



# Financial Services Act 2021

## 2021 CHAPTER 22

**U.K.**

An Act to make provision about financial services and markets; to make provision about debt respite schemes; to make provision about Help-to-Save accounts; and for connected purposes. [29th April 2021]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

VALID FROM 09/06/2021

### *Prudential regulation of credit institutions and investment firms*

VALID FROM 01/01/2022

#### **1 Exclusion of certain investment firms from the Capital Requirements Regulation **U.K.****

- (1) Article 4(1) of the Capital Requirements Regulation (definitions) is amended in accordance with subsections (2) to (6).
- (2) In point (2) (definition of “investment firm”), for the words from “excluding” to the end substitute “ other than a credit institution ”.
- (3) In point (2A) (definition of “CRR firm”), in paragraph (a)(ii), for “an investment firm” substitute “ a designated investment firm ”.
- (4) After point (2A) insert—

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“(2AA) ‘*designated investment firm*’ means an investment firm that is for the time being designated by the PRA under article 3 of the Financial Services and Markets Act 2000 (PRA-regulated Activities) Order 2013 (S.I. 2013/556), but is not—

- (a) a commodity and emission allowance dealer,
- (b) a collective investment undertaking, or
- (c) an insurance undertaking;

(2AB) ‘*FCA investment firm*’ means an investment firm that—

- (a) is an authorised person within the meaning of section 31(1)(a) of FSMA, and
- (b) is not a designated investment firm;”.

(5) In point (3) (definition of “institution”), for “an investment firm” substitute “a designated investment firm”.

(6) At the end insert—

“(150) ‘*commodity and emission allowance dealer*’ means an undertaking the main business of which consists exclusively of the provision of investment services or activities in relation to—

- (a) commodity derivatives or commodity derivative contracts referred to in paragraphs 5, 6, 7, 9 and 10 of Part 1 of Schedule 2 to the Regulated Activities Order,
- (b) derivatives of emission allowances referred to in paragraph 4 of that Part of that Schedule, or
- (c) emission allowances referred to in paragraph 11 of that Part of that Schedule.”

(7) In Schedule 1—

- (a) Part 1 contains consequential amendments of the Capital Requirements Regulation, and
- (b) Part 2 contains consequential amendments of the Capital Requirements (Country-by-Country Reporting) Regulations 2013 (S.I. 2013/3118).

VALID FROM 01/07/2021

## 2 Prudential regulation of certain investment firms by FCA rules **U.K.**

In Schedule 2—

- (a) Part 1 inserts Part 9C of the Financial Services and Markets Act 2000 (prudential regulation of FCA investment firms),
- (b) Part 2 contains minor and consequential amendments of the Financial Services and Markets Act 2000, and
- (c) Part 3 contains transitional provision.

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### **3 Transfer of certain prudential regulation matters into PRA rules** **U.K.**

- (1) The Treasury may by regulations revoke provisions of the Capital Requirements Regulation relating to the matters listed in subsection (2).
- (2) The matters are—
  - (a) deductions from Common Equity Tier 1 items;
  - (b) the following aspects of the standardised approach to credit risk—
    - (i) exposure value;
    - (ii) risk weights for exposures to institutions;
    - (iii) exposures to corporates;
    - (iv) exposures secured by mortgages on immovable property;
    - (v) retail exposures;
    - (vi) subordinated debt and equity exposures;
    - (vii) the use of credit assessments;
    - (viii) exposures with particularly high risk;
    - (ix) exposures in the form of units or shares in collective investment undertakings;
  - (c) classification of off-balance sheet items;
  - (d) the following aspects of the internal ratings based approach to credit risk—
    - (i) the advanced internal ratings based approach for asset classes that cannot be modelled in a robust and prudent manner;
    - (ii) input parameters;
    - (iii) the requirement to use the internal ratings based approach for all significant exposure classes;
    - (iv) the 1.06 scaling factor for estimating risk-weighted assets;
    - (v) exposures in the form of units or shares in collective investment undertakings;
    - (vi) risk-weighted exposure amounts for equity exposures;
    - (vii) the treatment of expected loss amounts by exposure types;
  - (e) the use of credit risk mitigation techniques for exposures risk-weighted under the standardised approach to credit risk or the internal ratings based approach to credit risk;
  - (f) the following aspects of own funds requirements for counterparty credit risk—
    - (i) requirements to use particular methods for calculating the exposure value;
    - (ii) the mark-to-market method;
    - (iii) the original exposure method;
    - (iv) the standardised method;
    - (v) own funds requirements for exposures to a central counterparty;
  - (g) own funds requirements for operational risk;
  - (h) the following aspects of own funds requirements for market risk—
    - (i) the approaches for calculating the own funds requirements for market risk;
    - (ii) the scope and structure of the alternative standardised approach;
    - (iii) foreign exchange risk factors in the alternative standardised approach;

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- (iv) the scope and structure of the alternative internal model approach, including the use of alternative internal models;
  - (v) regulatory back-testing requirements and multiplication factors in the alternative internal model approach;
  - (vi) requirements relating to risk measurement in the alternative internal model approach;
  - (i) own funds requirements relating to—
    - (i) derogations for small trading book business;
    - (ii) the trading book;
  - (j) own funds requirements for credit valuation adjustment risk;
  - (k) large exposures;
  - (l) liquidity requirements;
  - (m) the leverage ratio;
  - (n) reporting requirements;
  - (o) disclosure requirements;
  - (p) any other matter which is the subject of a CRR Basel standard.
- (3) The Treasury may by regulations revoke a provision of the Capital Requirements Regulation where—
- (a) the provision is connected with provision relating to a matter listed in subsection (2), and
  - (b) the Treasury consider the revocation necessary or desirable in order to maintain or improve the coherence of the prudential regime comprised in, and in provision made under, the Capital Requirements Regulation and in general rules made by the Prudential Regulation Authority.
- (4) The Treasury may only make regulations under subsection (1) or (3) revoking a provision if they consider that—
- (a) the provision has been, or will be, adequately replaced by general rules made, or to be made, by the Prudential Regulation Authority, or
  - (b) it is appropriate for the provision not to be replaced.
- (5) The Treasury may by regulations make consequential, supplementary, incidental, transitional, transitory and saving provision in connection with the revocation of provisions under subsection (1) or (3), including provision amending, repealing or revoking provisions of the Capital Requirements Regulation or another enactment.
- (6) Regulations under this section may make different provision for different purposes.
- (7) Regulations under this section are subject to the affirmative procedure.
- (8) Where the Treasury make regulations in reliance on subsection (2)(p), the Treasury must, when laying a draft of the regulations before Parliament, also lay before Parliament a statement explaining which provisions are made in reliance on that paragraph and identifying the relevant CRR Basel standard.
- (9) The reference in subsection (2)(p) to a matter that is the subject of a CRR Basel standard includes such a matter as it relates to any CRR firm (even where the standard in question does not apply to all CRR firms).
- (10) In this section—
- “CRR Basel standard” has the meaning given in section 4;

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“general rules” has the same meaning as in the Financial Services and Markets Act 2000 (see section 417 of that Act).

- (11) Terms used in this section and in the Capital Requirements Regulation have the same meaning in this section as they have in that Regulation (or any part of it).

#### **4 CRR Basel standards U.K.**

- (1) For the purposes of section 3, “CRR Basel standard” means—
- (a) a standard recommended in a document issued by the Basel Committee on Banking Supervision listed in subsection (2), or
  - (b) a standard recommended in another document issued by that Committee where the recommended date for implementation of the standard falls on or before the date described in subsection (3),
- subject to subsection (4).
- (2) The documents referred to in subsection (1)(a) are the documents entitled (and issued) as follows—
- (a) Capital requirements for banks' equity investments in funds (December 2013);
  - (b) The standardised approach for measuring counterparty credit risk exposures (March 2014);
  - (c) Capital requirements for bank exposures to central counterparties (April 2014);
  - (d) Supervisory framework for measuring and controlling large exposures (April 2014);
  - (e) Basel III: the net stable funding ratio (October 2014);
  - (f) Revised Pillar 3 disclosure requirements (January 2015);
  - (g) Pillar 3 disclosure requirements — consolidated and enhanced framework (March 2017);
  - (h) Implementation of net stable funding ratio and treatment of derivative liabilities (October 2017);
  - (i) Basel III: Finalising post-crisis reforms (December 2017);
  - (j) Technical Amendment — Basel III: Treatment of extraordinary monetary policy operations in the Net Stable Funding Ratio (June 2018);
  - (k) Pillar 3 disclosure requirements — regulatory treatment of accounting provisions (August 2018);
  - (l) Pillar 3 disclosure requirements — updated framework (December 2018);
  - (m) Minimum capital requirements for market risk (January 2019);
  - (n) Targeted revisions to the credit valuation adjustment risk framework (July 2020).
- (3) The date referred to in subsection (1)(b) is whichever is the latest of the dates recommended by the Basel Committee on Banking Supervision in a document listed in subsection (2) for the implementation of a standard (or, where implementation is recommended to take place in phases, for the full implementation of a standard).
- (4) A recommended standard is not a CRR Basel standard to the extent that, immediately before the day on which this section comes into force, provision giving effect to the recommendation is included in an enactment.

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- (5) References in this section to a document issued by the Basel Committee on Banking Supervision are to such a document as it has effect from time to time.

## **5 Prudential regulation of credit institutions etc by PRA rules U.K.**

- (1) In Schedule 3—
- (a) Part 1 inserts Part 9D of the Financial Services and Markets Act 2000 (prudential regulation of credit institutions etc),
  - (b) Part 2 amends the Prudential Regulation Authority's powers under Part 12B of that Act (approval of certain holding companies),
  - (c) Part 3 contains minor and consequential amendments, and
  - (d) Part 4 contains transitional provision.
- (2) Subsections (3) to (5) apply where a provision of the Capital Requirements Regulation, or of an instrument made under that Regulation, has been revoked by regulations under section 3.
- (3) In the Capital Requirements Regulation and in other enactments, except as otherwise provided—
- (a) pre-revocation references to the revoked provision are to be treated as references to the corresponding CRR rule, and
  - (b) pre-revocation references to the Capital Requirements Regulation or the instrument, or to a division of that Regulation or instrument that included the revoked provision, are to be treated as including the corresponding CRR rule.
- (4) The Prudential Regulation Authority must—
- (a) prepare a document setting out whether and, if so, how CRR rules correspond to the revoked provision,
  - (b) update the document from time to time, and
  - (c) publish the document, and any update, in the manner best calculated to bring it to the attention of those likely to be affected by the Capital Requirements Regulation and CRR rules.
- (5) For the purposes of subsection (3), whether a CRR rule corresponds to a revoked provision is to be determined by reference to the document published under subsection (4), as updated from time to time.
- (6) In this section, references to instruments made under the Capital Requirements Regulation include EU tertiary legislation made under that Regulation which forms part of retained EU law.
- (7) In this section—
- “CRR rules” has the same meaning as in the Financial Services and Markets Act 2000 (see section 144A of that Act, inserted by Schedule 3 to this Act);
- “EU tertiary legislation” has the same meaning as in the European Union (Withdrawal) Act 2018 (see section 20 of that Act);
- “pre-revocation reference” means, in connection with the revocation of a provision described in subsection (2), a reference contained in an enactment immediately before the revocation (whether or not the reference is in force at that time).

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PROSPECTIVE

**6 Power to amend the Credit Rating Agencies Regulation U.K.**

- (1) The Treasury may by regulations amend the Credit Rating Agencies Regulation by making provision related to the issuing and use of credit ratings which it considers necessary or desirable having regard to a CRR Basel standard.
- (2) Regulations under this section may—
  - (a) make different provision for different purposes, and
  - (b) make consequential, supplemental, incidental, transitional, transitory and saving provision.
- (3) Regulations under this section are subject to the affirmative procedure.
- (4) The power under subsection (1) includes power to make provision in relation to any CRR firm (even where the CRR Basel standard to which the Treasury have regard does not apply to all CRR firms).
- (5) In this section—
  - “CRR Basel standard” has the meaning given in section 4;
  - “CRR firm” has the same meaning as in the Capital Requirements Regulation;
  - “the Credit Rating Agencies Regulation” means Regulation (EC) No. 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies;
  - “credit rating” has the same meaning as in the Credit Rating Agencies Regulation (see Article 3(1)(a) of that Regulation).

VALID FROM 26/06/2021

**7 Amendments of the Capital Requirements Regulation U.K.**

Schedule 4 contains amendments of the Capital Requirements Regulation.

VALID FROM 01/07/2021

*Benchmarks*

**8 Review of which benchmarks are critical benchmarks U.K.**

- (1) Article A20 of the Benchmarks Regulation (review of critical benchmarks) is amended in accordance with subsections (2) to (5).
- (2) In paragraph 2, for point (a) (but not the “and” at the end) substitute—



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“(a) whether an administrator located in the United Kingdom provides a benchmark that satisfies one or more of conditions (a), (b), (c) or (d) of paragraph 1 of Article 20;”.

(3) In paragraph 2(b), for “point (a)(i) or (ii)” substitute “ point (a) ”.

(4) In paragraph 3(b), for “point (a)(i) or (ii)” substitute “ point (a) ”.

(5) In paragraph 6, for point (b) substitute—

“(b) the Treasury consider that the benchmark satisfies one or more of conditions (a), (b), (c) or (d) of paragraph 1 of Article 20.”

(6) In Article 20(1) of the Benchmarks Regulation (critical benchmarks: conditions and other matters)—

(a) in the opening words of point (c), for “all” substitute “ both ”,

(b) omit point (c)(i), and

(c) after point (c) insert—

“(d) the benchmark has a sufficient number of appropriate market-led substitutes that it does not fulfil the criterion in point (c)(ii), but:

(i) it is not reasonably practicable for one or more users of the benchmark to switch to one of those substitutes, and

(ii) the benchmark fulfils the criterion in point (c)(iii).”

