

# FINANCIAL SERVICES ACT 2012

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## EXPLANATORY NOTES

### COMMENTARY

#### **Part 2 - Amendments of Financial Services and Markets Act 2000**

#### **Control over authorised persons**

#### *Section 27: Powers of regulators in relation to parent undertakings*

333. *Section 27* confers powers on the regulators in relation to unregulated parent undertakings. It inserts a new Part 12A comprising of sections 192A to 192N into FSMA.
334. *New section 192A* defines a “qualifying authorised person” as a body corporate incorporated in the UK, which is a PRA-authorised person or an investment firm. *Subsections (4) to (9)* make provision for the Treasury to amend aspects of this definition by order.
335. *New section 192B* defines “qualifying parent undertaking” for the purposes of new Part 12A. To be a qualifying parent undertaking, the person must be the parent undertaking of a qualifying authorised person or recognised investment exchange (which is not an overseas investment exchange as defined by section 313(1) of FSMA (interpretation of Part 18)); must be incorporated in the UK or have a place of business in the UK; must not be an authorised person, recognised investment exchange or recognised clearing house (see section 286 of FSMA); and must be a financial institution of a kind prescribed by the Treasury by order.
336. *New section 192C* provides that the FCA or PRA may give a direction to a qualifying parent undertaking if one of two conditions are satisfied. The first condition, set out in *subsection (2)*, is that the regulator considers that it is desirable to give the direction to advance, in the case of the FCA, one or more of its operational objectives and in the case of the PRA, any of its objectives. The second condition, set out in *subsection (3)*, is that the regulator concerned is under EU law responsible for consolidated supervision of the members of a group which contains a qualifying authorised person and the regulator considers that giving the direction is desirable for the purpose of the effective consolidated supervision of the group. This condition might be met where, for example, the acts of the qualifying parent undertaking are having an adverse effect on the ability of the regulator to carry out effectively consolidated supervision of persons who are not authorised persons (for example, subsidiaries established in other Member States). *Subsection (5)* requires the regulator to consider whether it could use powers in relation to authorised persons or recognised investment exchanges rather than this power, and to have regard to the principle that a burden or restriction which is imposed should be proportionate to the benefits, considered in general terms, that are expected to result.
337. *New section 192D* gives more detail as to the requirements that may be imposed under section 192C.

*These notes refer to the Financial Services Act 2012  
(c.21) which received Royal Assent on 19 December 2012*

338. *New section 192E* sets out the procedural requirements relating to the giving of directions. If the regulator proposes to give a direction, it must first issue a written notice to the qualifying parent undertaking and to any authorised person or recognised investment exchange it thinks will be significantly affected, giving the details set out at *subsection (5)*. The direction may take effect immediately or on a specified date if the regulator considers it necessary for it to do so. If no date is specified in this way, the direction will take effect only after the time for referring the matter to the Tribunal has expired and any reference and further appeal has been finally determined (see the definition of “open to review” in section 391(8)). *Subsections (7) and (8)* require the regulator to give further written notice of its response to any representations which are made to the proposed direction. The regulator can decide not to give the direction (or to cancel it if it has already taken effect), to propose a different direction (in which case the original notice procedure must be repeated), or to proceed with the direction (in which case the person concerned has a further right to refer the matter to the Tribunal). *New section 192F* also requires consultation between the regulators (and the Bank of England where the direction is to be given to a person who is also a parent undertaking of a recognised clearing house) before the issuing of notices under *new section 192E*.
339. *New section 192G* confers a right to refer to the Tribunal an exercise of a regulator’s powers in relation to the issuing of directions.
340. *New section 192H* requires each regulator to publish a statement of policy on the exercise of its powers to issue directions, and to give a copy of the statement to the Treasury. Under *new section 192I*, before publishing a statement of policy, the regulators must first consult each other and the Bank of England and publish a draft for public consultation; they must also publish an account of what representations they received and their response to them.
341. *New section 192J* enables the FCA and PRA to make rules requiring qualifying parent undertakings (as defined by new section 192B) to provide information or documents to the regulator.
342. *New section 192K* enables the FCA and PRA to impose penalties on, or publish a statement of censure in relation to, a qualifying parent undertaking who has breached a direction given under new section 192C or rules made under new section 192J. Such action may not be taken outside the limitation period (as defined in *subsection (5)*).
343. *New section 192L* sets out the procedure the FCA and PRA must follow before taking action under section 192K. *Subsection (7)* provides that a person who has received a penalty or been the subject of a statement of censure may refer the matter to the Tribunal.
344. *New section 192M* requires a regulator to provide a copy of any statement of censure to certain persons (including the person in respect to whom it is made).
345. *New section 192N* requires the FCA and PRA to prepare a statement of policy with respect to the imposition of, and amount of, penalties under new section 192K. The regulator must have regard to any such statement when exercising its power to impose a penalty. The procedural requirements set out in section 192I (including the requirement to consult on a draft of the policy) apply.