), for “Part IV permission” substitute “ Part 4A permission ”.

#### *Exercise of passport rights by UK firms*

VALID FROM 27/02/2013

9 In Part 3 (exercise of passport rights by UK firms), before the italic heading before paragraph 19 insert—

#### *“Meaning of “the appropriate UK regulator”*

18A In this Part of this Schedule “the appropriate UK regulator” means—  
(a) where the UK firm is a PRA-authorized person, the PRA;  
(b) in any other case, the FCA.”

VALID FROM 27/02/2013

10 (1) Paragraph 19 (establishment) is amended as follows.  
(2) For “Authority”, in each place, substitute “ appropriate UK regulator ”.  
(3) After sub-paragraph (7B) insert—  
“(7C) Where the PRA is the appropriate UK regulator, it must consult the FCA before deciding whether to give a consent notice, except where sub-paragraph (7A) applies.  
(7D) Where the FCA is the appropriate UK regulator, it must consult the PRA before deciding whether to give a consent notice in relation to a UK firm whose immediate group includes a PRA-authorized person.”

VALID FROM 27/02/2013

11 (1) Paragraph 20 (services) is amended as follows.  
(2) For “Authority”, in each place, substitute “ appropriate UK regulator ”.

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(3) After sub-paragraph (3A) insert—

“(3AA) Where the PRA is the appropriate UK regulator, it must consult the FCA before deciding whether to give a consent notice.

(3AB) Where the FCA is the appropriate UK regulator, it must consult the PRA before deciding whether to give a consent notice in relation to a UK firm whose immediate group includes a PRA-authorised person.”

VALID FROM 27/02/2013

12 In paragraph 20ZA (information for host state regulator), for “Authority”, in each place, substitute “ appropriate UK regulator ”.

VALID FROM 27/02/2013

13 In paragraph 20B (notice of intention to market), for “Authority”, in each place, substitute “ appropriate UK regulator ”.

VALID FROM 27/02/2013

14 In paragraph 22 (continuing regulation of UK firms), in sub-paragraph (3)—  
(a) for “the Authority's consent” substitute “ the consent of the FCA or the PRA ”, and  
(b) in paragraph (b), for “the Authority” substitute “ the FCA or the PRA ”.

VALID FROM 27/02/2013

15 (1) Paragraph 23 (power to impose requirements) is amended as follows.  
(2) For “the Authority”, in each place, substitute “ the FCA ”.  
(3) In sub-paragraph (1)(a), for “Part IV permission” substitute “ Part 4A permission ”.  
(4) In sub-paragraphs (2) and (2A), for “section 45” substitute “ section 55L or 55M ”.  
(5) After sub-paragraph (2A) insert—  
“(2B) This paragraph does not affect any duty of the FCA to consult the PRA before exercising its power under section 55L or 55M.”

VALID FROM 27/02/2013

16 (1) Paragraph 24 (which relates to UK firms exercising rights under the banking consolidation directive) is amended as follows.  
(2) In sub-paragraph (1)(a), for “Part IV permission” substitute “ Part 4A permission ”.  
(3) In sub-paragraph (2)—

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- (a) for “the Authority”, in the first place, substitute “ either regulator ”,
- (b) in paragraph (a), for “Part IV permission” substitute “ Part 4A permission ”, and
- (c) in paragraph (b), for “the Authority” substitute “ that regulator ”.

17 After paragraph 24 insert—

*“Arrangements between FCA and PRA*

- 24A(1) The regulators may make arrangements about—
- (a) how they will consult each other when required to do so by paragraph 19(7C) or (7D) or 20(3AA) or (3AB) or by regulations under paragraph 22;
  - (b) how each of them will act in response to any advice or representations received from the other.
- (2) The arrangements may require one regulator to obtain the consent of the other in specified circumstances before—
- (a) giving a consent notice under paragraph 19 or 20, or
  - (b) exercising specified functions under regulations under paragraph 22.
- (3) The arrangements must be in writing, and must specify—
- (a) the EEA rights to which they relate, and
  - (b) the date on which they come into force.
- (4) Where arrangements are in force under this paragraph, the regulators must exercise functions in accordance with the arrangements.
- (5) The regulators must publish any arrangements under this paragraph in such manner as they think fit.”

**Commencement Information**

**I13** Sch. 4 para. 17 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

VALID FROM 27/02/2013

18 In paragraph 25 (information to be included in the public record) for “Authority” substitute “ FCA ”.

VALID FROM 27/02/2013

19 In paragraph 26 (UK management companies: delegation of functions), for “Authority”, in each place, substitute “ appropriate UK regulator ”.

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VALID FROM 27/02/2013

20 In paragraph 27 (UK management companies: withdrawal of authorisation), for “Authority”, in each place, substitute “ appropriate UK regulator ”.

VALID FROM 27/02/2013

21 In paragraph 28 (management companies: request for information), for “Authority”, in each place, substitute “ appropriate UK regulator ”.

## PART 2

### AMENDMENTS OF SCHEDULE 4 TO FSMA 2000: TREATY RIGHTS

VALID FROM 27/02/2013

22 Schedule 4 to FSMA 2000 (Treaty rights) is amended as follows.

VALID FROM 27/02/2013

23 (1) Paragraph 3 (exercise of Treaty rights) is amended as follows.  
(2) In sub-paragraph (2), for “Authority” substitute “ appropriate UK regulator ”.  
(3) After that sub-paragraph insert—  
    “(2A) In sub-paragraph (2) “the appropriate UK regulator” means—  
        (a) where any of the activities to which the notification under that sub-paragraph relates is a PRA-regulated activity, the PRA;  
        (b) in any other case, the FCA.  
(2B) Where the PRA receives a notification under sub-paragraph (2), it must give a copy to the FCA without delay.  
(2C) Where the FCA receives a notification under sub-paragraph (2), it must in prescribed cases give a copy to the PRA without delay.”

24 After paragraph 3 insert—

#### *“Notification between UK regulators*

3A Regulations may require the PRA and the FCA to notify each other about Treaty firms qualifying for authorisation.”

#### **Commencement Information**

**I14** Sch. 4 para. 24 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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VALID FROM 27/02/2013

- 25 (1) Paragraph 4 (permission) is amended as follows.
- (2) In sub-paragraph (3)—
- (a) for “a Part IV permission” substitute “ a Part 4A permission ”, and
  - (b) for “Authority” substitute “ appropriate UK regulator ”.
- (3) In sub-paragraph (4), for “Authority” substitute “ appropriate UK regulator ”.
- (4) After that sub-paragraph insert—
- “(5) The appropriate UK regulator” means—
- (a) where the Treaty firm is a PRA-authorised person, the FCA or the PRA;
  - (b) in any other case, the FCA.”
- 26 (1) Paragraph 5 (notice to Authority) is amended as follows.
- (2) In sub-paragraph (2), for “the Authority” substitute “ the appropriate UK regulator ”.
- (3) After sub-paragraph (2) insert—
- “(2A) The appropriate UK regulator” means—
- (a) where any of the activities to which the notice relates is a PRA-regulated activity, the PRA;
  - (b) in any other case, the FCA.
- (2B) Where the PRA receives a notice under sub-paragraph (2), it must give a copy to the FCA without delay.
- (2C) Where the FCA receives a notice under sub-paragraph (2) from—
- (a) a PRA-authorised person, or
  - (b) a person whose immediate group includes a PRA-authorised person, it must give a copy to the PRA without delay.”
- (4) For sub-paragraph (4) substitute—
- “(4) Subsections (1), (4) and (8) of section 55U apply to a notice under sub-paragraph (2) as they apply to an application for a Part 4A permission.”
- (5) In the italic heading immediately before paragraph 5, for “Authority” substitute “ UK regulator ”.

**Commencement Information**

**I15** Sch. 4 para. 26(4) in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

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VALID FROM 27/02/2013

### PART 3

#### AMENDMENTS OF SECTIONS 34 AND 35 OF FSMA 2000: EEA FIRMS AND TREATY FIRMS

- 27 (1) Section 34 of FSMA 2000 (EEA firms) is amended as follows.
- (2) In subsection (2), for “the Authority” substitute “ the appropriate regulator ”.
- (3) After that subsection insert—
- “(2A) In subsection (2) “the appropriate regulator” means—
- (a) in the case of a PRA-authorised person, the PRA, and
- (b) in any other case, the FCA.”
- (4) In subsection (3), for “Part IV permission” substitute “ Part 4A permission ”.
- 28 (1) Section 35 of FSMA 2000 (Treaty firms) is amended as follows.
- (2) In subsection (2), for “the Authority” substitute “ the appropriate regulator ”.
- (3) After that subsection insert—
- “(2A) In subsection (2) “the appropriate regulator” means—
- (a) in the case of a PRA-authorised person, the PRA, and
- (b) in any other case, the FCA.”
- (4) In subsection (3), for “Part IV permission” substitute “ Part 4A permission ”.

VALID FROM 27/02/2013

### PART 4

#### AMENDMENTS OF PART 13 OF FSMA 2000: POWERS OF INTERVENTION

- 29 Part 13 of FSMA 2000 (incoming firms: intervention by Authority) is amended as follows.
- 30 In the heading to Part 13, for “Authority” substitute “ FCA or PRA ”.
- 31 In section 193 (interpretation of Part 13), in subsection (1), in the definition of “power of intervention”, for “the Authority” substitute “ the FCA or the PRA ”.
- 32 (1) Section 194 (general grounds on which power of intervention is exercisable) is amended as follows.
- (2) In subsection (1)—
- (a) for “Authority”, in each place, substitute “ appropriate regulator ”,
- (b) in paragraph (c), for the words from “meet” to the end substitute “advance —
- (i) in the case of the FCA, one or more of its operational objectives, and

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(ii) in the case of the PRA, any of its objectives.”

- (3) After subsection (1A) insert—
- “(1B) The appropriate regulator” means—
- (a) where the incoming firm is a PRA-authorized person, the FCA or the PRA;
  - (b) in any other case, the FCA.”
- (4) In subsection (3), for “Authority”, in each place, substitute “ FCA ”.
- 33 (1) Section 194A (contravention by relevant EEA firm with UK branch of requirement under markets in financial instruments directive) is amended as follows.
- (2) For “the Authority” or “the Authority's”, in each place, substitute “ the appropriate regulator ” or “the appropriate regulator's”.
- (3) After subsection (8) insert—
- “(9) Subsection (4) is not to be regarded as requiring the PRA to take action in relation to the contravention of a requirement falling within subsection (3) in a case where it is satisfied that the FCA is required to act, and is acting or has acted, under subsection (4)—
- (a) in relation to that requirement, or
  - (b) where that requirement is imposed by rules made by the PRA, in relation to an identical requirement imposed by rules made by the FCA.
- (10) “The appropriate regulator” means—
- (a) where the relevant EEA firm is a PRA-authorized person, the FCA or, subject to subsection (9), the PRA;
  - (b) in any other case, the FCA.”
- (4) In the heading, for “Authority” substitute “ appropriate regulator ”.
- 34 (1) Section 195 (exercise of power in support of overseas regulator) is amended as follows.
- (2) In subsection (1), for “Authority” substitute “ appropriate regulator ”.
- (3) In subsection (2), for “Authority's” substitute “appropriate regulator's”.
- (4) After subsection (2) insert—
- “(2A) The appropriate regulator” means—
- (a) where the incoming firm is a PRA-authorized person, the FCA or the PRA;
  - (b) in any other case, the FCA.”
- (5) In subsection (4)—
- (a) in paragraph (a), for “the Authority” substitute “ either regulator ”, and
  - (b) omit paragraph (b).
- (6) In subsections (5) to (8), for “Authority”, in each place, substitute “ appropriate regulator ”.

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

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- 35 (1) Section 195A (contravention by relevant EEA firm or EEA UCITS of directive requirement: home state regulator primarily responsible for securing compliance) is amended as follows.
- (2) For “the Authority” or “the Authority’s”, in each place, substitute “ the appropriate regulator ” or “the appropriate regulator’s”.
- (3) After subsection (11A) insert—
- “(11B) Subsection (4) is not to be regarded as requiring the PRA to notify the home state regulator in relation to the contravention of a requirement falling within subsection (2) or (3) in a case where the PRA is satisfied that the FCA is required to act, and is acting or has acted, under subsection (4) in relation to that requirement.”
- (4) In subsection (12), before the definition of “home state” insert—
- ““the appropriate regulator” means—
- (a) where the relevant EEA firm is a PRA-authorised person, the FCA or, subject to subsection (11B), the PRA;
- (b) in any other case, the FCA;”.
- 36 For section 196 substitute—
- “196 The power of intervention**
- (1) If a regulator is entitled to exercise its power of intervention in respect of an incoming firm under this Part, it may impose any requirement in relation to the firm which that regulator could impose if—
- (a) the firm's permission was a Part 4A permission; and
- (b) the regulator was entitled to exercise its power under section 55L(3) or 55M(3).
- (2) The FCA must consult the PRA before exercising its powers by virtue of this section in relation to—
- (a) a PRA-authorised person, or
- (b) a member of a group which includes a PRA-authorized person.
- (3) The PRA must consult the FCA before exercising its powers by virtue of this section.”
- 37 (1) Section 197 (procedure on exercise of power of intervention) is amended as follows.
- (2) In subsection (2), for “Authority” substitute “ regulator ”.
- (3) In subsection (3), for “the Authority” substitute “ a regulator ”.
- (4) In subsection (4)—
- (a) in paragraph (c), for “Authority’s” substitute “regulator’s”, and
- (b) in paragraph (d), for “Authority” substitute “ regulator ”.
- (5) In subsections (5) to (7), for “Authority”, in each place, substitute “ regulator ”.
- 38 (1) Section 198 (power to apply to court for injunction in respect of certain overseas insurance companies) is amended as follows.

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

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- (2) In subsections (1) to (3), for “Authority”, in each place, substitute “ appropriate regulator ”.
- (3) After subsection (3) insert—
- “(3A) The appropriate regulator” means whichever regulator is, at the time when the request is received, the competent authority for the purposes of the provision referred to in subsection (1)(a), (b) or (c).”
- 39 (1) Section 199 (additional procedure for EEA firms in certain cases) is amended as follows.
- (2) In subsection (1), for “the Authority” substitute “ a regulator ”.
- (3) In subsection (2)(a)(i), for “the Authority” substitute “ that regulator ”.
- (4) In subsections (3) to (11), for “the Authority” substitute “ the regulator ”.
- (5) After subsection (11) insert—
- “(12) Subsection (3) is not to be regarded as requiring the PRA to take action in relation to the contravention of a relevant requirement in a case where it is satisfied that the FCA is required to act, and is acting or has acted, under subsection (3)—
- (a) in relation to that requirement, or
- (b) where that requirement is imposed by rules made by the PRA, in relation to an identical requirement imposed by rules made by the FCA.”
- 40 (1) Section 199A (management companies: loss of authorisation) is amended as follows.
- (2) In subsection (2), for “Authority”, in both places, substitute “ appropriate regulator ”.
- (3) For subsection (4) substitute—
- “(4) In this section—
- “the appropriate regulator” means whichever of the FCA and the PRA is the competent authority for the purposes of the UCITS directive;
- “collective investment scheme” has the same meaning as in Part 17.”
- 41 (1) Section 200 (rescission and variation of requirements) is amended as follows.
- (2) In subsection (1), for “The Authority” substitute “ Either regulator ”.
- (3) In subsection (2)—
- (a) for “the Authority”, in the first place, substitute “ either regulator ”, and
- (b) for “the Authority”, in the second place, substitute “ the regulator ”.
- (4) In subsections (3) and (4), for “Authority” substitute “ regulator ”.
- (5) In subsection (5)—
- (a) for “the Authority”, in the first place, substitute “ either regulator ”, and
- (b) in paragraph (a), for “the Authority” substitute “ the regulator ”.

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

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42	For section 201 substitute—  <b>“201 Effect of certain requirements on other persons</b>  If either regulator, in exercising its power of intervention, imposes on an incoming firm a requirement of the kind mentioned in subsection (4) of section 55P, the requirement has the same effect in relation to the firm as it would have in relation to an authorised person if it had been imposed on the authorised person by the regulator acting under section 55L or 55M.”
43	In section 202 (contravention of requirement imposed under Part 13), in subsection (1), for “the Authority” substitute “ a regulator ”.

## SCHEDULE 5

Section 15

### PERFORMANCE OF REGULATED ACTIVITIES

VALID FROM 01/04/2013	
1	Part 5 of FSMA 2000 is amended as follows.
VALID FROM 01/04/2013	
2	(1) Section 58 (applications relating to prohibition orders: procedure and right to refer to Tribunal) is amended as follows.  (2) In subsections (2) to (5), for “Authority” substitute “ appropriate regulator ”.  (3) After subsection (5) insert—  “ (6) The appropriate regulator” means the regulator to which the application is made.”
VALID FROM 01/04/2013	
3	In section 59 (approval for particular arrangements), omit subsection (9).
4	(1) Section 60 (applications for approval), for “Authority” or “Authority's”, in each place, substitute “ appropriate regulator ” or “appropriate regulator's”.  (2) For subsection (3) substitute—  “ (3) At any time after the application is received and before it is determined, the appropriate regulator may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application or, as the case requires, to decide whether to give consent.”  (3) In subsection (6), for “Part IV” substitute “ Part 4A ”.

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

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(4) After subsection (6) insert—

“(7) The PRA must consult the FCA before—

- (a) giving a direction under subsection (2)(a) in relation to a class of applicants, or
- (b) imposing a requirement under subsection (2)(b) on a class of applicants.

(8) The PRA must as soon as practicable notify the FCA of the receipt or withdrawal of an application to the PRA, unless the case is one in which by virtue of arrangements under section 59B the consent of the FCA is not required.

(9) “The appropriate regulator”—

- (a) in relation to a controlled function which is of a description specified in rules made by the FCA, means the FCA;
- (b) in relation to a controlled function which is of a description specified in rules made by the PRA, means the PRA, and for the purposes of subsection (3) also includes the FCA in cases where the consent of the FCA is required.”

#### Commencement Information

**I16** Sch. 5 para. 4 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

VALID FROM 01/04/2013

- 5 (1) Section 61 (determination of applications) is amended as follows.
- (2) In subsection (1), for “The Authority may grant an application made under section 60” substitute “ The regulator to which an application is made under section 60 may grant the application ”.
- (3) In subsection (2)—
- (a) for “the Authority” substitute “ the regulator ”, and
  - (b) after “general rules” insert “ made by that regulator ”.
- (4) After subsection (2) insert—
- “(2A) Subsections (1) and (2) apply in relation to the giving by the FCA of any required consent as they apply in relation to the grant of the application.”
- (5) In subsection (3), for the words from the beginning to “determine” substitute “ The regulator to which an application is made under section 60 must, before the end of the period for consideration, determine ”.
- (6) After subsection (3) insert—
- “(3A) The period for consideration”—
- (a) in any case where the application under section 60 is made by a person applying for permission under Part 4A (see section 60(6)), means whichever ends last of—

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- (i) the period within which the application for that permission must be determined under section 55V(1) or (2), and
  - (ii) the period of 3 months beginning with the date on which the regulator receives the application under section 60, and
- (b) in any other case, means the period of 3 months beginning with the date on which the regulator receives the application under section 60.”

(7) In subsection (4), for “the Authority”, in each place, substitute “ a regulator ”.

(8) In subsection (5)—

- (a) for “Authority”, in the first place, substitute “ regulator to which the application was made ”, and
- (b) for “Authority”, in the second place, substitute “ regulator ”.

VALID FROM 01/04/2013

- 6 (1) Section 62 (applications for approval: procedure and right to refer to Tribunal) is amended as follows.
- (2) In subsection (1), for the words from “If” to “, it” substitute “ If the regulator to which an application is made under section 60 (“an application”) decides to grant the application, it ”.
- (3) In subsections (2) to (4)—
- (a) for “the Authority” substitute “ the regulator to which an application is made ”, and
  - (b) for “an application” substitute “ the application ”.

VALID FROM 01/04/2013

- 7 (1) Section 63 (withdrawal of approval) is amended as follows.
- (2) In subsection (2)—
- (a) for “its approval, the Authority may take into account any matter which it could take into account if it were” substitute “ an approval, the FCA or the PRA may take into account any matter which could be taken into account in ”, and
  - (b) at the end insert “ (on the assumption, if it is not the case, that the application was one falling to be considered by it) ”.
- (3) In subsections (3) to (5)—
- (a) for “the Authority” substitute “ a regulator ”, and
  - (b) for “its approval” substitute “ an approval ”.

VALID FROM 01/04/2013

- 8 In section 63A (performance of controlled functions without approval: power to impose penalties)—

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

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- (a) for “Authority”, in each place, substitute “ appropriate regulator ”,
- (b) after subsection (5) insert—
  - “(5A) The appropriate regulator”—
    - (a) in relation to a controlled function which is of a description specified in rules made by the FCA, means the FCA, and
    - (b) in relation to a controlled function which is of a description specified in rules made by the PRA, means the PRA.”, and
  - (c) in subsection (6), after “Any” insert “ other ”.

VALID FROM 01/04/2013

9 In section 63B (procedure and right to refer to Tribunal), for “the Authority”, in each place, substitute “ a regulator ”.

- 10 (1) Section 63C (statement of policy) is amended as follows.
- (2) In subsection (1), for “The Authority” substitute “ Each regulator ”.
  - (3) In subsections (2) and (3), for “The Authority's” substitute “Each regulator's”.
  - (4) In subsection (4), for “the Authority” substitute “ the regulator that has issued the statement ”.
  - (5) In subsection (5)—
    - (a) for “The Authority” substitute “ A regulator ”, and
    - (b) after “issued” insert “ by it ”.
  - (6) In subsection (6), for “replaced, the Authority” substitute “ replaced by a regulator, the regulator ”.
  - (7) In subsection (7), for “The Authority” substitute “ A regulator ”.
  - (8) In subsection (8)—
    - (a) after “section” insert “ by a regulator ”, and
    - (b) for “Authority”, in both places, substitute “ regulator ”.
  - (9) In subsection (9), for “Authority” substitute “ regulator ”.
  - (10) In subsection (10)—
    - (a) for “the Authority” substitute “ a regulator ”, and
    - (b) after “published” insert “ by it ”.

#### Commencement Information

**I17** Sch. 5 para. 10 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 11 (1) Section 63D (statement of policy: procedure) is amended as follows.
- (2) In subsection (1)—
    - (a) for “issuing” substitute “ a regulator issues ”, and

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- (b) for “Authority”, in both places, substitute “ regulator ”.
- (3) In subsections (2), (3), (4) and (5) (in both places), for “Authority” substitute “ regulator ”.
- (4) In subsection (6)—
  - (a) for “The Authority” substitute “ A regulator ”, and
  - (b) after “published” insert “ by it ”.

#### Commencement Information

**I18** Sch. 5 para. 11 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 12 (1) Section 64 (conduct of approved persons: statement and codes) is amended as follows.
- (2) In subsection (2)—
    - (a) for “the Authority” substitute “ a regulator ”, and
    - (b) after “subsection (1)” insert “ or (1A) ”.
  - (3) In subsection (3)(a) to (c), for “Authority” substitute “ regulator issuing the code ”.
  - (4) In subsection (4)—
    - (a) for “The Authority” substitute “ A regulator ”, and
    - (b) after “issued” insert “ by it ”.
  - (5) In subsection (5)—
    - (a) after “replaced” insert “ by a regulator ”, and
    - (b) for “Authority” substitute “ regulator ”.
  - (6) In subsection (6)—
    - (a) for “the Authority”, in the first place, substitute “ the regulator that issued it ”, and
    - (b) for “the Authority”, in the second place, substitute “ that regulator ”.
  - (7) In subsection (10), for “The Authority” substitute “ A regulator ”.
  - (8) In subsection (11), for paragraph (b) substitute—
    - “(b) is to be treated for the purposes of section 1B(6)(a) as part of the FCA's rule-making functions (where the power is exercisable by the FCA) and is to be treated for the purposes of section 2J(1)(a) as part of the PRA's rule-making functions (where the power is exercisable by the PRA).”
  - (9) In subsection (12)—
    - (a) for “The Authority” substitute “ A regulator ”, and
    - (b) after “published” insert “ by it ”.
  - (10) For subsection (13) substitute—
    - “(13) Any expression which is used both in this section and section 59 has the same meaning in this section as in that section.”

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### Commencement Information

**I19** Sch. 5 para. 12 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 13 (1) Section 65 (statements and codes: procedure) is amended as follows.
- (2) For subsection (1) substitute—
- “(1) Before a regulator issues a statement or code under section 64, it must—
- (a) consult the other regulator; and
  - (b) after doing so, publish a draft of the statement or code in the way appearing to it to be best calculated to bring the statement or code to the attention of the public.
- (1A) The duty of the FCA to consult the PRA under subsection (1)(a) applies only in so far as the statement or code applies to persons in relation to whom approval is given under section 59 in respect of the performance by them of significant-influence functions (within the meaning of that section) in relation to the carrying on by PRA-authorised persons of regulated activities.”
- (3) In subsection (2)(b), for “the Authority” substitute “ the regulator publishing the draft ”.
- (4) In subsection (3)—
- (a) for “issuing” substitute “ a regulator issues ”, and
  - (b) for “the Authority” substitute “ it ”.
- (5) In subsection (4), for “the Authority” substitute “ a regulator ”.
- (6) In subsection (5)—
- (a) for “the Authority”, in the first place, substitute “ the regulator issuing the statement or code ”, and
  - (b) for “the Authority”, in the second place, substitute “ the regulator ”.
- (7) In subsection (6), for “the Authority” substitute “ the regulator concerned ”.
- (8) For subsection (7) substitute—
- “(7) Subsections (1)(b) and (2) to (6) do not apply in relation to—
- (a) a statement or code issued by the FCA if it considers that the delay involved in complying with them would be prejudicial to the interests of consumers, as defined in section 425A; or
  - (b) a statement or code issued by the PRA if it considers that the delay involved in complying with them would—
    - (i) be prejudicial to the safety and soundness of PRA-authorised persons, or
    - (ii) in a case where section 2C applies, be prejudicial to securing the appropriate degree of protection for policyholders.”
- (9) In subsection (9)—
- (a) for “The Authority” substitute “ A regulator ”, and
  - (b) after “published” insert “ by it ”.

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(10) For subsection (11) substitute—

“(11) Cost benefit analysis” means—

- (a) an analysis of the costs together with an analysis of the benefits that will arise—
  - (i) if the proposed statement or code is issued, or
  - (ii) if subsection (5)(b) applies, from the statement or code that has been issued, and
- (b) subject to subsection (11A), an estimate of those costs and of those benefits.

(11A) If, in the opinion of the regulator concerned—

- (a) the costs or benefits referred to in subsection (11) 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 opinion of the regulator concerned and an explanation of it.”

#### **Commencement Information**

**I20** Sch. 5 para. 13 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

14 (1) Section 66 (disciplinary powers) is amended as follows.

(2) In subsection (1)—

- (a) in the opening words—
  - (i) for “The Authority” substitute “ A regulator ”, and
  - (ii) after “this section” insert “ (whether or not it has given its approval in relation to the person) ”, and
- (b) in paragraphs (a) and (b), for “ Authority” substitute “ regulator ”.

(3) For subsection (2) substitute—

“(2) For the purposes of action by the FCA, a person is guilty of misconduct if, while an approved person—

- (a) the person has failed to comply with a statement of principle issued by the FCA under section 64, or
- (b) the person has been knowingly concerned in a contravention by the relevant authorised person of a requirement imposed on that authorised person—
  - (i) by or under this Act, or
  - (ii) by any qualifying EU provision specified, or of a description specified, for the purposes of this subsection by the Treasury by order.

(2A) For the purposes of action by the PRA, a person is guilty of misconduct if, while an approved person in respect of the performance of a significant-influence function in relation to the carrying on by a PRA-authorised person of a regulated activity—

- (a) the person has failed to comply with a statement of principle issued by the PRA under section 64, or

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- (b) the person has been knowingly concerned in a contravention by the relevant authorised person of a requirement imposed on that authorised person—
  - (i) by or under this Act, or
  - (ii) by any qualifying EU provision specified, or of a description specified, for the purposes of this subsection by the Treasury by order.”
- (4) In subsection (3), for “Authority” substitute “ regulator ”.
- (5) In subsection (3D), for “The Authority” substitute “ The regulator taking action under this section ”.
- (6) In subsection (4)—
  - (a) for “The Authority”, in the first place, substitute “ A regulator ”, and
  - (b) for “the Authority”, in the second place, substitute “ the regulator ”.
- (7) In subsection (5)(a), for “the Authority” substitute “ a regulator ”.
- (8) For subsection (6) substitute—
 

“(6) Approved person” means a person in relation to whom an approval is given under that section.”

#### Commencement Information

**I21** Sch. 5 para. 14 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2

VALID FROM 01/04/2013

- 15 (1) Section 67 (disciplinary measures: procedure and right to refer to Tribunal) is amended as follows.
- (2) In subsections (1) and (4), for “the Authority” substitute “ a regulator ”.
  - (3) In subsection (7)—
    - (a) for “the Authority”, in the first place, substitute “ a regulator ”, and
    - (b) for “the Authority”, in the second place, substitute “ the regulator ”.
  - (4) In subsection (9)—
    - (a) for “an approved person (“A”),” substitute “ a person (“A”) in relation to whom approval has been given, ”, and
    - (b) omit the second sentence.

