

FINANCIAL SERVICES ACT 2012

EXPLANATORY NOTES

COMMENTARY

Part 2 - Amendments of Financial Services and Markets Act 2000

Financial ombudsman service

Section 39 and Schedule 11: The financial ombudsman service

441. *Section 39* and Schedule 11 amend the provisions of FSMA relating to the Financial Ombudsman Service (FOS).
442. Section 228(6) of FSMA provides that a complainant is treated as having rejected an ombudsman's determination if the complainant does not accept or reject the determination by a date specified by the ombudsman. New *subsection (6A)* enables a complainant to accept a determination after the deadline has passed, if certain conditions are met. It is intended that the scheme operator of the FOS will make rules specifying the circumstances in which complainants will not be treated as having rejected a determination.
443. *New section 230A* places a duty on the scheme operator of the FOS to publish reports of determinations. However, a report (or part of a report) must not be published if the ombudsman making the determination informs the scheme operator that publication of the report (or part of it) is inappropriate. The report of a determination will not include the name of the complainant or any particulars which the scheme operator deems likely to identify the complainant, unless the complainant agrees.
444. *New section 232A* requires the scheme operator of the FOS to disclose information to the FCA in circumstances where it considers that the information might be of assistance to the FCA in advancing one or more of its operational objectives.
445. *New section 1C(2)(h)* (see *section 6*) places a duty on the FCA to have regard to any information which the scheme operator of the FOS has provided to the FCA pursuant to new section 232A (in considering what degree of protection for consumers may be appropriate, for the purposes of securing the FCA's consumer protection objective).
446. *Paragraph 12* inserts a *new section 234B*. This provision provides that a "successor firm" that takes over liability for the acts or omissions of a predecessor firm can be a respondent to a complaint made under the FOS regarding a predecessor firm. The aim of this provision is not to require a firm which acquires the business of another to accept liability for subsequent FOS claims but to ensure that where the firm has agreed to accept such liability, it also becomes a potential respondent to a complaint before the ombudsman scheme. The amendment applies equally to businesses that fall under the consumer credit jurisdiction and the voluntary jurisdiction.
447. *Paragraph 16* inserts a *new paragraph 3A* into schedule 17 FSMA (the ombudsman scheme). This provides for cooperation between the scheme operator of the FOS and the FCA in the exercise of their separate functions. It reflects the fact that some cooperation

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

is necessary for the FCA and the scheme operator of the FOS to each carry out their functions as effectively and as efficiently as possible. It makes cooperation compulsory but is silent as to the form that cooperation should take (except for the requirement to prepare and maintain a memorandum).

448. *Paragraph 18* allows the Treasury to direct the scheme operator to comply with provisions of the Companies Act 2006 dealing with accounts and audit which would otherwise not apply to it. The direction may modify provisions of the Companies Act 2006 dealing with accounts and audit in their application to the scheme operator.
449. *Paragraph 19* provides for the accounts of the scheme operator to be audited by the National Audit Office. The National Audit Office carries out audit functions of the Comptroller and Auditor General. The Treasury must lay before Parliament the certified accounts of the scheme operator and the report of the Comptroller and Auditor General on them.