## 9 **Mandatory administration of a critical benchmark** **U.K.**

(1) Article 21 of the Benchmarks Regulation (mandatory administration of a critical benchmark) is amended as follows.

(2) In paragraph 3, for “five years” substitute “ 10 years ”.

(3) After paragraph 3 insert—

“3A

If the FCA decides to compel the administrator to continue publishing the benchmark under paragraph 3, the FCA must assess the capability of the benchmark to measure the underlying market or economic reality, taking into account, among other things, the procedure established by the administrator in accordance with Article 28(1).

3B

After making its assessment under paragraph 3A, the FCA must give the administrator—

(a) a written notice stating that it considers that the benchmark is not representative of the market or economic reality that it is intended to measure or that the representativeness of the benchmark is at risk, or

(b) a written notice stating that it considers that the representativeness of the benchmark is not at risk.



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3C

The FCA must make its assessment under paragraph 3A, and give the notice under paragraph 3B, before the end of the period of 28 days beginning with the day on which the FCA notifies the administrator of its decision to compel the administrator to continue publishing the benchmark.”

**10 Prohibition on new use where administrator to cease providing critical benchmark U.K.**

In the Benchmarks Regulation, after Article 21 insert—

*“Article 21A*

***Prohibition on new use where administrator  
to cease providing critical benchmark***

1

Where the FCA has completed an assessment of a critical benchmark under Article 21(2), the FCA may, by publishing a notice, prohibit some or all new use of the benchmark by supervised entities.

2

In paragraph 1, the reference to new use of a benchmark is to doing the following on or after the day on which the prohibition takes effect (“the prohibition day”)—

- (a) issuing a financial instrument which references the benchmark, or amending the terms of a financial instrument so as to include a reference to the benchmark where the instrument did not reference the benchmark immediately before the prohibition day;
- (b) determining the amount payable under a financial instrument or a financial contract by referencing the benchmark, where the instrument or contract did not reference the benchmark immediately before the prohibition day;
- (c) being a party to a financial contract which references the benchmark—
  - (i) where the contract is formed on or after the prohibition day, or
  - (ii) where the contract was formed before the prohibition day but did not reference the benchmark immediately before that day;
- (d) providing a borrowing rate as described in point (7)(d) of Article 3(1) calculated by reference to the benchmark for the purposes of a financial contract—
  - (i) where the contract is formed on or after the prohibition day, or
  - (ii) where the contract was formed before the prohibition day but did not use the borrowing rate immediately before that day;
- (e) measuring the performance of an investment fund through the benchmark for a purpose described in point (7)(e) of Article 3(1),

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where the fund's constitutional documents or prospectus did not provide for its performance to be measured through the benchmark immediately before the prohibition day.

3 The FCA may only exercise the power under paragraph 1 if it considers it desirable to do so in order to advance either or both of the following—

- (a) its consumer protection objective (see section 1C of FSMA);
- (b) its integrity objective (see section 1D of that Act).

4 In exercising the power under paragraph 1 in relation to a benchmark that is used outside the United Kingdom, the FCA may, among other things, have regard to the likely effect outside the United Kingdom of the exercise of the power.

5 A notice under this Article may—

- (a) make different provision for different purposes;
- (b) make provision by reference to any aspect of the new use, including the persons involved in the use;
- (c) provide that the prohibition has effect only during a period specified in the notice;
- (d) make such transitional provision as the FCA considers appropriate.

6 A notice under this Article must—

- (a) give reasons for the prohibition,
- (b) specify when the prohibition is to take effect,
- (c) explain how the FCA has taken account of the relevant policy statement (see Article 23F), and
- (d) provide any further information that the FCA considers appropriate for assisting supervised entities to understand the prohibition.

7 A notice under this Article must be published in the manner that appears to the FCA to be best calculated to bring it to the attention of—

- (a) supervised entities, and
- (b) the public.

8 The FCA—

- (a) must give a copy of a notice under this Article to the Treasury before publishing it, and
- (b) may charge a reasonable fee for providing a person with a copy of a notice published under this Article.

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9 In paragraph 2(a) to (e), references to referencing, or measuring performance through, the benchmark (however expressed) include referencing, or measuring performance through, a combination of indices that include the benchmark.”

## 11 Assessment of representativeness of critical benchmarks **U.K.**

(1) In Article 3(1) of the Benchmarks Regulation (definitions)—

(a) after point (10) insert—

“(10A) ‘*supervised third country contributor*’ means a supervised third country entity that contributes input data to an administrator located in the United Kingdom;”, and

(b) after point (17) insert—

“(17A) ‘*supervised third country entity*’ means an entity that would be a supervised entity by virtue of point (a) of the definition of that term (CRR firm that is a credit institution) but for the fact that it does not have its head office or registered office in the United Kingdom;”.

(2) After Article 22 of the Benchmarks Regulation insert—

“*Article 22A*

### ***Assessment of representativeness of critical benchmarks: administrator***

1 This Article applies to a critical benchmark that—

- (a) is based on submissions by contributors the majority of which are supervised entities or supervised third country entities, and
- (b) is not an Article 23A benchmark.

2 An administrator of a critical benchmark must submit to the FCA an assessment of the capability of the benchmark to measure the underlying market or economic reality—

- (a) at the end of the period of two years beginning with the day on which the benchmark became a critical benchmark, and
- (b) at the end of each subsequent two year period.

3 The FCA may, by written notice, require an administrator of a critical benchmark to submit to the FCA an assessment of the capability of the benchmark to measure the underlying market or economic reality.

4 The FCA may only impose a requirement under paragraph 3 if it considers that—

- (a) the benchmark does not, or may not, represent the underlying market or economic reality, or

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(b) the representativeness of the benchmark is or may be at risk.

5 A notice under paragraph 3 may require the administrator to submit the assessment before a date specified in the notice, provided that date falls after the end of the period of two weeks beginning with the day on which the notice was given.

6 If a supervised contributor or a supervised third country contributor intends to cease contributing input data to a critical benchmark—

- (a) the contributor must notify the benchmark administrator promptly in writing, and
- (b) the notification must state the date on which it intends to cease contributing, which must be after the end of the period of 15 weeks beginning with the first working day after the day on which it gives the notification.

7 If an administrator of a benchmark is notified under paragraph 6, it must—

- (a) inform the FCA promptly, stating the date on which the notification was given, and
- (b) submit to the FCA an assessment of the implications of the contributor's withdrawal for the capability of the benchmark to measure the underlying market or economic reality.

8 An assessment under paragraph 7(b) must be submitted to the FCA before the end of the period of 14 days beginning with the first working day after the day on which the notification under paragraph 6 was given.

9 An administrator of a critical benchmark that is required to provide an assessment under this Article must not change the market or economic reality intended to be measured by the benchmark (as defined in the benchmark statement referred to in Article 27) during the assessment period, unless the FCA gives it written permission to do so.

10 For the purposes of paragraph 9, the assessment period begins—

- (a) in the case of an assessment under paragraph 2, with the day falling one month before the end of the relevant two year period described in that paragraph;
- (b) in the case of an assessment under paragraph 3, when the administrator receives the FCA's notice requiring the assessment;
- (c) in the case of an assessment under paragraph 7(b), when the contributor notifies the administrator under paragraph 6.

11 For the purposes of paragraph 9, the assessment period ends—

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- (a) when the FCA notifies the administrator that it considers that the representativeness of the benchmark is not at risk, whether by giving a notice under Article 22B(3)(b) or otherwise, or
- (b) when the benchmark becomes an Article 23A benchmark.

#### *Article 22B*

#### ***Assessment of representativeness of critical benchmarks: FCA***

1 Where the FCA receives an assessment by a benchmark administrator under Article 22A within the period specified by or under that Article, the FCA must make its own assessment of the capability of the benchmark to measure the underlying market or economic reality, taking into account, among other things—

- (a) the procedure established by the administrator in accordance with Article 28(1), and
- (b) the administrator's assessment.

2 If a benchmark administrator does not submit an assessment under Article 22A within the period specified by or under that Article, the FCA may make its own assessment of the capability of the benchmark to measure the underlying market or economic reality and, if it does so—

- (a) must take into account the procedure established by the administrator in accordance with Article 28(1), and
- (b) may take into account, among other things, an assessment submitted by the administrator after the end of the specified period.

3 After making its assessment under this Article, the FCA must give the benchmark administrator—

- (a) a written notice stating that it considers that the benchmark is not representative of the market or economic reality that it is intended to measure or that the representativeness of the benchmark is at risk, or
- (b) a written notice stating that it considers that the representativeness of the benchmark is not at risk.

4 Where the administrator's assessment was made under Article 22A(7)(b) (contributor intends to cease contributing input data), the FCA must make its assessment under paragraph 1 or 2, and give the notice under paragraph 3, before the end of the period of 28 days beginning with the first working day after the day on which the administrator was notified under Article 22A(6).”

- (3) Paragraph 2 of Article 22A of the Benchmarks Regulation (inserted by this section) applies in the case of a benchmark which became a critical benchmark before the day on which this section comes into force, but as if it only required the administrator to submit an assessment at the end of each two year period described in that paragraph which ends after that day.

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## 12 Mandatory contribution to critical benchmarks **U.K.**

- (1) Article 23 of the Benchmarks Regulation (mandatory contribution to a critical benchmark) is amended as follows.
- (2) Omit paragraphs 1 to 4.
- (3) For paragraph 5 substitute—

“5A  
If a supervised contributor or supervised third country contributor gives a notification under Article 22A(6), the contributor may not cease contributing input data before the date specified in the notification as the date on which it intends to cease contributing, unless the FCA gives it written permission to do so.

5B  
Paragraph 5A does not require a contributor to trade or commit to trade.”

- (4) In paragraph 6, for the opening words substitute “ If the FCA gives the administrator of a critical benchmark a notice under Article 21(3B)(a) or Article 22B(3)(a) (benchmark unrepresentative or representativeness at risk), it has the power to— ”.
- (5) In paragraph 6(a)—
  - (a) after “supervised entities” insert “ and supervised third country entities ”, and
  - (b) omit “from the date” to the end.
- (6) In paragraph 6(c), after “supervised entities” insert “ and supervised third country entities ”.
- (7) After paragraph 6 insert—

“6A  
The FCA may only exercise the powers under paragraph 6 so far as it considers it appropriate to do so for the purpose of maintaining, restoring or improving the representativeness of the benchmark.”

- (8) In paragraph 7—
  - (a) after “supervised entities” insert “ and supervised third country entities ”, and
  - (b) omit “supervised” (in the second place it occurs).
- (9) In paragraph 9(d), for “relevant supervised entities” substitute “ contributors mandated to contribute input data ”.
- (10) After paragraph 9 insert—

“9A  
In the case of an Article 23A benchmark, any measures adopted under paragraph 6 in relation to the benchmark are to be treated as being revoked when the designation of the benchmark under Article 23A takes effect.”

- (11) In paragraph 10—
  - (a) after “supervised contributor” insert “ and supervised third country contributor ”, and

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- (b) for “exceeding the maximum five year period laid down in the second subparagraph of paragraph 6” substitute “ extending beyond the end of the period of five years beginning with the day on which the administrator notified the FCA of its intention to cease providing the benchmark under Article 21(1) ”.

(12) Omit paragraph 12.

### 13 Designation of certain critical benchmarks **U.K.**

In the Benchmarks Regulation, after Article 23 insert—

*“Article 23A*

#### *Designation of certain critical benchmarks*

- 1 If the FCA gives the administrator of a critical benchmark a notice under Article 21(3B)(a) or Article 22B(3)(a) (benchmark unrepresentative or representativeness at risk), the FCA must, before the end of the period of 21 days beginning with the day on which it gave the notice—
- (a) consider whether it is appropriate for the FCA to designate the benchmark under this Article, and
  - (b) if it proposes to do so, inform the benchmark administrator by written notice.
- 2 The FCA may not designate a benchmark under this Article if it considers that it is, and is likely to continue to be, the case that—
- (a) the representativeness of the benchmark can reasonably be restored and maintained by the administrator or by the FCA exercising its powers under Article 23(6), and
  - (b) there are good reasons to restore and maintain its representativeness.
- 3 A notice under paragraph 1(b) must—
- (a) explain when the FCA proposes that the designation of the benchmark should take effect,
  - (b) give reasons for the FCA's proposed decision, and
  - (c) state that the administrator may make written representations to the FCA during the period of 14 days beginning with the day on which the notice is given.
- 4 If, after considering any representations made in accordance with paragraph 3(c), the FCA decides to designate the benchmark under this Article, it must give the administrator a written notice of its decision.
- 5 A notice under paragraph 4 must—
- (a) state when the designation of the benchmark takes effect,



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- (b) give reasons for the FCA's decision,
- (c) explain how the FCA has taken account of the relevant policy statement (see Article 23F),
- (d) state that the prohibition on use of the benchmark under Article 23B will take effect when the designation of the benchmark takes effect, unless the FCA exercises its powers under Article 23B(2) or 23C,
- (e) inform the administrator of its right to refer the decision to the Upper Tribunal and of the procedure for doing so, and
- (f) provide any further information that the FCA considers appropriate for assisting supervised entities to understand the effects of the designation of the benchmark.

6 The FCA may, before a designation under this Article takes effect, decide to change when it takes effect to a later time.

7 If it decides to make such a change—

- (a) the FCA must give the benchmark administrator a written notice of its decision, and
- (b) the notice must satisfy the requirements in paragraph 5(a) to (d) and (f).

8 The FCA may withdraw a designation of a benchmark under this Article if—

- (a) the designation has not taken effect,
- (b) paragraph 1 applies again in relation to the benchmark, and
- (c) the FCA designates the benchmark again under this Article with effect from an earlier date.

9 If the FCA decides to withdraw the designation of a benchmark under paragraph 8—

- (a) the FCA must include notice of the withdrawal in the notice under paragraph 4 of the further designation of the benchmark, and
- (b) the notice must satisfy the requirements in paragraph 5(b), (c) and (f) in relation to the decision to withdraw.