VALID FROM 01/04/2013

- 16 In section 68 (publication), for “the Authority” substitute “ the regulator publishing it ”.

- 17 (1) Section 69 (statement of policy) is amended as follows.
- (2) In subsection (1), for “The Authority must” substitute “ Each regulator must ”.

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- (3) In subsection (2), for “The Authority's” substitute “A regulator's”.
- (4) In subsection (3)—
  - (a) for “The Authority” substitute “ A regulator ”, and
  - (b) after “issued” insert “ by it ”.
- (5) In subsection (4), for “replaced, the Authority” substitute “ replaced by a regulator, the regulator ”.
- (6) In subsection (5), for “The Authority” substitute “ A regulator ”.
- (7) In subsection (6)—
  - (a) after “section” insert “ by a regulator ”, and
  - (b) for “the Authority”, in both places, substitute “ the regulator ”.
- (8) In subsection (7), for “Authority” substitute “ regulator ”.
- (9) In subsection (8)—
  - (a) for “the Authority” substitute “ a regulator ”, and
  - (b) after “published” insert “ by it ”.

**Commencement Information**

**I22** Sch. 5 para. 17 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 18 (1) Section 70 (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), (3), (4) and (5) (in both places), for “Authority” substitute “ regulator ”.
  - (4) In subsection (6)—
    - (a) for “The Authority” substitute “ A regulator ”, and
    - (b) after “published” insert “ by it ”.

**Commencement Information**

**I23** Sch. 5 para. 18 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

VALID FROM 01/04/2013

SCHEDULE 6

Section 22

CONTROL OF BUSINESS TRANSFERS

1 Part 7 of FSMA 2000 is amended as follows.

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

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- 2 Before section 104 insert—
- Meaning of “the appropriate regulator”**
- “103A) In this Part “the appropriate regulator” means—
- (a) in relation to a scheme in respect of which the authorised person concerned is a PRA-authorised person, the PRA;
  - (b) in any other case, the FCA.
- (2) In this Part, “the authorised person concerned”—
- (a) in the case of an insurance business transfer scheme, is to be read in accordance with section 105(2);
  - (b) in the case of a banking business transfer scheme, is to be read in accordance with section 106(2);
  - (c) in the case of a reclaim fund business transfer scheme, means the reclaim fund to whose business the scheme relates.”

3 (1) Section 109 (scheme reports) is amended as follows.

(2) For “Authority”, in each place, substitute “ appropriate regulator ”.

(3) After subsection (3) insert—

“(4) Where the appropriate regulator is the PRA, it must consult the FCA before—

    - (a) nominating or approving a person under subsection (2)(b), or
    - (b) approving a form under subsection (3).

(5) Subsection (6) applies where the appropriate regulator is the FCA and either—

    - (a) the transferee is a PRA-authorised person, or
    - (b) the authorised person concerned or the transferee has as a member of its immediate group a PRA-authorised person.

(6) The FCA must consult the PRA before—

    - (a) nominating or approving a person under subsection (2)(b), or
    - (b) approving a form under subsection (3).”

4 (1) Section 110 (right to participate in proceedings) is amended as follows.

(2) The existing provision becomes subsection (1).

(3) For paragraph (a) of that subsection substitute—

“(a) the FCA,

      - (aa) in the case of a scheme falling within subsection (2), the PRA, and”.

(4) After that subsection insert—

“(2) A scheme falls within this subsection if—

        - (a) the authorised person concerned or the transferee is a PRA-authorised person, or
        - (b) the authorised person concerned or the transferee has as a member of its immediate group a PRA-authorised person.”

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

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- 5 In section 112 (effect of order sanctioning business transfer scheme), in subsections (10) and (11), for “Authority” substitute “ appropriate regulator ”.
- 6 After section 112 insert—
- “112ZA Duty of regulator to provide copy of order**
- (1) Where the PRA receives under section 112(10) a copy of an order it must, without delay, give a copy of it to the FCA.
- (2) Where the FCA receives under section 112(10) a copy of an order it must, without delay, give a copy of it to the PRA if the order relates to a scheme in respect of which—
- (a) the transferee is a PRA-authorised person, or
- (b) the authorised person concerned or the transferee has as a member of its immediate group a PRA-authorised person.”
- 7 (1) Section 113 (appointment of actuary) is amended as follows.
- (2) In subsection (2)—
- (a) for “the Authority”, in the first place, substitute “ either regulator ”, and
- (b) for “Authority”, in the second place, substitute “ regulator which made the application ”.
- (3) After that subsection insert—
- “ (3) An application under subsection (2) may be made by the PRA only if—
- (a) the authorised person concerned or the transferee is a PRA-authorised person, or
- (b) the authorised person concerned or the transferee has as a member of its immediate group a PRA-authorised person.”
- 8 In section 115 (certificates for purposes of insurance business transfers overseas), for “Authority” substitute “ appropriate regulator ”.
- 9 Schedule 12 to FSMA (transfer schemes: certificates) is amended as follows.
- 10 In paragraph 1, for “the Authority”, in each place, substitute “ the appropriate regulator ”.
- 11 (1) Paragraph 2 is amended as follows.
- (2) In the following places, for “Authority” substitute “ appropriate regulator ”
- (a) sub-paragraph (1)(b);
- (b) in the first place in sub-paragraph (3).
- (3) In sub-paragraph (3), after “transferred” insert “ certification ”.
- (4) In sub-paragraph (6)(c), for “, the Authority” substitute “—
- (i) the PRA, if the transferee is a PRA-authorised person with a Part 4A permission or with permission under Schedule 4;
- (ii) the FCA, if the transferee is a person with a Part 4A permission or with permission under Schedule 4 but is not a PRA-authorised person.”
- 12 In paragraph 3, for “Authority” substitute “ appropriate regulator ”.

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

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- 13 In paragraph 4, for “Authority”, in the first place, substitute “ appropriate regulator ”.
- 14 In paragraph 5, for “Authority”, in the first place, substitute “ appropriate regulator ”.
- 15 In paragraph 5A, for “the Authority” substitute “ the appropriate regulator ”.
- 16 In paragraph 8(2)—
- (a) for paragraph (a) substitute—
- “(a) if the transferee is a PRA-authorized person with a Part 4A permission or with permission under Schedule 4, the PRA;
- (aa) if the transferee is a person with Part 4A permission or with permission under Schedule 4 but is not a PRA-authorized person, the FCA;”, and
- (b) in paragraph (c), after “(a)” insert “ , (aa) ”.
- 17 In paragraph 9, for “Authority” substitute “ appropriate regulator ”.
- 18 (1) Paragraph 9A is amended as follows.
- (2) The existing provision becomes sub-paragraph (1).
- (3) In that sub-paragraph, for “Authority” substitute “ relevant regulator ”.
- (4) After that sub-paragraph insert—
- “(2) In this paragraph the “relevant regulator” means—
- (a) if the transferee is a PRA-authorized person, the PRA;
- (b) in any other case, the FCA.”
- 19 (1) Paragraph 10 is amended as follows.
- (2) In sub-paragraph (2), for “Authority” substitute “ FCA or the PRA ”.
- (3) In sub-paragraph (5), for “Authority” substitute “ regulator which supervises the transferee's margin of solvency ”.
- (4) In sub-paragraph (6), for “Authority” substitute “ FCA or the PRA ”.

## SCHEDULE 7

Section 29

### APPLICATION OF PROVISIONS OF FSMA 2000 TO BANK OF ENGLAND ETC

#### **Commencement Information**

**I24** Sch. 7 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

**I25** Sch. 7 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2

This is the Schedule 17A to be inserted in FSMA 2000 after Schedule 17—

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## “SCHEDULE 17A

Section 285A

### FURTHER PROVISION IN RELATION TO EXERCISE OF PART 18 FUNCTIONS BY BANK OF ENGLAND

#### PART 1

##### CO-OPERATION BETWEEN APPROPRIATE REGULATORS

###### *Memorandum of understanding between appropriate regulators and PRA*

- 1 (1) The appropriate regulators must prepare and maintain a memorandum describing how they intend to work together in exercising their functions in relation to persons who are recognised bodies.
- (2) The memorandum must in particular make provision about—
  - (a) the need for each party when exercising a function in relation to any person (“A”) who is a recognised body, or any member of A's group, to have regard to the exercise (or possible exercise) of any function by the other party in relation to A or any member of A's group;
  - (b) the role of each party in cases where they are both exercising functions in relation to the same persons;
  - (c) the obtaining and disclosure of information;
  - (d) the co-ordination by the parties of the exercise of their powers to appoint competent persons under Part 11 (information gathering and investigations) to conduct investigations on their behalf.
- (3) In this paragraph any reference to a function is to any function whether conferred by or under any provision of this Part of this Act or any other provision of this Act or otherwise.
- 2 (1) The appropriate regulators and the PRA must prepare and maintain a memorandum describing how they intend to work together in exercising their functions in relation to persons who are recognised bodies and who—
  - (a) are PRA-authorised persons; or
  - (b) are members of a group of which a member is a PRA-authorised person.
- (2) The memorandum must in particular make provision about—
  - (a) the need for each party when exercising a function in relation to any person (“A”) who is a recognised body, or any member of A's group, to have regard to the exercise (or possible exercise) of any function by the other party in relation to A or any member of A's group;
  - (b) the role of each party in cases where they are both exercising functions in relation to the same persons;
  - (c) the obtaining and disclosure of information;
  - (d) the co-ordination by the parties of the exercise of their powers to appoint competent persons under Part 11 (information gathering and investigations) to conduct investigations on their behalf.
- (3) In this paragraph any reference to a function is to any function whether conferred by or under any provision of this Part of this Act or any other provision of this Act or otherwise.

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- 3 The parties to a memorandum under paragraph 1 or 2 must review the memorandum at least once in each calendar year.
- 4 The parties to a memorandum under paragraph 1 or 2 must give the Treasury a copy of the memorandum and any revised memorandum.
- 5 The Treasury must lay before Parliament a copy of any document received by them under paragraph 4.
- 6 The parties to a memorandum under paragraph 1 or 2 must ensure that the memorandum as currently in force is published in the way appearing to them to be best calculated to bring it to the attention of the public.

*Notification by FCA of action in relation to recognised clearing houses*

- 7 The FCA must notify the Bank of England of any direction given by it under section 128 to a recognised clearing house (market abuse: suspension of investigations).
- 8 The FCA must notify the Bank of England of any requirement imposed by it under section 313A on a recognised clearing house (power to require suspension or removal of financial instruments from trading).

## PART 2

### APPLICATION OF PROVISIONS OF THIS ACT IN RELATION TO BANK OF ENGLAND

#### *Introduction*

- 9 (1) The provisions of this Act mentioned in this Part of this Schedule are to apply in relation to the Bank of England in accordance with the provision made by this Part of this Schedule.
- (2) In any case where sub-paragraph (1) applies—
  - (a) any reference in this Act to the FCA or the PRA which is contained in, or relates to, any of those provisions (however expressed) is to be read as a reference to the Bank; and
  - (b) this Act has effect with any other necessary modifications.

#### *Rules*

- 10 (1) The following provisions of Part 9A of this Act are to apply in relation to rules made by the Bank under any provision made by or under this Act—
  - (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 138D (actions for damages), but with the omission of subsection (2);
  - (e) section 138E (limits on effect of contravening rules);
  - (f) section 138F (notification of rules);
  - (g) section 138G (rule-making instruments);
  - (h) section 138H (verification of rules);

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- (i) section 138J (consultation), but with the omission of subsections (1)(a), (2)(c) and (5)(b); and
  - (j) section 138L (consultation: general exemptions), but with the omission of subsections (1) and (3).
- (2) Any reference in any of those provisions to an authorised person is to be read as a reference to a recognised clearing house.
- (3) Section 138J(2)(d) has effect in relation to rules proposed to be made by the Bank 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's financial stability objective.
- (4) Section 138L(2) has effect as if for paragraphs (a) and (b) there were substituted “ be prejudicial to financial stability ”.

#### *Information gathering and investigations*

- 11 (1) The powers conferred by section 165(1) and (3) (power to require information) are exercisable by the Bank or (as the case may be) its officers to impose requirements on—
- (a) a recognised clearing house;
  - (b) a person who for the purposes of section 165 is connected with a recognised clearing house.
- (2) The information or documents that the Bank may require to be provided or produced are limited to—
- (a) information or documents reasonably required in connection with the exercise by the Bank of functions conferred on it by or under this Part of this Act;
  - (b) information or documents reasonably required in connection with the exercise by the Bank of any of its other functions in pursuance of its financial stability objective; and
  - (c) information or documents which the Bank reasonably considers may enable or assist the FCA in discharging functions conferred on the FCA by or under this Act.
- (3) In consequence of the provision made by sub-paragraph (2), section 165(4) is not to apply in relation to section 165(1) and (3) as applied by this paragraph.
- 12 The power conferred by section 166 (reports by skilled person) is exercisable by the Bank as if references in that section to an authorised person were to a recognised clearing house.
- 13 (1) The powers conferred by section 167 (appointment of persons to carry out general investigations) are exercisable by the Bank as if references in that section to an authorised person were to any recognised clearing house other than an overseas clearing house.
- (2) In addition to the powers conferred by section 171, a person conducting an investigation under section 167 as a result of this paragraph is to have the powers conferred by sections 172 and 173 (and for this purpose the references in those sections to an investigator are to be read accordingly).
- 14 (1) The power conferred by section 168(5) (appointment of persons to carry out investigations in particular cases) is exercisable by the Bank.

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- (2) That power is exercisable if it appears to the Bank that there are circumstances suggesting that—
- (a) a clearing house may be guilty of an offence under section 398(1) or an offence under prescribed regulations relating to money laundering;
  - (b) a clearing house may have contravened a rule made by the Bank under this Part of this Act;
  - (c) a clearing house may have contravened the recognition requirements;
  - (d) a clearing house may have contravened any qualifying EU provision that is specified, or of a description specified, for the purposes of this sub-paragraph by the Treasury by order;
  - (e) a clearing house may have breached the general prohibition.
- (3) In addition to the powers conferred by section 171, a person conducting an investigation under section 168(5) as a result of this paragraph is to have the powers conferred by sections 172 and 173 (and for this purpose the references in those sections to an investigator are to be read accordingly).
- 15 An overseas regulator may, in accordance with section 169, request the Bank to exercise the power conferred by section 165 (as applied by paragraph 11 of this Schedule).
- 16 The power to give information under section 176(1) (entry of premises under warrant) is exercisable by the Bank, or an investigator appointed by the Bank, as if the reference to the second set of conditions were omitted.

*Powers in relation to parent undertakings*

- 17 (1) The following provisions of Part 12A of this Act are to apply in relation to the Bank—
- (a) section 192C (power to direct qualifying parent undertaking);
  - (b) section 192D (requirements that may be imposed);
  - (c) section 192E (direction: procedure);
  - (d) section 192G (references to Tribunal);
  - (e) section 192H (statement of policy);
  - (f) section 192I (statement of policy: procedure);
  - (g) section 192J (rules requiring provision of information);
  - (h) sections 192K to 192N (enforcement).
- (2) For the purposes of those provisions section 192B (meaning of “qualifying parent undertaking”) is to apply as if the reference in subsection (1) to a qualifying authorised person or recognised UK investment exchange were a reference to a recognised clearing house other than an overseas clearing house.
- (3) Section 192C has effect as if—
- (a) the general condition in subsection (2) were that the Bank considers that it is desirable to give the direction for the purpose of the effective regulation of one or more recognised clearing houses in the group of the qualifying parent undertaking,
  - (b) subsections (3) and (4) were omitted, and
  - (c) the reference in subsection (5)(a) to authorised persons or recognised investment exchanges were a reference to recognised clearing houses.
- (4) Section 192E has effect as if the reference in subsection (1) to an authorised person or recognised investment exchange were a reference to a recognised clearing house.

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- (5) Section 192I has effect as if the reference in subsection (1)(a) to the other regulator and the Bank were a reference to the FCA and the PRA.
- (6) Before the Bank gives a notice under section 192E(1) or (8)(b)—
  - (a) if the notice relates to the parent undertaking of an authorised person or recognised investment exchange, the Bank must consult the FCA, and
  - (b) if the notice relates to the parent undertaking of a PRA-authorised person, the Bank must also consult the PRA.

#### *Auditors*

- 18 (1) Section 342 (information given by auditor to a regulator) applies in relation to a relevant auditor as if—
  - (a) the references in that section to a recognised investment exchange were to a recognised clearing house,
  - (b) in the case of an auditor of a recognised clearing house which is also an authorised person or recognised investment exchange, the references to a regulator included the Bank, and
  - (c) in the case of an auditor of a recognised clearing house not falling within paragraph (b), the references to a regulator were to the Bank.
- (2) A “relevant auditor” is a person who is, or has been, an auditor of a recognised clearing house appointed under or as a result of a statutory provision.
- 19 (1) Section 343 (information given by auditor: person with close links) applies in relation to a relevant auditor as if—
  - (a) the references in that section to a recognised investment exchange were to a recognised clearing house,
  - (b) in the case of an auditor of a recognised clearing house which is an authorised person or which is a recognised investment exchange, the references to a regulator included the Bank, and
  - (c) in the case of an auditor of a recognised clearing house not falling within paragraph (b), the references to a regulator were to the Bank.
- (2) A “relevant auditor” is a person who—
  - (a) is, or has been, an auditor of a recognised clearing house appointed under or as a result of a statutory provision, and
  - (b) is, or has been, an auditor of a person who has close links with the recognised clearing house.
- 20 Section 344 (duty of auditor resigning to give notice) applies to an auditor to whom section 342 applies (whether by virtue of paragraph 18 or otherwise) as if—
  - (a) the references in that section to a recognised investment exchange were to a recognised clearing house,
  - (b) in the case of an auditor of a recognised clearing house which is neither an authorised person nor a recognised investment exchange, the reference in the definition of “the appropriate regulator” to the FCA were a reference to the Bank,
  - (c) in the case of an auditor of a recognised clearing house which is a PRA-authorised person, the reference in the definition of “the appropriate regulator” to the PRA were a reference to the PRA and the Bank, and

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- (d) in the case, not falling within paragraph (c), of an auditor of a recognised clearing house which is an authorised person or which is a recognised investment exchange, the reference in the definition of “the appropriate regulator” to the FCA were a reference to the FCA and the Bank.
- 21 Sections 345A to 345E apply to auditors to whom section 342 applies only by virtue of paragraph 18 as if—
- (a) the references in those sections to an auditor or actuary to whom section 342 applies were to an auditor to whom section 342 applies by virtue of paragraph 18,
  - (b) the references in those sections to a PRA-authorized person were to a recognised clearing house,
  - (c) in a case where the Bank disqualifies a person from being an auditor of a recognised clearing house that is also a recognised investment exchange, section 345A(5)(a) required the Bank to notify the FCA, and
  - (d) the references in sections 345D and 345E to a regulator included the Bank.

*Public record and disclosure of information*

- 22 Section 347 (record of authorised persons, recognised investment exchanges, etc), so far as it relates to recognised investment exchanges, applies in relation to the Bank as if references in that section to a recognised investment exchange were to a recognised clearing house.
- 23 Sections 348 to 350 and 353 (disclosure of information) apply in relation to information received by the Bank for the purposes of, or in the discharge of, any of its functions relating to recognised clearing houses.

*Insolvency*

- 24 (1) The following provisions of Part 24 of this Act are to apply in relation to the Bank—
- (a) section 356 (powers to participate in proceedings: company voluntary arrangements);
  - (b) section 358 (powers to participate in proceedings: trust deeds for creditors in Scotland);
  - (c) section 359 (administration order);
  - (d) section 362 (powers to participate in administration proceedings);
  - (e) section 362A (consent to appointment of administrator);
  - (f) section 363 (powers to participate in proceedings: receivership);
  - (g) section 365 (powers to participate in proceedings: voluntary winding-up);
  - (h) section 367 (winding-up petitions);
  - (i) section 371 (powers to participate in proceedings: winding-up).
- (2) Those provisions are to apply as if any reference to an authorised person or recognised investment exchange were a reference to a recognised clearing house.
- 25 In the case of any regulated activity which is carried on for the purposes of, or in connection with, the provision of clearing services, the reference to the FCA in section 375(1) is to be read as including a reference to the Bank.

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### *Injunctions and restitution*

- 26 (1) The power to make an application under section 380(1), (2) or (3) (injunctions) is exercisable by the Bank.
- (2) For the purposes of the application, any reference in that section to a relevant requirement is to—
- (a) a requirement that is imposed by or under any provision of this Part of this Act that relates to a recognised clearing house;
  - (b) a requirement that is imposed under any other provision of this Act by the Bank;
  - (c) a requirement that is imposed by any qualifying EU provision that is specified, or of a description specified, for the purposes of this sub-paragraph by the Treasury by order; or
  - (d) a requirement that is imposed by this Act and whose contravention constitutes an offence that the Bank has power to prosecute under this Act (see section 401, as applied by paragraph 31).
- 27 (1) The power to make an application under section 382(1) (restitution order) is exercisable by the Bank.
- (2) For the purposes of the application, any reference in that section to a relevant requirement is to be read in accordance with paragraph 26(2) of this Schedule.
- 28 (1) The power conferred by section 384(5) (power of FCA to require restitution order) is exercisable by the Bank.
- (2) That power is exercisable if the Bank is satisfied that a recognised clearing house has contravened a relevant requirement, or been knowingly concerned in the contravention of a relevant requirement, and—
- (a) that profits have accrued to the recognised clearing house as a result of the contravention; or
  - (b) that one or more persons have suffered loss or been otherwise adversely affected as a result of the contravention.
- (3) For the purposes of that power, “relevant requirement” is to be read in accordance with paragraph 26(2) of this Schedule.
- (4) Where this paragraph applies, section 384(5) and (6) are to have effect as if—
- (a) any reference to the person concerned were a reference to the recognised clearing house; and
  - (b) any reference to subsection (1) were a reference to sub-paragraph (2) of this paragraph.

### *Notices*

- 29 The provisions of Part 26 of this Act (notices) apply in relation to a warning or decision notice given by the Bank under section 192L, 312G or 312H as they apply in relation to such a notice given by the FCA under that section.

### *Offences*

- 30 Section 398 (misleading the FCA: residual cases) applies to information given to the Bank in purported compliance with—

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- (a) a requirement that is imposed by or under any provision of Part 18 of this Act that relates to a recognised clearing house;
  - (b) a requirement that is imposed under any other provision of this Act by the Bank; or
  - (c) a requirement that is imposed by any qualifying EU provision specified, or of a description specified, for the purposes of this paragraph by the Treasury by order.
- 31 (1) Section 401 (proceedings for an offence) applies to the Bank as if for the purposes of subsections (2)(a) and (3)(a) of that section the Bank were an appropriate regulator in respect of each of the following offences—
- (a) an offence under section 177(3) where the investigation is being, or is likely to be, conducted on behalf of the Bank;
  - (b) an offence under section 177(4) where the requirement is imposed by the Bank;
  - (c) an offence under section 177(6) where the warrant is issued as a result of information on oath given by the Bank or a person appointed by it to conduct an investigation on its behalf;
  - (d) an offence under section 398(1) where the information was given to the Bank.
- (2) Section 401(3B) has effect subject to the provision made by this paragraph (so that the FCA is not the appropriate regulator for the purposes of subsections (2)(a) and (3)(a) in respect of the above offences).

#### *Records*

- 32 Paragraph 17 of Schedule 1ZB (records) applies in relation to the recording of decisions made by the Bank in the exercise of its functions relating to recognised clearing houses.

#### *Annual report*

- 33 Paragraph 19 of Schedule 1ZB (annual report by PRA) applies in relation to the Bank, but—
- (a) as if for paragraphs (a) to (f) of sub-paragraph (1) there were substituted—
    - “(a) the discharge of its functions relating to recognised clearing houses,
    - (b) the extent to which, in its opinion, in discharging those functions its financial stability objective has been met,” and
  - (b) as if sub-paragraph (3) were omitted.

### **PART 3**

#### WINDING UP, ADMINISTRATION OR INSOLVENCY OF UK CLEARING HOUSES

##### *Notice to Bank of England of preliminary steps*

- 34 (1) An application for an administration order in respect of a UK clearing house may not be determined unless the conditions below are satisfied.
- (2) A petition for a winding up order in respect of a UK clearing house may not be determined unless the conditions below are satisfied.

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- (3) A resolution for voluntary winding up of a UK clearing house may not be made unless the conditions below are satisfied.
- (4) An administrator of a UK clearing house may not be appointed unless the conditions below are satisfied.
- (5) Condition 1 is that the Bank of England has been notified—
  - (a) by the applicant for an administration order, that the application has been made,
  - (b) by the petitioner for a winding up order, that the petition has been presented,
  - (c) by the UK clearing house, that a resolution for voluntary winding up may be made, or
  - (d) by the person proposing to appoint an administrator, of the proposed appointment.
- (6) Condition 2 is that a copy of the notice complying with Condition 1 has been filed (in Scotland, lodged) with the court (and made available for public inspection by the court).
- (7) Condition 3 is that—
  - (a) the period of 2 weeks, beginning with the day on which the notice is received, has ended, or
  - (b) the Bank of England has informed the person who gave the notice that—
    - (i) it has no objection to the order, resolution or appointment being made, and
    - (ii) it does not intend to exercise a stabilisation power under Part 1 of the Banking Act 2009.
- (8) Arranging for the giving of notice in order to satisfy Condition 1 can be a step with a view to minimising the potential loss to a UK clearing house's creditors for the purpose of section 214 of the Insolvency Act 1986 (wrongful trading).
- (9) In this paragraph “the court” means—
  - (a) in England and Wales, the High Court,
  - (b) in Scotland, the Court of Session, and
  - (c) in Northern Ireland, the High Court.

*Power to give directions to insolvency practitioner*

- 35
- (1) This paragraph applies where a person has been appointed to act as an insolvency practitioner (within the meaning of section 388 of the Insolvency Act 1986 or Article 3 of the Insolvency (Northern Ireland) Order 1989) in relation to a company which is, or has been, a UK clearing house.
  - (2) The Bank of England may give directions to the person if satisfied that it is desirable to give the directions, having regard to the public interest in—
    - (a) protecting and enhancing the stability of the UK financial system,
    - (b) protecting and enhancing public confidence in the stability of the UK financial system, and
    - (c) maintaining the continuity of central counterparty clearing services.
  - (3) Before giving directions the Bank of England must consult—
    - (a) the Treasury,
    - (b) (if the clearing house is a PRA-authorized person) the PRA, and

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- (c) the FCA.
- (4) Directions are enforceable, on an application by the Bank of England, by an injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.
- (5) A person is not liable for damages in respect of action or inaction in accordance with directions.
- (6) The immunity does not extend to action or inaction—
  - (a) in bad faith, or
  - (b) in contravention of section 6(1) of the Human Rights Act 1998.

## PART 4

### FEES

- 36 (1) The Bank of England may, in connection with the discharge of any of its qualifying functions, require recognised clearing houses to pay fees to the Bank.
- (2) The “qualifying functions” of the Bank are—
- (a) its functions under or as a result of this Part of this Act, 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) The power of the Bank to set fees includes power to set fees for the purpose of meeting expenses incurred by it or the FCA—
- (a) in preparation for the exercise of functions by the Bank under this Part of this Act, or
  - (b) for the purpose of facilitating the exercise by the Bank of those functions or otherwise in connection with their exercise by it.
- (4) It is irrelevant when the expenses were incurred (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).
- 37 Any fee which is owed to the Bank under paragraph 36 may be recovered as a debt due to the Bank.”

## SCHEDULE 8

Section 35

### SECTIONS 28 TO 34: MINOR AND CONSEQUENTIAL AMENDMENTS

- 1 FSMA 2000 is amended as follows.

**Commencement Information**

**I26** [Sch. 8 para. 1](#) in force at 24.1.2013 for specified purposes by [S.I. 2013/113](#), [art. 2\(1\)\(c\)](#), [Sch. Pt. 3](#)

- 2 (1) Section 286 (qualification for recognition) is amended as follows.

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

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(2) In subsection (1)(a), for “the Authority” substitute “ the appropriate regulator ”.

(3) In subsections (4A), (4C) and (6), for “the Authority” substitute “ the FCA ”.

#### Commencement Information

**I27** Sch. 8 para. 2 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 3 (1) Section 287 (application by an investment exchange) is amended as follows.
- (2) In subsections (1) and (2) for “the Authority”, in each place, substitute “ the FCA ”.
- (3) In subsection (3)—
- (a) in paragraph (a), after “provision” insert “ by another person ”,
  - (b) in paragraph (b), for “clearing services” substitute “ services falling within section 285(2)(b) ”, and
  - (c) in paragraphs (d) and (e), for “the Authority” substitute “ the FCA ”.

#### Commencement Information

**I28** Sch. 8 para. 3 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 4 (1) Section 288 (application by a clearing house) is amended as follows.
- (2) In subsection (1), for “the Authority” substitute “ the Bank of England ”.
- (3) In subsection (2)—
- (a) in the opening words, for “the Authority” substitute “ the Bank of England ”, and
  - (b) in paragraph (d), for “the Authority” substitute “ the Bank ”.
- (4) In subsection (3)(b), after “clearing services” insert “ or services falling within section 285(3)(b) ”.

#### Commencement Information

**I29** Sch. 8 para. 4 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 5 In section 289 (applications: supplementary), in subsections (1), (2) (in both places) and (3), for “the Authority” substitute “ the appropriate regulator ”.

#### Commencement Information

**I30** Sch. 8 para. 5 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 6 (1) Section 290 (recognition orders) is amended as follows.
- (2) In subsection (1)—
- (a) for “the Authority”, in the first place, substitute “ the appropriate regulator ”, and
  - (b) for “the Authority”, in the second place, substitute “ the regulator concerned ”.

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- (3) In subsection (1B), for “the Authority” substitute “ the FCA ”.
- (4) Omit subsection (2).
- (5) In subsection (3), for “the Authority” substitute “ the appropriate regulator ”.
- (6) Omit subsection (6).

**Commencement Information**

**I31** Sch. 8 para. 6 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 7 (1) Section 290A (refusal of recognition on ground of excessive regulatory provision) is amended as follows.
  - (2) In subsection (1)—
    - (a) for “The Authority must” substitute “ The appropriate regulator must ”,
    - (b) for “the Authority that” substitute “ it that ”,
    - (c) omit the “or” following paragraph (a), and
    - (d) at the end of paragraph (b) insert “or
      - (c) the provision by the applicant of services falling within section 285(2)(b) or (3)(b),”.
  - (3) In subsection (3), for “Authority” substitute “ appropriate regulator ”.

**Commencement Information**

**I32** Sch. 8 para. 7 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 8 In section 292 (overseas investment exchanges and overseas clearing house), in subsections (2), (3)(c) and (d), (4) and (5)(c), for “the Authority” substitute “ the appropriate regulator ”.

**Commencement Information**

**I33** Sch. 8 para. 8 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 9 In section 292A (publication of information by recognised investment exchange), in subsections (1), (3), (5) and (6), for “Authority” substitute “ FCA ”.

**Commencement Information**

**I34** Sch. 8 para. 9 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 10 (1) Section 293 (notification requirements) is amended as follows.
  - (2) In subsections (1) to (3) and (5), for “Authority” substitute “ appropriate regulator ”.
  - (3) In subsection (6)—
    - (a) in paragraph (a), after “provision” insert “ by another person ”,
    - (b) in paragraph (b), for “clearing services” substitute “ services falling within section 285(2)(b) ”, and

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(c) for “the Authority” substitute “ the FCA and the Bank of England ”.

(4) In subsection (7)—

(a) in paragraph (a), after “clearing services” insert “ or services falling within section 285(3)(b) ”,

(b) in paragraph (b), after “clearing services” insert “ or services falling within section 285(3)(b) ”, and

(c) for “the Authority” substitute “ the Bank of England and the FCA ”.

(5) In subsection (9), for “the Authority's” substitute “the appropriate regulator's”.

#### Commencement Information

**I35** Sch. 8 para. 10 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

11 For section 293A substitute—

#### “293A Information: compliance with EU requirements

The appropriate regulator may require a recognised body to give the appropriate regulator such information as the appropriate regulator reasonably requires in order to satisfy itself that the body is complying with any qualifying EU provision that is specified, or of a description specified, for the purposes of this section by the Treasury by order.”

#### Commencement Information

**I36** Sch. 8 para. 11 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2

**I37** Sch. 8 para. 11 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

12 In section 294 (modification or waiver of rules), in subsections (1), (2), (4) and (6), for “Authority” substitute “ appropriate regulator ”.

#### Commencement Information

**I38** Sch. 8 para. 12 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

13 (1) Section 295 (notification: overseas investment exchanges and overseas clearing houses) is amended as follows.

(2) In subsection (1), for “the Authority” substitute “ the appropriate regulator ”.

(3) In subsection (2), for the words from “likely” to the end substitute “ likely to affect the appropriate regulator's assessment of whether it is satisfied as to the requirements set out in section 292(3) ”.

(4) In subsection (3), for “the Authority” substitute “ the appropriate regulator ”.

(5) Omit subsection (4).

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#### Commencement Information

**I39** Sch. 8 para. 13 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 14 (1) Section 296 (power to give directions) is amended as follows.
- (2) In subsection (1), for “the Authority” substitute “ the appropriate regulator ”.
- (3) In subsection (1A)—
- (a) for the words from “in the case of a recognised body which is a recognised investment” to “the body” substitute “ if it appears to the appropriate regulator that a recognised body ”, and
  - (b) for the words from “directly applicable” to the end substitute “ directly applicable EU regulation specified (or of a description specified) in an order made by the Treasury ”.
- (4) In subsection (2), for “The Authority” substitute “ The regulator concerned ”.
- (5) In subsection (2A)—
- (a) in the opening words, for “a recognised investment exchange other than an overseas investment exchange” substitute “ a recognised body other than an overseas investment exchange or overseas clearing house ”,
  - (b) in paragraph (a)—
    - (i) for “the Authority”, in both places, substitute “ the regulator concerned ”, and
    - (ii) for “the exchange” substitute “ the body ”, and
  - (c) in paragraph (b), for “the exchange” substitute “ the body ”.
- (6) In subsection (3), for “the Authority” substitute “ the regulator concerned ”.
- (7) In subsection (4), for “the Authority” substitute “ an appropriate regulator ”.
- (8) In the heading, for “Authority's” substitute “Appropriate regulator's”.

#### Commencement Information

**I40** Sch. 8 para. 14 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

**I41** Sch. 8 para. 14 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2

- 15 (1) Section 297 (revoking recognition) is amended as follows.
- (2) In subsections (1) and (2), for “the Authority” substitute “ the appropriate regulator ”.
- (3) In subsection (2A)—
- (a) in the opening words—
    - (i) for “the Authority” substitute “ the appropriate regulator ”, and
    - (ii) omit “which is a recognised investment exchange”,
  - (b) in paragraphs (a) and (b), after “exchange” insert “ or (as the case may be) of a clearing house ”, and
  - (c) in paragraph (c), for the words from “directly applicable” to the end substitute “ directly applicable EU regulation specified (or of a description specified) in an order made by the Treasury ”.

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(4) In subsection (2C), at the end insert “ or overseas clearing house ”.

(5) In subsections (5) and (6), for “the Authority” substitute “ the appropriate regulator ”.

**Commencement Information**

**I42** Sch. 8 para. 15 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

**I43** Sch. 8 para. 15 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2

16 In section 298 (directions and revocation: procedure)—

(a) in subsections (1), (6) and (7), after “section 296” insert “ or 296A ”, and

(b) in subsections (1), (2)(a), (3), (5), (6), (7) (in both places) and (8), for “the Authority” substitute “ the appropriate regulator ”.

**Commencement Information**

**I44** Sch. 8 para. 16 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

17 In section 299 (complaints about recognised bodies), in subsections (1) and (2), for “Authority” substitute “ appropriate regulator ”.

**Commencement Information**

**I45** Sch. 8 para. 17 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

18 In section 300A (power to disallow excessive regulatory provision)—

(a) in subsection (1), for the words from “with” to the end substitute “with—

(a) its business as an investment exchange,

(b) the provision by it of clearing services, or

(c) the provision by it of services falling within section 285(2)(b) or (3)(b).”, and

(b) in subsections (2) (in both places) and (4), and in the heading, for “Authority” substitute “ appropriate regulator ”.

**Commencement Information**

**I46** Sch. 8 para. 18 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

19 In section 300B (duty to notify proposal to make regulatory provision) for “Authority” (in each place) substitute “ appropriate regulator ”.

**Commencement Information**

**I47** Sch. 8 para. 19 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

20 In section 300C (restriction on making provision before Authority decides whether to act), in subsections (1), (2)(a), (3) (in both places), (4)(a) and (b), and in the heading, for “Authority” substitute “ appropriate regulator ”.

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**Commencement Information**

**I48** Sch. 8 para. 20 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 21 (1) Section 300D (consideration by Authority whether to disallow proposed provision) is amended as follows.
- (2) In subsections (1) to (4) and (5)(a) and (b), for “Authority” substitute “ appropriate regulator ”.
- (3) In subsection (6)—
- (a) in the opening words, for “the Authority” substitute “ the appropriate regulator ”,
  - (b) in paragraph (b)—
    - (i) for “the Authority's” substitute “the appropriate regulator's”, and
    - (ii) for “the Authority” substitute “ the regulator concerned ”, and
  - (c) in paragraph (c)(i) and (ii), for “the Authority” substitute “ the appropriate regulator ”.
- (4) In the heading, for “Authority” substitute “ appropriate regulator ”.

**Commencement Information**

**I49** Sch. 8 para. 21 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 22 (1) Section 301 (supervision of certain contracts) is amended as follows.
- (2) In subsection (2), for “the Authority” substitute “ the Bank of England ”.
- (3) In subsection (3)—
- (a) for “the Authority”, in the first place, substitute “ the FCA or the Bank of England ”, and
  - (b) for “the Authority”, in the second place, substitute “ the Bank ”.
- (4) In subsections (4)(a), (6)(a), (7) and (9), for “Authority” substitute “ Bank of England ”.

**Commencement Information**

**I50** Sch. 8 para. 22 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 23 In section 301A (obligation to notify the Authority: acquisitions of control), in subsections (1) and (2), and in the heading, for “the Authority” substitute “ the FCA ”.

**Commencement Information**

**I51** Sch. 8 para. 23 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 24 In section 301B (requirements for s.301A notices), in subsections (1) to (3), for “Authority” substitute “ FCA ”.

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**Commencement Information**

**I52** [Sch. 8 para. 24](#) in force at 24.1.2013 for specified purposes by [S.I. 2013/113](#), [art. 2\(1\)\(c\)](#), [Sch. Pt. 3](#)

- 25 In section 301C (acknowledgement of receipt), in subsections (1) and (2), for “Authority” substitute “ FCA ”.

**Commencement Information**

**I53** [Sch. 8 para. 25](#) in force at 24.1.2013 for specified purposes by [S.I. 2013/113](#), [art. 2\(1\)\(c\)](#), [Sch. Pt. 3](#)

- 26 In section 301F (assessment: general), in subsections (1) to (3), for “Authority” substitute “ FCA ”.

**Commencement Information**

**I54** [Sch. 8 para. 26](#) in force at 24.1.2013 for specified purposes by [S.I. 2013/113](#), [art. 2\(1\)\(c\)](#), [Sch. Pt. 3](#)

- 27 (1) Section 301G (assessment: procedure) is amended as follows.  
(2) In subsections (1) (in both places) and (2) to (5), for “Authority” substitute “ FCA ”.  
(3) In subsection (6), for “the Authority’s” substitute “the FCA’s”.

**Commencement Information**

**I55** [Sch. 8 para. 27](#) in force at 24.1.2013 for specified purposes by [S.I. 2013/113](#), [art. 2\(1\)\(c\)](#), [Sch. Pt. 3](#)

- 28 In section 301H (duration of approval), in subsections (1), (2) and (3) (in both places), for “the Authority” substitute “ the FCA ”.

**Commencement Information**

**I56** [Sch. 8 para. 28](#) in force at 24.1.2013 for specified purposes by [S.I. 2013/113](#), [art. 2\(1\)\(c\)](#), [Sch. Pt. 3](#)

- 29 In section 301I (objections by the Authority), in subsections (1) to (5), and in the heading, for “Authority” substitute “ FCA ”.

**Commencement Information**

**I57** [Sch. 8 para. 29](#) in force at 24.1.2013 for specified purposes by [S.I. 2013/113](#), [art. 2\(1\)\(c\)](#), [Sch. Pt. 3](#)

- 30 In section 301J (restriction notices), in subsections (1), (2)(b), (3) and (7), for “Authority” substitute “ FCA ”.

**Commencement Information**

**I58** [Sch. 8 para. 30](#) in force at 24.1.2013 for specified purposes by [S.I. 2013/113](#), [art. 2\(1\)\(c\)](#), [Sch. Pt. 3](#)

- 31 In section 301K (order for sale of shares), in subsection (1), for “the Authority” substitute “ the FCA ”.

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**Commencement Information**

**I59** Sch. 8 para. 31 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 32 (1) Section 301L (offences under Chapter) is amended as follows.
- (2) In subsections (1) and (2) (in both places), for “the Authority” substitute “ the FCA ”.
- (3) In subsection (4), for “the Authority’s” substitute “the FCA’s”.
- (4) In subsections (5) and (9), for “the Authority” substitute “ the FCA ”.

**Commencement Information**

**I60** Sch. 8 para. 32 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 33 In section 312A (exercise of passport rights by EEA market operator), in subsection (1)(b), for “the Authority” substitute “ the FCA ”.

**Commencement Information**

**I61** Sch. 8 para. 33 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 34 In section 312B (removal of passport rights from EEA market operator), in subsections (1) (in each place), (3), (4)(b), (5), (6), (7)(a) and (b), (8)(b), (9) to (11), (12) (in both places) and (13) (in the first place), for “Authority” substitute “ FCA ”.

**Commencement Information**

**I62** Sch. 8 para. 34 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 35 In section 312C (exercise of passport rights by recognised investment exchange), in subsections (2) to (6), for “Authority” substitute “ FCA ”.

**Commencement Information**

**I63** Sch. 8 para. 35 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 36 (1) Section 313 (interpretation) is amended as follows.
- (2) In subsection (1)—
- (a) after the definition of “applicant” insert—
- ““central counterparty clearing services” has the same meaning as in section 155 of the Companies Act 1989 (see subsection (3A) of that section);” and
- (b) at the end insert—
- ““UK clearing house” means a clearing house—
- (a) which has its head office or its registered office (or both) in the United Kingdom,
- (b) which provides central counterparty clearing services, and

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(c) in relation to which a recognition order is in force.”

(3) In subsection (4), after “clearing services” insert “ or services falling within section 285(3)(b) ”.

**Commencement Information**

**I64** Sch. 8 para. 36 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 37 In section 392 (warning and decisions notices: application of provisions relating to third party rights and access to evidence)—
- (a) in paragraph (a), after “section 280(1),” insert “ section 312G(1), ”, and
  - (b) in paragraph (b), after “section 280(2),” insert “ section 312H(1), ”.

**Commencement Information**

**I65** Sch. 8 para. 37 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 38 In section 412A (approval and monitoring of trade-matching and reporting systems), in subsections (1), (2), (4), (5) (in both places), (6) (in both places) and (7), for “Authority” substitute “ FCA ”.

**Commencement Information**

**I66** Sch. 8 para. 38 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 39 In section 412B (procedure for approval and suspension or withdrawal of approval), in subsections (1) to (6), (7) (in both places), (8) and (9), for “Authority” substitute “ FCA ”.

**Commencement Information**

**I67** Sch. 8 para. 39 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

SCHEDULE 9

Section 37

DISCIPLINE AND ENFORCEMENT

VALID FROM 01/04/2013

**PART 1**

INTRODUCTORY

- 1 FSMA 2000 is amended as follows.

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VALID FROM 01/04/2013

## 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
  - (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).”
- 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.

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(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—

- (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) ”.

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.

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

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- (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.”

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.
- (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.”

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.

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

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 ”.

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;

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(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)—

- (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.”

VALID FROM 01/04/2013

## **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

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(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.”

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

## PART 4

### DISCIPLINARY MEASURES

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

#### **Meaning of “relevant requirement” and “appropriate regulator”**

“204A) 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”.

#### **Commencement Information**

**I68** 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

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

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VALID FROM 01/04/2013

- 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 ”.

VALID FROM 01/04/2013

- 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 ”.

VALID FROM 01/04/2013

- 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 ”.

VALID FROM 01/04/2013

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

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VALID FROM 01/04/2013

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

VALID FROM 01/04/2013

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

- 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 ”.

#### **Commencement Information**

**I69** 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

- 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 ”.

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

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(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

**I70** 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

## 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.
  - (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.

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(12) The Treasury may by order amend the definition of “appropriate regulator”.

#### Commencement Information

**I71** 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

VALID FROM 01/04/2013

- 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 ”.
- 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,
- (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.

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- (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

**I72** 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

VALID FROM 01/04/2013

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

- 23 (1) Section 384 (power of Authority to require restitution) is amended as follows.
- (2) In subsection (1)—
- for “The Authority” substitute “ The appropriate regulator ”, and
  - after “authorised person” insert “ or recognised investment exchange ”.
- (3) In subsections (2) and (4), for “Authority” substitute “ FCA ”.
- (4) In subsection (5)—
- for “Authority”, in the first place, substitute “ regulator exercising the power (“the regulator concerned”) ”, and
  - for “Authority”, in each of the other places, substitute “ regulator concerned ”.
- (5) In subsection (6), for “Authority” substitute “ regulator concerned ”.
- (6) In subsection (7)—
- 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
  - 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 requirement that is imposed by the PRA under any provision of this Act,
  - 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

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- (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

**I73** 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

VALID FROM 01/04/2013

- 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 ”.

VALID FROM 01/04/2013

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

## PART 6

### NOTICE PROCEDURES

VALID FROM 01/04/2013

- 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—

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“(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 ”.

VALID FROM 01/04/2013

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 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 ”.

VALID FROM 01/04/2013

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 ”.

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VALID FROM 01/04/2013

- 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 ”.

VALID FROM 01/04/2013

- 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)—
- (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;

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- (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),
- (b) prejudicial to the safety and soundness of PRA-authorized 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 ”.

VALID FROM 01/04/2013

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

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(b) after “131H(4),” insert “ 192L(4), ”.

VALID FROM 01/04/2013

- 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 ”.

VALID FROM 01/04/2013

- 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, ”.
- (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 ”.

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

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- “(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
    - (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)—

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- (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)—
- (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**

**I74** 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

- 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 ”.

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

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- (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

**I75** 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

VALID FROM 01/04/2013

## 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 ”.
- 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).”
- 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—

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“(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;
- (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 ”.

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 ”.

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) ”.

VALID FROM 01/04/2013

## PART 8

### CO-OPERATION

41 After section 415A insert—

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

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### *“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.
- (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.”

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## SCHEDULE 10

Section 38

### THE FINANCIAL SERVICES COMPENSATION SCHEME

- 1 Part 15 of FSMA 2000 (the Financial Services Compensation Scheme) is amended as follows.

#### Commencement Information

**I76** Sch. 10 para. 1 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 2 (1) Section 212 (the scheme manager) is amended as follows.
- (2) For subsections (1) and (2) substitute—
- “(1) The scheme manager” means the body corporate established by the Financial Services Authority under this section as originally enacted.
- (2) The regulators must take such steps as are necessary to ensure that the scheme manager is, at all times, capable of exercising the functions conferred on it by or under this Part or Part 15A.”
- (3) In subsections (4) and (5) for “Authority” substitute “ regulators ”.
- (4) In subsection (7), omit “board members,”.

#### Commencement Information

**I77** Sch. 10 para. 2 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 3 (1) Section 213 (the compensation scheme) is amended as follows.
- (2) In each place, for “Authority” substitute “ regulators ”.
- (3) In subsection (1)—
- (a) after “rules” insert “ made in accordance with an order under subsection (1A) ”, and
- (b) for the words from “cases where” to the end substitute “cases where—
- (a) relevant persons are unable, or likely to be unable, to satisfy claims against them, or
- (b) persons who have assumed responsibility for liabilities arising from acts or omissions of relevant persons (“successors”) are unable, or likely to be unable, to satisfy claims against the successors that are based on those acts or omissions.”
- (4) After subsection (1) insert—
- “(1A) The Treasury must by order specify—
- (a) the cases in which the FCA may, or may not, make rules under subsection (1), and
- (b) the cases in which the PRA may, or may not, make rules under that subsection.”
- (5) In subsection (2), after “rules” insert “ (taken together) ”.

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- (6) In subsection (9)(a), after “against him” insert “, or against a successor falling within subsection (1)(b),”.

**Commencement Information**

- I78** Sch. 10 para. 3 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3  
**I79** Sch. 10 para. 3 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2

- 4 In section 214 (general provisions of the scheme), in subsection (1), after paragraph (a) insert—  
“(aa) as to the circumstances in which a successor falling within section 213(1)(b) is to be taken (for the purposes of the scheme) to be unable, or likely to be unable, to satisfy claims against the successor that are based on the acts or omissions of a relevant person;”.

**Commencement Information**

- I80** Sch. 10 para. 4 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 5 In section 215 (rights of the scheme in insolvency), for “Authority”, in each place, substitute “ regulators ”.

**Commencement Information**

- I81** Sch. 10 para. 5 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 6 In section 217 (insurers in financial difficulties), in subsection (5), for “Authority” substitute “ either regulator or both regulators ”.

**Commencement Information**

- I82** Sch. 10 para. 6 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 7 After section 217 insert—

*“Relationship with the regulators*

**217A Co-operation**

- (1) Each regulator and the scheme manager must take such steps as they consider appropriate to co-operate with each other in the exercise of their functions under this Part and Part 15A.
- (2) Each regulator and the scheme manager must prepare and maintain a memorandum describing how that regulator and the scheme manager intend to comply with subsection (1).
- (3) The scheme manager must ensure that the memoranda as currently in force are published in the way appearing to it to be best calculated to bring them to the attention of the public.”

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**Commencement Information**

**I83** Sch. 10 para. 7 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

8 For the italic heading before section 218 substitute “ *Annual plan and report* ”.

**Commencement Information**

**I84** Sch. 10 para. 8 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

9 Before section 218 insert—

**Annual plan**

“217~~B~~) The scheme manager must in respect of each of its financial years prepare an annual plan.

- (2) The plan must be prepared before the start of the financial year.
- (3) An annual plan in respect of a financial year must make provision about the use of the resources of the scheme manager.
- (4) The plan may include material relating to periods longer than the financial year in question.
- (5) Before preparing an annual plan, the scheme manager must consult such persons (if any) as the scheme manager considers appropriate.
- (6) The scheme manager must publish each annual plan in the way it considers appropriate.”

**Commencement Information**

**I85** Sch. 10 para. 9 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

10 (1) Section 218 (annual report) is amended as follows.

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

(3) At the end insert—

“(4) The Treasury may—

- (a) require the scheme manager to comply with any provisions of the Companies Act 2006 about accounts and their audit which would not otherwise apply to it, or
- (b) direct that any such provision of that Act is to apply to the scheme manager with such modifications as are specified in the direction.

(5) Compliance with any requirement under subsection (4)(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.

(6) Proceedings under subsection (5) may be brought only by the Treasury.”

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**Commencement Information**

**I86** Sch. 10 para. 10 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

11 After section 218 insert—

**“218ZA Audit of accounts**

- (1) The scheme manager must send a copy of its annual accounts to the Comptroller and Auditor General and the Treasury as soon as is reasonably practicable.
- (2) The Comptroller and Auditor General must—
  - (a) examine, certify and report on accounts received under this section, 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 scheme manager must send a copy of the certified accounts and the report to the regulators.
- (5) Except as provided by section 218(4), the scheme manager 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 section “annual accounts” has the meaning given by section 471 of the Companies Act 2006.”

**Commencement Information**

**I87** Sch. 10 para. 11 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

12 (1) Section 218A (power to require information) is amended as follows.

- (2) In subsection (1)—
  - (a) for “The Authority”, in the first place, substitute “ Each regulator ”, and
  - (b) for “the Authority”, in the second and third place, substitute “ that regulator ”.
- (3) In subsections (2) and (4), for “Authority” substitute “ regulator ”.
- (4) In subsection (5), for “Authority's” substitute “regulator's”.
- (5) In the heading, for “Authority's” substitute “Regulators”.

**Commencement Information**

**I88** Sch. 10 para. 12 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

13 In section 221 (powers of court), in subsection (2), after “director or” insert “ other ”.

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**Commencement Information**

**I89** Sch. 10 para. 13 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

14 In section 222 (statutory immunity), in subsection (1), omit “board member”.

**Commencement Information**

**I90** Sch. 10 para. 14 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

15 In section 224 (scheme manager's power to inspect documents), in subsection (1), after “relevant person,” insert “ or a successor falling within section 213(1)(b), ”.

**Commencement Information**

**I91** Sch. 10 para. 15 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

SCHEDULE 11

Section 39

THE FINANCIAL OMBUDSMAN SERVICE

1 In section 226 (compulsory jurisdiction), in subsection (3)(a), for “Authority” substitute “ FCA ”.

**Commencement Information**

**I92** Sch. 11 para. 1 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

2 In section 226A (consumer credit jurisdiction), in subsection (7), for “Authority” substitute “ FCA ”.

**Commencement Information**

**I93** Sch. 11 para. 2 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

3 In section 227 (voluntary jurisdiction), in subsection (6), for “Authority's” substitute “FCA's”.

**Commencement Information**

**I94** Sch. 11 para. 3 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

4 (1) Section 228 (determination under the compulsory and consumer credit jurisdiction) is amended as follows.

(2) In subsection (4), in paragraph (c), omit “in writing”.

(3) After subsection (6) insert—

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“(6A) But the complainant is not to be treated as having rejected the determination by virtue of subsection (6) if—

- (a) the complainant notifies the ombudsman after the specified date of the complainant's acceptance of the determination,
- (b) the complainant has not previously notified the ombudsman of the complainant's rejection of the determination, and
- (c) the ombudsman is satisfied that such conditions as may be prescribed by rules made by the scheme operator for the purposes of this section are satisfied.”

(4) After subsection (7) insert—

“(7A) Where a determination is rejected by virtue of subsection (6), the notification under subsection (7) must contain a general description of the effect of subsection (6A).”

**Commencement Information**

**I95** Sch. 11 para. 4 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

5 In section 229 (awards), in subsection (4), for “Authority” substitute “ FCA ”.

**Commencement Information**

**I96** Sch. 11 para. 5 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

6 In section 230 (costs), in subsection (2), for “Authority” substitute “ FCA ”.

**Commencement Information**

**I97** Sch. 11 para. 6 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

7 After section 230 insert—

**“230A Reports of determinations**

- (1) The scheme operator must publish a report of any determination made under this Part.
- (2) But if the ombudsman who makes the determination informs the scheme operator that, in the ombudsman's opinion, it is inappropriate to publish a report of that determination (or any part of it) the scheme operator must not publish a report of that determination (or that part).
- (3) Unless the complainant agrees, a report of a determination published by the scheme operator may not include the name of the complainant, or particulars which, in the opinion of the scheme operator, are likely to identify the complainant.
- (4) The scheme operator may charge a reasonable fee for providing a person with a copy of a report.”

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

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**Commencement Information**

**I98** Sch. 11 para. 7 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

8 In section 232 (powers of court), in subsection (2), after “director or” insert “ other ”.

**Commencement Information**

**I99** Sch. 11 para. 8 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

9 After section 232 insert—

**“232A Scheme operator's duty to provide information to FCA**

If the scheme operator considers that it has information that, in its opinion, would or might be of assistance to the FCA in advancing one or more of the FCA's operational objectives, it must disclose that information to the FCA.”

**Commencement Information**

**I100** Sch. 11 para. 9 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

10 In section 234 (industry funding), in subsection (1), for “Authority” substitute “ FCA ”.

**Commencement Information**

**I101** Sch. 11 para. 10 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

11 In section 234A (funding by consumer credit licensees), in subsection (1), for “Authority” substitute “ FCA ”.

**Commencement Information**

**I102** Sch. 11 para. 11 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

12 After section 234A insert—

*“Successors to businesses*

**234B Transfers of liability**

- (1) This section applies where a person (the “successor”) has assumed a liability (including a contingent one) of a person (the “predecessor”) who was, or (apart from this section) would have been, the respondent in respect of a complaint falling to be dealt with under the ombudsman scheme.
- (2) The complaint may (but need not) be dealt with under this Part as if the successor were the respondent.”

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

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**Commencement Information**

**I103** Sch. 11 para. 12 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

13 Schedule 17 (the ombudsman scheme) is amended as follows.

**Commencement Information**

**I104** Sch. 11 para. 13 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

14 For paragraph 2 (and the italic heading before it) substitute—

*“Duty of FCA*

- 2 The FCA must take such steps as are necessary to ensure that the body corporate established by the Financial Services Authority under this Schedule as originally enacted is, at all times, capable of exercising the functions conferred on the scheme operator by or under this Act.”

**Commencement Information**

**I105** Sch. 11 para. 14 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

15 In paragraph 3 (constitution)—

- (a) for “Authority”, in each place, substitute “ FCA ”, and  
(b) in sub-paragraph (4), after “9” insert “ , 9A ”.

**Commencement Information**

**I106** Sch. 11 para. 15 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

16 After paragraph 3 insert—

*“Relationship with FCA*

- 3A (1) The scheme operator and the FCA must each take such steps as it considers appropriate to co-operate with the other in the exercise of their functions under this Part of this Act.
- (2) The scheme operator and the FCA must prepare and maintain a memorandum describing how they intend to comply with sub-paragraph (1).
- (3) The scheme operator must ensure that the memorandum as currently in force is published in the way appearing to the scheme operator to be best calculated to bring it to the attention of the public.”