10 A notice under paragraph 4 or 7—

- (a) may identify when the designation takes effect in any manner that the FCA considers appropriate, including by specifying a day or by describing a day by reference to the process for a reference to the Upper Tribunal or another process or event, and
- (b) must be published by the FCA—
  - (i) before the day on which the notice provides for the designation to take effect, and
  - (ii) in the manner that appears to the FCA to be best calculated to bring it to the attention of the public.

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- 11 The FCA—
- (a) must give a copy of a notice under this Article to the Treasury before publishing it, and
  - (b) may charge a reasonable fee for providing a person with a copy of a notice under this Article.

12 If the FCA decides to designate a benchmark under this Article and gives the administrator a notice under paragraph 4, the benchmark administrator may refer the matter to the Upper Tribunal.

13 Part 9 of FSMA (hearings and appeals) applies in relation to references to the Upper Tribunal made under this Article as it applies in relation to references made to that Tribunal under that Act.

14 In this Regulation, references to an “Article 23A benchmark” are to a benchmark in relation to which a designation under this Article has effect.”

#### 14 Use of Article 23A benchmarks **U.K.**

In the Benchmarks Regulation, after Article 23A (inserted by section 13) insert—

*“Article 23B*

##### ***Prohibition on use of Article 23A benchmark***

1 Supervised entities must not use an Article 23A benchmark, except where permitted to do so under paragraph 2 or Article 23C.

2 The FCA may, by publishing a notice before the day on which the designation of the benchmark under Article 23A takes effect, provide that the prohibition in paragraph 1 does not take effect until a date specified in the notice.

3 The date specified in a notice under paragraph 2 must fall before the end of the period of four months beginning with the day on which the designation of the benchmark under Article 23A takes effect.

4 A notice published under this Article must be published in the way appearing to the FCA to be best calculated to bring it to the attention of—

- (a) supervised entities, and
- (b) the public.

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5 The FCA may charge a reasonable fee for providing a person with a copy of a notice published under this Article.

*Article 23C*

***Exception from the prohibition for legacy use of Article 23A benchmark***

1 This Article applies to an Article 23A benchmark.

2 The FCA may, by publishing a notice, permit some or all legacy use of the benchmark by supervised entities.

3 The FCA may, by publishing a notice, alter or withdraw a permission under paragraph 2.

4 The FCA may only exercise a power under paragraph 2 or 3 if it considers it desirable to do so in order to advance either or both of the following—  
(a) its consumer protection objective (see section 1C of FSMA);  
(b) its integrity objective (see section 1D of that Act).

5 In exercising a power under paragraph 2 or 3 in relation to a benchmark that is used outside the United Kingdom, the FCA may, among other things, have regard to the likely effect outside the United Kingdom of the exercise of the power.

6 A notice under this Article may—  
(a) make provision by reference to any aspect of the legacy use of the benchmark, including the persons involved in the use;  
(b) provide that the permission has effect only during a period specified in the notice;  
(c) make different provision for different purposes;  
(d) make such transitional provision as the FCA considers appropriate.

7 A notice under this Article must—  
(a) give reasons for the permission, or the alteration or withdrawal of permission,  
(b) specify when the permission, or the alteration or withdrawal, is to take effect,  
(c) explain how the FCA has taken account of the relevant policy statement (see Article 23F), and

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- (d) provide any further information that the FCA considers appropriate for assisting supervised entities to understand the permission or the alteration or withdrawal of permission.

8 A notice under this Article must be published in the manner that appears to the FCA to be best calculated to bring it to the attention of—

- (a) supervised entities, and
- (b) the public.

9 The FCA—

- (a) must give a copy of a notice under this Article to the Treasury before publishing it, and
- (b) may charge a reasonable fee for providing a person with a copy of a notice published under this Article.

10 In this Article—

- (a) references to legacy use of a benchmark are to use that is not new use, and
- (b) “new use” has the same meaning, in connection with the prohibition under Article 23B, as it has in connection with a prohibition under Article 21A (see Article 21A(2) and (9)).”

## 15 **Orderly cessation of Article 23A benchmarks** **U.K.**

(1) In the Benchmarks Regulation, after Article 23C (inserted by section 14) insert—

*“Article 23D*

### *Orderly cessation of Article 23A benchmarks*

1 This Article applies to an Article 23A benchmark.

2 The FCA may by written notice impose requirements on the benchmark administrator relating to any of the following—

- (a) the way in which the benchmark is determined, including the input data,
- (b) rules of the benchmark, and
- (c) where the benchmark is based on submissions by contributors, the code of conduct referred to in Article 15.

3 The FCA may only exercise the powers under paragraph 2 if—

- (a) it considers it appropriate to do so having regard to the desirability of securing that the cessation of the benchmark takes place in an orderly fashion, and

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(b) it considers it desirable to do so in order to advance either or both of the following—

- (i) its consumer protection objective (see section 1C of FSMA);
- (ii) its integrity objective (see section 1D of that Act).

4 In exercising a power under paragraph 2 in relation to a benchmark that is used outside the United Kingdom, the FCA may, among other things, have regard to the likely effect outside the United Kingdom of the exercise of the power.

5 The powers under paragraph 2—

- (a) may be exercised so as to confer a discretion on the administrator,
- (b) include power to specify when a requirement must be satisfied, and
- (c) include power to vary or withdraw a requirement from time to time.

6 The powers under paragraph 2 are not limited by the market or economic reality that was intended to be measured by the benchmark immediately before it became an Article 23A benchmark (as defined in the benchmark statement referred to in Article 27), although the FCA may have regard to that when exercising those powers.

7 A notice under paragraph 2 must—

- (a) explain the exercise of the power,
- (b) give reasons for the decision to exercise the power,
- (c) specify when the requirement (or variation or withdrawal of a requirement) is to take effect,
- (d) explain how the FCA has taken account of the relevant policy statement (see Article 23F), and
- (e) provide any further information that the FCA considers appropriate for assisting supervised entities to understand the effects of the exercise of the power.

8 The benchmark administrator may not change anything described in paragraph 2 unless—

- (a) the FCA requires it to do so, or gives it a discretion to do so, under paragraph 2, or
- (b) the FCA has given a written notice permitting it to do so and has not given a written notice withdrawing the permission.

9 A notice under paragraph 2 or 8(b) must be published as soon as reasonably practicable in the way appearing to the FCA to be best calculated to bring it to the attention of the public.

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- 10 The FCA—
- (a) must give a copy of a notice under paragraph 2 or 8(b) to the Treasury before publishing it, and
  - (b) may charge a reasonable fee for providing a person with a copy of a notice under paragraph 2 or 8(b).

- 11 In relation to an Article 23A benchmark, this Regulation applies with the modifications specified in or under Annex 4 (and see also Articles 22A(1)(b) and 23(9A)).”

(2) In the Benchmarks Regulation, after Annex 3 insert—

“ANNEX  
4 U.K.

#### ARTICLE 23A BENCHMARKS

- 1 This Regulation applies in relation to an Article 23A benchmark with—
- (a) the modifications listed in paragraph 2, and
  - (b) any modifications specified in a notice given by the FCA to the benchmark administrator under paragraph 6.
- 2 The modifications referred to in paragraph 1(a) are the following—
- (a) Article 11(1) has effect as if—
    - (i) point (a) were omitted, and
    - (ii) in point (d), the words “and representative” (in the first place they occur) and “and representative of the market or economic reality that the benchmark is intended to measure” were omitted;
  - (b) point (a) in Article 27(1) has effect as if for “and the circumstances in which such measurement may become unreliable” there were substituted “ immediately before it became an Article 23A benchmark ”.
- 3 The FCA may, in accordance with paragraphs 4 to 9, provide that this Regulation applies to an Article 23A benchmark with modifications, where it considers it appropriate to do so having regard to the effects of the designation under Article 23A or the FCA's exercise of its powers under Article 23D(2) (or both).
- 4 If the FCA proposes that this Regulation should apply to an Article 23A benchmark with modifications, or that existing modifications applied by a notice under paragraph 6 should be varied, it must inform the benchmark administrator by written notice.
- 5 A notice under paragraph 4 must—
- (a) explain the proposed modifications or variations,
  - (b) give reasons for the FCA's proposed decision, and

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- (c) state that the administrator may make written representations to the FCA during the period of 14 days beginning with the day on which the notice is given.
- 6 If, after considering any representations made in accordance with paragraph 5(c), the FCA decides to make the proposed modifications or variations, it must give the administrator a written notice of its decision.
- 7 A notice under paragraph 6 must—
- (a) specify the modifications or variations,
  - (b) give reasons for the FCA's decision, and
  - (c) provide any further information that the FCA considers appropriate for assisting supervised entities to understand the effects of the modifications or variations.
- 8 A notice under paragraph 6 must be published as soon as reasonably practicable in the way appearing to the FCA to be best calculated to bring it to the attention of the public.
- 9 The FCA—
- (a) must give a copy of a notice under paragraph 6 to the Treasury before publishing it, and
  - (b) may charge a reasonable fee for providing a person with a copy of a notice published under this Annex.
- 10 Paragraphs 11 to 13 apply where the FCA gives the administrator of an Article 23A benchmark a notice under Article 23D(2) or (8)(b).
- 11 The FCA must, before the end of the period of three months beginning with the day on which it gave the notice referred to in paragraph 10, consider whether to exercise its power under paragraph 3 in relation to the benchmark.
- 12 During the interim period, the benchmark administrator is only required to comply with this Regulation to the extent that, taking account of the changes made by the notice referred to in paragraph 10, it remains reasonably practicable to do so.
- 13 In paragraph 12, “interim period” means a period beginning when the notice referred to in paragraph 10 is given and ending—
- (a) at the end of the three month period referred to in paragraph 11, if that period ends without the FCA giving a notice under paragraph 4, or
  - (b) when the FCA, having given the administrator a notice under paragraph 4, gives the administrator —
    - (i) a written notice that it has decided not to make the proposed modifications or variations, or
    - (ii) a notice under paragraph 6.
- 14 References in this Annex to varying modifications (however expressed) include removing or replacing some or all modifications.”
- 16 Review of exercise of powers under Article 23D U.K.**
- In the Benchmarks Regulation, after Article 23D (inserted by section 15) insert—



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*“Article 23E*

***Review of exercise of powers under Article 23D***

- 1 Where the FCA has exercised a power under Article 23D(2) in relation to a benchmark, the FCA must, for each review period—
- (a) review its exercise of its powers under Article 23D(2) in relation to that benchmark during the period, and
  - (b) publish a report setting out the outcome of the review.
- 2 For the purposes of paragraph 1, the review periods are—
- (a) the period of two years beginning with the day on which the first notice under Article 23D(2) relating to the benchmark is published, and
  - (b) each subsequent period of two years, excluding the period in which the benchmark ceases to be provided and subsequent periods.
- 3 The FCA must publish a report under paragraph 1(b) as soon as reasonably practicable after the end of the review period.
- 4 Where the FCA, having exercised a power under Article 23D(2) in relation to a benchmark, exercises a power under Article 23D(2) again in relation to the benchmark, it must—
- (a) carry out a review of the most recent previous exercise of that power in relation to that benchmark, and
  - (b) publish a report setting out the outcome of the review.
- 5 The FCA must take the action described in paragraph 4—
- (a) before its subsequent exercise of a power under Article 23D(2), where that is reasonably practicable, or
  - (b) otherwise, as soon as reasonably practicable afterwards.
- 6 The FCA may fulfil the duty in paragraph 1 and satisfy paragraph 4 by means of the same review and report.
- 7 In a review under this Article, the FCA must—
- (a) consider whether the exercise of the power has advanced, or is likely to advance, the objectives mentioned in Article 23D(3)(b), and
  - (b) have regard to the policy statement with respect to the exercise of its powers under Article 23D (see Article 23F).

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8 A report published under this Article must be published in the way appearing to the FCA to be best calculated to bring it to the attention of the public.

9 The FCA—

- (a) must give a copy of a report of a review under this Article to the Treasury before publishing it, and
- (b) may charge a reasonable fee for providing a person with a copy of a report published in accordance with this Article.”

## 17 Policy statements relating to critical benchmarks **U.K.**

(1) In the Benchmarks Regulation, after Article 23E (inserted by section 16) insert—

*“Article 23F*

### ***Policy statements***

1 The FCA must prepare and publish a statement of its policy with respect to—

- (a) the exercise of its power under Article 21A,
- (b) the designation of benchmarks under Article 23A,
- (c) the exercise of its powers under Article 23C, and
- (d) the exercise of its powers under Article 23D.

2 The FCA—

- (a) may alter or replace a statement published under this Article, and
- (b) if it does so, must publish the altered or replacement statement.

3 A statement published under this Article must be published in the way appearing to the FCA to be best calculated to bring it to the attention of the public.

4 The FCA—

- (a) must give a copy of a statement under this Article to the Treasury before publishing it, and
- (b) may charge a reasonable fee for providing a person with a copy of a statement published under this Article.

5 In making a decision under Article 23A, or exercising its powers under any of Article 21A, 23C or 23D, the FCA must have regard to any relevant statement of policy published under this Article and in force at the time.”

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(2) The FCA's duty under Article 23F(1) of the Benchmarks Regulation (inserted by subsection (1)) to prepare and publish a statement may be satisfied by things done by the FCA before subsection (1) comes into force (as well as by things done after that time).

## 18 Critical benchmarks provided for different currencies etc **U.K.**

(1) In the Benchmarks Regulation, after Article 23F (inserted by section 17) insert—

### *“Article 23G*

#### ***Critical benchmarks provided for different currencies etc***

1 This Article makes provision about critical benchmarks provided for different currencies, maturities or tenors (“umbrella benchmarks”).

2 References in this Article to a “version” of an umbrella benchmark are to the benchmark as provided for a particular currency, maturity or tenor or, where the benchmark is provided for a combination of two or more of those factors, the benchmark as provided for each combination.