**Commencement Information**

**I107** Sch. 11 para. 16 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

17 In paragraph 6 (status), in sub-paragraph (2), omit “board members,”.

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#### Commencement Information

**I108** Sch. 11 para. 17 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 18 In paragraph 7 (annual reports)—
- (a) for “Authority”, in each place, substitute “ FCA ”, and
  - (b) at the end insert—
    - “(5) The Treasury may—
      - (a) require the scheme operator to comply with any provisions of the Companies Act 2006 about accounts and their audit which would not otherwise apply to it, or
      - (b) direct that any provision of that Act about accounts and their audit is to apply to the scheme operator with such modifications as are specified in the direction, whether or not the provision would otherwise apply to the scheme manager.
    - (6) Compliance with any requirement under sub-paragraph (5)(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.
    - (7) Proceedings under sub-paragraph (6) may be brought only by the Treasury.”

#### Commencement Information

**I109** Sch. 11 para. 18 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 19 After paragraph 7 insert—
- “Audit of accounts*
- 7A (1) The scheme operator 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 scheme operator must send a copy of the certified accounts and the report to the FCA.
  - (5) Except as provided by paragraph 7(5), the scheme operator 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 by section 471 of the Companies Act 2006.”

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**Commencement Information**

**I110** Sch. 11 para. 19 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 20 For the italic heading before paragraph 8 substitute “ *Information, advice and guidance* ”.

**Commencement Information**

**I111** Sch. 11 para. 20 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 21 In paragraph 8 (guidance), for “guidance consisting of such information and advice” substitute “ such information, guidance or advice ”.

**Commencement Information**

**I112** Sch. 11 para. 21 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 22 In paragraph 9 (budget), for “Authority”, in each place, substitute “ FCA ”.

**Commencement Information**

**I113** Sch. 11 para. 22 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 23 After paragraph 9 insert—

*“Annual plan*

- 9A (1) The scheme operator must in respect of each of its financial years prepare an annual plan.
- (2) The plan must be prepared before the start of the financial year.
- (3) An annual plan in respect of a financial year must make provision about the use of the resources of the scheme operator.
- (4) The plan may include material relating to periods longer than the financial year in question.
- (5) Before preparing an annual plan, the scheme operator must consult such persons (if any) as the scheme operator considers appropriate.
- (6) The scheme operator must publish each annual plan in the way it considers appropriate.”

**Commencement Information**

**I114** Sch. 11 para. 23 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 24 In paragraph 13 (procedural rules)—
- (a) for “Authority”, in each place, substitute “ FCA ”,

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- (b) for “Authority's”, in each place, (including the italic heading), substitute “FCA's”, and
- (c) in sub-paragraph (4)(b), for “Part X” substitute “ Part 9A ”.

**Commencement Information**

**I115** Sch. 11 para. 24 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 25 In paragraph 14 (scheme operator's rules)—
- (a) in sub-paragraph (2), after paragraph (f) insert—
    - “(fa) allow the correction of any clerical mistake in the written statement of a determination made by an ombudsman;
    - (fb) provide that any irregularity arising from a failure to comply with any provisions of the scheme rules does not of itself render a determination void;”, and”
  - (b) in sub-paragraph (7), for “Authority” substitute “ FCA ”.

**Commencement Information**

**I116** Sch. 11 para. 25 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 26 In paragraph 16B (procedure for complaints etc), in sub-paragraph (1), after paragraph (d) insert—
- “(e) may provide that an ombudsman may correct any clerical mistake in a determination made by that ombudsman;
  - (f) provide that any irregularity arising from a failure to comply with any provisions of the consumer credit rules does not of itself render a determination void.”

**Commencement Information**

**I117** Sch. 11 para. 26 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 27 In paragraph 16E (consumer credit rules), for “Authority”, in each place, substitute “ FCA ”.

**Commencement Information**

**I118** Sch. 11 para. 27 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 28 In paragraph 18 (terms of reference), for “Authority”, in each place, substitute “ FCA ”.

**Commencement Information**

**I119** Sch. 11 para. 28 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 29 In paragraph 19 (delegation), in sub-paragraph (3), for “Authority” substitute “ FCA ”.

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#### Commencement Information

**I120** Sch. 11 para. 29 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 30 In paragraph 20 (voluntary jurisdiction rules: procedure), for “Authority”, in each place, substitute “ FCA ”.

#### Commencement Information

**I121** Sch. 11 para. 30 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

## SCHEDULE 12

Section 41

### AMENDMENTS OF PARTS 11 AND 23 OF FSMA 2000

#### PART 1

##### PART 11 OF FSMA 2000: INFORMATION GATHERING AND INVESTIGATIONS

VALID FROM 01/04/2013

- 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 ”.

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

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- (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”.

VALID FROM 01/04/2013

- 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”.

VALID FROM 01/04/2013

- 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”.

VALID FROM 01/04/2013

- 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

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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—
  - (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

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(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.”

**Commencement Information**

**I122** Sch. 12 para. 5 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

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.
- (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.

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- (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.”

#### Commencement Information

**I123** Sch. 12 para. 6 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

VALID FROM 01/04/2013

- 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
- (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 ”,

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- (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.”

#### Commencement Information

**I124** Sch. 12 para. 8 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2

- 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”.

#### Commencement Information

**I125** Sch. 12 para. 9 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

VALID FROM 01/04/2013

- 10 In section 169A (supporting an overseas regulator regarding financial stability), in subsection (1), for “Authority” substitute “PRA”.

VALID FROM 01/04/2013

- 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;

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(b) the Secretary of State, if the Secretary of State appointed the investigator.”

VALID FROM 01/04/2013

12 In section 174 (admissibility of statements to investigators), in subsection (2), for “the Authority” substitute “ a regulator ”.

VALID FROM 01/04/2013

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 ”.

VALID FROM 01/04/2013

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 ”.

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VALID FROM 01/04/2013

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.
- (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).”

VALID FROM 01/04/2013

**PART 2**

PART 23 OF FSMA 2000: PUBLIC RECORD,  
DISCLOSURE OF INFORMATION AND CO-OPERATION

- 16 (1) Section 347 (record of authorised persons) is amended as follows.
- (2) In subsections (1) to (6), for “Authority”, in each place, substitute “ FCA ”.
  - (3) Omit subsection (1)(f).
  - (4) In subsection (2), in paragraph (e)—
    - (a) omit “or recognised clearing house,”, and
    - (b) omit “or clearing house”.
  - (5) In subsection (8), for “Authority” substitute “ FCA or the PRA ”.

17 After section 347 insert—

**“347A Duty of PRA to disclose information relevant to the record**

- (1) The PRA must, for the purpose of assisting the FCA to comply with its duty under section 347—

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

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- (a) notify the FCA if the information included in the record as required under section 347(2)(a) appears to the PRA to be incomplete or inaccurate,
  - (b) if it makes a prohibition order relating to an individual, provide the FCA with information falling within section 347(2)(f) in relation to that order,
  - (c) where it is the appropriate regulator in relation to an approved person, provide the FCA with information falling within section 347(2)(g) in relation to that approved person, and
  - (d) where the FCA has notified the PRA that it considers it appropriate to include in the record information of a certain description, disclose to the FCA such information of that description as the PRA has in its possession.
- (2) The duty to provide information under this section does not apply to information which the PRA reasonably believes is in the possession of the FCA.
- (3) Subsection (1) does not require or authorise the disclosure of information whose disclosure is prohibited by or under section 348.
- (4) This section is without prejudice to any other power to disclose information.
- (5) In this section references to the “record” are to the record maintained under section 347.”
- 18 (1) Section 348 (restrictions on disclosure of information) is amended as follows.
- (2) In subsection (2)(b)—
    - (a) for “Authority” substitute “ FCA, the PRA ”, and
    - (b) omit “, the competent authority for the purposes of Part VI”.
  - (3) In subsection (5)—
    - (a) for paragraph (a) substitute—
      - “(a) the FCA;
      - (aa) the PRA;”,
    - (b) omit paragraph (b),
    - (c) in paragraph (d), for “139E” substitute “ 166A ”, and
    - (d) after paragraph (e) insert—
      - “(ea) a person who is or has been engaged to provide services to a person mentioned in those paragraphs;”.
  - (4) In subsection (6)—
    - (a) in paragraph (a), for “the competent authority” substitute “ the FCA ”,
    - (b) in paragraph (b), for “Authority” substitute “ FCA, the PRA ”, and
    - (c) omit paragraph (c).
  - (5) In the heading for “Authority” substitute “ FCA, PRA ”.
- 19 (1) Section 349 (exceptions from section 348) is amended as follows.
- (2) In subsection (2)(c), for “Authority” substitute “ FCA or the PRA ”.

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

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- (3) In subsection (3A)(a), for “Authority” substitute “ FCA or the PRA ”.
- (4) In subsection (3B)(c), for “Authority's functions” substitute “ functions of the FCA or the PRA ”.
- 20 (1) Section 350 (disclosure of information by HMRC) is amended as follows.
- (2) For subsection (1) substitute—
- “(1) No obligation as to secrecy imposed by statute or otherwise prevents the disclosure of Revenue information to—
- (a) the FCA or the PRA, if the disclosure is made for the purpose of assisting or enabling that regulator to discharge its functions under this or any other Act, or
- (b) the Secretary of State, if the disclosure is made for the purpose of assisting in the investigation of a matter under section 168 or with a view to the appointment of an investigator under that section.”
- (3) In subsection (4), for “subsection (1)” substitute “ subsection (1)(b) ”.
- 21 Omit section 351 (competition information).
- 22 In section 351A (disclosure under the UCITS directive), in subsection (1), for “the Authority” substitute “ the FCA or the PRA ”.
- 23 (1) In section 353 (removal of other restrictions on disclosure), in subsection (1)(b)—
- (a) for “Authority”, in the first place, substitute “ FCA or the PRA ”, and
- (b) for “Authority”, in the second place, substitute “ either of them ”.
- 24 After section 353 insert—

*“Information received from Bank of England*

**353A Information received from Bank of England**

- (1) A regulator must not disclose to any person specially protected information.
- (2) “Specially protected information” is information in relation to which the first and second conditions are met.
- (3) The first condition is that the regulator received the information from—
- (a) the Bank of England (“the Bank”), or
- (b) the other regulator where that regulator had received the information from the Bank.
- (4) The second condition is that the Bank notified the regulator to which it disclosed the information that the Bank held the information for the purpose of its functions with respect to any of the following—
- (a) monetary policy;
- (b) financial operations intended to support financial institutions for the purposes of maintaining stability;
- (c) the provision of private banking services and related services.
- (5) The notification referred to in subsection (4) must be—

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- (a) in writing, and
  - (b) given before, or at the same time as, the Bank discloses the information.
- (6) The prohibition in subsection (1) does not apply—
- (a) to disclosure by one regulator to the other regulator where the regulator making the disclosure informs the other regulator that the information is specially protected information by virtue of this section;
  - (b) where the Bank has consented to disclosure of the information;
  - (c) to information which has been made available to the public by virtue of being disclosed in any circumstances in which, or for any purposes for which, disclosure is not precluded by this section;
  - (d) to information which the regulator is required to disclose in pursuance of any EU obligation.
- (7) In this section references to disclosure by or to a regulator or by the Bank include references to disclosure by or to—
- (a) persons who are, or are acting as,—
    - (i) officers of, or members of the staff of, the regulator, or
    - (ii) officers, employees or agents of the Bank, or
  - (b) auditors, experts, contractors or investigators appointed by the regulator or the Bank under powers conferred by this Act or otherwise.
- (8) References to disclosure by a regulator do not include references to disclosure between persons who fall within any paragraph of subsection (7)(a) or (b) in relation to that regulator.
- (9) Each regulator must take such steps as are reasonable in the circumstances to prevent the disclosure of specially protected information, in cases not excluded by subsection (6), by those who are or have been—
- (a) its officers or members of staff (including persons acting as its officers or members of staff);
  - (b) auditors, experts, contractors or investigators appointed by the regulator under powers conferred by this Act or otherwise;
  - (c) persons to whom the regulator has delegated any of its functions.”

25

For section 354 substitute—

**“354A FCA's duty to co-operate with others**

- (1) The FCA must take such steps as it considers appropriate to co-operate with other persons (whether in the United Kingdom or elsewhere) who have functions—
  - (a) similar to those of the FCA, or
  - (b) in relation to the prevention or detection of financial crime.
- (2) The persons referred to in subsection (1) do not include the Bank of England or the PRA (but see sections 3D and 3Q).

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

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- (3) The FCA must take such steps as it considers appropriate to co-operate with—
  - (a) the Panel on Takeovers and Mergers;
  - (b) an authority designated as a supervisory authority for the purposes of Article 4.1 of the Takeovers Directive;
  - (c) any other person or body that exercises functions of a public nature, under legislation in any country or territory outside the United Kingdom, that appear to the FCA to be similar to those of the Panel on Takeovers and Mergers.
- (4) Co-operation may include the sharing of information which the FCA is not prevented from disclosing.
- (5) “Financial crime” has the meaning given in section 1H(3).

#### **354B PRA's duty to co-operate with others**

- (1) The PRA must take such steps as it considers appropriate to co-operate with—
  - (a) other persons (whether in the United Kingdom or elsewhere) who have functions similar to those of the PRA, and
  - (b) other bodies that have functions relevant to financial stability.
- (2) The persons referred to in subsection (1) do not include the Bank of England or the FCA (but see sections 3D and 3Q).
- (3) Co-operation may include the sharing of information which the PRA is not prevented from disclosing.

#### **354C PRA's duty to provide information to Bank of England**

- (1) The PRA must disclose to the Bank of England (“the Bank”) any information in its possession that it thinks will or may assist the Bank in achieving its financial stability objective.
- (2) The duty in subsection (1) applies whether or not the Bank has requested that the information be disclosed to it.
- (3) Subsection (1) does not require or authorise the disclosure of information whose disclosure—
  - (a) is prohibited by or under section 348 or any other enactment;
  - (b) is incompatible with any EU obligation;
  - (c) would constitute or be punishable as a contempt of court.
- (4) This section is without prejudice to any other power to disclose information.
- (5) The Bank's financial stability objective is the objective set out in section 2A(1) of the Bank of England Act 1998.
- (6) In this section “enactment” includes—
  - (a) an Act of the Scottish Parliament,
  - (b) Northern Ireland legislation, and

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(c) a Measure or Act of the National Assembly for Wales.”

## SCHEDULE 13

Section 42

### AUDITORS AND ACTUARIES

VALID FROM 01/04/2013

1 FSMA 2000 is amended as follows.

2 In Part 22 (auditors and actuaries), before section 340 (and the italic heading immediately before it) insert—

*“General duties of PRA*

**General duties of PRA in relation to auditors**

339A) The arrangements maintained by the PRA under section 2K (supervision of PRA-~~authorised~~ authorised persons) must include arrangements for—

- (a) the sharing with auditors of PRA-~~authorised~~ authorised persons of information that the PRA is not prevented from disclosing, and
- (b) the exchange of opinions with auditors of PRA-~~authorised~~ authorised persons.

(2) The PRA must issue and maintain a code of practice describing how it will comply with subsection (1).

(3) The PRA may at any time alter or replace a code issued under this section.

(4) If a code is altered or replaced, the PRA must issue the altered or replacement code.

(5) When the PRA issues a code under this section the PRA must—

- (a) give a copy of the code to the Treasury, and
- (b) publish the code in such manner as the PRA thinks fit.

(6) The Treasury must lay before Parliament a copy of the code.

(7) “Auditor” means an auditor appointed under or as a result of a statutory provision.”

**Commencement Information**

**I126** Sch. 13 para. 2 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

VALID FROM 01/04/2013

3 (1) Section 340 (appointment) is amended as follows.

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

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- (2) In subsection (1), for “Rules may require” substitute “ The appropriate regulator may make rules requiring ”.
- (3) In subsection (2), for “Rules may require” substitute “ The appropriate regulator may make rules requiring ”.
- (4) For subsection (3) substitute—
- “(3A) The PRA—
- (a) must make rules imposing on auditors of PRA-*authorised persons* such duties as may be specified in relation to co-operation with the PRA in connection with the supervision by the PRA of PRA-*authorised persons*, and
- (b) may make rules—
- (i) imposing such other duties on auditors of PRA-*authorised persons* as may be specified, and
- (ii) imposing such duties on actuaries acting for PRA-*authorised persons* as may be specified.
- (3B) The FCA may make rules imposing on auditors of, or actuaries acting for, *authorised persons* such duties as may be specified.”
- (5) In subsection (4), for “Authority”, in each place, substitute “ regulator making the rules ”.
- (6) In subsection (5), for “(3)” substitute “ (3A) or (3B) ”.
- (7) After subsection (5) insert—
- “(5A) In subsections (1) and (2) “the appropriate regulator” means—
- (a) in the case of a PRA-*authorised person*, the PRA;
- (b) in any other case, the FCA.”
- (8) In subsection (6), for “(3)” substitute “ (3B) ”.
- (9) After subsection (7) insert—
- “(8) The powers conferred by this section enable only the making of such rules as appear to the regulator making them to be necessary or expedient—
- (a) in the case of the FCA, for the purpose of advancing one or more of its operational objectives, or
- (b) in the case of the PRA, for the purpose of advancing any of its objectives.”

VALID FROM 01/04/2013

- 4 (1) Section 342 (information given by auditor or actuary) is amended as follows.
- (2) In subsection (1), after “*authorised person*” insert “ or recognised investment exchange, ”.
- (3) In subsection (3)—
- (a) for “the Authority”, in the first place, substitute “ a regulator ”,
- (b) after “*authorised person*” insert “ or recognised investment exchange ”, and

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(c) for “the Authority”, in the second place, substitute “ that regulator ”.

(4) In subsection (4), for “Authority” substitute “ regulator ”.

(5) In subsection (7), after “authorised person” insert “ or recognised investment exchange ”.

(6) For “the Authority”, in each other place (including the heading), substitute “ a regulator ”.

VALID FROM 01/04/2013

5 (1) Section 343 (information given by auditor or actuary: persons with close links) is amended as follows.

(2) In subsection (1)—

(a) in paragraph (a), after “authorised person” insert “ or recognised investment exchange, ”, and

(b) in paragraph (b), after “authorised person” insert “ or recognised investment exchange ”.

(3) In subsection (3)—

(a) for “the Authority”, in the first place, substitute “ a regulator ”,

(b) after “authorised person” insert “ or recognised investment exchange ”, and

(c) for “the Authority”, in the second place, substitute “ that regulator ”.

(4) In subsection (4), for “Authority” substitute “ regulator ”.

(5) in subsection (7), after “authorised person” insert “ or recognised investment exchange ”.

(6) In subsection (8), after “authorised person” insert “ or recognised investment exchange ”.

(7) For “the Authority”, in each other place (including the heading), substitute “ a regulator ”.

VALID FROM 01/04/2013

6 (1) Section 344 (duty of auditor or actuary resigning to give notice) is amended as follows.

(2) In each place for “Authority” substitute “ appropriate regulator ”.

(3) In subsection (2)(a), after “authorised person” insert “ or recognised investment exchange ”.

(4) In subsection (3)(a), for “Authority's” substitute “regulator's”.

(5) After subsection (3) insert—

“(4) In this section “the appropriate regulator” means—

(a) in the case of an auditor of, or an actuary acting for, a PRA-  
authorised person, the PRA;

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(b) in any other case, the FCA.”

- 7 (1) For section 345 (disqualification of auditor or actuary) and the italic heading before it substitute—

*“Disciplinary measures*

**345 Disciplinary measures: FCA**

- (1) Subsection (2) applies if it appears to the FCA that an auditor or actuary to whom section 342 applies—
- (a) has failed to comply with a duty imposed on the auditor or actuary by rules made by the FCA, or
  - (b) has failed to comply with a duty imposed under this Act to communicate information to the FCA.
- (2) The FCA may do one or more of the following—
- (a) disqualify the auditor or actuary from being the auditor of, or (as the case may be) from acting as an actuary for, any authorised person or any particular class of authorised person;
  - (b) disqualify the auditor from being the auditor of any recognised investment exchange or any particular class of recognised investment exchange;
  - (c) publish a statement to the effect that it appears to the FCA that the auditor or (as the case may be) actuary has failed to comply with the duty;
  - (d) impose on the auditor or actuary a penalty, payable to the FCA, of such amount as the FCA considers appropriate.
- (3) If an auditor or actuary has been disqualified by the PRA under section 345A(4)(a), the FCA may disqualify the auditor or actuary, so long as the disqualification under that provision remains in force, from being the auditor of, or (as the case may be) from acting as an actuary for—
- (a) any FCA-authorised person,
  - (b) any particular class of FCA-authorised person,
  - (c) any recognised investment exchange, or
  - (d) any particular class of recognised investment exchange.
- (4) In subsection (3) “FCA-authorised person” means an authorised person who is not a PRA-authorised person.
- (5) Where under subsection (2) or (3) the FCA disqualifies a person from being the auditor of an authorised person or recognised investment exchange or class of authorised person or recognised investment exchange and that authorised person or recognised investment exchange is also, or any person within that class is also, a recognised clearing house, the FCA must —
- (a) notify the Bank of England, and
  - (b) notify the disqualified person that it has made a notification under paragraph (a).

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

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- (6) The FCA may remove any disqualification imposed under paragraph (a) or (b) of subsection (2) if satisfied that the disqualified person will in future comply with the duty in question.
- (7) The FCA may at any time remove any disqualification imposed under subsection (3).

### **345A Disciplinary measures: PRA**

- (1) The following provisions of this section have effect only if the Treasury, by order made after consultation with the PRA, so provide.
- (2) Subsection (3) applies if it appears to the PRA that an auditor or actuary to whom section 342 applies—
  - (a) has failed to comply with a duty imposed on the auditor or actuary by rules made by the PRA, or
  - (b) has failed to comply with a duty imposed under this Act to communicate information to the PRA.
- (3) The PRA may exercise one or more of the specified powers.
- (4) The specified powers are such one or more of the following as may be specified in the order under subsection (1)—
  - (a) to disqualify the auditor or actuary from being the auditor of, or (as the case may be) from acting as an actuary for, any PRA-authorised person or any particular class of PRA-authorised person;
  - (b) to publish a statement to the effect that it appears to the PRA that the auditor or (as the case may be) actuary has failed to comply with the duty;
  - (c) to impose on the auditor or actuary a penalty, payable to the PRA, of such amount as the PRA considers appropriate.
- (5) Where the PRA disqualifies a person under subsection (4)(a) it must—
  - (a) notify the FCA, and
  - (b) notify the person concerned that it has made a notification under paragraph (a).
- (6) Where the PRA disqualifies a person from being the auditor of a PRA-authorised person or class of PRA-authorised person, and that PRA-authorised person is also, or any person within that class is also, a recognised clearing house, the PRA must, in addition to complying with subsection (5)—
  - (a) notify the Bank of England, and
  - (b) notify the disqualified person that it has made a notification under paragraph (a).
- (7) The PRA may remove any disqualification imposed under subsection (4)(a) if satisfied that the disqualified person will in future comply with the duty in question.

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

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### **345B Procedure and right to refer to Tribunal**

- (1) If the FCA proposes to act under section 345(2) or the PRA proposes to act under section 345A(3), it must give the auditor or actuary to whom the action would relate a warning notice.
- (2) A warning notice about a proposal to impose a penalty must state the amount of the penalty.
- (3) A warning notice about a proposal to publish a statement must set out the terms of the statement.
- (4) If the FCA decides to act under section 345(2) or the PRA decides to act under section 345A(3), it must give the auditor or actuary to whom the action would relate a decision notice.
- (5) A decision notice about the imposition of a penalty must state the amount of the penalty.
- (6) A decision notice about the publication of a statement must set out the terms of the statement.
- (7) If the FCA decides to act under section 345(2) or the PRA decides to act under section 345A(3), the auditor or actuary concerned may refer the matter to the Tribunal.

### **345C Duty on publication of statement**

After a statement under section 345(2)(c) or 345A(4)(b) is published, the regulator that published it must send a copy of the statement to—

- (a) the auditor or actuary, and
- (b) any person to whom a copy of the decision notice was given under section 393(4).

### **345D Imposition of penalties on auditors or actuaries: statement of policy**

- (1) The FCA must prepare and issue a statement of its policy with respect to—
  - (a) the imposition of penalties under section 345(2)(d), and
  - (b) the amount of penalties under that provision.
- (2) If by virtue of an order under section 345A(1), the PRA has power to impose penalties under section 345A(4)(c), the PRA must prepare and issue a statement of its policy with respect to—
  - (a) the imposition of penalties under section 345A(4)(c), and
  - (b) the amount of penalties under that provision.
- (3) A regulator's policy in determining what the amount of a penalty should be must include having regard to—
  - (a) the seriousness of the contravention, and
  - (b) the extent to which the contravention was deliberate or reckless.
- (4) A regulator may at any time alter or replace a statement issued under this section.

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

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- (5) If a statement issued under this section is altered or replaced, the regulator must issue the altered or replacement statement.
- (6) A regulator must, without delay, give the Treasury a copy of any statement which it publishes under this section.
- (7) A statement issued under this section must be published by the regulator in the way appearing to the regulator to be best calculated to bring it to the attention of the public.
- (8) In deciding whether to exercise a power under section 345(2)(d) in the case of any particular contravention, the FCA must have regard to any statement of policy published by it under this section and in force at a time when the contravention occurred.
- (9) In deciding whether to exercise a power under section 345A(4)(c) in the case of any particular contravention, the PRA must have regard to any statement of policy published by it under this section and in force at a time when the contravention occurred.
- (10) A regulator may charge a reasonable fee for providing a person with a copy of the statement.

#### **345E Statements of policy: procedure**

- (1) Before a regulator issues a statement under section 345D, the regulator must publish a draft of the proposed statement in the way appearing to the regulator to be best calculated to bring it to the attention of the public.
- (2) The draft must be accompanied by notice that representations about the proposal may be made to the regulator within a specified time.
- (3) Before issuing the proposed statement, the regulator must have regard to any representations made to it in accordance with subsection (2).
- (4) If the regulator issues the proposed statement it must publish an account, in general terms, of—
  - (a) the representations made to it in accordance with subsection (2), and
  - (b) its response to them.
- (5) If the statement differs from the draft published under subsection (1) in a way which is, in the opinion of the regulator, significant, the regulator must (in addition to complying with subsection (4)) publish details of the difference.
- (6) A regulator may charge a reasonable fee for providing a person with a copy of a draft under subsection (1).
- (7) This section also applies to a proposal to alter or replace a statement.”

#### **Commencement Information**

**I127** Sch. 13 para. 7 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

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

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VALID FROM 01/04/2013

- 8 (1) Section 392 (application of sections 393 and 394) is amended as follows.
- (2) In paragraph (a), for “345(2) (whether as a result of subsection (1) of that section” substitute “ 345B(1) (whether as a result of section 345(2), 345A(3) ”.
- (3) In paragraph (b), for “345(3) (whether as a result of subsection (1) of that section” substitute “ 345B(4) (whether as a result of section 345(2), 345A(3) ”.

VALID FROM 01/04/2013

## SCHEDULE 14

Section 44

### AMENDMENTS OF PART 24 OF FSMA 2000: INSOLVENCY

- 1 Part 24 of FSMA 2000 is amended as follows.
- 2 In section 355 (interpretation of Part 24) at the end of subsection (1) insert—
- ““PRA-regulated person” means a person who—
- (a) is or has been a PRA-authorized person,
- (b) is or has been an appointed representative whose principal (or one of whose principals) is, or was, a PRA-authorized person, or
- (c) is carrying on or has carried on a PRA-regulated activity in contravention of the general prohibition.”
- 3 (1) Section 356 (powers to participate in proceedings: company voluntary arrangements) is amended as follows.
- (2) In subsections (1) and (2), for “the Authority” substitute “ or recognised investment exchange, the appropriate regulator ”.
- (3) In subsection (3)—
- (a) for “the Authority”, in the first place, substitute “ a regulator ”, and
- (b) for “the Authority”, in the second place, substitute “ the appropriate regulator ”.
- (4) After subsection (3) insert—
- “(4) The appropriate regulator” means—
- (a) in the case of a PRA-authorized person—
- (i) for the purposes of subsections (1) and (2), the FCA or the PRA, and
- (ii) for the purposes of subsection (3), each of the FCA and the PRA;
- (b) in any other case, the FCA.
- (5) If either regulator makes an application to the court under any of those provisions in relation to a PRA-authorized person, the other regulator is entitled to be heard at any hearing relating to the application.”

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- (5) In the heading, for “Authority's powers” substitute “ Powers of FCA and PRA ”.
- 4 (1) Section 357 (powers to participate in proceedings: individual voluntary arrangements) is amended as follows.
- (2) In subsections (1) to (5), for “Authority” substitute “ appropriate regulator ”.
- (3) In subsection (6)—
- (a) for “the Authority”, in the first place, substitute “ a regulator ”, and
- (b) for “the Authority”, in the second place, substitute “ the appropriate regulator ”.
- (4) After subsection (6) insert—
- “(7) The appropriate regulator” means—
- (a) in the case of a PRA-authorised person—
- (i) for the purposes of subsections (1) and (4) to (6), each of the FCA and the PRA, and
- (ii) for the purposes of subsection (3), the FCA or the PRA;
- (b) in any other case, the FCA.
- (8) If either regulator makes an application to the court under any of the provisions mentioned in subsection (5) in relation to a PRA-authorised person, the other regulator is entitled to be heard at any hearing relating to the application.”
- (5) In the heading, for “Authority's powers” substitute “ Powers of FCA and PRA ”.
- 5 (1) Section 358 (powers to participate in proceedings: trust deeds for creditors in Scotland) is amended as follows.
- (2) In subsections (1), (2) and (6), after “authorised person” insert “ or recognised investment exchange ”.
- (3) In subsections (2) to (4), for “Authority” substitute “ appropriate regulator ”.
- (4) In subsection (5)—
- (a) for “the Authority”, in the first place, substitute “ the appropriate regulator ”, and
- (b) for “the Authority”, in the second place, substitute “ that regulator ”.
- (5) In subsection (6), for “the Authority” substitute “ a regulator ”.
- (6) After subsection (6) insert—
- “(6A) The appropriate regulator” means—
- (a) in the case of a PRA-authorised person—
- (i) for the purposes of subsections (2), (3) and (4), each of the FCA and the PRA, and
- (ii) for the purposes of subsection (5), the FCA or the PRA;
- (b) in any other case, the FCA.”
- (7) In the heading, for “Authority's powers” substitute “ Powers of FCA and PRA ”.
- 6 (1) Section 359 (administration order) is amended as follows.

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- (2) In subsection (1)—
- (a) for “Authority” substitute “ FCA ”, and
  - (b) in paragraph (a), after “authorised person” insert “ or recognised investment exchange ”.
- (3) After subsection (1) insert—
- “(1A) The PRA may make an administration application under Schedule B1 to the 1986 Act or Schedule B1 to the 1989 Order in relation to a company or insolvent partnership which is a PRA-regulated person.”
- (4) In subsection (2), for “the Authority” substitute “ a regulator ”.
- (5) In subsection (4), in the definition of “authorised deposit taker”, for “Part IV”, in both places, substitute “ Part 4A ”.
- 7 (1) Section 361 (administrator's duty to report) is amended as follows.
- (2) For subsection (2) substitute—
- “(2) If the administrator thinks that the company or partnership is carrying on, or has carried on—
- (a) a regulated activity in contravention of the general prohibition, or
  - (b) a credit-related regulated activity in contravention of section 20,
- the administrator must report the matter to the appropriate regulator without delay.”
- (3) After subsection (2) insert—
- “(2A) The appropriate regulator” means—
- (a) where the regulated activity is a PRA-regulated activity, the FCA and the PRA;
  - (b) in any other case, the FCA.”
- (4) For subsection (3) substitute—
- “(3) Subsection (2) does not apply where—
- (a) the administration arises out of an administration order made on an application made or petition presented by a regulator, and
  - (b) the regulator's application or petition depended on a contravention by the company or partnership of the general prohibition.”
- (5) In the heading, for “Authority” substitute “ FCA and PRA ”.
- 8 (1) Section 362 (powers to participate in proceedings: administration orders) is amended as follows.
- (2) In subsection (1)—
- (a) omit “other than the Authority”, and
  - (b) in paragraph (a), after “authorised person” insert “ or recognised investment exchange ”.
- (3) After subsection (1A) insert—
- “(1B) This section also applies in relation to—

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- (a) the appointment under paragraph 22 of Schedule B1 to the 1986 Act (as applied by order under section 420 of the 1986 Act), or under paragraph 23 of Schedule B1 to the 1989 Order (as applied by order under Article 364 of the 1989 Order), of an administrator of a partnership of a kind described in subsection (1)(a) to (c), or
- (b) the filing with the court of a copy of notice of intention to appoint an administrator under either of those paragraphs (as so applied).”
- (4) In subsections (2) to (6), for “Authority” substitute “ appropriate regulator ”.
- (5) After subsection (6) insert—
- “ (7) The appropriate regulator” means—
- (a) for the purposes of subsections (2) to (4) and (6)—
- (i) where the company or partnership is a PRA-regulated person, each of the FCA and the PRA, and
- (ii) in any other case, the FCA;
- (b) for the purposes of subsection (5)—
- (i) where the company or partnership is a PRA-regulated person, the FCA or the PRA, and
- (ii) in any other case, the FCA.
- (8) But where the administration application was made by a regulator “the appropriate regulator” does not include that regulator.”
- (6) In the heading, for “Authority's powers” substitute “ Powers of FCA and PRA ”.
- 9 (1) Section 362A (administrator appointed by company or directors) is amended as follows.
- (2) In subsection (1), after “company” insert “ or partnership ”.
- (3) For subsection (2) substitute—
- “ (2) An administrator of the company or partnership may not be appointed under a provision specified in subsection (2A) without the consent of the appropriate regulator.
- (2A) Those provisions are—
- (a) paragraph 22 of Schedule B1 to the 1986 Act (including that paragraph as applied in relation to partnerships by order under section 420 of that Act);
- (b) paragraph 23 of Schedule B1 to the 1989 Order (including that paragraph as applied in relation to partnerships by order under article 364 of that Order).
- (2B) “The appropriate regulator” means—
- (a) where the company or partnership is a PRA-regulated person, the PRA, and
- (b) in any other case, the FCA.”
- 10 (1) Section 363 (powers to participate in proceedings: receivership) is amended as follows.

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- (2) In subsection (1)(a), after “authorised person” insert “ or recognised investment exchange ”.
- (3) In subsections (2) to (5), for “Authority” substitute “ appropriate regulator ”.
- (4) After subsection (5) insert—
- “(6) The appropriate regulator” means—
- (a) for the purposes of subsections (2) to (4)—
- (i) where the company is a PRA-regulated person, each of the FCA and the PRA, and
- (ii) in any other case, the FCA;
- (b) for the purposes of subsection (5)—
- (i) where the company is a PRA-regulated person, the FCA or the PRA, and
- (ii) in any other case, the FCA.”
- (5) In the heading, for “Authority's powers” substitute “ Powers of FCA and PRA ”.
- 11 In section 364 (receiver's duty to report to Authority)—
- (a) in paragraph (b), after “prohibition” insert “ or a credit-related regulated activity in contravention of section 20 ”,
- (b) for “to the Authority without delay” substitute “ without delay to the FCA and, if the regulated activity concerned is a PRA-regulated activity, to the PRA ”, and
- (c) in the heading, for “Authority” substitute “ FCA and PRA ”.
- 12 (1) Section 365 (powers to participate in proceedings: voluntary winding up) is amended as follows.
- (2) In subsection (1)(b), after “authorised person” insert “ or recognised investment exchange ”.
- (3) In subsections (2) to (7), for “Authority” substitute “ appropriate regulator ”.
- (4) After subsection (7) insert—
- “(8) The appropriate regulator” means—
- (a) for the purposes of subsections (2) to (4), (6) and (7)—
- (i) where the company is a PRA-authorized person, each of the FCA and the PRA, and
- (ii) in any other case, the FCA;
- (b) for the purposes of subsection (5)—
- (i) where the company is a PRA-authorized person, the FCA or the PRA, and
- (ii) in any other case, the FCA.”
- (5) In the heading, for “Authority's powers” substitute “ Powers of FCA and PRA ”.
- 13 (1) Section 366 (insurers effecting or carrying out long-term contracts of insurance) is amended as follows.
- (2) In subsections (1), (2) and (5), for “Authority” substitute “ PRA ”.
- (3) At the end insert—

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- “(9) Before giving or refusing consent under subsection (1), the PRA must consult the FCA.
- (10) In the event that the activity of effecting or carrying out long-term contracts of insurance as principal is not to any extent a PRA-regulated activity—
- (a) references to the PRA in subsections (1), (2) and (5) are to be read as references to the FCA, and
  - (b) subsection (9) does not apply.”
- 14 (1) Section 367 (winding-up petitions) is amended as follows.
- (2) In subsection (1)—
    - (a) for “Authority” substitute “ FCA ”, and
    - (b) in paragraph (a), after “authorised person” insert “ or recognised investment exchange ”.
  - (3) After that subsection insert—
 

“(1A) The PRA may present a petition to the court for the winding up of a body which is a PRA-regulated person.”
  - (4) In subsection (2), for “subsection (1)” substitute “ subsections (1) and (1A) ”.
  - (5) In subsection (6), after “(1)” insert “ or (1A) ”.
- 15 (1) Section 368 (winding-up petitions: EEA and Treaty firms) is amended as follows.
- (2) The existing provision becomes subsection (1).
  - (3) In that subsection—
    - (a) for “The Authority” substitute “ A regulator ”, and
    - (b) after “it” insert “ or the other regulator ”.
  - (4) After that subsection insert—
 

“(2) If a regulator receives from the home state regulator of a body falling within subsection (1)(a) or (b) a request to present a petition to the court under section 367 for the winding up of the body, it must—

    - (a) notify the other regulator of the request, and
    - (b) provide the other regulator with such information relating to the request as it thinks fit.”
- 16 (1) Section 369 (insurers: service of petition etc. on Authority) is amended as follows.
- (2) In subsection (1)—
    - (a) for “the Authority” substitute “ a regulator ”, and
    - (b) for “on the Authority” substitute “ on the appropriate regulator ”.
  - (3) In subsection (2)—
    - (a) for “the Authority” substitute “ a regulator ”, and
    - (b) for “on the Authority” substitute “ on the appropriate regulator ”.
  - (4) After that subsection insert—
 

“(3) The appropriate regulator” means—

    - (a) in relation to a PRA-authorised person, the FCA and the PRA, and

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- (b) in any other case, the FCA.
- (4) If either regulator—
- (a) presents a petition for the winding up of a PRA-authorized person with permission to effect or carry out contracts of insurance, or
  - (b) applies to have a provisional liquidator appointed under section 135 of the 1986 Act (or Article 115 of the 1989 Order) in respect of a PRA-authorized person with permission to effect or carry out contracts of insurance,
- that regulator must serve a copy of the petition or application (as the case requires) on the other regulator.”
- (5) In the heading, for “Authority” substitute “ FCA and PRA ”.
- 17 (1) Section 369A (reclaim funds: service of petition etc. on Authority) is amended as follows.
- (2) In subsection (1)—
- (a) for “other than the Authority” substitute “ other than a regulator ”, and
  - (b) for “on the Authority” substitute “ on the appropriate regulator ”.
- (3) In subsection (2)—
- (a) for “other than the Authority” substitute “ other than a regulator ”, and
  - (b) for “on the Authority” substitute “ on the appropriate regulator ”.
- (4) After subsection (3) insert—
- “(4) The appropriate regulator” means—
- (a) in relation to an authorised reclaim fund that is a PRA-authorized person, the FCA and the PRA, and
  - (b) in relation to any other authorised reclaim fund, the FCA.
- (5) If either regulator—
- (a) presents a petition for the winding up of an authorised reclaim fund that is a PRA-authorized person, or
  - (b) applies to have a provisional liquidator appointed under section 135 of the 1986 Act (or Article 115 of the 1989 Order) in respect of an authorised reclaim fund that is a PRA-authorized person,
- that regulator must serve a copy of the petition or application (as the case requires) on the other regulator.”
- (5) In the heading, for “Authority” substitute “ FCA and PRA ”.
- 18 For section 370 substitute—
- “370 Liquidator's duty to report to FCA and PRA**
- (1) If—
- (a) a company is being wound up voluntarily or a body is being wound up on a petition presented by any person, and
  - (b) it appears to the liquidator that the company or body is carrying on, or has carried on—

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- (i) a regulated activity in contravention of the general prohibition, or  
(ii) a credit-related regulated activity in contravention of section 20,
- the liquidator must report the matter without delay to the FCA and, if the regulated activity concerned is a PRA-regulated activity, to the PRA.
- (2) Subsection (1) does not apply where—
- (a) a body is being wound up on a petition presented by a regulator, and
  - (b) the regulator's petition depended on a contravention by the body of the general prohibition.”
- 19 (1) Section 371 (power to participate in proceedings: winding up by the court) is amended as follows.
- (2) In subsection (1)—
- (a) omit “other than the Authority”, and
  - (b) in paragraph (a), after “authorised person” insert “ or recognised investment exchange ”.
- (3) In subsections (2) to (5), for “Authority” substitute “ appropriate regulator ”.
- (4) After subsection (5) insert—
- “(6) The appropriate regulator” means—
- (a) for the purposes of subsections (2), (3) and (5)—
    - (i) where the body is a PRA-regulated person, each of the FCA and the PRA, and
    - (ii) in any other case, the FCA;
  - (b) for the purposes of subsection (4)—
    - (i) where the body is a PRA-regulated person, the FCA or the PRA, and
    - (ii) in any other case, the FCA.
- (7) But where the petition was presented by a regulator “the appropriate regulator” does not include the regulator which presented the petition.”
- (5) In the heading, for “Authority's powers” substitute “ Powers of FCA and PRA ”.
- 20 (1) Section 372 (bankruptcy petitions) is amended as follows.
- (2) In subsection (1), for “Authority” substitute “ FCA ”.
- (3) After that subsection insert—
- “(1A) The PRA may present a petition to the court—
- (a) under section 264 of the 1986 Act (or Article 238 of the 1989 Order) for a bankruptcy order to be made against an individual who is a PRA-regulated person;
  - (b) under section 5 of the 1985 Act for the sequestration of the estate of an individual who is a PRA-regulated person.”
- (4) In subsection (2), for “such a petition may be presented” substitute “ a petition may be presented by virtue of subsection (1) or (1A) ”.

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- (5) In subsection (4)(a)—
- (a) for “the Authority”, in the first place, substitute “ a regulator ”, and
  - (b) for “the Authority”, in the second place, substitute “ that regulator ”.
- (6) In subsection (6)—
- (a) after “(1)(b)” insert “ or (1A)(b) ”, and
  - (b) in paragraph (a), for “the Authority” substitute “ the regulator by which the petition is presented ”.
- 21 (1) Section 373 (insolvency practitioner's duty to report to Authority) is amended as follows.
- (2) In subsection (1)—
- (a) in paragraph (a), omit the words from “by virtue of” to “Authority”,
  - (b) in paragraph (b), for the words from “carried on” to the end substitute “carried on—
    - (i) a regulated activity in contravention of the general prohibition, or
    - (ii) a credit-related regulated activity in contravention of section 20,”, and
  - (c) for “to the Authority without delay” substitute “ without delay to the FCA and, if the regulated activity concerned is a PRA-regulated activity, to the PRA ”.
- (3) After that subsection insert—
- “(1A) Subsection (1) does not apply where—
- (a) the bankruptcy order or sequestration award is in force by virtue of a petition presented by a regulator, and
  - (b) the regulator's petition depended on a contravention by the individual of the general prohibition.”
- (4) In the heading, for “to Authority” substitute “ to FCA and PRA ”.
- 22 (1) Section 374 (Authority's powers to participate in proceedings: bankruptcy) is amended as follows.
- (2) In subsection (1), omit “other than the Authority”.
- (3) In subsections (2) to (4), for “Authority” substitute “ appropriate regulator ”.
- (4) After subsection (6) insert—
- “(7) The appropriate regulator” means—
- (a) for the purposes of subsections (2) and (3)—
    - (i) where the individual or entity is a PRA-regulated person, each of the FCA and the PRA, and
    - (ii) in any other case, the FCA;
  - (b) for the purposes of subsection (4)—
    - (i) where the individual or entity is a PRA-regulated person, the FCA or the PRA, and
    - (ii) in any other case, the FCA.

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	(8) But where the petition was presented by a regulator “the appropriate regulator” does not include the regulator which presented the petition.”
	(5) In the heading, for “Authority's powers” substitute “ Powers of FCA or PRA ”.
23	(1) Section 375 (Authority's right to apply for an order relating to debt avoidance) is amended as follows.
	(2) In subsection (1), for “Authority” substitute “ FCA ”.
	(3) After subsection (1) insert—
	“(1A) The PRA may apply for an order under section 423 of the 1986 Act (or Article 367 of the 1989 Order) in relation to a debtor if—
	(a) at the time the transaction at an undervalue was entered into, the debtor was carrying on a PRA-regulated activity (whether or not in contravention of the general prohibition); and
	(b) a victim of the transaction is or was party to an agreement entered into with the debtor, the making or performance of which constituted or was part of a PRA-regulated activity carried on by the debtor.”
	(4) In subsection (2), after “subsection (1)(b)” insert “ or subsection (1A)(b) (as the case may be) ”.
	(5) In the heading, for “Authority's right” substitute “ Right of FCA and PRA ”.
24	(1) Section 376 (continuation of contracts of long-term insurance where insurer in liquidation) is amended as follows.
	(2) In subsection (11)(c), for “Authority” substitute “ PRA ”.
	(3) After subsection (11) insert—
	“(11A) The PRA must—
	(a) consult the FCA before making an application under subsection (10), and
	(b) provide the FCA with a copy of any actuary's report made to the PRA under that subsection.
	(11B) In the event that the activity of effecting or carrying out long-term contracts of insurance as principal is not to any extent a PRA-authorized activity—
	(a) the reference in subsection (11)(c) to the PRA is to be read as a reference to the FCA, and
	(b) subsection (11A) does not apply.”

## SCHEDULE 15

Section 45

## THE CONSUMER FINANCIAL EDUCATION BODY

- 1 Schedule 1A (further provision about the consumer financial education body) is amended as follows.

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**Commencement Information**

**I128** Sch. 15 para. 1 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 2 In paragraph 1 (ensuring exercise of functions) for “Authority”, in each place, substitute “ FCA ”.

**Commencement Information**

**I129** Sch. 15 para. 2 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 3 In paragraph 2 (constitution) for “Authority”, in each place, substitute “ FCA ”.

**Commencement Information**

**I130** Sch. 15 para. 3 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 4 In paragraph 3 (status), in sub-paragraph (2), omit “board members,”.

**Commencement Information**

**I131** Sch. 15 para. 4 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 5 In paragraph 4 (discharge of functions by others), in sub-paragraph (1)(a), for “section 6A(1)” substitute “ section 3S(3) ”.

**Commencement Information**

**I132** Sch. 15 para. 5 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 6 In paragraph 5 in sub-paragraph (1), for “section 6A(1)” substitute “ section 3S(3) ”.

**Commencement Information**

**I133** Sch. 15 para. 6 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 7 For paragraph 6 (and the italic heading before it) substitute—

*“Discharge of functions: considerations*

- 6 In discharging the consumer financial education function the consumer financial education body must have regard to the duty of the FCA to advance its operational objectives.

*Relationship with the FCA*

- 6A (1) The consumer financial education body and the FCA must each take such steps as it considers appropriate to co-operate with the other in the exercise of their functions under this Act.

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- (2) The consumer financial education body and the FCA must prepare and maintain a memorandum describing how they intend to comply with sub-paragraph (1).
- (3) The consumer financial education body must ensure that the memorandum as currently in force is published in the way appearing to it to be best calculated to bring it to the attention of the public.
- 6B If the consumer financial education body considers that it has information that, in its opinion, would or might be of assistance to the FCA in advancing one or more of the FCA's operational objectives, it must disclose that information to the FCA.”

**Commencement Information**

**I134** Sch. 15 para. 7 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 8 In paragraph 7 (budget) for “Authority”, in each place, substitute “ FCA ”.

**Commencement Information**

**I135** Sch. 15 para. 8 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 9 In paragraph 8 (annual plan)—
- (a) for “Authority”, in each place, substitute “ FCA ”, and
- (b) in sub-paragraph (6), after paragraph (d) insert—
- “*(da)* the Smaller Business Practitioner Panel;”.

**Commencement Information**

**I136** Sch. 15 para. 9 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 10 In paragraph 9 (annual reports)—
- (a) for “Authority”, in each place, substitute “ FCA ”, and
- (b) at the end insert—
- “(5) The Treasury may—
- (a) require the consumer financial education body to comply with any provision of the Companies Act 2006 about accounts and their audit which would not otherwise apply to it, or
- (b) direct that any provision of that Act about accounts and their audit is to apply to the consumer financial education body with such modifications as are specified in the direction, whether or not the provision would otherwise apply to it.
- (6) Compliance with any requirement under sub-paragraph (5)(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.

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(7) Proceedings under sub-paragraph (6) may be brought only by the Treasury.”

**Commencement Information**

**I137** Sch. 15 para. 10 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

11 After paragraph 9 insert—

*“Audit of accounts*

- 9A (1) The consumer financial education body must send a copy of its annual accounts to the Comptroller and Auditor General and the Treasury 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 consumer financial education body must send a copy of the certified accounts and the report to the FCA.
- (5) Except as provided for by paragraph 9(5), the consumer financial education body 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 by section 471 of the Companies Act 2006.”

**Commencement Information**

**I138** Sch. 15 para. 11 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

12 In paragraph 11 (meaning of “relevant costs”) for “Authority” substitute “ FCA ”.

**Commencement Information**

**I139** Sch. 15 para. 12 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

13 In paragraph 12 (funding) for “Authority”, in each place, substitute “ FCA ”.

**Commencement Information**

**I140** Sch. 15 para. 13 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

14 In paragraph 13 (funding by consumer credit licensees), in sub-paragraph (5)(a), for “Authority” substitute “ FCA ”.

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**Commencement Information**

**I141** Sch. 15 para. 14 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 15 In paragraph 15 (reviews of use of resources), for “Authority”, in each place, substitute “ FCA ”.

**Commencement Information**

**I142** Sch. 15 para. 15 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

- 16 In the title to the Schedule, in the marginal reference, for “Section 6A” substitute “ Section 3S ”.

**Commencement Information**

**I143** Sch. 15 para. 16 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

VALID FROM 01/04/2013

SCHEDULE 16

Section 46

PROVISION OF FINANCIAL SERVICES BY MEMBERS OF THE PROFESSIONS

- 1 In section 325 (general duty)—
- (a) for “Authority”, in each place, substitute “ FCA ”, and
  - (b) in the heading, for “Authority's” substitute “FCA's”.
- 2 In section 328 (directions relating to the general prohibition), for “Authority”, in each place, substitute “ FCA ”.
- 3 In section 329 (orders relating to the general prohibition), for “Authority”, in each place, substitute “ FCA ”.
- 4 In section 330 (consultation)—
- (a) for “Authority”, in each place, substitute “ FCA ”, and
  - (b) 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 direction is given, or
      - (ii) if subsection (5)(b) applies, from the direction that has been given, and
    - (b) subject to subsection (10A), an estimate of those costs and of those benefits.
- (10A) If, in the opinion of the FCA—

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	(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.”
5	In section 331 (procedure for making orders), for “Authority”, in each place, substitute “ FCA ”.
6	In section 332 (rules relating to persons to whom the general prohibition does not apply), for “Authority”, in each place, substitute “ FCA ”.

VALID FROM 01/04/2013

## SCHEDULE 17

Section 106

### AMENDMENTS OF BANKING ACT 2009 RELATED TO PART 2 OF THIS ACT

#### PART 1

##### AMENDMENTS OF PART 1 OF THE ACT

1 Part 1 of the Banking Act 2009 is amended as follows.

2 (1) Section 1 (overview) is amended as follows.

(2) In subsection (5), for paragraph (c) and the “and” before it, substitute—

“(c) the Prudential Regulation Authority, and

(d) the Financial Conduct Authority.”

(3) In the Table, after the entry relating to sections 82 and 83, insert—

“Section 83A

Banks not regulated by the PRA”.

3 In section 2 (interpretation: “bank”), for “Part 4” substitute “ Part 4A ”.

4 In section 3 (interpretation: other expressions), for the definition of “the FSA” and the “and” following it, substitute—

““the PRA” means the Prudential Regulation Authority,

“the FCA” means the Financial Conduct Authority, and”.

5 In section 4 (special resolution objectives), in subsection (3), for paragraph (b) and the “and” following it, substitute—

“(b) the PRA,

(ba) the FCA, and”.

6 In section 5 (code of practice), in subsection (5), for paragraph (b) and the “and” following it, substitute—

“(b) the PRA,

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	(ba) the FCA, and”.
7	<p>(1) Section 6 (code of practice: procedure) is amended as follows.</p> <p>(2) Omit subsections (1) and (2).</p> <p>(3) For subsection (4) substitute—</p> <p style="padding-left: 40px;">“(4) Before re-issuing the code of practice the Treasury must consult—</p> <p style="padding-left: 80px;">(a) the PRA,</p> <p style="padding-left: 80px;">(b) the FCA,</p> <p style="padding-left: 80px;">(c) the Bank of England, and</p> <p style="padding-left: 80px;">(d) the scheme manager of the Financial Services Compensation Scheme (established under Part 15 of the Financial Services and Markets Act 2000).</p> <p style="padding-left: 40px;">(5) As soon as is reasonably practicable after re-issuing the code of practice the Treasury shall lay a copy before Parliament.”</p>
8	<p>(1) Section 7 (general conditions) is amended as follows.</p> <p>(2) In subsection (1), for “FSA” substitute “ PRA ”.</p> <p>(3) In subsection (2), omit the words from “(within” to the end.</p> <p>(4) In subsection (4), for “FSA” substitute “ PRA ”.</p> <p>(5) After that subsection insert—</p> <p style="padding-left: 40px;">“(4A) The threshold conditions” means the threshold conditions, as defined by subsection (1) of section 55B of the Financial Services and Markets Act 2000, for which the PRA is treated as responsible under subsection (2) of that section.”</p> <p>(6) In subsection (5)—</p> <p style="padding-left: 40px;">(a) for “FSA” substitute “ PRA ”, and</p> <p style="padding-left: 40px;">(b) at the end of paragraph (a) insert—</p> <p style="padding-left: 80px;">“(aa) the FCA,”.</p>
9	<p>In section 8 (specific conditions: private sector purchaser and bridge bank), in subsection (3), for paragraph (a) and the “and” following it, substitute—</p> <p style="padding-left: 40px;">“(a) the PRA,</p> <p style="padding-left: 40px;">(aa) the FCA, and”.</p>
10	<p>In section 9 (specific conditions: temporary public ownership), in subsection (4), for paragraph (a) and the “and” following it, substitute—</p> <p style="padding-left: 40px;">“(a) the PRA,</p> <p style="padding-left: 40px;">(aa) the FCA, and”.</p>
11	<p>In section 10 (Banking Liaison Panel), in subsection (3), for paragraph (c) substitute—</p> <p style="padding-left: 40px;">“(c) a member appointed by the PRA,</p> <p style="padding-left: 40px;">(ca) a member appointed by the FCA,”.</p>
12	<p>In section 24 (procedure: instruments), in subsection (1), for paragraph (c) and the “and” following it, substitute—</p> <p style="padding-left: 40px;">“(c) the PRA,</p>

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	(ca) the FCA, and”.
13	In section 25 (procedure: orders), in subsection (2), for paragraph (c) and the “and” following it, substitute— “(c) the PRA, (ca) the FCA, and”.
14	In section 26 (supplemental instruments), in subsection (5), for paragraph (a) and the “and” following it, substitute— “(a) the PRA, (aa) the FCA, and”.
15	In section 27 (supplemental orders), in subsection (5), for paragraph (a) and the “and” following it, substitute— “(a) the PRA, (aa) the FCA, and”.
16	In section 28 (onward transfer), in subsection (6), for paragraph (a) and the “and” following it, substitute— “(a) the PRA, (aa) the FCA, and”.
17	In section 29 (reverse share transfer), in subsection (6), for paragraph (a) and the “and” following it, substitute— “(a) the PRA, (aa) the FCA, and”.
18	In section 30 (bridge bank: share transfers), in subsection (5), for paragraph (a) and the “and” following it, substitute— “(a) the PRA, (aa) the FCA, and”.
19	In section 31 (bridge bank: reverse share transfer), in subsection (5), for paragraph (a) and the “and” following it, substitute— “(a) the PRA, (aa) the FCA, and”.
20	In section 41 (procedure), in subsection (1), for paragraph (c) and the “and” following it, substitute— “(c) the PRA, (ca) the FCA, and”.
21	In section 42 (supplemental instruments), in subsection (5), for paragraph (a) and the “and” following it, substitute— “(a) the PRA, (aa) the FCA, and”.
22	In section 43 (onward transfer), in subsection (7), for paragraph (a) and the “and” following it, substitute— “(a) the PRA, (aa) the FCA, and”.
23	In section 44 (reverse property transfer), in subsection (6), for paragraph (a) and the “and” following it, substitute— “(a) the PRA,

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	(aa) the FCA, and”.
24	In section 45 (temporary public ownership: property transfer), in subsection (8), for paragraph (a) and the “and” following it, substitute— “(a) the PRA, (aa) the FCA, and”.
25	In section 46 (temporary public ownership: reverse property transfer), in subsection (7), for paragraph (a) and the “and” following it, substitute— “(a) the PRA, (aa) the FCA, and”.
26	In section 57 (valuation principles), in subsection (4)(a), for “Part 4” substitute “Part 4A”.
27	(1) Section 82 (temporary public ownership) is amended as follows. (2) In subsection (2), for “the FSA are” substitute “the PRA is”. (3) In subsection (5), for paragraph (a) and the “and” following it, substitute— “(a) the PRA, (aa) the FCA, and”.
28	After section 83 insert—  <i>“Banks not regulated by PRA</i>
	<b>83A Modifications of Part</b>
	(1) In the application of this Part to an FCA-regulated bank the modifications specified in the Table apply. (2) In this section— “FCA-regulated bank” means a bank which does not carry on any activity which is a PRA-regulated activity for the purposes of the Financial Services and Markets Act 2000; “immediate group” has the meaning given by section 421ZA of the Financial Services and Markets Act 2000; “PRA-authorised person” has the meaning given by section 2B(5) of that Act.
	<b>PART 2</b>
	AMENDMENTS OF PART 2 OF THE ACT
29	Part 2 of the Banking Act 2009 is amended as follows.
30	In section 91 (interpretation: “bank”), for “Part 4” substitute “Part 4A”.
31	In section 93 (interpretation: other expressions), for subsection (1) substitute— “(1) In this Part— (a) “the PRA” means the Prudential Regulation Authority, and (b) “the FCA” means the Financial Conduct Authority.”