3 Articles 11(4), (4A) and (4B), 21, 21A, 22A, 22B, 23 and 23A to 23E and Annex 4 apply in relation to an umbrella benchmark as if each version of the umbrella benchmark were—

- (a) a separate critical benchmark, and
- (b) intended to measure the market or economic reality defined in the benchmark statement for the umbrella benchmark (whether defined there separately for different versions of the benchmark or for the umbrella benchmark taken as a whole),

subject to the modifications in paragraph 4.

4 The modifications are as follows—

- (a) the reference in point (c) of Article 21(3) to the benchmark ceasing to be critical is a reference to the umbrella benchmark ceasing to be critical;
- (b) the reference in Article 22A(1)(a) to a benchmark being based on particular submissions is a reference to the umbrella benchmark, taken as a whole but disregarding any versions that are Article 23A benchmarks, being based on such submissions;
- (c) the benchmark administrator's duty under Article 22A(2) is a duty to submit an assessment dealing separately with each version of the umbrella benchmark;
- (d) the FCA's duty under Article 23E(1) is a duty to carry out a review of its exercise of its powers under Article 23D(2) in relation to each version of the umbrella benchmark (and the first review period

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begins when the first notice under Article 23D(2) relating to any version of the benchmark is published).

5 Notices given under the provisions listed in paragraph 3 may relate to one version, several versions or all versions of the umbrella benchmark.

6 The FCA may exercise its functions under Articles 21, 21A, 22A, 22B, 23 and 23A to 23E and paragraph 3 of Annex 4 in different ways in relation to different versions of the umbrella benchmark.

7 Nothing in this Article is to be interpreted as implying anything about the operation, in relation to umbrella benchmarks, of provisions of this Regulation not mentioned in this Article.

8 The Treasury may by regulations make provision about the operation of this Regulation in relation to umbrella benchmarks, including provision amending or revoking provisions of this Article (other than this paragraph).”

(2) In Article 49 of the Benchmarks Regulation (regulations made by the Treasury)—

(a) after paragraph 2 insert—

“2A Regulations made under Article 23G may not be made unless a draft of the statutory instrument containing them has been laid before and approved by a resolution of each House of Parliament.”, and

(b) in paragraph 3, at the beginning insert “ Subject to paragraph 2A, ”.

## 19 Changes to and cessation of a benchmark **U.K.**

(1) Article 28 of the Benchmarks Regulation (changes to and cessation of a benchmark) is amended as follows.

(2) In paragraph 1—

(a) omit “, together with the benchmark statement referred to in Article 27,”,

(b) for “a procedure” substitute “ a robust procedure ”, and

(c) omit “and shall be updated and published whenever a material change occurs”.

(3) After paragraph 1 insert—

“1A The procedure described in paragraph 1—

(a) must be published with the benchmark statement for the benchmark when that statement is published in accordance with the first or second subparagraph of Article 27(1), and

(b) must be updated and published whenever a material change occurs.

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- 1B In the case of a critical benchmark—
- (a) on the day on which a procedure described in paragraph 1 is published in accordance with paragraph 1A(a), the administrator must give the FCA an assessment of the matters described in paragraph 1C,
  - (b) the FCA must, before the end of the consideration period, consider whether a procedure published in accordance with paragraph 1A(a) satisfies paragraph 1,
  - (c) before publishing an update of a procedure described in paragraph 1 (whether in accordance with paragraph 1A(b) or otherwise), an administrator must give the update to the FCA, together with an assessment of the matters described in paragraph 1C,
  - (d) where the FCA is given an update of a procedure described in paragraph 1 by an administrator, it must, before the end of the consideration period, consider whether the update satisfies paragraph 1, and
  - (e) an administrator must not publish an update of a procedure described in paragraph 1 unless—
    - (i) the FCA has given a written notice to the administrator confirming that the update satisfies paragraph 1, or
    - (ii) the consideration period has expired without the FCA giving a written notice to the administrator stating that the update does not satisfy that paragraph.
- 1C An assessment provided by an administrator for the purposes of paragraph 1B(a) or (c) must assess the following matters—
- (a) the nature and extent of the current use of the benchmark,
  - (b) the availability of suitable alternatives to the benchmark, and
  - (c) how prepared users of the benchmark are for changes to, or the cessation of, the benchmark.
- 1D For the purposes of paragraph 1B, “the consideration period”, in relation to a procedure or an update of a procedure, means the period of 60 days beginning with the day on which the procedure is published or the update of the procedure is given to the FCA (as appropriate) (“the relevant day”), subject to any extension under paragraph 1E.
- 1E The FCA may extend the consideration period by giving a written notice to the administrator before its expiry but may not extend the period beyond the end of the period of six months beginning with the relevant day.”

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**20 Extension of transitional period for benchmarks with non-UK administrators** **U.K.**

- (1) Article 51(5) of the Benchmarks Regulation (transitional provision for benchmarks with administrators located in a country outside the UK) is amended as follows.
- (2) In point (a), for “31 December 2022” substitute “ 31 December 2025 ”.
- (3) In point (b)—
  - (a) for “1 January 2023” substitute “ 1 January 2026 ”, and
  - (b) for “31 December 2022” substitute “ 31 December 2025 ”.

**21 Benchmarks: minor and consequential amendments** **U.K.**

Schedule 5 contains minor and consequential amendments of the Benchmarks Regulation.

VALID FROM 01/07/2021

*Access to financial services markets*

VALID FROM 01/09/2023

**22 Regulated activities and Gibraltar** **U.K.**

- (1) Part 3 of the Financial Services and Markets Act 2000 (authorisation and exemption) is amended in accordance with subsections (2) to (4).
- (2) In section 31(1) (authorised persons), after paragraph (a) insert—
  - “(aa) a Gibraltar-based person who has a Schedule 2A permission to carry on one or more regulated activities;”.
- (3) After section 32 insert—

**“32A Gibraltar-based persons**

- (1) The Treasury must, for each reporting period, prepare a report about the operation of Schedule 2A during the period.
- (2) The report must, among other things, consider whether the conditions in paragraphs 7, 8 and 9 of Schedule 2A continue to be satisfied in connection with each regulated activity which is an approved activity for the purposes of that Schedule.
- (3) The Treasury must consult the FCA and the PRA during the preparation of the report.
- (4) The Treasury must lay a copy of the report before Parliament as soon as reasonably practicable after the end of the reporting period.
- (5) The reporting periods are—

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- (a) the period of two years beginning with the day on which Schedule 2A comes fully into force, and
- (b) each subsequent period of two years.”

(4) After section 36 insert—

*“UK-based persons carrying on activities in Gibraltar*

### **36A UK-based persons carrying on activities in Gibraltar**

Schedule 2B makes provision about the carrying on of activities corresponding to regulated activities in Gibraltar by UK-based persons.”

- (5) Schedule 6 inserts Schedule 2A to the Financial Services and Markets Act 2000 (Gibraltar-based persons carrying on activities in the UK).
- (6) Schedule 7 inserts Schedule 2B to the Financial Services and Markets Act 2000 (UK-based persons carrying on activities in Gibraltar).
- (7) Schedule 8 contains minor and consequential amendments.
- (8) The Treasury may by regulations—
  - (a) amend Part 7 of the Financial Services and Markets Act 2000 (control of business transfers) to make provision about the operation of that Part in relation to cases involving a Gibraltar-based person;
  - (b) amend Part 18A of the Financial Services and Markets Act 2000 (suspension and removal of financial instruments from trading) to make provision about the operation of that Part in relation to cases involving a Gibraltar-based person;
  - (c) make provision relating to a Gibraltar-based person equivalent to provision in an enactment in force immediately before IP completion day relating to an EEA firm of a kind mentioned in Schedule 3 to the Financial Services and Markets Act 2000, with such modifications as the Treasury consider appropriate.
- (9) The powers to make regulations under subsection (8) do not restrict the Treasury's power to make consequential provision under section 45.
- (10) Section 45(3) to (5) apply in relation to regulations under subsection (8) as they apply to regulations under that section.
- (11) In this section, “Gibraltar-based person” has the same meaning as in Schedule 2A to the Financial Services and Markets Act 2000 (inserted by Schedule 6 to this Act) (see paragraph 1 of that Schedule).

PROSPECTIVE

## **23 Power to make provision about Gibraltar** **U.K.**

- (1) The Treasury may by regulations—
  - (a) repeal or revoke relevant Gibraltar provision and make changes described in subsection (5),



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- (b) make provision with the same effect as relevant Gibraltar provision repealed or revoked under paragraph (a),
  - (c) amend relevant Gibraltar provision so as to restore any aspect of the effect the provision had immediately before IP completion day, and
  - (d) replace or supplement relevant Gibraltar provision with provision substantially similar to, or to a provision of, section 32A of, or Schedule 2A or 2B to, the Financial Services and Markets Act 2000 (inserted by section 22 of, and Schedules 6 and 7 to, this Act).
- (2) In this section—
- (a) “Gibraltar provision” means a provision or set of provisions in an enactment so far as it relates to—
    - (i) the carrying on of activities in the United Kingdom by persons based in Gibraltar,
    - (ii) the carrying on of activities in Gibraltar by persons based in the United Kingdom, or
    - (iii) interaction of any other kind between the United Kingdom and Gibraltar, whether relating to persons, activities, financial instruments, other property or other matters,
  - (b) Gibraltar provision is “relevant” if—
    - (i) it is a provision of, or applied or modified by, regulations listed in subsection (3),
    - (ii) it was inserted, amended or otherwise modified by regulations listed in subsection (4),
    - (iii) it is, or is the subject of, saving provision included in regulations listed in subsection (4), or
    - (iv) in the case of a set of provisions, it includes provision falling within sub-paragraph (ii) or (iii), and
  - (c) Gibraltar provision is also “relevant” if it was made by regulations under subsection (1)(b), (c) or (d) or, in the case of a set of provisions, it includes provision made by such regulations.
- (3) The regulations referred to in subsection (2)(b)(i) are the following, as amended from time to time—
- (a) the Electronic Money Regulations 2011 (S.I. 2011/99);
  - (b) the Payment Services Regulations 2017 (S.I. 2017/752);
  - (c) the Data Reporting Services Regulations 2017 (S.I. 2017/699).
- (4) The regulations referred to in subsection (2)(b)(ii) and (iii) are the following, as amended from time to time—
- (a) regulation 3 of the Building Societies Legislation (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1187);
  - (b) Parts 2 and 3 of the Credit Transfers and Direct Debits in Euro (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1199);
  - (c) Part 2 of the Greenhouse Gas Emissions Trading Scheme (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/107);
  - (d) Chapters 1 and 2 of Part 2 of the Alternative Investment Fund Managers (Amendment etc) (EU Exit) Regulations 2019 (S.I. 2019/328);
  - (e) the Gibraltar (Miscellaneous Amendments) (EU Exit) Regulations 2019 (S.I. 2019/680).

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- (5) The changes referred to in subsection (1)(a) are changes that the Treasury consider appropriate to secure that, after the repeal or revocation of the relevant Gibraltar provision, the same provision is made in connection with Gibraltar as is made in connection with most or all other countries or territories outside the United Kingdom.
- (6) The Treasury may not make regulations under subsection (1)(b), (c) or (d) unless they are satisfied that doing so is compatible with each of the following objectives—
  - (a) to protect and enhance the soundness, stability and resilience of the UK financial system;
  - (b) to protect and enhance public confidence in the UK financial system;
  - (c) to prevent the use of the UK financial system for a purpose connected with financial crime;
  - (d) to ensure that, in the United Kingdom, financial markets and significant markets for financial services function well;
  - (e) to protect consumers;
  - (f) to protect the operation of the Financial Services Compensation Scheme;
  - (g) to protect public funds;
  - (h) to maintain and improve relations between the United Kingdom and other countries and territories with significant financial markets or significant markets for financial services.
- (7) Before making regulations under subsection (1)(d), the Treasury must consult—
  - (a) the government of Gibraltar,
  - (b) the Financial Conduct Authority, and
  - (c) the Prudential Regulation Authority.
- (8) The powers under subsection (1)(b), (c) and (d) include—
  - (a) power to make such modifications as the Treasury consider appropriate having regard to changes in the law of any part of the United Kingdom since the relevant regulations listed in subsection (3) or (4) were made, and
  - (b) power to restate relevant Gibraltar provision in a clearer or more accessible way.
- (9) Where provision saving or modifying a provision is repealed or revoked under subsection (1)(a), the power under subsection (1)(b) includes power to make provision with the same effect as the provision that was the subject of the saving or modification, read with the saving or modification.
- (10) The power under subsection (1)(d) includes power to make provision applying provisions of section 32A of, or Schedule 2A or 2B to, the Financial Services and Markets Act 2000, with or without modifications.
- (11) Regulations under this section may—
  - (a) make different provision for different purposes;
  - (b) confer functions on a person, including functions involving the exercise of a discretion;
  - (c) amend, revoke, repeal or otherwise modify an enactment;
  - (d) make consequential, incidental, supplementary, transitional, transitory or saving provision.
- (12) Regulations under this section are subject to the affirmative procedure.

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(13) For the purposes of this section, provision that is saved or modified by regulations listed in subsection (3) or (4) is Gibraltar provision if, when read with the saving or modification, it relates to a matter described in subsection (2)(a).

(14) In this section—

“consumers” has the meaning given in section 1G of the Financial Services and Markets Act 2000;

“financial crime” has the meaning given in section 1H of the Financial Services and Markets Act 2000;

“public funds” means the Consolidated Fund and any other account or source of money which cannot be drawn or spent other than by, or with the authority of, the Treasury;

“the UK financial system” has the same meaning as in the Financial Services and Markets Act 2000 (see section 1I of that Act).

VALID FROM 23/02/2022

## 24 **Collective investment schemes authorised in approved countries** **U.K.**

(1) In Part 17 of the Financial Services and Markets Act 2000 (collective investment schemes), in section 237(3)—

(a) in the definition of “a recognised scheme”, after “means” insert “ a section 271A scheme or ”, and

(b) after that definition insert—

““a section 271A scheme” means a scheme recognised under section 271A (and see also section 271S);”.

(2) In Schedule 9—

(a) Part 1 inserts sections 271A to 271S (collective investment schemes authorised in approved countries or territories) in Chapter 5 of Part 17 of the Financial Services and Markets Act 2000 (recognised overseas schemes), and

(b) Part 2 contains minor and consequential amendments.

VALID FROM 23/02/2022

## 25 **Individually recognised overseas collective investment schemes** **U.K.**

(1) The Financial Services and Markets Act 2000 is amended as follows.

(2) Chapter 5 of Part 17 (recognised overseas schemes) is amended in accordance with subsections (3) to (5).

(3) In section 272 (individually recognised overseas schemes)—

(a) in subsection (1)—

(i) in paragraph (a) omit the “and” at the end,

(ii) before paragraph (d) insert—

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- “(ca) does not have the benefit of section 271A, and”,  
and  
(iii) in paragraph (d), for “the following provisions of this section”  
substitute “ subsections (2) to (15) ”,
- (b) after that subsection insert—
- “(1A) For the purposes of subsection (1)(ca), a collective investment  
scheme has the benefit of section 271A if—
- (a) it is authorised under the law of a country or territory  
which is for the time being approved by regulations under  
section 271A, and
- (b) it falls within a description of schemes specified in the  
regulations.”, and
- (c) in subsection (5)(b) omit “, or could be,”.
- (4) In section 277 (requirement to notify the FCA of proposed alteration to recognised  
scheme)—
- (a) in subsection (1), at the end insert “ which, if made, would be a material  
alteration ”,
- (b) in subsection (3) omit “At least one month”,
- (c) after that subsection insert—
- “(3A) A notice under subsection (3) must be given—
- (a) at least one month before the proposed replacement, or
- (b) if that is not reasonably practicable, as soon as is  
reasonably practicable in the period of one month before  
the proposed replacement.
- (3B) The operator of such a scheme must give written notice to the FCA,  
as soon as reasonably practicable, of any change to—
- (a) the name or address of the operator of the scheme,
- (b) the name or address of any trustee or depositary of the  
scheme,
- (c) the name or address of any representative of the operator  
in the United Kingdom, and
- (d) the address of the place in the United Kingdom for service  
of notices, or other documents, required or authorised to  
be served on the operator under this Act.”, and
- (d) after subsection (5) insert—
- “(6) The FCA may make rules specifying when a proposed alteration  
is a material alteration for the purposes of subsection (1).”
- (5) After section 282 insert—
- “282A Obligations on operator where recognition is revoked or  
suspended**
- (1) This section applies where—
- (a) the FCA gives a decision notice under section 280(2) in relation to  
a scheme recognised under section 272, or

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(b) a direction given by the FCA under section 281(2) in relation to such a scheme takes effect.

- (2) The operator of the scheme must notify such persons as the FCA may direct that the FCA has revoked an order under section 272 for recognition of the scheme or given a direction under section 281 in relation to the scheme (as applicable).
- (3) A notification under subsection (2) that relates to a direction under section 281 must set out the terms of the direction.
- (4) A notification under subsection (2) must—
  - (a) contain such information as the FCA may direct, and
  - (b) be made in such form and manner as the FCA may direct.
- (5) Different directions may be given under subsection (2) or (4) in relation to—
  - (a) different schemes or different descriptions of schemes;
  - (b) different persons or descriptions of persons to whom a notification under subsection (2) must be given.

#### **282B Public censure**

- (1) This section applies where the FCA considers that—
  - (a) rules made under section 278 have been contravened,
  - (b) the operator of a scheme recognised under section 272 has contravened section 277, 277A or 282A, or
  - (c) the operator of a scheme recognised under section 272 has contravened a rule made, or a requirement imposed, under section 283.
- (2) The FCA may publish a statement to that effect.
- (3) Where the FCA proposes to publish a statement under subsection (2) in relation to a scheme or the operator of a scheme, it must give the operator a warning notice setting out the terms of the statement.
- (4) If the FCA decides to publish the statement—
  - (a) it must give the operator, without delay, a decision notice setting out the terms of the statement, and
  - (b) the operator may refer the matter to the Tribunal.
- (5) After a statement under subsection (2) is published, the FCA must send a copy of it to the operator and to any person to whom a copy of the decision notice was given under section 393(4).

#### **282C Recognition of parts of schemes under section 272**

- (1) Section 272(1) applies in relation to a part of a collective investment scheme as it applies in relation to such a scheme.
- (2) Accordingly, the following include a part of a scheme recognised under section 272—

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- (a) the reference to a scheme recognised under section 272 in the definition of “recognised scheme” in section 237(3), and
  - (b) other references to such a scheme (however expressed) in or in provision made under this Part of this Act (unless the contrary intention appears).
- (3) Provisions of or made under this Part of this Act have effect in relation to parts of schemes recognised, or seeking recognition, under section 272 with appropriate modifications.
- (4) The Treasury may by regulations—
- (a) make provision about what are, or are not, appropriate modifications for the purposes of subsection (3);
  - (b) make provision so that a relevant enactment has effect in relation to parts of schemes recognised, or seeking recognition, under section 272 with such modifications as the Treasury consider appropriate;
  - (c) make provision so that a relevant enactment does not have effect in relation to such parts of schemes.
- (5) Regulations under subsection (4)(b) or (c) may amend, repeal or revoke an enactment.
- (6) In this section—
- “enactment” has the same meaning as in section 271E;
  - “relevant enactment” means an enactment passed or made before the day on which subsection (1) comes into force that makes provision in relation to collective investment schemes recognised, or seeking recognition, under section 272.”
- (6) In section 237(3), in the definition of “a recognised scheme”, at the end insert “ (and see also section 282C) ”.
- (7) In section 392 (application of third party rights to notices)—
- (a) in paragraph (a), after “280(1),” insert “ 282B(3), ”, and
  - (b) in paragraph (b), after “280(2),” insert “ 282B(4), ”.
- (8) In section 429(2) (regulations subject to affirmative procedure), before “284A” insert “ 282C, ”.

VALID FROM 23/02/2022

## 26 Money market funds authorised in approved countries **U.K.**

- (1) Regulation (EU) 2017/1131 of the European Parliament and of the Council of 14 June 2017 on money market funds is amended as follows.
- (2) In Article 4 (authorisation of MMFs)—
  - (a) in paragraph 1, after point (a) insert—
    - “(aa) it is authorised and supervised in a country or territory approved by regulations under Article 4A and satisfies the condition in paragraph 1ZA;”, and

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(b) after paragraph 1 insert—

“1ZA An undertaking satisfies the condition in this paragraph if the FCA has received written notification that the undertaking intends to be marketed in the United Kingdom as an MMF.

1ZB A notification under paragraph 1ZA must—

- (a) be made by such person, and in such form and manner, as the FCA may direct, and
- (b) contain or be accompanied by such information as the FCA may direct.

1ZC Different directions may be given under paragraph 1ZB in relation to different undertakings or categories of undertaking.”

(3) After Article 4 insert—

*“Article 4A*

***Approval of country or territory***

1 The Treasury may make regulations for the purposes of Article 4(1)(aa) approving a country or territory in relation to MMFs.

2 The Treasury may not make regulations under paragraph 1 unless satisfied that the law and practice of the country or territory imposes requirements on MMFs which have equivalent effect to the requirements imposed by this Regulation.

3 In making regulations under this Article, the Treasury may have regard to any matter that they consider relevant.

4 When considering whether to make, vary or revoke regulations under this Article, the Treasury may ask the FCA to prepare a report on the law and practice of the country or territory under which MMFs are authorised and supervised, or particular aspects of such law and practice.

5 A request for a report under paragraph 4 must be made in writing.

6 If the Treasury ask for a report under paragraph 4, the FCA must provide the Treasury with the report.”



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- (4) In Article 6(1) (use of designation as MMF), in each subparagraph, after point (a) insert—
- “(aa) the UCITS or AIF is authorised and supervised in a country or territory approved by regulations under Article 4A and satisfies the condition in Article 4(1ZA); or”.

## 27 Provision of investment services etc in the UK **U.K.**

- (1) Schedule 10 contains amendments of the Markets in Financial Instruments Regulation relating to the provision of investment services, and the performance of investment activities, in the United Kingdom by third country firms.
- (2) In this section and Schedule 10, “the Markets in Financial Instruments Regulation” means Regulation (EU) No. 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments.

VALID FROM 01/07/2021

### *Variation or cancellation of permission to carry on regulated activity*

## 28 Part 4A permissions: variation or cancellation on initiative of FCA **U.K.**

Schedule 11 amends Part 4A of the Financial Services and Markets Act 2000 (permission to carry on regulated activities) and other provisions in that Act for connected purposes.

VALID FROM 01/07/2021

### *Rules about level of care provided by authorised persons*

## 29 FCA rules about level of care provided to consumers by authorised persons **U.K.**

- (1) The Financial Conduct Authority must carry out a public consultation about whether it should make general rules providing that authorised persons owe a duty of care to consumers.
- (2) The consultation must include consultation about—
- whether the Financial Conduct Authority should make other provision in general rules about the level of care that must be provided to consumers by authorised persons, either instead of or in addition to a duty of care,
  - whether a duty of care should be owed, or other provision should apply, to all consumers or to particular classes of consumer, and
  - the extent to which a duty of care, or other provision, would advance the Financial Conduct Authority's consumer protection objective (see section 1C of the Financial Services and Markets Act 2000).

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- (3) The Financial Conduct Authority—
- (a) must carry out the consultation, and publish its analysis of the responses, before 1 January 2022, and
  - (b) must, before 1 August 2022, make such general rules about the level of care that must be provided to consumers, or particular classes of consumer, by authorised persons as it considers appropriate, having regard to that analysis.
- (4) The duties to consult under this section may be satisfied by consultation carried out after 1 January 2021 but before this section comes into force (as well as by consultation carried out after this section comes into force).
- (5) In this section—
- “authorised person” has the same meaning as in the Financial Services and Markets Act 2000 (see section 31 of that Act);
  - “consumer” has the meaning given in section 1G of that Act;
  - “general rules” means rules made under section 137A of that Act.

*Insider dealing and money laundering etc*

VALID FROM 29/06/2021

**30 Insider lists and managers' transactions** **U.K.**

- (1) Regulation (EU) No. 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse is amended as follows.
- (2) In Article 18 (insider lists)—
- (a) in paragraph 1, in the opening words—
    - (i) for “or any person” substitute “, and any person”, and
    - (ii) after “shall” insert “ each ”,
  - (b) in paragraph 2, in the first subparagraph—
    - (i) for “or any person” substitute “, and any person”,
    - (ii) after “shall” insert “ each ”, and
    - (iii) for “the insider list” substitute “ their insider list ”,
  - (c) in paragraph 2, for the second subparagraph substitute—
 

“Where another person is requested by the issuer to draw up and update the issuer's insider list, the issuer shall remain fully responsible for complying with this Article. The issuer shall always retain a right of access to the insider list that the other person is drawing up.”,
  - (d) in paragraph 4—
    - (i) for “or any person” substitute “, and any person”, and
    - (ii) for “shall update the” substitute “, shall each update their”, and
  - (e) in paragraph 5—
    - (i) for “or any person” substitute “, and any person”, and
    - (ii) for “shall retain the” substitute “, shall each retain their”.
- (3) In Article 19 (managers' transactions)—

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- (a) in paragraph 1, in the second subparagraph, for “business days” substitute “working days”,
- (b) in paragraph 3, in the first subparagraph, for the words from the beginning to “transaction” substitute “The issuer or emission allowance market participant must make public the information contained in a notification referred to in paragraph 1 within two working days of receipt of such a notification”, and
- (c) at the end insert—

“16

In this Article, “working day” means a day other than—

- (a) Saturday or Sunday,
- (b) Christmas Day or Good Friday, or
- (c) a day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971.”

VALID FROM 01/11/2021

### **31 Maximum sentences for insider dealing and financial services offences** **U.K.**

- (1) In section 61(1)(b) of the Criminal Justice Act 1993 (penalty for conviction on indictment for insider dealing), for “seven years” substitute “ten years”.
- (2) In section 92(1)(b) of the Financial Services Act 2012 (penalty for conviction on indictment for financial services offences), for “7 years” substitute “10 years”.
- (3) The amendment made by subsection (1) or (2) does not apply in relation to offences committed before the subsection comes into force.
- (4) Where an offence is found to have been committed over a period of 2 or more days, or at some time during a period of 2 or more days, it must be taken for the purposes of subsection (3) to have been committed on the first of those days.

VALID FROM 29/06/2021

### **32 Money laundering offences: electronic money institutions, payment institutions and deposit-taking bodies** **U.K.**

- (1) Part 7 of the Proceeds of Crime Act 2002 (money laundering) is amended in accordance with subsections (2) to (6).
- (2) In section 327(2C) (conversion or transfer of criminal property: exceptions), after “deposit-taking body” insert “, electronic money institution or payment institution”.
- (3) In section 328(5) (arrangements: exceptions), after “deposit-taking body” insert “, electronic money institution or payment institution”.
- (4) In section 329(2C) (acquisition, use and possession: exceptions), after “deposit-taking body” insert “, electronic money institution or payment institution”.

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(5) In section 339A (threshold amounts)—

- (a) in subsection (2), after “deposit-taking body” insert “, electronic money institution or payment institution ”,
- (b) in subsection (3), in the opening words, after “deposit-taking body” insert “, electronic money institution or payment institution ”,
- (c) in subsection (3)(a), for “deposit-taking body's” substitute “body's or institution's”,
- (d) in subsection (3)(b), for “deposit-taking body” substitute “ body or institution ”,
- (e) in subsection (4), after “deposit-taking body” insert “, electronic money institution or payment institution ”, and
- (f) in subsection (8)—
  - (i) after “deposit-taking body” insert “, electronic money institution or payment institution ”, and
  - (ii) after “the body” insert “ or institution ”.