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- 32 In section 95 (application), in subsection (1)(b), for “FSA” substitute “ PRA ”.
- 33 In section 96 (grounds for applying), for “FSA”, in each place, substitute “ PRA ”.
- 34 In section 97 (grounds for making), in subsection (1), for “FSA” substitute “ PRA ”.
- 35 In section 98 (commencement), in subsection (2), for “FSA”, in both places, substitute “ PRA ”.
- 36 (1) Section 100 (liquidation committee) is amended as follows.
- (2) For subsection (2) substitute—
- “(2) The liquidation committee is to consist initially of—
- (a) two individuals nominated by the Bank of England,
- (b) one individual nominated by the PRA,
- (c) one individual nominated by the FCA, and
- (d) one individual nominated by the FSCS.”
- (3) In subsection (6)(c), for “and the FSA” substitute “ , the PRA and the FCA ”.
- 37 In section 101 (liquidation committee: supplemental), in subsection (7), for “FSA” substitute “ PRA, the FCA ”.
- 38 In section 103 (general powers, duties and effect), in the Table—
- (a) in the entry relating to section 147 of the Insolvency Act 1986, for “FSA” substitute “ PRA ”, and
- (b) in the entry relating to section 241 of that Act, for “FSA” substitute “ PRA ”.
- 39 (1) Section 108 (removal by court) is amended as follows.
- (2) In subsection (1)(b), for “FSA” substitute “ PRA ”.
- (3) In subsection (2)—
- (a) for “FSA” substitute “ PRA ”, and
- (b) after “England” insert “ and the FCA ”.
- (4) In subsection (3), for “FSA” substitute “ PRA and the FCA ”.
- 40 In section 109 (removal by creditors), in subsection (4) for “and the FSA” substitute “ , the PRA and the FCA ”.
- 41 In section 113 (company voluntary arrangement), in subsection (2)(b), for sub-paragraph (i) substitute—
- “(i) the PRA,
- (ia) the FCA,”.
- 42 In section 115 (dissolution), in subsection (2)(b), for sub-paragraph (i) substitute—
- “(i) the PRA,
- (ia) the FCA,”.
- 43 In section 117 (bank insolvency as alternative order), in subsection (2)(a)—
- (a) for “FSA” substitute “ PRA ”, and
- (b) after “England” insert “ and the FCA ”.

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- 44 (1) Section 120 (notice of preliminary steps) is amended as follows.
- (2) For “FSA”, in each place (including the heading), substitute “ PRA ”.
- (3) In subsection (6), after “filed” insert “ (in Scotland, lodged) ”.
- (4) In subsection (10), in paragraph (a), after “England” insert “ and the FCA ”.

45 After section 129 insert—

**“129A Banks not regulated by PRA**

(1) In the application of this Part to an FCA-regulated bank the modifications specified in the Table apply.

(2) In this section—

“FCA-regulated bank” means a bank which does not carry on any activity which is a PRA-regulated activity for the purposes of the Financial Services and Markets Act 2000;

“immediate group” has the meaning given by section 421ZA of the Financial Services and Markets Act 2000;

“PRA-authorised person” has the meaning given by section 2B(5) of that Act.

**PART 3**

AMENDMENTS OF PART 3 TO THE ACT

46 Part 3 of the Banking Act 2009 is amended as follows.

47 In section 147 (administrator's proposals), in subsection (6), for “FSA” substitute “ PRA and a copy of it to the FCA ”.

48 In section 153 (successful rescue), in subsection (3), for “FSA” substitute “ PRA and the FCA ”.

49 In section 157 (other processes), in subsection (1), for “Before exercising an insolvency power in respect of a residual bank the FSA” substitute “ Before the PRA or the FCA exercises an insolvency power in respect of a residual bank, whichever of them is exercising the power ”.

50 After section 157 insert—

**“157A Banks not regulated by PRA**

(1) In the application of this Part to an FCA-regulated bank the modifications specified in the Table apply.

(2) In this section “FCA-regulated bank” means a bank which does not carry on any activity which is a PRA-regulated activity for the purposes of the Financial Services and Markets Act 2000.

51 In section 166 (interpretation: general), for subsection (2) substitute—

“(2) In this Part—

“the FCA” means the Financial Conduct Authority, and

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“the PRA” means the Prudential Regulation Authority.”

#### PART 4

##### AMENDMENTS OF PARTS 4 TO 6 OF THE ACT

- 52 Parts 4 to 6 of the Banking Act 2009 are amended as follows.
- 53 (1) Section 183 (interpretation of Part 5) is amended as follows.
- (2) In paragraph (c)—
- (a) for “section 3(2)” substitute “ section 11 ”, and
- (b) omit “(market confidence)”.
- (3) For paragraph (e), and the “and” before it, substitute—
- “(e) the FCA” means the Financial Conduct Authority,
- (f) “Part 4A permission” has the meaning given by section 55A of the Financial Services and Markets Act 2000,
- (g) “the PRA” means the Prudential Regulation Authority,
- (h) “PRA-regulated activity” has the meaning given by section 22A of the Financial Services and Markets Act 2000, and
- (i) “recognised investment exchange” has the meaning given by section 285 of that Act.”
- 54 In section 223 (termination of right to issue), in subsections (5) and (6), for “Part 4” substitute “ Part 4A ”.
- 55 (1) Section 232 (definition) is amended as follows.
- (2) In subsections (2) and (6)(a), for “Part 4” substitute “ Part 4A ”.
- (3) In subsection (5B), in the definition of “rules”, for “section 139(1)” substitute “ section 137B(1) ”.
- (4) After subsection (6) insert—
- “(7) The Treasury may by order amend the definition of “investment activity” in subsection (5B), including by defining that term by reference to rules or guidance made by the PRA or the FCA under the Financial Services and Markets Act 2000.”
- 56 In section 234 (regulations: details), for subsection (8)(b) substitute—
- “(b) the Prudential Regulation Authority,
- (ba) the Financial Conduct Authority,”.
- 57 In section 235 (regulations: procedure), at the end insert—
- “(6) An order under section 232(7)—
- (a) is to be made by statutory instrument, and
- (b) is subject to annulment in pursuance of a resolution of either House of Parliament.”
- 58 In section 246 (information), in subsection (2)—
- (a) for paragraph (b) substitute—
- “(b) the Prudential Regulation Authority;

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	(ba) the Financial Conduct Authority;”, and
	(b) in paragraph (d), for “or the Financial Services Authority” substitute, “the Prudential Regulation Authority or the Financial Conduct Authority”.
59	(1) Section 249 (functions) is amended as follows.
	(2) In subsection (1)—
	(a) for “Financial Services Authority” substitute “ Prudential Regulation Authority or the Financial Conduct Authority ”, and
	(b) for “the Authority” substitute “ that authority ”.
	(3) In subsection (2), for “Financial Services Authority” substitute “ Prudential Regulation Authority or the Financial Conduct Authority ”.
	(4) Omit subsection (3).
60	In section 250 (information), for “Financial Services Authority” substitute “ Prudential Regulation Authority. ”
61	(1) Section 259 (statutory instruments) is amended as follows.
	(2) In the entry in the Table relating to section 232, for “232” substitute “ 232(6) ”.
	(3) After that entry insert—
“232(7)	Investment banks: definition of investment Negative resolution”. activity
	(4) In the entry in the Table relating to section 249, for “FSA—” substitute “ PRA or FCA— ”.
62	In the Table in section 261 (index of defined terms)—
	(a) after the entry relating to “enactment” insert—
	“FCA 3, 93, 166 & 183”
	(b) omit the entry relating to the FSA, and
	(c) after the entry relating to “partial property transfer” insert—
	“PRA 3, 93, 166 & 183”.

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## SCHEDULE 18

Section 114(1)

### FURTHER MINOR AND CONSEQUENTIAL AMENDMENTS

#### PART 1

##### AMENDMENTS OF FSMA 2000

VALID FROM 01/04/2013

1 FSMA 2000 is amended as follows.

VALID FROM 01/04/2013

- 2
- (1) Section 33 (withdrawal of authorisation) is amended as follows.
  - (2) In subsection (1)(a), for “Part IV permission” substitute “ Part 4A permission ”.
  - (3) In subsection (2), for “Authority” substitute “ appropriate regulator ”.
  - (4) After that subsection insert—
    - “(2A) In subsection (2) “the appropriate regulator” means—
      - (a) in the case of a PRA-authorised person, the PRA, and
      - (b) in any other case, the FCA.”
  - (5) In the heading, omit “by the Authority”.

VALID FROM 01/04/2013

- 3
- (1) Section 36 (persons authorised as a result of being concerned in collective investment schemes) is amended as follows.
  - (2) In subsection (1), for “Authority” substitute “ FCA ”.
  - (3) In subsection (2), for “Part IV permission” substitute “ Part 4A permission ”.

VALID FROM 01/04/2013

4 In section 38 (exemption orders), in subsection (2), for “Part IV permission” substitute “ Part 4A permission ”.

- 5
- (1) Section 39 (exemption of appointed representatives) is amended as follows.
  - (2) In subsection (1B), for “Authority”, in each place, substitute “ FCA ”.
  - (3) For subsection (4) substitute—
    - “(4) In determining whether an authorised person has complied with—
      - (a) a provision contained in or made under this Act, or

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- (b) a qualifying EU provision that is specified, or of a description specified, for the purposes of this subsection by the Treasury by order,

anything which a relevant person has done or omitted as respects business for which the authorised person has accepted responsibility is to be treated as having been done or omitted by the authorised person.”

#### Commencement Information

**I144** Sch. 18 para. 5 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2

VALID FROM 01/04/2013

- 6 In section 39A (tied agents operating outside the United Kingdom), for “Authority”, in each place, substitute “ FCA ”.

VALID FROM 01/04/2013

- 7 In section 97(1)(d) (contravention of Part 6 rules: appointment of persons to carry out investigations), for “83, 85, 87G or 98” substitute “ 85 or 87G ”.

VALID FROM 01/04/2013

- 8 In section 177 (offences), in subsection (2), after “director or” insert “ other ”.

VALID FROM 01/04/2013

- 9 (1) In each of the provisions of Part 17 (collective investment schemes) mentioned in sub-paragraph (2), for “Authority”, or “Authority's”, in each place, substitute “ FCA ” or “FCA's”.

(2) Those provisions are—

- (a) sections 237 to 239;
- (b) sections 242 to 252A;
- (c) sections 254 to 262 (including the heading to section 259);
- (d) section 264;
- (e) section 266;
- (f) sections 271 to 283B.

- 10 (1) Section 249 (disqualification of auditor for breach of trust scheme rules) is amended as follows.

(2) In subsection (1) for the words from “it may” to the end substitute “it may do one or more of the following—

- (a) disqualify the auditor from being the auditor of any authorised unit trust scheme or authorised open-ended investment company;

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- (b) publish a statement to the effect that it appears to the FCA that the auditor has failed to comply with the duty;
  - (c) impose on the auditor a penalty, payable to the FCA, of such amount as the FCA considers appropriate.”
- (3) For subsection (2) substitute—
- “(2) Sections 345B to 345E have effect in relation to the taking of action under subsection (1) as they have effect in relation to the taking of action under section 345(2).”
- (4) For the heading substitute “ Disciplinary measures ”.

#### Commencement Information

**I145** Sch. 18 para. 10 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

VALID FROM 01/04/2013

- 11 (1) Section 250 (modification or waiver of rules) is amended as follows.
- (2) In subsection (4)—
- (a) for “Subsections (3) to (9) and (11) of section 148” substitute “ Section 138A and subsections (1) to (3), (5) and (6) of section 138B ”,
  - (b) for “section 148(2)” substitute “ section 138A(1) ”, and
  - (c) in paragraph (c), for “subsection (7)(b)” substitute “ section 138B(3)(c) ”.
- (3) In subsection (5)—
- (a) for “Subsections (3) to (9) and (11) of section 148” substitute “ Section 138A and subsections (1) to (3), (5) and (6) of section 138B ”,
  - (b) for “section 148(2)” substitute “ section 138A(1) ”,
  - (c) in paragraph (a), for “subsection (4)(a)” substitute “ subsection (4)(a) of section 138A ”,
  - (d) in paragraph (b), for “subsection (7)(b) and (11)” substitute “ section 138B(3)(c) and the definition of “immediate group” in section 421ZA as it applies to that section ”,
  - (e) in paragraph (c), for “subsection (7)(b)” substitute “ section 138B(3)(c) ”,
  - (f) in paragraph (d), for “subsection (8)” substitute “ section 138B(5) ”, and
  - (g) in paragraph (e), for “subsection (9)” substitute “ section 138A(7) ”.

VALID FROM 01/04/2013

- 12 In section 257 (directions), in subsection (5), for “section 150” substitute “ section 138D ”.

VALID FROM 01/04/2013

- 13 In section 267 (power to suspend promotion of scheme)—

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- (a) in subsections (1), (2), (4) (in both places) and (5) (in both places), for “Authority” substitute “ FCA ”, and
- (b) in the heading for “Authority” substitute “ FCA ”.

VALID FROM 01/04/2013

- 14 In section 268 (section 267: procedure)—
- (a) in subsection (2), for “Authority” substitute “ FCA ”,
  - (b) in subsection (3), for “the Authority” substitute “ the FCA ”,
  - (c) in subsection (4)(c), for “Authority's” substitute “FCA's”,
  - (d) in subsections (4)(d), (5) and (6) for “Authority” substitute “ FCA ”,
  - (e) in subsection (7), for “The Authority” substitute “ The FCA ”,
  - (f) in subsection (8), for “Authority” substitute “ FCA ”,
  - (g) in subsection (9), for “The Authority” substitute “ The FCA ”,
  - (h) in subsection (13), for “Authority's” substitute “FCA's”, and
  - (i) in the heading, for “Authority's” substitute “FCA's”.

VALID FROM 01/04/2013

- 15 In section 269 (procedure: application for variation or revocation of direction)—
- (a) in subsections (1), (2), (4) and (5), for “Authority” substitute “ FCA ”, and
  - (b) in subsection (6), for “The Authority” substitute “ The FCA ”.

VALID FROM 01/04/2013

- 16 In section 270 (schemes authorised in designated countries or territories)—
- (a) in subsection (1), in each place, for “Authority” substitute “ FCA ”,
  - (b) in subsections (2)(b) and (5) (in both places), for “the Authority” substitute “ the FCA ”, and
  - (c) in subsection (6), for “Authority” substitute “ FCA ”.

VALID FROM 01/04/2013

- 17 In section 284 (power to investigate), in subsection (11), for “the Authority” substitute “ the FCA ”.

VALID FROM 01/04/2013

- 18 In section 404 (consumer redress scheme), for “Authority”, in each place, substitute “ FCA ”.

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VALID FROM 01/04/2013

- 19 In section 404A (supplementary provision relating to rules under section 404), for “Authority” or “Authority's”, in each place, substitute “ FCA ” or “FCA's”.

VALID FROM 01/04/2013

- 20 (1) Section 404F (definitions etc.) is amended as follows.
- (2) For “Authority”, in each place, substitute “ FCA ”.
- (3) In subsection (8), for paragraph (a) substitute—
- “(a) the variation under section 55H or 55J of a Part 4A permission,
  - (aa) the imposition or variation of a requirement under section 55L, or”.

VALID FROM 01/04/2013

- 21 (1) Section 405 (directions) is amended as follows.
- (2) In subsection (1)—
- (a) for “Authority” substitute “ appropriate regulator ”,
  - (b) in paragraph (a), for “Part IV” substitute “ Part 4A ”, and
  - (c) in paragraphs (c) and (d), for “notice of control” substitute “ section 178 notice ”.
- (3) In subsection (2)(b), for “notices of control” substitute “ section 178 notices ”.
- (4) After subsection (4) insert—
- “(4A) The appropriate regulator”—
- (a) for the purposes of subsection (1)(a) and (b), is the regulator to which the application for permission under Part 4A is made;
  - (b) for the purposes of subsection (1)(c) and (d), is the appropriate regulator as defined in section 178(2A).
- (4B) “Section 178 notice” means a notice given under section 178.”

VALID FROM 01/04/2013

- 22 (1) Section 407 (consequences of a direction under section 405) is amended as follows.
- (2) In subsection (1)—
- (a) for “the Authority”, in the first place, substitute “ a regulator ”,
  - (b) in paragraph (a), for “subsections (7) to (9) of section 52 do” substitute “ section 55X does ”, and
  - (c) in paragraph (b), for “Authority” substitute “ regulator ”.
- (3) In subsection (2)—
- (a) for “the Authority”, in the first place, substitute “ a regulator ”,

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(b) in paragraph (a), for “section 52(1) and (2)” substitute “ subsections (1) to (3) of section 55V ”, and

(c) in paragraph (b), for “Authority” substitute “ regulator ”.

(4) In subsection (3)—

(a) for “the Authority”, in the first place, substitute “ a regulator ”, and

(b) in paragraph (b), for “Authority” substitute “ regulator ”.

VALID FROM 01/04/2013

23 In section 409 (Gibraltar), in subsection (2), for “Part IV permission” substitute “ Part 4A permission ”.

VALID FROM 01/04/2013

24 In section 415 (jurisdiction in civil proceedings), in subsection (1), for paragraph (a) substitute—

“(a) the FCA,

(aa) the PRA,

(ab) the Bank of England.”.

VALID FROM 01/04/2013

25 (1) Section 415A (interpretation of powers under the Act) is amended as follows.

(2) For “Authority” substitute “ FCA, the PRA or the Bank of England ”.

(3) In the heading to the section and the italic heading before it, for “of the Authority” substitute “ under the Act ”.

VALID FROM 01/04/2013

26 In paragraph 8 of Schedule 6 (additional threshold conditions), in subparagraph (2)(b), for “the Authority” substitute “ such of the FCA or the PRA as may be specified, ”.

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VALID FROM 01/04/2013

## PART 2

### AMENDMENTS OF OTHER ACTS OF PARLIAMENT

#### *Bankers' Books Evidence Act 1879 (c. 11)*

- 27 In section 9 of the Bankers' Books Evidence Act 1879 (interpretation), in subsection (1A)(a), for “Part 4” substitute “ Part 4A ”.

#### *Agricultural Credits Act 1928 (c. 43)*

- 28 In section 5 of the Agricultural Credits Act 1928 (agricultural charges on farming stock and assets), in subsection (7), in the definition of “Bank”, for “Part 4” substitute “ Part 4A ”.

#### *Agricultural Credits (Scotland) Act 1929 (19 & 20 Geo. 5 c. 13)*

- 29 In section 9 of the Agricultural Credits (Scotland) Act 1929 (interpretation), in subsection (2), in the definition of “Bank”, for “Part 4” substitute “ Part 4A ”.

#### *Fire Services Act 1947 (c. 41)*

- 30 In section 27A of the Fire Services Act 1947 (information in connection with firemen's pensions etc.) (as that section continues to have effect by virtue of the Firefighters' Pension Scheme (England and Scotland) Order 2004 and the Fire and Rescue Services Act 2004 (Firefighters' Pension Scheme) (Wales) Order 2004), in subsection (2)(a), for “section 150” substitute “ section 138D ”.

#### *Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 (c. 65)*

- 31 In section 57 of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 (life policies: supplementary provisions), in subsection (5A), for “section 150” substitute “ section 138D ”.

#### *Theft Act 1968 (c. 60)*

- 32 In section 24A of the Theft Act 1968 (dishonestly retaining a wrongful credit), in subsection (9), for paragraph (c) substitute—  
“(c) a person falling within any of paragraphs (a) to (j) of the definition of “electronic money issuer” in regulation 2(1) of the Electronic Money Regulations 2011.”

#### *Decimal Currency Act 1969 (c. 19)*

- 33 In section 7 of the Decimal Currency Act 1969 (payments under friendly society and industrial assurance contracts: supplemental), in subsection (5), for “section 138” substitute “ sections 137A and 137G ”.

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*Employers' Liability (Compulsory Insurance) Act 1969 (c. 57)*

- 34 In section 1 of the Employers' Liability (Compulsory Insurance) Act 1969 (insurance against liability for employees), in subsection (3)(b)(i), for “Part 4” substitute “ Part 4A ”.

*Superannuation Act 1972 (c. 11)*

- 35 In section 1 of the Superannuation Act 1972 (superannuation schemes: civil servants), in subsection (9), in the definition of “authorised provider”, for “Part 4” substitute “ Part 4A ”.

*Employment Agencies Act 1973 (c. 35)*

- 36 In section 9 of the Employment Agencies Act 1973 (inspection), in subsection (1AC), for “Part 4” substitute “ Part 4A ”.

*Consumer Credit Act 1974 (c. 39)*

- 37 (1) The Consumer Credit Act 1974 is amended as follows.
- (2) In section 16 (exempt agreements)—
- (a) in subsection (3A), in the Table—
- (i) for “Financial Services Authority”, in the first place, substitute “ Financial Conduct Authority ”, and
- (ii) for “and the Financial Services Authority”, substitute “ , the Financial Conduct Authority and the Prudential Regulation Authority ”, and
- (b) in subsection (10), in paragraphs (a)(i) and (b)(i), for “Part 4” substitute “Part 4A.
- (3) In section 25 (licensee to be a fit person), in subsection (1B)—
- (a) for “Part 4” substitute “ Part 4A ”, and
- (b) for “the Financial Services Authority” substitute “ the regulator which granted the permission under Part 4A ”.
- (4) In section 35 (the register), in subsection (1A), for “Financial Services Authority” substitute “ Financial Conduct Authority or the Prudential Regulation Authority ”.

*Solicitors Act 1974 (c. 47)*

- 38 In section 87 of the Solicitors Act 1974 (interpretation), in the definition of “bank” in subsection (1) and in subsection (1A)(a), for “Part 4” substitute “ Part 4A ”.

*House of Commons Disqualification Act 1975 (c. 24)*

- 39 In Part 3 of Schedule 1 to the House of Commons Disqualification Act 1975 (other disqualifying offices)—
- (a) omit the entry “Member of the governing body of the Financial Services Authority”, and

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- (b) at the appropriate place in each case insert— “ Member of the governing body of the Financial Conduct Authority; ”; “ Member of the governing body of the Prudential Regulation Authority; ”.

*Northern Ireland Assembly Disqualification Act 1975 (c. 25)*

40 In Part 3 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (other disqualifying offices)—

- (a) omit the entry “Member of the governing body of the Financial Services Authority”, and  
(b) at the appropriate place in each case insert— “ Member of the governing body of the Financial Conduct Authority; ”; “ Member of the governing body of the Prudential Regulation Authority; ”.

*Police Pensions Act 1976 (c. 35)*

41 In section 8A of the Police Pensions Act 1976 (information in connection with police pensions etc.), in subsection (2)(a), for “section 150” substitute “section 138D”.

*Judicial Pensions Act 1981 (c. 20)*

42 In section 33A of the Judicial Pensions Act 1981 (voluntary contributions), in subsection (9), in paragraph (a) of the definition of “authorised provider”, for “Part 4” substitute “Part 4A”.

*Lloyd's Act 1982 (c. xiv)*

43 In section 7 of the Lloyd's Act 1982 (the Disciplinary Committee and the Appeal Tribunal), in subsection (1A)(c), for “Financial Services Authority” substitute “Prudential Regulation Authority or the Financial Conduct Authority”.

*Inheritance Tax Act 1984 (c. 51)*

44 In section 59 of the Inheritance Tax Act 1984 (qualifying interest in possession), in subsection (3)(b)(i), for “Part 4” substitute “Part 4A”.

*Companies Act 1985 (c. 6)*

45 The Companies Act 1985 is amended as follows.

46 In Schedule 15C (specified persons), for paragraph 7 substitute—

- “7 The Financial Conduct Authority.  
7A The Prudential Regulation Authority.  
7B The Bank of England.”

47 (1) Schedule 15D (disclosures) is amended as follows.

- (2) In paragraph 28 for “Financial Services Authority” substitute “Financial Conduct Authority or the Prudential Regulation Authority”.

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- (3) In paragraph 29 for the words from “competent authority” to the end substitute “Financial Conduct Authority to exercise its functions under Part 6 of the Financial Services and Markets Act 2000.”
- (4) In paragraph 43, for paragraph (a) substitute—
- “(a) a decision of the Financial Conduct Authority;  
(aa) a decision of the Prudential Regulation Authority;”.
- Trustee Savings Banks Act 1985 (c. 58)*
- 48 In Part 3 of Schedule 1 to the Trustee Savings Banks Act 1985 (supplementary transfer provisions), in paragraph 11(4A)(a), for “Part 4” substitute “Part 4A”.
- Administration of Justice Act 1985 (c. 61)*
- 49 In section 21 of the Administration of Justice Act 1985 (professional indemnity and compensation), in subsection (5)(a), for “Part 4” substitute “Part 4A”.
- Housing Act 1985 (c. 68)*
- 50 In section 622 of the Housing Act 1985 (minor definitions: general), in subsection (1), in the definitions of “authorised deposit taker”, “authorised insurer” and “authorised mortgage lender”, for “Part 4” substitute “Part 4A”.
- Insolvency Act 1986 (c. 45)*
- 51 The Insolvency Act 1986 is amended as follows.
- 52 (1) Section 4A (approval of proposed voluntary arrangement) is amended as follows.
- (2) In subsection (5), for “Financial Services Authority” substitute “appropriate regulator”.
- (3) After that subsection insert—
- “(5A) The appropriate regulator” means—
- (a) where the regulated company is a PRA-regulated company within the meaning of paragraph 44 of Schedule A1, the Financial Conduct Authority and the Prudential Regulation Authority, and
- (b) in any other case, the Financial Conduct Authority.”
- 53 In section 422 (order relating to formerly authorised banks), in subsection (1)—
- (a) for “Financial Services Authority” substitute “Financial Conduct Authority and the Prudential Regulation Authority”, and
- (b) in paragraph (b), for “Part IV” substitute “Part 4A”.
- 54 (1) Paragraph 44 of Schedule A1 (moratorium where directors propose voluntary arrangement; modifications relating to regulated companies) is amended as follows.
- (2) In sub-paragraphs (2) to (4), for “Authority” substitute “appropriate regulator”.
- (3) In sub-paragraph (5)—
- (a) for “the Authority”, in the first place, substitute “a regulator”, and

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- (b) for “the Authority”, in the second place, substitute “ the appropriate regulator ”.
- (4) In sub-paragraph (6), for “Authority” substitute “ appropriate regulator ”.
- (5) In sub-paragraph (7)—
  - (a) for “the Authority”, in the first place, substitute “ a regulator ”, and
  - (b) for “the Authority”, in the second place, substitute “ the appropriate regulator ”.
- (6) In sub-paragraphs (8) to (11), for “Authority” substitute “ appropriate regulator ”.
- (7) In sub-paragraph (12)—
  - (a) for “the Authority”, in the first place, substitute “ a regulator ”, and
  - (b) for “the Authority”, in the second place, substitute “ the appropriate regulator ”.
- (8) In sub-paragraph (13), for “Authority” substitute “ appropriate regulator ”.
- (9) In sub-paragraph (14)—
  - (a) for “the Authority”, in the first place, substitute “ a regulator ”, and
  - (b) for “the Authority”, in the second place, substitute “ the appropriate regulator ”.
- (10) In sub-paragraph (15), for “Authority” substitute “ appropriate regulator ”.
- (11) In sub-paragraph (16)—
  - (a) for “the Authority”, in the first place, substitute “ a regulator ”, and
  - (b) for “the Authority”, in the second place, substitute “ the appropriate regulator ”.
- (12) After sub-paragraph (16) insert—

“(16A) If either regulator makes an application to the court under any of the provisions mentioned in sub-paragraphs (5), (7), (12), (14) or (16) in relation to a PRA-regulated company, the other regulator is entitled to be heard on the application.”
- (13) In sub-paragraph (17), for “Authority” substitute “ appropriate regulator ”.
- (14) After sub-paragraph (17) insert—

“(17A) The appropriate regulator” means—

  - (a) for the purposes of sub-paragraphs (2) to (8) and (10) to (17)—
    - (i) where the regulated company is a PRA-regulated company, each of the Financial Conduct Authority and the Prudential Regulation Authority, and
    - (ii) in any other case, the Financial Conduct Authority;
  - (b) for the purposes of sub-paragraph (9)—
    - (i) where the regulated company is a PRA-regulated company, the Financial Conduct Authority or the Prudential Regulation Authority, and
    - (ii) in any other case, the Financial Conduct Authority.”
- (15) In sub-paragraph (18)—

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(a) for the definition of “the Authority” and the “and” following it substitute—

““PRA-authorised person” has the meaning given by section 2B(5) of the Financial Services and Markets Act 2000;

“PRA-regulated activity” has the meaning given by section 22A of the Financial Services and Markets Act 2000;

“PRA-regulated company” means a regulated company which—

- (a) is, or has been, a PRA-authorised person,
- (b) is, or has been, an appointed representative within the meaning given by section 39 of the the Financial Services and Markets Act 2000, whose principal (or one of whose principals) is, or was, a PRA-authorised person, or
- (c) is carrying on, or has carried on, a PRA-regulated activity in contravention of the general prohibition;”.