(6) In section 340 (interpretation)—

- (a) in subsection (14)—
  - (i) omit “or” at the end of paragraph (a), and
  - (ii) after paragraph (b) insert “, or
  - (c) a person specified, or of a description specified, in regulations made by the Treasury or the Secretary of State.”,
- (b) after subsection (14) insert—
  - “(14A) In subsection (14)(a)—
    - (a) the reference to the activity of accepting deposits is a reference to that activity so far as it is, for the time being, a regulated activity for the purposes of the Financial Services and Markets Act 2000 by virtue of an order under section 22 of that Act, but
    - (b) the reference to a business which engages in that activity does not include a person specified, or of a description specified, in regulations made by the Treasury or the Secretary of State.
  - (14B) Before making regulations under subsection (14A)(b), the Treasury or the Secretary of State (as appropriate) must consult such persons likely to be affected by the regulations, or such representatives of such persons, as they consider appropriate.
  - (14C) “Electronic money institution” has the same meaning as in the Electronic Money Regulations 2011 (S.I. 2011/99) (see regulation 2 of those Regulations).”, and
- (c) at the end insert—
  - “(16) “Payment institution” means an authorised payment institution or a small payment institution (each as defined in regulation 2 of the Payment Services Regulations 2017 (S.I. 2017/752)).”

(7) In section 459 of the Proceeds of Crime Act 2002 (orders and regulations)—

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- (a) in subsection (4), before paragraph (aa), insert—  
“(azb) regulations under section 340(14)(c) or (14A)(b),”
- (b) before subsection (6A) insert—  
“(6ZC) No regulations may be made by the Treasury or the Secretary of State under section 340(14)(c) or (14A)(b) unless a draft of the regulations has been laid before Parliament and approved by a resolution of each House.”, and
- (c) in subsection (6A), before “would” insert “ or of regulations under section 340(14)(c) or (14A)(b) ”.

### 33 **Forfeiture of money: electronic money institutions and payment institutions** **U.K.**

- (1) Schedule 12 amends provisions in the Anti-terrorism, Crime and Security Act 2001 and the Proceeds of Crime Act 2002 about the forfeiture of money so that they apply to money held in accounts maintained with electronic money institutions and payment institutions.
- (2) Subject to subsection (3), the amendments made by that Schedule are to be treated as having come into force at the same time as the provisions they amend.
- (3) Subsection (2) does not apply to the amendments of Part 5 of the Proceeds of Crime Act 2002 as they extend to Northern Ireland.
- (4) Regulations made, before this section comes into force, under—
  - (a) paragraph 10X of Schedule 1 to the Anti-Terrorism, Crime and Security Act 2001, or
  - (b) section 303Z10 of the Proceeds of Crime Act 2002,apply (and are to be treated as having always applied) for the purposes of notices relating to money held in accounts maintained with electronic money institutions and payment institutions, as well as for the purposes of notices relating to money held in accounts maintained with banks and building societies.

VALID FROM 01/07/2021

### 34 **Application of money laundering regulations to overseas trustees** **U.K.**

- (1) Schedule 2 to the Sanctions and Anti-Money Laundering Act 2018 (money laundering and terrorist financing: further provision about section 49 regulations) is amended as follows.
- (2) In paragraph 22(2) (extra-territorial application of section 49 regulations: meaning of “United Kingdom person”)—
  - (a) in paragraph (b), omit the “or” at the end, and
  - (b) after paragraph (c) insert “, or
  - (d) a person—
    - (i) who does not fall within any of paragraphs (a) to (c), and

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(ii) who is a trustee with links to the United Kingdom (see paragraph 22A).”

(3) After paragraph 22 insert—

“22A

(1) Sub-paragraphs (2) and (3) have effect for the purposes of paragraph 22(2)(d).

(2) A person who is a trustee of a trust has links to the United Kingdom if—

- (a) any property subject to the trust is situated in the United Kingdom,
- (b) a trustee of the trust enters into a business, professional or commercial relationship with a relevant person, or
- (c) the income of the trust includes income which, directly or indirectly, is from a source in the United Kingdom.

(3) A person who is a trustee of a trust also has links to the United Kingdom if—

- (a) at least one other person is a trustee of the trust,
- (b) the other trustee (or at least one of the other trustees if the trust has more than two trustees) is resident in the United Kingdom, and
- (c) a person makes, at a time when the person is resident in the United Kingdom, a gift of property which becomes subject to the trust.

(4) In this paragraph “property” has the meaning given by section 436 of the Insolvency Act 1986.”

VALID FROM 29/06/2021

### *Debt respite scheme*

#### **35 Debt respite scheme** **E+W+N.I.**

(1) In section 6(2)(c) of the Financial Guidance and Claims Act 2018 (debt respite scheme), omit “and their creditors”.

(2) In section 7 of that Act (debt respite scheme: regulations), after subsection (4) insert—

“(4A) The regulations may include the following as part of the scheme so far as it applies in England and Wales—

- (a) provision about the involvement of creditors in the process of devising a plan for the repayment of some or all of an individual's debts;
- (b) provision to protect an individual, during the period of a repayment plan, from being required to repay a debt to which the plan applies otherwise than in accordance with the plan;
- (c) provision for an amount payable in respect of a debt in accordance with a repayment plan—

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- (i) to be payable instead towards the costs of operating the repayment plan, other repayment plans or the debt respite scheme, and
  - (ii) to be treated, so far as paid towards those costs, as permanently reducing a debt to which the plan applies.”
- (3) In section 7(5) of that Act, after paragraph (b) insert—  
“(ba) make provision binding the Crown,”.
- (4) The amendment in subsection (1) does not have the effect that further advice on the establishment of a debt respite scheme has to be sought, provided or published under section 6(1), (4) or (5) of the Financial Guidance and Claims Act 2018 (such advice having been sought, provided and published in accordance with those provisions before the day on which this Act is passed).

### *Help to save*

## **36** **Successor accounts for Help-to-Save savers** **U.K.**

In Schedule 2 to the Savings (Government Contributions) Act 2017 (Help-to-Save accounts), after paragraph 13 insert—

### **“Successor accounts for certain Help-to-Save accounts**

- 13A (1) In this paragraph “matured account” means an account provided by the Director of Savings which has been, but has ceased to be, a Help-to-Save account.
- (2) Treasury regulations may make provision for, or in connection with, the transfer of the balance in a matured account to another account provided by the Director of Savings (a “successor account”).
- (3) Regulations under sub-paragraph (2) must require the successor account to be an account in the National Savings Bank.
- (4) Regulations under sub-paragraph (2) may not include provision for a transfer which overrides an instruction for dealing with the balance in a matured account where—
- (a) the instruction is given by, or by a person acting on behalf of, the individual for whom the matured account was opened, and
  - (b) the Director of Savings receives the instruction before the transfer is made and considers that it is reasonably practicable to implement it.
- (5) Regulations under sub-paragraph (2) may make provision about the balance in a matured account opened before the regulations are made.
- (6) Where regulations under sub-paragraph (2) provide for a transfer from a matured account to a successor account—
- (a) the successor account may be a new or existing account, and
  - (b) no charge for the transfer may be imposed on the individual for whom the matured account was opened.”



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### Miscellaneous

VALID FROM 01/07/2021

#### 37 Regulated activities and application of Consumer Credit Act 1974 **U.K.**

- (1) This section applies on or at any time after the making of an order under section 22 of the Financial Services and Markets Act 2000, after this section comes into force, which has the effect that a relevant credit activity becomes a regulated activity for the purposes of that Act.
- (2) Section 107(6) of the Financial Services Act 2012 (power to make provision about the application of the Consumer Credit Act 1974) has effect as if—
  - (a) the reference to an order of the kind mentioned in subsection (1) of that section included an order of the kind mentioned in subsection (1) of this section, and
  - (b) the references to a transferred activity included a relevant credit activity which is the subject of an order of the kind mentioned in subsection (1) of this section.
- (3) “Relevant credit activity” means the activity of—
  - (a) entering into an agreement described in article 60F(2) or (3) of the Regulated Activities Order (certain borrower-lender-supplier agreements for fixed-sum credit or running-account credit) as lender, or
  - (b) exercising, or having the right to exercise, the lender's rights and duties under such an agreement,
 so far as the activity is not a transferred activity (as defined in section 107(1) of the Financial Services Act 2012).
- (4) “The Regulated Activities Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) as it has effect on the passing of this Act.

VALID FROM 01/07/2021

#### 38 Amendments of the PRIIPs Regulation etc **U.K.**

- (1) In this section “the PRIIPs Regulation” means Regulation (EU) No. 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs).
- (2) After Article 4 of the PRIIPs Regulation insert—

#### “Article 4A

1

The FCA may make rules specifying whether or not a product, or category of product, falls within the definition of a PRIIP for the purposes of this Regulation.

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2 The provisions of Part 9A of FSMA listed in paragraph 3 apply to rules made under this Article as they apply to rules made by the FCA under that Act, subject to the modifications in that paragraph (if any).

3 The provisions are—

- (a) section 137T (general supplementary powers), as if—
  - (i) the reference in paragraph (a) to authorised persons were a reference to persons, and
  - (ii) paragraph (b) were omitted;
- (b) section 138F (notification of rules), as if subsection (2) were omitted;
- (c) section 138G (rule-making instruments);
- (d) section 138I (consultation by the FCA), as if—
  - (i) subsection (1)(a) (and the “and” after it) were omitted,
  - (ii) in subsection (1)(b), “after doing so,” were omitted,
  - (iii) in subsection (2), paragraphs (c) and (d) were omitted, and
  - (iv) subsections (5)(b) and (10) were omitted;
- (e) section 138L (consultation: general exemptions), as if—
  - (i) in subsection (1), for “Sections 138I(1)(b) and (2) to (5) and 138K do” there were substituted “ Section 138I(1)(b) and (2) to (5) does ”,
  - (ii) subsections (2) and (4)(b) were omitted,
  - (iii) in subsection (5)(a), “or 138J(2)(a)” were omitted, and
  - (iv) in subsection (5)(b), “or 138J(5)(a)” were omitted;
- (f) section 141A (power to make consequential amendments of references to rules etc).”

(3) Any requirement that arises by virtue of Article 4A(3)(d) of the PRIIPs Regulation, as inserted by subsection (2), may be satisfied by things done before that subsection comes into force (as well as by things done after that time).

(4) In paragraph 3 of Article 8 of the PRIIPs Regulation (information to be contained in key information document), in point (d)(iii), for “performance scenarios and the assumptions made to produce them” substitute “ information on performance ”.

(5) The Treasury may by regulations substitute a later date for the date that is for the time being mentioned in Article 32(1) of the PRIIPs Regulation (exemption of UCITS).

(6) The date as substituted under subsection (5) must be no later than 31 December 2026.

(7) Regulations under subsection (5) are subject to the negative procedure.

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VALID FROM 01/07/2021

**39 Retention of personal data under the Market Abuse Regulation U.K.**

In Article 28 of Regulation (EU) No. 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (data protection), omit “Personal data is to be retained for a maximum period of five years.”

VALID FROM 01/07/2021

**40 Over the counter derivatives: clearing and procedures for reporting U.K.**

(1) Regulation (EU) No. 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (the “European Market Infrastructure Regulation”) is amended as follows.

(2) In Article 4 (clearing obligation)—

(a) after paragraph 3 insert—

“3A

Clearing members and clients which provide clearing services, whether directly or indirectly, must—

- (a) provide those services under fair, reasonable, non-discriminatory and transparent commercial terms, and
- (b) take all reasonable measures to identify, prevent, manage and monitor conflicts of interest, in particular between the trading unit and the clearing unit, that may adversely affect the fair, reasonable, non-discriminatory and transparent provision of clearing services.

3B

The duty under paragraph 3A(a)—

- (a) does not oblige clearing members or clients to contract, and
- (b) does not prevent clearing members or clients from taking steps to control the risks related to the clearing services offered.

3C

The duty to take the measures described in paragraph 3A(b) includes a duty to do so where trading and clearing services are provided by different legal entities belonging to the same group.

3D

The duties under paragraph 3A (read with paragraphs 3B and 3C) apply in relation to an undertaking with an indirect contractual arrangement with a clearing member of a CCP which enables that undertaking to clear its transactions with a CCP as they apply in relation to a client.”, and

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(b) after paragraph 4 insert—

“4A  
The FCA may make rules specifying the conditions under which the commercial terms referred to in paragraph 3A(a) are to be considered fair, reasonable, non-discriminatory and transparent.”

(3) In Article 78 (general requirements), at the end insert—

“9  
A trade repository must establish the following procedures and policies—  
(a) procedures for the effective reconciliation of data between trade repositories;  
(b) procedures to verify the completeness and correctness of the data reported;  
(c) policies for the orderly transfer of data to other trade repositories where requested by the counterparties or CCPs referred to in Article 9 or where otherwise necessary.

10  
The FCA may make rules applying to trade repositories relating to—  
(a) procedures described in paragraph 9(a) and (b),  
(b) procedures to be applied to verify compliance by counterparties and CCPs with the reporting obligation under Article 9, and  
(c) policies described in paragraph 9(c).”

(4) After Article 84a insert—

*“Article 84b*

***FCA rules***

1  
The provisions of Part 9A of FSMA (rules and guidance) listed in paragraph 2 apply in relation to rules made by the FCA under Article 4(4A) or 78(10) as they apply in relation to rules made by the FCA under that Part of that Act, subject to the modification in paragraph 3.

2  
The provisions are—  
(a) section 137T (general supplementary powers);  
(b) section 138C (evidential provision);  
(c) section 138E (limits on effect of contravening rules);  
(d) sections 138F, 138G and 138H (notification and verification etc);  
(e) sections 138I and 138L (consultation);  
(f) section 141A (power to make consequential amendments of references to rules).