(b) after the definition of “regulated company” insert—

““regulator” means the Financial Conduct Authority or the Prudential Regulation Authority.”

(16) In the italic heading, for “Financial Services Authority” substitute “ Financial Conduct Authority and Prudential Regulation Authority ”.

55 (1) Schedule B1 (administration) is amended as follows.

(2) In paragraph 40 (dismissal of pending winding-up petition), in sub-paragraph (2) (b), for “Financial Services Authority” substitute “ Financial Conduct Authority or Prudential Regulation Authority ”.

(3) In paragraph 42 (moratorium on insolvency proceedings), in sub-paragraph (4) (b), for “Financial Services Authority” substitute “ Financial Conduct Authority or Prudential Regulation Authority ”.

(4) In paragraph 82 (public interest winding-up), in sub-paragraph (1)(b), for “Financial Services Authority” substitute “ Financial Conduct Authority or Prudential Regulation Authority ”.

*Debtors (Scotland) Act 1987 (c. 18)*

56 In section 73F of the Debtors (Scotland) Act 1987 (protection of minimum balance in bank accounts), in subsection (5)(b), for “Part 4” substitute “ Part 4A ”.

*Housing (Scotland) Act 1987 (c. 26)*

57 In section 338 of the Housing (Scotland) Act 1987 (interpretation), in subsection (1)—

- (a) in the definition of “bank”, for “Part 4” substitute “ Part 4A ”, and
- (b) in the definition of “insurance company” for “Part 4” substitute “ Part 4A ”.

*Income and Corporation Taxes Act 1988 (c. 1)*

58 (1) The Income and Corporation Taxes Act 1988 is amended as follows.

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- (2) In section 266 (life assurance premiums), in subsection (2)(a)(i), for “Part 4” substitute “ Part 4A ”.
- (3) In section 376 (qualifying borrowers and qualifying lenders), in subsection (4)(e), for “Part 4” substitute “ Part 4A ”.
- (4) In section 376A (the register of qualifying lenders), in subsection (1A)(a), for “Part 4” substitute “ Part 4A ”.
- (5) In section 431 (interpretation: insurance companies), in subsection (2), in the definition of “insurance company”, for “Part 4” substitute “ Part 4A ”.
- (6) In section 444AB (transfer schemes)—
  - (a) in subsection (2)(b), for “Part 4” substitute “ Part 4A ”, and
  - (b) in subsection (2A)(b), for “Part 4” substitute “ Part 4A ”.

*Access to Medical Reports Act 1988 (c. 28)*

- 59 In section 2 of the Access to Medical Reports Act 1988 (interpretation), in subsection (1), in the definition of “insurer”, for “Part 4” substitute “ Part 4A ”.

*Road Traffic Act 1988 (c. 52)*

- 60 In section 95 of the Road Traffic Act 1988 (notification of refusal of insurance on grounds of health), in subsection (3)(a), for “Part 4” substitute “ Part 4A ”.

*Water Act 1989 (c. 15)*

- 61 In section 174 of the Water Act 1989 (restriction on disclosure of information), in subsection (2)(e), for “or the Financial Services Authority” substitute “ , the Financial Conduct Authority, the Prudential Regulation Authority or the Bank of England ”.

*Companies Act 1989 (c. 40)*

- 62 The Companies Act 1989 is amended as follows.
- 63 (1) Section 82 (request for assistance by overseas regulatory authority) is amended as follows.
- (2) In subsection (2)(a)—
    - (a) in sub-paragraph (ii), for “Financial Services Authority” substitute “ FCA, the PRA or the Bank of England ”, and
    - (b) omit sub-paragraph (iii).
  - (3) In subsection (3), for “Financial Services Authority” substitute “ corresponding UK regulator (if any) ”.
  - (4) After that subsection insert—

“(3A) In subsection (3), “the corresponding UK regulator” means such one or more of the FCA, PRA and the Bank of England as appears to the Secretary of State to exercise functions corresponding to the regulatory functions for the purposes of which the request is made.”

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- (5) In subsection (5)—
- (a) for “Financial Services Authority”, in the first place, substitute “ FCA and the PRA ”,
  - (b) for “Financial Services Authority”, in the second place, substitute “ FCA or the PRA ”, and
  - (c) for “the Authority” substitute “ the body giving the notification ”.
- 64 (1) Section 87 (exceptions from restrictions on disclosure) is amended as follows.
- (2) In subsection (2)(b), for sub-paragraph (i) substitute—
- “(i) a decision of the FCA;
  - (ia) a decision of the PRA;”.
- (3) In subsection (4), in the Table, in the entry relating to the Financial Services Authority, for “The Financial Services Authority” substitute “ The FCA or the PRA ”.
- 65 (1) Section 157 (change in default rules) is amended as follows.
- (2) In subsection (1)—
- (a) for “Authority”, in the first place, substitute “ appropriate regulator ”, and
  - (b) for “Authority”, in the second place, substitute “ regulator ”.
- (3) At the end insert—
- “(4) The appropriate regulator”—
- (a) in relation to a recognised UK investment exchange, means the FCA, and
  - (b) in relation to a recognised UK clearing house, means the Bank of England.”
- 66 (1) Section 162 (duty to report on completion of default proceedings) is amended as follows.
- (2) In subsections (1) and (1A), for “Authority” substitute “ appropriate regulator ”.
- (3) In subsection (4), for “Authority” substitute “ appropriate regulator ”.
- (4) At the end insert—
- “(7) The appropriate regulator”—
- (a) in relation to a recognised investment exchange or a recognised overseas investment exchange, means the FCA, and
  - (b) in relation to a recognised clearing house or a recognised overseas clearing house, means the Bank of England.”
- 67 (1) Section 167 (application to determine whether default proceedings to be taken) is amended as follows.
- (2) In subsections (1B), (3) (in both places), (4) and (5) (in both places), for “Authority” substitute “ appropriate regulator ”.
- (3) At the end insert—
- “(6) The appropriate regulator”—

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	<p>(a) in relation to a responsible investment exchange, means the FCA, and</p> <p>(b) in relation to a responsible clearing house, means the Bank of England.”</p>
68	<p>(1) Section 169 (supplementary provisions) is amended as follows.</p> <p>(2) In subsection (3A), for paragraph (b) and the “and” before it, substitute—</p> <p>“(b) in the case of a UK investment exchange, the FCA, and</p> <p>(c) in the case of a UK clearing house, the Bank of England.”</p> <p>(3) In subsection (5), for “or the Authority” substitute “ , the FCA or the Bank of England ”.</p>
69	<p>(1) Section 176 (power to make provision about certain charges) is amended as follows.</p> <p>(2) In subsection (2)—</p> <p>(a) in paragraph (b), for “Authority” substitute “ Bank of England ”, and</p> <p>(b) in paragraph (d), for “Part 4” substitute “ Part 4A ”.</p> <p>(3) In subsection (6)—</p> <p>(a) for “Authority”, in the first place, substitute “ Bank of England ”, and</p> <p>(b) for “Authority”, in the second place, substitute “ FCA ”.</p>
70	<p>(1) Section 190 (minor definitions) is amended as follows.</p> <p>(2) Omit the definition of “the Authority”.</p> <p>(3) After the definition of “charge” insert—</p> <p>““the FCA” means the Financial Conduct Authority;”.</p> <p>(4) After the definition of “overseas” insert—</p> <p>““the PRA” means the Prudential Regulation Authority;”.</p>
71	<p>(1) Section 191 (index of defined expressions) is amended as follows.</p> <p>(2) Omit the entry relating to “the Authority”.</p> <p>(3) After the entry relating to “designated non-member” insert—</p>
“the FCA	Section 190(1)”
(4) After the entry relating to “permanent trustee” insert—	
“the PRA	Section 190(1)”
	<p><i>Water Industry Act 1991 (c. 56)</i></p>
72	<p>In section 206 of the Water Industry Act 1991 (restriction on disclosure of information), in subsection (3)(e), for “or the Financial Services Authority” substitute “ , the Financial Conduct Authority, the Prudential Regulation Authority or the Bank of England ”.</p>

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*Water Resources Act 1991 (c. 57)*

- 73 In section 204 of the Water Resources Act 1991 (restriction on disclosure of information), in subsection (2)(e), for “or the Financial Services Authority” substitute “, the Financial Conduct Authority, the Prudential Regulation Authority or the Bank of England”.

*Social Security Administration Act 1992 (c. 5)*

- 74 (1) The Social Security Administration Act 1992 is amended as follows.
- (2) In section 15A (payment out of benefit of sums in respect of mortgage interest), in subsection (4), in the definitions of “deposit taker” and “insurer”, for “Part 4” substitute “ Part 4A ”.
- (3) In section 109B (power to require information), in subsection (7), in the definitions of “bank” and “insurer”, for “Part IV” substitute “ Part 4A ”.

*Judicial Pensions and Retirement Act 1993 (c. 8)*

- 75 (1) The Judicial Pensions and Retirement Act 1993 is amended as follows.
- (2) In section 10 (additional benefits from voluntary contributions), in subsection (8), in the definitions of “authorised provider” and “insurer”, for “Part 4” substitute “ Part 4A ”.
- (3) In Part 1 of Schedule 2 (transfer of accrued benefits: interpretation), in paragraph 1, in the definition of “authorised insurer”, for “Part 4” substitute “ Part 4A ”.

*Criminal Justice Act 1993 (c. 36)*

- 76 In Schedule 1 to the Criminal Justice Act 1993 (special defences), in paragraph 5(2), for “section 144(1)” substitute “ section 137Q ”.

*Railways Act 1993 (c. 43)*

- 77 (1) The Railways Act 1993 is amended as follows.
- (2) In section 145 (restrictions on disclosure of information), in subsection (2)(c), for “or the Financial Services Authority” substitute “, the Financial Conduct Authority or the Prudential Regulation Authority”.
- (3) In section 151 (general interpretation), in subsection (1), in the definition of “securities”, for “section 74(5)” substitute “ section 102A(2) ”.

*Pension Schemes Act 1993 (c. 48)*

- 78 (1) The Pension Schemes Act 1993 is amended as follows.
- (2) In section 149 (procedure on an investigation by the Pensions Ombudsman), in subsection (6)—
- (a) for paragraph (e) substitute—
- “(e) the Financial Conduct Authority,  
(ea) the Prudential Regulation Authority,  
(eb) the Bank of England,” and

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(b) in paragraph (o), for “a body corporate established in accordance with paragraph 2(1)” substitute “the body corporate mentioned in paragraph 2”.

(3) In section 158A (disclosures by the Secretary of State), in subsection (1), in the Table, for the entry relating to the Financial Services Authority substitute—

“The Financial Conduct Authority	Any of its functions.
The Prudential Regulation Authority	Any of its functions.”.

(4) In section 180A (insurer and long-term insurance business), in subsection (1)(a), for “Part 4” substitute “ Part 4A ”.

(5) In section 185 (duty to consult before making regulations)—

- (a) in subsection (7), for “the Financial Services Authority” substitute “ the appropriate regulator ”, and  
(b) after that subsection insert—

“(7A) The appropriate regulator” means—

- (a) where the group insurance business to which the regulations relate consists only of activities which are PRA-regulated activities, the Prudential Regulation Authority,  
(b) where the group insurance business to which the regulations relate consists partly of activities which are PRA-regulated activities and partly of other regulated activities, the Prudential Regulation Authority and the Financial Conduct Authority, or  
(c) in any other case, the Financial Conduct Authority.

(7B) In subsection (7A) “regulated activities” and “PRA-regulated activities” have the same meaning as in the Financial Services and Markets Act 2000.”

*Finance Act 1994 (c. 9)*

79 (1) The Finance Act 1994 is amended as follows.

(2) In Schedule 7 (insurance premium tax), in paragraph 28B—

- (a) in sub-paragraph (1)—  
(i) for “the Financial Services Authority (“the Authority”)” substitute “ a regulator ”, and  
(ii) for “assisting the Authority” substitute “ assisting the regulator ”, and  
(b) in sub-paragraph (2)—  
(i) for “the Authority”, in the first place, substitute “ a regulator ”, and  
(ii) for “the Authority”, in the second place, substitute “ the regulator ”.  
(c) after that sub-paragraph insert—

“(3) In this paragraph “regulator” means—

- (a) the Financial Conduct Authority;  
(b) the Prudential Regulation Authority.”

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- (3) In Schedule 24 (provisions relating to the Railways Act 1993), in paragraph 19(7), in the definition of “securities”, for “section 74(5)” substitute “ section 102A(2) ”.

*Coal Industry Act 1994 (c. 21)*

- 80 In section 59 of the Coal Industry Act 1994 (information to be kept confidential), in subsection (3)(b), for “and the Financial Services Authority” substitute “ , the Financial Conduct Authority and the Prudential Regulation Authority ”.

*Value Added Tax Act 1994 (c. 23)*

- 81 In Part 2 of Schedule 9 to the Value Added Tax Act 1994 (exemptions: groups), in Group 5 (finance), in Note (6), in the definitions of “closed-ended collective investment undertaking” and “individually recognised overseas scheme”, for “Financial Services Authority” substitute “ Financial Conduct Authority ”.

*Pensions Act 1995 (c. 26)*

- 82 (1) The Pensions Act 1995 is amended as follows.
- (2) In section 49 (responsibilities of trustees etc.), in subsection (8A)(a), for “Part 4” substitute “ Part 4A ”.
- (3) In section 172 (information about public service schemes), in subsection (1)(a), for “section 150” substitute “ section 138D ”.

*Finance Act 1997 (c. 16)*

- 83 In section 96 of the Finance Act 1997 (demutualisation of insurance companies), in subsection (8), in the definition of “general insurance company”, for “Part 4” substitute “ Part 4A ”.

*Social Security (Recovery of Benefits) Act 1997 (c. 27)*

- 84 In Part 1 of Schedule 1 to the Social Security (Recovery of Benefits) Act 1997 (compensation payments: exempted payments), in paragraph 5(2)(a), for “Part 4” substitute “ Part 4A ”.

*Bank of England Act 1998 (c. 11)*

- 85 (1) The Bank of England Act 1998 is amended as follows.
- (2) In section 17 (power to obtain information), in subsections (3D) and (7)(a), for “Part 4” substitute “ Part 4A ”.
- (3) Omit—
- (a) section 21 and the italic heading before it;
  - (b) section 23(2);
  - (c) section 24 and the italic heading before it.
- (4) In Schedule 2 (cash ratio deposits), in paragraph 1(1A)(c), for “Part 4” substitute “ Part 4A ”.

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	<p>(5) In Schedule 7 (restriction on disclosure of information), in paragraph 3, in the Table—</p> <p>(a) for “Financial Services Authority” substitute “ Financial Conduct Authority or the Prudential Regulation Authority ”, and</p> <p>(b) omit the entry relating to the competent authority for the purposes of Part 6 of the Financial Services Act 2000.</p>
	<p style="text-align: center;"><i>Data Protection Act 1998 (c. 29)</i></p>
86	<p>In Schedule 7 to the Data Protection Act 1998 (miscellaneous exemptions), in paragraph 6(3), in the definition of “relevant person”, in paragraph (a), for “Part IV” substitute “ Part 4A ”.</p>
	<p style="text-align: center;"><i>Terrorism Act 2000 (c. 11)</i></p>
87	<p>(1) The Terrorism Act 2000 is amended as follows.</p> <p>(2) In Part 2 of Schedule 3A (supervisory authorities), in paragraph 4(1)—</p> <p>(a) for paragraph (c) substitute—</p> <p style="padding-left: 40px;">“(c) the Financial Conduct Authority;”, and</p> <p>(b) after paragraph (e) insert—</p> <p style="padding-left: 40px;">“(ea) the Prudential Regulation Authority;”.</p> <p>(3) In Schedule 6 (financial information), in paragraph 6(1)(a), for “Part 4” substitute “ Part 4A ”.</p>
	<p style="text-align: center;"><i>Regulation of Investigatory Powers Act 2000 (c. 23)</i></p>
88	<p>In Part 1 of Schedule 1 to the Regulation of Investigatory Powers Act 2000 (relevant authorities), for paragraph 19 substitute—</p> <p>“19 The Financial Conduct Authority.</p> <p>19A The Prudential Regulation Authority.”</p>
	<p style="text-align: center;"><i>Utilities Act 2000 (c. 27)</i></p>
89	<p>In section 105 of the Utilities Act 2000 (general restriction on disclosure of information), in subsection (4)(da), for “or the Financial Services Authority” substitute “ , the Financial Conduct Authority, the Prudential Regulation Authority or the Bank of England ”.</p>
	<p style="text-align: center;"><i>Trustee Act 2000 (c. 29)</i></p>
90	<p>(1) Section 29 of the Trustee Act 2000 (remuneration of certain trustees) is amended as follows.</p> <p>(2) In subsection (3)—</p> <p>(a) for “an authorised institution under the Banking Act 1987” substitute “ a deposit taker ”, and</p> <p>(b) for “institution's” substitute “deposit taker's”.</p> <p>(3) After that subsection insert—</p>

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“(3A) In subsection (3), “deposit taker” means—

- (a) a person who has permission under Part 4A of the Financial Services and Markets Act 2000 to accept deposits, or
- (b) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12(1) of that Schedule) to accept deposits.

(3B) A reference in subsection (3A) to a person or firm with permission to accept deposits does not include a person or firm with permission to do so only for the purposes of, or in the course of, carrying on another regulated activity in accordance with that permission.

(3C) Subsections (3A) and (3B) must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000,
- (b) any relevant order under that section, and
- (c) Schedule 2 to that Act.”.

*Freedom of Information Act 2000 (c. 36)*

91 In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (other public bodies and offices: general)—

- (a) omit the entry relating to the Financial Services Authority, and
- (b) at the appropriate place in each case insert— “ The Financial Conduct Authority. ”; “ The Prudential Regulation Authority. ”.

*Criminal Justice and Police Act 2001 (c. 16)*

92 In section 57 of the Criminal Justice and Police Act 2001 (retention of seized items), in subsection (1)(o), for “section 176(8)” substitute “ section 176A ”.

*Anti-terrorism, Crime and Security Act 2001 (c. 24)*

93 In Part 5 of Schedule 1 to the Anti-terrorism, Crime and Security Act 2001 (property earmarked as terrorist property), in paragraph 16(6)—

- (a) for “Financial Services Authority under” substitute “ Financial Conduct Authority, the Prudential Regulation Authority or the Bank of England under or by virtue of ”, and
- (b) omit “of authority”.

*Proceeds of Crime Act 2002 (c. 29)*

94 (1) The Proceeds of Crime Act 2002 is amended as follows.

(2) In section 282 (exemptions), in subsection (3)—

- (a) for “Financial Services Authority” substitute “ Financial Conduct Authority or the Prudential Regulation Authority ”, and
- (b) for “the authority” substitute “ it ”.

(3) In section 308 (general exceptions), in subsection (7)(a)—

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- (a) for “Financial Services Authority under” substitute “ Financial Conduct Authority, the Prudential Regulation Authority or the Bank of England under or by virtue of”, and
  - (b) omit “of authority”.
- (4) In Part 2 of Schedule 9 (supervisory authorities), in paragraph 4(1)—
- (a) for paragraph (c) substitute—  
“ (c) Financial Conduct Authority;” and
  - (b) after paragraph (e) insert—  
“ (ea) Prudential Regulation Authority;”.

*Enterprise Act 2002 (c. 40)*

- 95 (1) The Enterprise Act 2002 is amended as follows.
- (2) In section 213 (enforcers), in subsection (5A)(c), for “Financial Services Authority” substitute “ Financial Conduct Authority ”.
  - (3) In Schedule 14 (specified functions), in the entry relating to the Financial Services and Markets Act 2000, for “Chapter 3 of Part 10 and Chapter 2 of Part 18” substitute “ Chapter 4 of Part 9A ”.

*Nationality, Immigration and Asylum Act 2002 (c. 41)*

- 96 In section 135 of the Nationality, Immigration and Asylum Act 2002 (financial institution to provide information), in subsection (2)(a), for “Part 4” substitute “ Part 4A ”.

*Income Tax (Earnings and Pensions) Act 2003 (c. 1)*

- 97 (1) The Income Tax (Earnings and Pensions) Act 2003 is amended as follows.
- (2) In Part 4 of Schedule 2 (approved share incentive plans: types of shares that may be awarded), in paragraph 30(3)—
    - (a) for “competent authority for listing” substitute “ Financial Conduct Authority ”, and
    - (b) for “section 74(4)” substitute “ section 73A ”.
  - (3) In Part 4 of Schedule 3 (approved SAYE option schemes: applicable shares), in paragraph 21(5)—
    - (a) for “competent authority for listing” substitute “ Financial Conduct Authority ”, and
    - (b) for “section 74(4)” substitute “ section 73A ”.
  - (4) In Part 4 of Schedule 4 (approved CSOP schemes: applicable shares), in paragraph 19(5)—
    - (a) for “competent authority for listing” substitute “ Financial Conduct Authority ”, and
    - (b) for “section 74(4)” substitute “ section 73A ”.

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*Finance Act 2003 (c. 14)*

- 98 In section 63 of the Finance Act 2003 (demutualisation of insurance company), in subsection (7), in the definition of “general insurance company”, for “Part 4” substitute “ Part 4A ”.

*Health and Social Care (Community Health and Standards) Act 2003 (c. 43)*

- 99 In Schedule 10 to the Health and Social Care (Community Health and Standards) Act 2003 (recovery of NHS charges (exempted payments)), in paragraph 4(2) (a), for “Part 4” substitute “ Part 4A ”.

*Finance Act 2004 (c. 12)*

- 100 In Part 1 of Schedule 28 to the Finance Act 2004 (pension rules), in paragraph 14(3)(a), for “Financial Services Authority” substitute “ Financial Conduct Authority or the Prudential Regulation Authority ”.

*Energy Act 2004 (c. 20)*

- 101 In Part 4 of Schedule 20 to the Energy Act 2004 (modifications of Insolvency Act 1986), in paragraph 42(3), for “administration applications by Financial Services Authority” substitute “ administration order ”.

*Fire and Rescue Services Act 2004 (c. 21)*

- 102 In section 35 of the Fire and Rescue Services Act 2004 (provision of information in connection with pensions), in subsection (2)(a), for “section 150” substitute “ section 138D ”.

*Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27)*

- 103 In section 14 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (supervision of accounts and reports of issuers of listed securities), in subsections (2)(b) and (7)(b), for “Financial Services Authority” substitute “ Financial Conduct Authority ”.

*Pensions Act 2004 (c. 35)*

- 104 (1) The Pensions Act 2004 is amended as follows.
- (2) In section 115 (borrowing), in subsection (3), in the definition of “deposit- taker”, for “Part 4” substitute “ Part 4A ”.
- (3) In Schedule 3 (disclosure of restricted information by the Pensions Regulator), in the Table—
- |   |                             |
|---|-----------------------------|
| (a) for the entry relating to the Financial Services Authority substitute—  |                             |
| “The Financial Conduct Authority  | Any of its functions.       |
| The Prudential Regulation Authority   | Any of its functions.”, and |
| (b) in the entry relating to a member of the panel appointed under paragraph 4 of Schedule 17 to the Financial Services and Markets Act 2000, for “established by” substitute “ mentioned in ”. |                             |

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(4) In Schedule 8 (disclosure of restricted information by the Board of the Pension Protection Fund), in the Table—

(a) for the entry relating to the Financial Services Authority substitute—

“The Financial Conduct Authority	Any of its functions.
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The Prudential Regulation Authority	Any of its functions.”, and
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(b) in the entry relating to a member of the panel appointed under paragraph 4 of Schedule 17 to the Financial Services and Markets Act 2000, for “established by” substitute “ mentioned in ”.

*Inquiries Act 2005 (c. 12)*

105 In section 23 of the Inquiries Act 2005 (risk of damage to the economy), in subsection (1), for “Financial Services Authority” substitute “ Financial Conduct Authority, the Prudential Regulation Authority ”.

*Serious Organised Crime and Police Act 2005 (c. 15)*

106 (1) Section 71 of the Serious Organised Crime and Police Act 2005 (immunity from prosecution) is amended as follows.

(2) In subsection (4), for paragraph (da) substitute—

“(da) the Financial Conduct Authority;

(daa) the Prudential Regulation Authority;

(dab) the Bank of England, where the indictable offence or offence triable either way which is being investigated or prosecuted is an offence under the Financial Services and Markets Act 2000;”.

(3) In subsection (6A), for “Financial Services Authority” substitute “ Financial Conduct Authority, the Prudential Regulation Authority, the Bank of England ”.

(4) For subsection (6B) substitute—

“(6B) Paragraph 8(1) of Schedule 1ZA and paragraph 16(1) of Schedule 1ZB to the Financial Services and Markets Act 2000 (arrangements for discharging functions) do not apply to the exercise of the powers conferred on the Financial Conduct Authority or the Prudential Regulation Authority under this Chapter.

(6BA) Paragraph 11 of Schedule 1 to the Bank of England Act 1998 (power to delegate) does not apply to the exercise of the powers conferred on the Bank of England under this Chapter.”

(5) In subsection (6C)—

(a) for “Financial Services Authority” substitute “ Financial Conduct Authority, the Prudential Regulation Authority, the Bank of England ”, and

(b) for “either of them” substitute “ any of them ”.

*Gambling Act 2005 (c. 19)*

107 In Part 2 of Schedule 6 to the Gambling Act 2005 (exchange of information: enforcement and regulatory bodies)—

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- (a) omit the entry “The Financial Services Authority”, and
- (b) at the appropriate place in each case insert— “ The Financial Conduct Authority ”; “ The Prudential Regulation Authority ”.

*Finance (No. 2) Act 2005 (c. 22)*

- 108 In section 18 of the Finance (No. 2) Act 2005 (regulations under section 17), in subsection (3)(a), for “Financial Services Authority” substitute “ Financial Conduct Authority ”.

*Compensation Act 2006 (c. 29)*

- 109 (1) Section 3 of the Compensation Act 2006 (mesothelioma: damages) is amended as follows.
- (2) In subsection (8)—
- (a) omit paragraph (a), and
  - (b) in paragraph (f), for “Financial Services Authority” substitute “ Financial Conduct Authority or the Prudential Regulation Authority ”.
- (3) Omit subsection (9).

*Companies Act 2006 (c. 46)*

- 110 The Companies Act 2006 is amended as follows.
- 111 In section 384 (companies excluded from small companies regime), in subsection (2)(c), for “Part 4” substitute “ Part 4A ”.
- 112 (1) Section 461 (permitted disclosure of information obtained under compulsory powers) is amended as follows.
- (2) In subsection (3), for paragraph (e) and the “or” following it, substitute—
- (e) “(e) the Financial Conduct Authority,
  - (ea) the Prudential Regulation Authority, or”.
- (3) In subsection (4)(g), for “Financial Services Authority” substitute “ Financial Conduct Authority or the Prudential Regulation Authority ”.
- 113 In section 467 (companies excluded from being treated as medium-sized), in subsection (1)(b)(i) and (2)(c), for “Part 4” substitute “ Part 4A ”.
- 114 In section 470 (power to apply provisions to banking partnerships), in subsection (2), for “Part 4” substitute “ Part 4A ”.
- 115 In section 474 (definitions), in subsection (1), in the definition of “e-money issuer”, for “Part 4” substitute “ Part 4A ”.
- 116 In section 539 (definitions), in subsection (1), in the definition of “e-money issuer”, for “Part 4” substitute “ Part 4A ”.
- 117 (1) Section 843 (realised profits and losses of long-term insurance business) is amended as follows.
- (2) In subsection (2)(b), for “section 142(2)” substitute “ Part 9A ”.
- (3) In subsection (6)(a), for “Part 10” substitute “ Part 9A ”.