3  
Section 137T applies as if the reference to authorised persons were—

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- (a) for the purposes of rules made under Article 4(4A), a reference to clearing members, clients and undertakings described in Article 4(3D), and
  - (b) for the purposes of rules made under Article 78(10), a reference to trade repositories.”
- (5) The requirements of section 138I of the Financial Services and Markets Act 2000, in so far as they apply in connection with rules made under Article 4(4A) or 78(10) of the European Market Infrastructure Regulation, may be satisfied by things done before the relevant provision of this section comes into force (as well as by things done after that time).

#### 41 Regulations about financial collateral arrangements **U.K.**

- (1) The Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003/3226) as originally made, and all amendments made to them, have effect, and are to be treated as having had effect, despite any lack of power to make the regulations and amendments.
- (2) Accordingly, the validity of anything done under or in reliance on those regulations (whether as originally made or as amended) is to be treated as unaffected by any such lack of power.
- (3) The Banking Act 2009 is amended in accordance with subsections (4) to (6).
- (4) In section 255 (regulations about financial collateral arrangements)—
  - (a) in subsection (3)(b) omit “or purported to be done”,
  - (b) omit subsection (5), and
  - (c) after that subsection insert—
    - “(6) Regulations under this section are to be made by statutory instrument.
    - (7) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
    - (8) Section 41 of the Financial Services Act 2021 makes further provision in relation to the Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003/3226).”
- (5) Omit section 256 (procedure for making regulations under section 255).
- (6) In the table in section 259(3) (procedure applying to statutory instruments), in the entry for section 255, for “affirmative resolution” substitute “draft affirmative resolution”.

VALID FROM 29/06/2021

#### 42 Appointment of chief executive of FCA **U.K.**

- (1) Schedule 1ZA to the Financial Services and Markets Act 2000 (Financial Conduct Authority) is amended as follows.
- (2) In paragraph 2A—
  - (a) after sub-paragraph (1) insert—

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- “(1A) Appointment as chief executive under paragraph 2(2)(b) is to be for a period of 5 years.”, and
- (b) in sub-paragraph (2), for “Sub-paragraph (1) does” substitute “ Sub-paragraphs (1) and (1A) do ”.
- (3) After paragraph 2A insert—
- “2B
- (1) A person may not be appointed as chief executive under paragraph 2(2)(b) more than twice.
- (2) For this purpose an appointment as chief executive on an acting basis, pending a further appointment being made, is to be ignored.”

VALID FROM 01/07/2021

#### 43 Subordinate legislation made under retained direct EU legislation **U.K.**

- (1) The Financial Services and Markets Act 2000 is amended as follows.
- (2) In section 425C (“qualifying provision”)—
- (a) the existing text becomes subsection (1),
- (b) after paragraph (b) of that subsection insert—
- “(ba) other subordinate legislation made under retained direct EU legislation;”,
- (c) in paragraph (c) of that subsection omit “(within the meaning of the Interpretation Act 1978)”, and
- (d) after that subsection insert—
- “(2) In this section, “subordinate legislation” has the same meaning as in the Interpretation Act 1978 (see section 21 of that Act).”
- (3) In paragraph 8(3) of Schedule 1ZA (Financial Conduct Authority's arrangements for discharging functions: legislative functions), in paragraph (a), after “rules” insert “ under this Act or under retained direct EU legislation ”.

VALID FROM 29/06/2021

#### 44 Payment services and the provision of cash **U.K.**

In Part 2 of Schedule 1 to the Payment Services Regulations (S.I. 2017/752) (activities which do not constitute payment services), after paragraph 2 insert—

- “3
- (1) The provision of cash otherwise than through an automatic teller machine does not constitute a payment service where—
- (a) there is a transfer of a corresponding amount from a payment account held by the recipient of the cash to a relevant person, and

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(b) the payment account is not provided by a relevant person.

(2) In sub-paragraph (1), “relevant person” means—

(a) where the cash is provided by a person (“P1”) through one or more persons acting on P1's behalf, P1 and each person acting (directly or indirectly) on P1's behalf;

(b) where the cash is provided by a person (“P2”) otherwise than on behalf of another person or through one or more persons acting on P2's behalf, P2.

(3) The execution of the transfer referred to in sub-paragraph (1)(a), and other services enabling that transfer, are not excluded from the meaning of payment services by this paragraph.”

### General

#### 45 Power to make consequential provision **U.K.**

- (1) The Treasury may by regulations make provision that is consequential on any provision made by this Act.
- (2) The Secretary of State may by regulations make provision that is consequential on provision made by section 32 or 33 or Schedule 12.
- (3) Regulations under this section may—
  - (a) make different provision for different purposes;
  - (b) include transitional, transitory or saving provision;
  - (c) amend, repeal, revoke or otherwise modify an enactment.
- (4) Regulations under this section are subject to the affirmative procedure if they amend, repeal or revoke any provision of—
  - (a) an Act,
  - (b) retained direct principal EU legislation,
  - (c) a Measure or Act of Senedd Cymru,
  - (d) an Act of the Scottish Parliament, or
  - (e) Northern Ireland legislation.
- (5) Regulations under this section to which subsection (4) does not apply are subject to the negative procedure.

#### 46 Regulations **U.K.**

- (1) Regulations under this Act are to be made by statutory instrument.
- (2) Where regulations under this Act are subject to “the negative procedure”, the statutory instrument containing the regulations is subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) Where regulations under this Act are subject to “the affirmative procedure”, the regulations may not be made unless a draft of the statutory instrument containing them has been laid before and approved by a resolution of each House of Parliament.



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- (4) Any provision that may be included in regulations under this Act subject to the negative procedure may be made by regulations subject to the affirmative procedure.

#### 47 Interpretation **U.K.**

In this Act—

“the Benchmarks Regulation” means Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds;

“the Capital Requirements Regulation” means Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms;

“enactment” includes—

- (a) retained direct EU legislation,
- (b) an enactment comprised in subordinate legislation,
- (c) an enactment comprised in, or in an instrument made under, a Measure or Act of Senedd Cymru,
- (d) an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament, and
- (e) an enactment comprised in, or in an instrument made under, Northern Ireland legislation;

“subordinate legislation” has the same meaning as in the Interpretation Act 1978 (see section 21 of that Act).

#### 48 Extent **U.K.**

- (1) This Act extends to England and Wales, Scotland and Northern Ireland, subject to subsections (2) and (3).
- (2) In section 35—
- (a) subsections (1), (2) and (4) extend to England and Wales only, and
  - (b) subsection (3) extends to England and Wales and Northern Ireland only.
- (3) In Schedule 12, paragraph 14(4) extends to Northern Ireland only.
- (4) The power under section 79(10) of the Criminal Justice Act 1993 may be exercised so as to extend to any of the British overseas territories the amendment of that Act made by section 31 of this Act (with or without exceptions or modifications).
- (5) The power under section 430(3) of the Financial Services and Markets Act 2000 may be exercised so as to extend to any of the Channel Islands or the Isle of Man any amendment or repeal made by or under this Act of any part of that Act (with or without modifications).

#### 49 Commencement and transitional provision **U.K.**

- (1) This section and the following provisions come into force on the day on which this Act is passed—
- (a) section 33 and Schedule 12, except for paragraphs 10 to 21 of that Schedule as they extend to Northern Ireland,

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- (b) section 36,
  - (c) section 41,
  - (d) section 45,
  - (e) section 46,
  - (f) section 47,
  - (g) section 48, and
  - (h) section 50.
- (2) The following provisions come into force at the end of the period of two months beginning with the day on which this Act is passed—
- (a) section 30,
  - (b) section 32,
  - (c) section 35,
  - (d) section 42, and
  - (e) section 44.
- (3) Paragraphs 10 to 21 of Schedule 12 as they extend to Northern Ireland come into force on such day as the Treasury or the Secretary of State may by regulations appoint.
- (4) Section 34 comes into force on such day as the Treasury or the Secretary of State may by regulations appoint.
- (5) The other provisions of this Act come into force on such day as the Treasury may by regulations appoint.
- (6) Regulations under subsection (3), (4) or (5) may appoint different days for different purposes.
- (7) The Treasury or the Secretary of State may by regulations make transitional, transitory or saving provision in connection with the coming into force of a provision of this Act.
- (8) Regulations under subsection (7) may make different provision for different purposes.

**50 Short title** **U.K.**

This Act may be cited as the Financial Services Act 2021.

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## SCHEDULES

VALID FROM 01/01/2022

### SCHEDULE 1 U.K.

Section 1

#### EXCLUSION OF CERTAIN INVESTMENT FIRMS FROM THE CAPITAL REQUIREMENTS REGULATION: CONSEQUENTIAL AMENDMENTS

#### PART 1 U.K.

##### AMENDMENTS OF THE CAPITAL REQUIREMENTS REGULATION

- 1 The Capital Requirements Regulation is amended as follows.
- 2 (1) Article 4(1) (definitions) is amended as follows.
- (2) Omit point (4) (definition of “local firm”).
- (3) After point (22) insert—
- “(22A) ‘*investment holding company*’ means a financial institution which is not a financial holding company and whose subsidiaries—
- (a) are exclusively or mainly investment firms or financial institutions, and
- (b) include at least one investment firm;”.
- (4) In point (26) (definition of “financial institution”)—
- (a) after “including” insert “ an investment firm, ”, and
- (b) after “a mixed financial holding company,” insert “ an investment holding company, ”.
- (5) For point (29a) substitute—
- “(29a) ‘*UK parent investment firm*’ means a parent undertaking in the United Kingdom that is an investment firm;”.
- (6) For point (51) substitute—
- “(51) ‘*initial capital*’, in relation to an institution, means the amount and types of own funds specified in rule 12.1 of the Definition of Capital Part of the PRA rulebook;”.
- (7) In point (60) (definition of “cash assimilated instrument”), after “institution” (in each place) insert “ or investment firm ”.
- 3 (1) Article 4A (definitions: regulators' rules) is amended as follows.
- (2) In paragraph 1(b) (references to FCA sourcebook), for “as the sourcebook has effect on IP completion day” substitute “ as amended from time to time ”.

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3	At the end insert—
4	<p>“3 In this Regulation, “Part 9C rules” has the same meaning as in FSMA (see section 417 of that Act).”</p> <p>For Article 4B substitute—</p> <p style="text-align: center;"><i>“Article 4B</i></p> <p style="text-align: center;"><b><i>The consolidating supervisor</i></b></p> <p>The consolidating supervisor is the PRA.”</p>
5	<p>Before Article 11 (and the Section and Chapter headings before it) insert—</p> <p style="text-align: center;"><i>“Article 10A</i></p> <p style="text-align: center;"><b><i>Application of prudential requirements on a consolidated basis where FCA investment firms are parent undertakings</i></b></p> <p>For the purposes of the application of this Chapter, FCA investment firms are to be considered to be UK parent financial holding companies where they are parent undertakings of an institution.”</p>
6	Omit Article 15 (derogation from the application of own funds requirements on a consolidated basis for groups of investment firms).
7	Omit Article 16 (derogation from the application of the leverage ratio requirements on a consolidated basis for groups of investment firms).
8	Omit Article 17 (supervision of investment firms waived from the application of own funds requirements on a consolidated basis).
9	In Article 47c(5) (deduction for non-performing exposures), omit “and the FCA”.
10	In Article 49(6) (requirement for deduction where consolidation, supplementary supervision or institutional protection schemes are applied) omit “and Annex 1 of Chapter 3 of the FCA General Prudential sourcebook”.
11	<p>(1) Article 81(1)(a) (minority interests that qualify for inclusion in consolidated Common Equity Tier 1 capital) is amended as follows.</p> <p>(2) After point (ii) insert—</p> <p style="padding-left: 40px;">“(ia) an intermediate financial holding company or intermediate mixed financial holding company that is subject to the requirements of this Regulation on a sub-consolidated basis;</p> <p style="padding-left: 40px;">(ib) an intermediate investment holding company that is subject to the requirements of Part 9C rules on a consolidated basis;</p> <p style="padding-left: 40px;">(ic) an FCA investment firm;”.</p> <p>(3) In point (iii)—</p> <p style="padding-left: 40px;">(a) after “subject to prudential requirements” insert “ which are ”,</p> <p style="padding-left: 40px;">(b) for “where” substitute “ which ”, and</p> <p style="padding-left: 40px;">(c) omit “that those prudential requirements”.</p>

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- 12 (1) Article 82(a) (Qualifying Additional Tier 1, Tier 1, Tier 2 capital and qualifying own funds) is amended as follows.
- (2) After point (ii) insert—
- “(iia) an intermediate financial holding company or intermediate mixed financial holding company that is subject to the requirements of this Regulation on a sub-consolidated basis;
- (iib) an intermediate investment holding company that is subject to the requirements of Part 9C rules on a consolidated basis;
- (iic) an FCA investment firm;”.
- (3) In point (iii)—
- (a) after “subject to prudential requirements” insert “ which are ”,
- (b) for “where” substitute “ which ”, and
- (c) omit “that those prudential requirements”.
- 13 (1) Article 84 (minority interests included in consolidated Common Equity Tier 1 capital) is amended as follows.
- (2) In paragraph 1(a), for point (i) substitute—
- “(i) the amount of Common Equity Tier 1 capital of that subsidiary required to meet the following:
- (A) the sum of the requirement laid down in point (a) of Article 92(1), the requirements referred to in Articles 458, 459 and 500, the specific own funds requirements referred to in regulation 34 of the Capital Requirements Regulations 2013, the combined buffer requirement defined in regulation 2 of the Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014, and any additional local supervisory regulations in third countries insofar as those requirements are to be met by Common Equity Tier 1 capital, or
- (B) where the subsidiary is an FCA investment firm, the sum of the own funds requirements set out in Part 9C rules which apply to the subsidiary and any requirements set out in additional local supervisory regulations in third countries insofar as those requirements are to be met by Common Equity Tier 1 capital;”.
- (3) In paragraph 3—
- (a) for “a competent authority” substitute “ the PRA ”, and
- (b) for “interest” substitute “ interests ”.
- (4) After paragraph 3 insert—
- “3A Where Part 9C rules provide that, in relation to any subsidiaries which are FCA investment firms, the calculation referred to in paragraph 1 is to be undertaken on a consolidated basis so as to include those subsidiaries,