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- 118 In section 948 (restrictions on disclosure), in subsection (7)—
- (a) for paragraph (a) substitute—
    - “(a) the Financial Conduct Authority;
    - (aa) the Prudential Regulation Authority;
    - (ab) the Bank of England;”, and
  - (b) in paragraph (c), for “Financial Services Authority” substitute “Financial Conduct Authority or the Prudential Regulation Authority or similar to the regulatory functions of the Bank of England”.
- 119 In section 950 (Panel on Takeovers and Mergers: duty of co-operation), in subsection (1)—
- (a) for paragraph (a) substitute—
    - “(a) the Financial Conduct Authority;
    - (aa) the Prudential Regulation Authority;
    - (ab) the Bank of England;”, and
  - (b) in paragraph (c), for “Financial Services Authority” substitute “Financial Conduct Authority or the Prudential Regulation Authority or similar to the regulatory functions of the Bank of England”.
- 120 In section 995 (petition by Secretary of State), in subsection (1)—
- (a) in paragraph (c), for “or the Financial Services Authority” substitute “, the Financial Conduct Authority, the Prudential Regulation Authority or the Bank of England”, and
  - (b) in paragraph (d), for “or the Financial Services Authority” substitute “, the Financial Conduct Authority, the Prudential Regulation Authority or the Bank of England”.
- 121 In section 1164 (meaning of “banking company” and “banking group”), in subsection (2), for “Part 4” substitute “Part 4A”.
- 122 In section 1165 (meaning of “insurance company” etc.), in subsection (2), for “Part 4” substitute “Part 4A”.
- 123 (1) Schedule 2 (specified persons and descriptions of disclosure for the purposes of section 948) is amended as follows.
- (2) In Part 1, in section (A) (United Kingdom), for paragraph 5 substitute—
    - “**5** The Financial Conduct Authority.
    - “**5A** The Prudential Regulation Authority.”
  - (3) In Part 2, in section (A) (United Kingdom)—
    - (a) in paragraph 11, for “paragraph 7 of Schedule 1 to the Financial Services and Markets Act 2000” substitute “section 84 of the Financial Services Act 2012”,
    - (b) in paragraph 12, for “section 15 of the Financial Services and Markets Act 2000” substitute “section 69 of the Financial Services Act 2012”,
    - (c) in paragraph 37, for “Financial Services Authority” substitute “Financial Conduct Authority or the Prudential Regulation Authority”,
    - (d) in paragraph 49, for paragraph (a) substitute—
      - “(a) a decision of the Financial Conduct Authority;
      - (aa) a decision of the Prudential Regulation Authority;”.

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- (4) In Part 3, in paragraph 1(2), for “Financial Services Authority” substitute “Financial Conduct Authority or the Prudential Regulation Authority or similar to the regulatory functions of the Bank of England”.
- 124 (1) Schedule 11A (specified persons, description, disclosures etc. for the purposes of section 1224A) is amended as follows.
- (2) In Part 1, for paragraph 5 substitute—
- “5       The Financial Conduct Authority.  
5A       The Prudential Regulation Authority.”
- (3) In Part 2—
- (a) in paragraph 28, for “paragraph 7 of Schedule 1 to the Financial Services and Markets Act 2000” substitute “section 84 of the Financial Services Act 2012”,
- (b) in paragraph 29, for “section 15 of the Financial Services and Markets Act 2000 (c. 8)” substitute “section 69 of the Financial Services Act 2012”,
- (c) in paragraph 52, for “Financial Services Authority” substitute “Financial Conduct Authority or the Prudential Regulation Authority”, and
- (d) in paragraph 71, for paragraph (a) substitute—
- “(a) a decision of the Financial Conduct Authority;  
(aa) a decision of the Prudential Regulation Authority;”.
- Legal Services Act 2007 (c. 29)*
- 125 (1) The Legal Services Act 2007 is amended as follows.
- (2) In section 64 (modification of functions of the Legal Services Board), in subsection (5), in the definition of “authorised insurer”, for “Part 4” substitute “Part 4A”.
- (3) In section 169 (disclosure of information to the Legal Services Board), for subsection (5)(f) substitute—
- “(f) the Financial Conduct Authority;  
(g) the Prudential Regulation Authority;  
(h) the Bank of England.”
- (4) In section 195 (application of the Legal Profession and Legal Aid (Scotland) Act 2007), in subsection (2)(e), for “Financial Services Authority” substitute “Financial Conduct Authority”.
- Regulatory Enforcement and Sanctions Act 2008 (c. 13)*
- 126 In Schedule 5 to the Regulatory Enforcement and Sanctions Act 2008 (Designated Regulators)—
- (a) for “Financial Services Authority” substitute “Financial Conduct Authority”, and
- (b) after the entry for the Pensions Regulator insert— “Prudential Regulation Authority”.

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*Counter-Terrorism Act 2008 (c. 28)*

- 127 (1) Schedule 7 to the Counter-Terrorism Act 2008 (terrorist financing and money laundering) is amended as follows.
- (2) In Part 5 (enforcement: information powers)—
- (a) in paragraph 18(1), for paragraph (a) substitute—
- “(a) The Financial Conduct Authority (“the FCA”),”
- (b) in paragraph 18(2), in both places, for “FSA” substitute “ FCA ”, and
- (c) in paragraph 21(7), for “FSA” substitute “ FCA ”.
- (3) In Part 6 (enforcement: civil penalties)—
- (a) in paragraph 27(1), for “FSA” substitute “ FCA ”, and
- (b) in paragraph 28(1), for “FSA” substitute “ FCA ”.
- (4) In Part 7 (enforcement: offences), in paragraph 33—
- (a) in sub-paragraphs (1)(a) and (2)(a), for “FSA” substitute “ FCA ”, and
- (b) in sub-paragraph (3) omit “by FSA”.
- (5) In Part 8 (supplemental)—
- (a) in paragraph 39(2)(a) for “FSA” substitute “ FCA ”,
- (b) in paragraph 41(1)—
- (i) for “Parts 1, 2 and 4 of Schedule 1” substitute “ “Parts 1, 3 and 5 of Schedule 1ZA”, and
- (ii) for “FSA” substitute “ FCA ”,
- (c) in the italic heading before paragraph 41, for “Financial Services Authority” substitute “ Financial Conduct Authority ”, and
- (d) in paragraph 46, in the index of defined terms, for “the FSA” substitute “ the FCA ”.

*Dormant Bank and Building Society Accounts Act 2008 (c. 31)*

- 128 In section 7 of the Dormant Bank and Building Society Accounts Act 2008 (meaning of “bank”), in subsection (2)(a), for “Part 4” substitute “ Part 4A ”.

*Corporation Tax Act 2010 (c. 4)*

- 129 (1) The Corporation Tax Act 2010 is amended as follows.
- (2) In section 161 (restricted right to dividends), in subsection (8), for paragraph (a), and the “and” following it, substitute—
- “(a) in relation to a dividend paid by a company that is a PRA-  
authorised person for the purposes of the FISMA, the Prudential  
Regulation Authority,
- (aa) in relation to a dividend paid by a company that is authorised for  
the purposes of the FISMA but does not fall within paragraph (a),  
the Financial Conduct Authority, and”.
- (3) In section 635 (application of Chapter 6 of Part 13: banks etc. in compulsory liquidation), in subsection (2)(a), for “Part 4” substitute “ Part 4A ”.
- (4) In section 1120 (meaning of “bank”), in subsection (3), for “Part 4” substitute “ Part 4A ”.

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

*Changes to legislation: Financial Services Act 2012 is up to date with all changes known to be in force on or before 12 July 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)*

*Finance Act 2010 (c. 13)*

- 130 In Part 3 of Schedule 1 to the Finance Act 2010 (bank payroll tax: definitions), in paragraph 45(14)—
- (a) for paragraph (a) and the “or” following it, substitute—
    - “(a) the Financial Conduct Authority,
    - (aa) the Prudential Regulation Authority, or”, and
  - (b) in paragraph (b), for “Financial Services Authority” substitute “Financial Conduct Authority or the Prudential Regulation Authority”.

*Equality Act 2010 (c. 15)*

- 131 In Part 1 of Schedule 19 to the Equality Act 2010 (public authorities subject to the public sector equality duty), under the italic heading “Industry, business, finance etc”—
- (a) for “The Financial Services Authority” substitute “The Financial Conduct Authority”, and
  - (b) after the entry for the Office of Communications insert— “The Prudential Regulation Authority”.

*Terrorist Asset-Freezing etc. Act 2010 (c. 38)*

- 132 (1) The Terrorist Asset-Freezing etc Act 2010 is amended as follows.
- (2) In section 23 (general power to disclose information), in subsection (1)—
- (a) in paragraph (e), for “Financial Services Authority” substitute “Financial Conduct Authority, the Prudential Regulation Authority”, and
  - (b) after that paragraph insert—
    - “(ea) to the Bank of England, for the purpose of enabling or assisting the Bank to exercise any powers conferred on it by or under the Financial Services and Markets Act 2000;”.
- (3) In section 41 (meaning of “relevant institution”), in subsection (1)(a), for “Part 4” substitute “Part 4A”.

*Postal Services Act 2011 (c. 5)*

- 133 In Part 3 of Schedule 10 to the Postal Services Act 2011 (conduct of postal administration: modification of enactments), in paragraph 41(3), for “administration applications by FSA” substitute “administration order”.

*Finance Act 2011 (c. 11)*

- 134 (1) Part 4 of Schedule 19 to the Finance Act 2011 (the bank levy) is amended as follows.
- (2) In paragraph 37(2), in both places, for “section 213(2)(b)” substitute “section 213(3)(b)”.
- (3) In paragraph 38(3)(a), for “section 139(1)” substitute “section 137B(1)”.

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

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*Terrorism Prevention and Investigation Measures Act 2011 (c. 23)*

- 135 In Part 1 of Schedule 1 to the Terrorism Prevention and Investigation Measures Act 2011 (measures), in paragraph 5(4), for “Part 4” substitute “ Part 4A ”.

*Charities Act 2011 (c. 25)*

- 136 In section 109 of the Charities Act 2011 (dormant bank account: supplementary), in subsection (3), for “Part 4” substitute “ Part 4A ”.

*Health and Social Care Act 2012 (c. 7)*

- 137 In section 145 of the Health and Social Care Act 2012 (borrowing), in subsection (3)(a), for “Part 4” substitute “ Part 4A ”.

*Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10)*

- 138 (1) The Legal Aid, Sentencing and Punishment of Offenders Act 2012 is amended as follows.
- (2) In section 57 (effect of rules against referral fees), in subsection (4), for “Financial Services Authority” substitute “ Financial Conduct Authority ”.
- (3) In section 58 (regulation by FSA)—
- (a) in subsections (1) and (3)(c) and (d), for “Financial Services Authority” substitute “ Financial Conduct Authority ”, and
  - (b) in the heading, for “FSA” substitute “ FCA ”.
- (4) In section 59 (regulators and regulated persons)—
- (a) in subsection (1), in the Table, for “Financial Services Authority” substitute “ Financial Conduct Authority ”, and
  - (b) in subsection (2), in the Table, for “Financial Services Authority” substitute “ Financial Conduct Authority ”.

VALID FROM 01/04/2013

**PART 3**

AMENDMENTS OF ACTS OF THE SCOTTISH PARLIAMENT

*Charities and Trustee Investment (Scotland) Act 2005 (asp 10)*

- 139 In section 106 of the Charities and Trustee Investment (Scotland) Act 2005 (general interpretation), in the definition of “relevant financial institution”, for “Part 4” substitute “ Part 4A ”.

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

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*Housing (Scotland) Act 2006 (asp 1)*

- 140 In section 75 of the Housing (Scotland) Act 2006 (determination by local authorities about applications for a grant or loan), in subsection (5)(a), in the definition of “commercial lender”, for “Part 4” substitute “ Part 4A ”.

VALID FROM 01/04/2013

**PART 4**

AMENDMENTS OF NORTHERN IRELAND LEGISLATION

*County Courts Act (Northern Ireland) 1959 (c. 25 (N.I.))*

- 141 In section 127A of the County Courts Act (Northern Ireland) 1959 (voluntary contributions to judicial pension scheme), in subsection (7), in the definition of “authorised provider”, for “Part 4” substitute “ Part 4A ”.

*District Judges (Magistrates' Courts) Pensions Act (Northern Ireland) 1960 (c. 2 (N.I.))*

- 142 In section 9A of the District Judges (Magistrates' Courts) Pensions Act (Northern Ireland) 1960 (voluntary contributions under the judicial pension scheme), in subsection (7), in the definition of “insurer”, for “Part 4” substitute “ Part 4A ”.

*Charities Act (Northern Ireland) 2008 (c. 12 (N.I.))*

- 143 (1) The Charities Act (Northern Ireland) 2008 is amended as follows.
- (2) In section 48 (power to give directions about dormant bank accounts of charities), in subsection (8)(b)(i), for “Part 4” substitute “ Part 4A ”.
- (3) In section 56 (powers in relation to English, Welsh and Scottish charities), in subsection (7)(a), for “Part 4” substitute “ Part 4A ”.

VALID FROM 01/04/2013

**PART 5**

AMENDMENT OF MEASURE OF THE NATIONAL ASSEMBLY FOR WALES

*Welsh Language (Wales) Measure 2011 (nawm 1)*

- 144 In Schedule 6 to the Welsh Language (Wales) Measure 2011 (public bodies etc: standards)—
- (a) in the Welsh text, omit the entry relating to “Awdurdod Gwasanaethau Ariannol (“*The Financial Services Authority*”)” and at the appropriate place among the entries headed “Cyffredinol” insert—

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

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“Awdurdod Ariannol ( <i>“Financial Authority”</i> )	Ymddygiad	Safonau cyflenwi gwasanaethau Safonau llunio polisi Safonau gweithredu Safonau cadw cofnodion.”
(b) in the English text, omit the entry relating to “The Financial Services Authority ( <i>“Awdurdod Gwasanaethau Ariannol”</i> )” and at the appropriate place among the entries headed “General” insert—		
“Financial Conduct Authority ( <i>“Awdurdod Ariannol”</i> )	Ymddygiad	Record keeping standards Service delivery standards Policy making standards Operational standards.”
(c) in the Welsh text, at the appropriate place among the entries headed “Cyffredinol”, insert—		
“Awdurdod Darbodus ( <i>“Prudential Regulation Authority”</i> )	Rheoleiddio	Safonau cyflenwi gwasanaethau Safonau llunio polisi Safonau gweithredu Safonau cadw cofnodion.”
(d) in the English text, at the appropriate place among the entries headed “General”, insert—		
“Prudential Authority ( <i>“Awdurdod Rheoleiddio Darbodus”</i> )	Regulation	Record keeping standards Service delivery standards Policy making standards Operational standards.”

VALID FROM 01/04/2013

SCHEDULE 19

Section 114(2)

REPEALS

<i>Short title</i>	<i>Extent of repeal</i>
Bank of England Act 1998	Section 1(3).
Competition Act 1998	In Schedule 2, paragraph 1 and the italic heading before it. In Schedule 7, in paragraph 19A(9)—

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	(a) “or (in the case of the Financial Services and Markets Act 2000 (c 8)) an investigation”, and (b) paragraph (m).
	In Schedule 12, paragraph 8 and the italic heading before it.
	In Schedule 13, in paragraph 26— (a) sub-paragraph (1)(a), (b) sub-paragraph (2), (c) in sub-paragraph (3) the words “and (2)”, and (d) sub-paragraph (3)(a).
Insolvency Act 2000	Section 15(2).
Proceeds of Crime Act 2002	In Schedule 11, paragraph 38 and the italic heading before it.
Enterprise Act 2002	Sections 241A(2)(b) and 243(3)(c).  In Schedule 25, sub-paragraphs (2) to (5) and (10) to (15) of paragraph 40.
Communications Act 2003	In Schedule 16, paragraph 5 and the italic heading before it.
Constitutional Reform Act 2005	In Schedule 7, the entry relating to the Financial Services and Markets Act 2000.  In Schedule 9, paragraph 70 and the italic heading before it.
Inquiries Act 2005	Section 46.
Companies Act 2006	Section 964(3) and (5).  In Part 2 of Schedule 2, paragraph 38.  In Schedule 11A, paragraph 53.  In Schedule 15, paragraphs 2 and 9.
Tribunals, Courts and Enforcement Act 2007	In Schedule 6, in the Table in Part 3, the entry relating to the Financial Services and Markets Tribunal.
Consumers, Estate Agents and Redress Act 2007	In section 20— (a) in subsection (2), in the definition of “designated body”, paragraph (b), and (b) subsection (3)(a).  Section 39.  In Schedule 1, paragraph 1(4)(a).
Banking Act 2009	Section 249(4).
Financial Services Act 2010	Section 1.  Section 2(2) to (5).  Section 3(2) to (4).  Section 6.  Section 7.

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In Schedule 2, paragraphs 2 to 6, 11 to 14, 27 and 34.

## SCHEDULE 20

Section 119(1)

### TRANSITIONAL PROVISIONS

#### *Interpretation*

- 1 In this Schedule “the relevant commencement” means the time when section 6 comes into force in relation to section 1A(1) of FSMA 2000, (which renames the Financial Services Authority as the Financial Conduct Authority).

#### **Commencement Information**

**I146** Sch. 20 para. 1 in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), Sch. Pt. 1

#### *References in this Act to FCA or Financial Services Authority*

- 2 (1) In this Act, unless the context otherwise requires, a reference (however expressed) to the Financial Services Authority is to be read, in relation to any time after the relevant commencement, as a reference to the Financial Conduct Authority.
- (2) In this Act, unless the context otherwise requires, a reference (however expressed) to the Financial Conduct Authority is to be read, in relation to any time before the relevant commencement, as a reference to the Financial Services Authority.

#### **Commencement Information**

**I147** Sch. 20 para. 2 in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), Sch. Pt. 1

#### *Interpretation of documents referring to the Financial Services Authority*

- 3 (1) In a relevant provision, a reference (however expressed) to the Financial Services Authority is, in relation to any time after the relevant commencement, to be read as a reference to the Financial Conduct Authority, but subject to sub-paragraph (2).
- (2) If the relevant provision is predicated on the continuing exercise by the Financial Services Authority of a function which has by virtue of this Act become exercisable by the Prudential Regulation Authority or the Bank of England, the reference is to be read as being or as the case requires including a reference to the Prudential Regulation Authority or the Bank.
- (3) Sub-paragraphs (1) and (2) have effect subject to the provisions of any scheme under paragraph 2 of Schedule 21.
- (4) In this paragraph “relevant provision” means a provision which—
- (a) has effect before, as well as after, the relevant commencement, and
  - (b) is contained in a document other than an enactment.

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

*Changes to legislation: Financial Services Act 2012 is up to date with all changes known to be in force on or before 12 July 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)*

#### Commencement Information

**I148** Sch. 20 para. 3 in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), Sch. Pt. 1

#### *Renaming of companies as Financial Conduct Authority and Prudential Regulation Authority*

- 4 (1) On the relevant commencement, the registrar of companies for England and Wales must give effect to section 1A(1) of FSMA 2000 by—
- (a) entering the new name on the register of companies in place of the former name, and
  - (b) issuing a new certificate of incorporation altered to take account of the new name.
- (2) On the coming into force of section 6 so far as it relates to section 2A(1) of FSMA 2000, (which renames the Prudential Regulation Authority Limited as the Prudential Regulation Authority), the registrar of companies for England and Wales must give effect to that provision by—
- (a) entering the new name on the register of companies in place of the former name, and
  - (b) issuing a new certificate of incorporation altered to take account of the new name.

#### Commencement Information

**I149** Sch. 20 para. 4 in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), Sch. Pt. 1

#### *Threshold conditions*

- 5 Before section 11 comes into force in relation to section 55B of FSMA 2000 (the threshold conditions), the Treasury must make an order under section 55C of that Act which—
- (a) amends or replaces Parts 1 and 2 of Schedule 6 to that Act, and
  - (b) makes provision as to which of the conditions set out in those Parts of that Schedule are to relate to the discharge by each regulator of its functions.

#### Commencement Information

**I150** Sch. 20 para. 5 in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), Sch. Pt. 1

#### *Consultation*

- 6 In relation to the first order under section 9L of the Bank of England Act 1998, subsection (2) of that section (which relates to consultation) does not apply.

#### Commencement Information

**I151** Sch. 20 para. 6 in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), Sch. Pt. 1

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

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- 7 (1) This paragraph applies where a provision of Part 5 or 6 of this Act, or an amendment of FSMA 2000 made by any provision of this Act, imposes on the FCA, the PRA or the Bank of England, in connection with the making or issuing of any rules or other instrument or document—
- (a) a public consultation requirement, or
  - (b) a requirement (however expressed) to consult particular persons.
- (2) The requirement may be satisfied—
- (a) by things done (wholly or in part) before the commencement of the provision in question or the passing of this Act, and
  - (b) by things done by the Financial Services Authority or the Bank of England or by both of them.
- (3) “Public consultation requirement” means a requirement (however expressed) to publish a draft of the instrument or other document with or without other material and to invite representations about it.

**Commencement Information**

**I152** Sch. 20 para. 7 in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), Sch. Pt. 1

- 8 (1) The first order under section 22A of FSMA 2000 may, if it imposes on the PRA a public consultation requirement in relation to any statement of policy required by the order to be prepared by the PRA, provide that in relation to the first statement of policy the requirement may be satisfied—
- (a) by things done (wholly or in part) before the commencement of the order or the passing of this Act, and
  - (b) by things done by the Financial Services Authority or the Bank of England or by both of them.
- (2) “Public consultation requirement” has the same meaning as in paragraph 7.

**Commencement Information**

**I153** Sch. 20 para. 8 in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), Sch. Pt. 1

*Information*

- 9 (1) The FSA may disclose to the PRA any information which the FSA considers that it is necessary or expedient to disclose to the PRA in preparation for the commencement of any provision of this Act conferring functions on the PRA.
- (2) The FSA may disclose to the Bank of England any information which the FSA considers that it is necessary or expedient to disclose to the Bank in preparation for the commencement of any provision of this Act conferring functions on the Bank.
- (3) Section 348 of FSMA 2000 (restrictions on disclosure of confidential information) has effect subject to sub-paragraphs (1) and (2).

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**Commencement Information**

**I154** Sch. 20 para. 9 in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), Sch. Pt. 1

*Postal Services Act 2000*

- 10 (1) The following amendments of the Postal Services Act 2000 have effect until the repeal by the Postal Services Act 2011 of the provisions amended has been brought into force for all purposes.
- (2) In section 7 of the Postal Services Act 2000 (exceptions), in subsection (5), in the definition of “deposit taker”, for “Part 4” substitute “ Part 4A ”.
- (3) In Schedule 7 of that Act (disclosure of information), for paragraph 3(2)(s) substitute—
- “(s) the Financial Conduct Authority,  
(sa) the Prudential Regulation Authority.”.

**Commencement Information**

**I155** Sch. 20 para. 10 in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), Sch. Pt. 1

SCHEDULE 21

Section 119(2)

TRANSFER SCHEMES

**PART 1**

PROPERTY, RIGHTS AND LIABILITIES OF FINANCIAL SERVICES AUTHORITY

*Interpretation*

- 1 In this Part of this Schedule—
- “the Bank” means the Bank of England;  
“the FSA” means the Financial Services Authority.

**Commencement Information**

**I156** Sch. 21 para. 1 in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), Sch. Pt. 1

*Transfer schemes*

- 2 (1) The FSA must make one or more schemes under this paragraph for the transfer of property, rights and liabilities of the FSA—
- (a) to the PRA or the Bank,  
(b) to the PRA and the Bank, to be held jointly, or

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- (c) to the FSA and either the PRA or the Bank or both, to be held jointly.
- (2) A scheme under this paragraph made by the FSA is not to be capable of coming into force unless it is approved by the Treasury.
- (3) The FSA may not submit a scheme under this paragraph to the Treasury for their approval without the consent of the Bank.
- (4) Sub-paragraph (5) applies if—
- (a) the FSA fails, before such time as may be notified to it by the Treasury as the latest time for submission of a scheme under this paragraph in connection with the transfer by or under this Act of specified functions of the FSA to the PRA, to the Bank, or to the FSA and the PRA, to submit such a scheme to the Treasury for their approval, or
- (b) the Treasury decide not to approve a scheme that has been submitted to them by the FSA (either with or without modifications).
- (5) Where this sub-paragraph applies, the Treasury may, after consultation with the FSA and the Bank, make a scheme under this paragraph for the transfer of such of the FSA's property, rights and liabilities as appear to them appropriate to be transferred as mentioned in sub-paragraph (1) in consequence of the transfer of functions by or under this Act.
- (6) The property, rights and liabilities which are the subject of a scheme under this paragraph are transferred in accordance with the provisions of the scheme on such day as the scheme may specify.
- (7) The FSA must provide the Treasury with all such information and other assistance as they may reasonably require for the purposes of, or otherwise in connection with, the exercise of any power conferred on the Treasury by this paragraph.
- (8) In the following provisions of this Part of this Schedule a scheme under this paragraph is referred to as a “transfer scheme”.

**Commencement Information**

**I157** Sch. 21 para. 2 in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), Sch. Pt. 1

- 3 The property, rights and liabilities that may be the subject of a transfer scheme include—
- (a) any that would otherwise be incapable of being transferred or assigned, and
- (b) rights and liabilities under a contract of employment.

**Commencement Information**

**I158** Sch. 21 para. 3 in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), Sch. Pt. 1

- 4 A transfer scheme may—
- (a) apportion, or provide for the apportionment of, property, rights and liabilities,
- (b) define the property, rights and liabilities to be transferred by specifying them or by describing them (including describing them by reference to functions that are transferred by or under this Act);

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- (c) contain provision for the payment of compensation by the PRA or the Bank to the FSA;
- (d) contain provision for the payment of compensation by the FSA, the PRA or the Bank to any person whose interests are adversely affected by the scheme;
- (e) contain supplemental, incidental, transitional and consequential provision.

**Commencement Information**

**I159** Sch. 21 para. 4 in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), Sch. Pt. 1

- 5 A transfer scheme which relates to rights and liabilities under a contract of employment—
- (a) must provide for the transfer to which the scheme relates to be treated as if it were a relevant transfer for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”), but
  - (b) may, in connection with functions becoming exercisable (alone or jointly) by the PRA—
    - (i) provide for the transfer of rights and liabilities under a contract of employment to the Bank, and
    - (ii) provide for TUPE to have effect as if the relevant transfer were a transfer to the Bank.

**Commencement Information**

**I160** Sch. 21 para. 5 in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), Sch. Pt. 1

## PART 2

### PROPERTY, RIGHTS AND LIABILITIES OF OFFICE OF FAIR TRADING

#### *Interpretation*

- 6 In this Part of this Schedule “the OFT” means the Office of Fair Trading.

**Commencement Information**

**I161** Sch. 21 para. 6 in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), Sch. Pt. 1

#### *Transfer schemes*

- 7 (1) This paragraph applies if after the passing of this Act the Treasury make an order under section 22 of FSMA 2000 which has the effect that an activity—
- (a) ceases to be an activity in respect of which a licence under section 21 of the Consumer Credit Act 1974 is required or would be required but for the exemption conferred by subsection (2), (3) or (4) of that section or paragraph 15(3) of Schedule 3 to FSMA 2000, and
  - (b) becomes a regulated activity for the purposes of FSMA 2000.

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- (2) The OFT must make one or more schemes under this paragraph for the transfer of property, rights and liabilities of the OFT to the FCA.
- (3) A scheme under this paragraph made by the OFT is not to be capable of coming into force unless it is approved by the Treasury and the Secretary of State.
- (4) The OFT may not submit a scheme under this paragraph to the Treasury or the Secretary of State for their approval without the consent of the FCA.
- (5) Sub-paragraph (6) applies if—
  - (a) the OFT fails, before such time as may be notified to it by the Treasury as the latest time for submission of a scheme under this paragraph in connection with an order falling within sub-paragraph (1), to submit such a scheme to the Treasury and the Secretary of State for their approval, or
  - (b) the Treasury or the Secretary of State decide not to approve a scheme that has been submitted to them by the OFT (either with or without modifications).
- (6) Where this sub-paragraph applies, the Treasury may, with the approval of the Secretary of State, make a scheme under this paragraph for the transfer to the FCA of such of the OFT's property, rights and liabilities as appear to the Treasury appropriate to be transferred to the FCA in consequence of the order falling within sub-paragraph (1).
- (7) The property, rights and liabilities which are the subject of a scheme under this paragraph are transferred in accordance with the provisions of the scheme on such day as the scheme may specify.
- (8) The OFT must provide the Treasury or the Secretary of State with all such information and other assistance as either of them may reasonably require for the purposes of, or otherwise in connection with, the exercise of any power conferred on the Treasury or the Secretary of State by this paragraph.
- (9) In the following provisions of this Part of this Schedule a scheme under this paragraph is referred to as a “transfer scheme”.

**Commencement Information**

**I162** Sch. 21 para. 7 in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), Sch. Pt. 1

- 8 The property, rights and liabilities that may be the subject of a transfer scheme include—
- (a) any that would not otherwise be capable of being transferred or assigned, and
  - (b) rights and liabilities under a contract of employment.

**Commencement Information**

**I163** Sch. 21 para. 8 in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), Sch. Pt. 1

- 9 A transfer scheme may—
- (a) apportion, or provide for the apportionment of, property, rights and liabilities,

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- (b) define the property, rights and liabilities to be transferred by specifying them or by describing them (including describing them by reference to functions that are transferred by the order falling within paragraph 7(1));
- (c) contain provision for the payment of compensation by the FCA to the OFT;
- (d) contain provision for the payment of compensation by the OFT or the FCA to any person whose interests are adversely affected by the scheme;
- (e) contain supplemental, incidental, transitional and consequential provision.

**Commencement Information**

**I164** Sch. 21 para. 9 in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), Sch. Pt. 1

- 10 A transfer scheme which relates to rights and liabilities under a contract of employment must provide for the transfer to which the scheme relates to be treated as if it were a relevant transfer for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006.

**Commencement Information**

**I165** Sch. 21 para. 10 in force at 24.1.2013 by S.I. 2013/113, art. 2(1)(a), Sch. Pt. 1

**Status:**

Point in time view as at 19/02/2013.

**Changes to legislation:**

Financial Services Act 2012 is up to date with all changes known to be in force on or before 12 July 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.