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- minority interests within those subsidiaries shall not be recognised in own funds at the sub-consolidated or consolidated level, as applicable.”
- 14 (1) Article 85 (qualifying Tier 1 instruments included in consolidated Tier 1 capital) is amended as follows.
- (2) In paragraph 1(a), for point (i) substitute—
- “(i) the amount of Tier 1 capital of the subsidiary required to meet the following:
- (A) the sum of the requirement laid down in point (b) of Article 92(1), the requirements referred to in Articles 458, 459 and 500, the specific own funds requirements referred to in regulation 34 of the Capital Requirements Regulations 2013, the combined buffer requirement defined in regulation 2 of the Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014, and any additional local supervisory regulations in third countries insofar as those requirements are to be met by Tier 1 Capital, or
- (B) where the subsidiary is an FCA investment firm, the sum of the own funds requirements set out in Part 9C rules which apply to the subsidiary and any requirements set out in additional local supervisory regulations in third countries insofar as those requirements are to be met by Tier 1 capital;”.
- (3) In paragraph 3, for “a competent authority” substitute “ the PRA ”.
- (4) After paragraph 3 insert—
- “3A Where Part 9C rules provide that, in relation to any subsidiaries which are FCA investment firms, the calculation referred to in paragraph 1 is to be undertaken on a consolidated basis so as to include those subsidiaries, Tier 1 instruments within those subsidiaries shall not be recognised in own funds at the sub-consolidated or consolidated level, as applicable.”
- 15 (1) Article 87 (qualifying own funds included in consolidated own funds) is amended as follows.
- (2) In paragraph 1(a), for point (i) substitute—
- “(i) the amount of own funds of the subsidiary required to meet the following—
- (A) the sum of the requirement laid down in point (c) of Article 92(1), the requirements referred to in Articles 458, 459 and 500, the specific own funds requirements referred to in regulation 34 of the Capital Requirements Regulations 2013, the combined buffer requirement defined in regulation 2 of the Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014, and any additional local supervisory regulations in third countries, or

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	(B) where the subsidiary is an FCA investment firm, the sum of the own funds requirements set out in Part 9C rules which apply to the subsidiary and any requirements set out in additional local supervisory regulations in third countries;”.
	(3) In paragraph 3, for “a competent authority” substitute “ the PRA ”.
	(4) After paragraph 3 insert—
	“3A Where Part 9C rules provide that, in relation to any subsidiaries which are FCA investment firms, the calculation referred to in paragraph 1 is to be undertaken on a consolidated basis so as to include those subsidiaries, own funds instruments within those subsidiaries shall not be recognised in own funds at the sub-consolidated or consolidated level, as applicable.”
16	In Article 93 (initial capital requirement on going concern)—
	(a) omit paragraph 3,
	(b) in paragraphs 4 and 5, omit “or 3”, and
	(c) in paragraph 6, for “2 to 5” substitute “ 2, 4 and 5 ”.
17	Omit Article 95 (own funds requirements for investment firms with limited authorisation to provide investment services).
18	Omit Article 96 (own funds requirements for IFPRU 730k firms).
19	Omit Article 97 (own funds based on fixed overheads).
20	Omit Article 98 (own funds for investment firms on a consolidated basis).
21	In Article 100 (additional reporting requirements), in the second subparagraph, for “The FCA or the PRA (as the case may be)” substitute “ The PRA ”.
22	In Article 115(2) (exposures to regional governments or local authorities), in the second subparagraph, omit “and FCA”.
23	In Article 119 (exposures to institutions), after paragraph 5 insert—
	“6 For the purposes of paragraph 5, the requirements laid down in Part 9C rules are to be treated as being comparable to those applied to institutions in terms of robustness.”
24	(1) Article 136 (mapping of ECAI's credit assessments) is amended as follows.
	(2) In paragraph 1, for “The FCA and the PRA may each” substitute “ The PRA may ”.
	(3) In paragraph 2—
	(a) for “the FCA and the PRA”, in each place it occurs, substitute “ the PRA ”, and
	(b) in point (e), for “have” substitute “ has ”.
	(4) In paragraph 3, for “The FCA and the PRA may each” substitute “ The PRA may ”.
25	In Article 162(3) (maturity), in the second subparagraph, in point (a), after “institutions” insert “ or investment firms ”.
26	(1) Article 197 (eligibility of collateral under all approaches and methods) is amended as follows.
	(2) In paragraph 1(c), after “issued by institutions” insert “ or investment firms ”.



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	(3) In paragraph 4, after “other institutions” insert “ or investment firms ”.
27	In Article 199(8) (additional eligibility for collateral under the IRB Approach), omit “and the FCA”.
28	In Article 200 (other funded credit protection), for point (c) substitute— “(c) instruments issued by a third party institution, or an investment firm, which will be repurchased by that institution, or that investment firm, on request.”
29	In Article 202 (eligibility of protection providers under the IRB Approach which qualify for Article 153(3) treatment), after “institutions,” insert “ investment firms, ”.
30	In Article 224(6) (supervisory volatility adjustment under Financial Collateral Comprehensive Method), after “institutions”, in the first place it occurs, insert “ or investment firms ”.
31	In Article 227(3) (conditions for applying 0% volatility adjustment under Financial Collateral Comprehensive Method), after point (b) insert— “(ba) investment firms;”.
32	In Article 243(1) (criteria for STS securitisations qualifying for differentiated capital treatment), in the second subparagraph, after “an institution,” insert “ an investment firm, ”.
33	(1) Article 270e (securitisation mapping) is amended as follows. (2) For “The FCA and the PRA may each” substitute “ The PRA may ”. (3) For the words from “For” to “shall” substitute “ For the purposes of this Article, the PRA shall ”.
34	In Article 290(3) (stress testing), for the words from “the relevant regulatory rules” to the end substitute “ rule 6.1 of the Internal Capital Adequacy Part of the PRA rulebook ”.
35	(1) Article 304(5) (treatment of clearing members' exposure to clients) is amended as follows. (2) In the first subparagraph, for “The FCA and the PRA may each” substitute “ The PRA may ”. (3) In the second subparagraph, for “the FCA or the PRA (as the case may be)” substitute “ the PRA ”.
36	(1) Article 325u(5) (own funds requirements for residual risks) is amended as follows. (2) In the first subparagraph, for “The FCA and PRA may each” substitute “ The PRA may ”. (3) In the second subparagraph, for “the FCA and PRA” substitute “ the PRA ”.
37	(1) Article 325az (alternative internal model approach and permission to use alternative internal models) is amended as follows. (2) In paragraph 8, for “The FCA and PRA may each” substitute “ The PRA may ”. (3) In paragraph 9— (a) for “The FCA and the PRA may each” substitute “ The PRA may ”, and

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- (b) for “they” substitute “ it ”.
- 38 (1) Article 325bk(3) (calculation of stress scenario risk measure) is amended as follows.
- (2) In the first subparagraph, for “The FCA and PRA may each” substitute “ The PRA may ”.
- (3) In the second subparagraph, for “the FCA and PRA” substitute “ the PRA ”.
- 39 In Article 382(4) (scope of own funds requirements for CVA risk), in point (b), for “institutions” substitute “ entities ”.
- 40 (1) Article 441(2) (indicators of global systemic importance) is amended as follows.
- (2) For “The FCA and the PRA may each” substitute “ The PRA may ”.
- (3) For “the FCA or the PRA (as the case may be)” substitute “ the PRA ”.
- 41 In Article 450(1)(d) (remuneration policy) omit “19A.3.44R to 44DR and”.
- 42 In Article 456(1) (regulations modifying this Regulation) omit points (f) and (g).
- 43 (1) Article 464B (power to make technical standards) is amended as follows.
- (2) Omit paragraph 1.
- (3) In paragraph 2, for “the PRA and FCA may both” substitute “ the PRA may ”.
- (4) In paragraph 3 omit “alone”.
- 44 In Article 522(1)(b) (savings provisions: pre-exit decisions)—
- (a) omit “and FCA”, and
- (b) omit the words from “in relation to” to “other person”.
- 45 In Annex 1 (classification of off-balance sheet items), in point 1(d), at the end insert “ or an investment firm ”.
- 46 (1) Annex 3 (items subject to supplementary reporting of liquid assets) is amended as follows.
- (2) In point 3(b), for “of an institution or any of its affiliated entities” substitute “ of, or of an affiliated entity of, an institution or an investment firm ”.
- (3) In point 5(b), for “of an institution or any of its affiliated entities” substitute “ of, or of an affiliated entity of, an institution or an investment firm ”.
- (4) In point 6(a), for “on an SSPE, an institution or any of its affiliated entities” substitute “ on, or on an affiliated entity of, an SSPE, an institution or an investment firm ”.
- (5) In point 7, for “on an SSPE, an institution or any of its affiliated entities” substitute “ on, or on an affiliated entity of, an SSPE, an institution or an investment firm ”.
- (6) In point 11, for “by an institution or any of its affiliates” substitute “ by, or by an affiliate of, an institution or an investment firm ”.
- 47 In the following provisions, for “FCA and PRA may each” or “FCA and the PRA may each” (as appropriate) substitute “ PRA may ”
- Article 4(4);
- Article 18(9);

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Article 26(4);  
Article 27(2);  
Article 28(5);  
Article 29(6);  
Article 32(2);  
Article 33(4);  
Article 36(2), (3) and (4);  
Article 41(2);  
Article 52(2);  
Article 73(7);  
Article 76(4);  
Article 78(5);  
Article 79(2);  
Article 83(2);  
Article 84(4);  
Article 99(5), first subparagraph;  
Article 99(6), second subparagraph;  
Article 101(4);  
Article 105(14);  
Article 110(4);  
Article 132a(4);  
Article 143(5);  
Article 144(2);  
Article 148(6);  
Article 150(3);  
Article 152(5);  
Article 153(9);  
Article 164(8);  
Article 173(3);  
Article 178(6);  
Article 180(3);  
Article 181(3);  
Article 182(4);  
Article 183(6);  
Article 194(10);  
Article 197(8);  
Article 221(9);  
Article 248(1), second subparagraph;  
Article 255(9);  
Article 270a(2);  
Article 277(5);  
Article 279a(3);  
Article 312(4);  
Article 314(5);  
Article 316(3);

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Article 318(3);  
 Article 325(9);  
 Article 325w(8);  
 Article 325ap(3);  
 Article 325bd(7);  
 Article 325be(3);  
 Article 325bf(9);  
 Article 325bg(4);  
 Article 325bp(12);  
 Article 329(3);  
 Article 341(3);  
 Article 344(1);  
 Article 352(6);  
 Article 354(3);  
 Article 358(4), first subparagraph;  
 Article 363(4);  
 Article 382(5);  
 Article 383(7);  
 Article 430b(6);  
 Article 434a, first subparagraph;  
 Article 437(2);  
 Article 440(2);  
 Article 443;  
 Article 451(2);  
 Article 487(3);  
 Article 492(5).

## PART 2 U.K.

### AMENDMENTS OF THE CAPITAL REQUIREMENTS (COUNTRY-BY-COUNTRY REPORTING) REGULATIONS 2013

48 The Capital Requirements (Country-by-Country Reporting) Regulations 2013 (S.I. 2013/3118) are amended as follows.

49 (1) Regulation 1(2) (interpretation) is amended as follows.

(2) For the definition of “capital requirements regulation” substitute—

““the capital requirements regulation” means Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No. 648/2012;”.

(3) After that definition insert—

““FCA investment firm” has the same meaning as in Part 9C of the 2000 Act;

“financial institution” has the meaning given in Article 4(1)(26) of the capital requirements regulation;”.

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- (4) After the definition of “period of account” insert—
- ““Regulated Activities Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544);
- “relevant FCA investment firm” has the meaning given in paragraph (2A);
- “small and non-interconnected firm” has the meaning given in rules made by the Financial Conduct Authority for the purposes of Part 9C of the 2000 Act.”.
- 50 In regulation 1, after paragraph (2) insert—
- “(2A) For the purposes of these Regulations, an FCA investment firm is “relevant” if—
- (a) it has a branch or subsidiary in a country or territory outside the United Kingdom that is a financial institution, and
- (b) it is not a small and non-interconnected firm,
- subject to paragraphs (2B) and (2C).
- (2B) Where an FCA investment firm which has not been a small and non-interconnected firm for a period becomes a small and non-interconnected firm, it only ceases to be a relevant FCA investment firm once—
- (a) it has been a small and non-interconnected firm for a continuous period of six months, and
- (b) it has notified the Financial Conduct Authority.
- (2C) Where an FCA investment firm which has been a small and non-interconnected firm for a period determines that it is no longer a small and non-interconnected firm—
- (a) it must notify the Financial Conduct Authority, and
- (b) it does not become a relevant FCA investment firm until—
- (i) the end of the period of 12 months beginning with the day on which it made the determination, or
- (ii) if the notification specifies an earlier date, that date.”
- 51 In regulation 1(3) (interpretation of references to EU legislation), for “any EU regulation,” substitute “ any EU regulation other than the capital requirements regulation or to any ”.
- 52 (1) Regulation 2 (ongoing reporting obligation) is amended as follows.
- (2) In paragraph (1), after “Institutions” insert “ and relevant FCA investment firms ”.
- (3) In paragraph (2), after “institution” insert “ or relevant FCA investment firm ”.
- (4) In paragraph (3), for “institution's period of account” substitute “ period of account for the institution or relevant FCA investment firm ”.
- (5) In paragraph (4)—
- (a) in the opening words, after “institution” insert “ or relevant FCA investment firm ”, and
- (b) in sub-paragraph (a), after “institution” insert “ or relevant FCA investment firm ”.

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- (6) In paragraph (8), after “institution” insert “ or relevant FCA investment firm ”.
- 53 In regulation 3(1) (interim reporting obligation), after “Institutions” insert “ and relevant FCA investment firms ”.
- 54 (1) Regulation 4 (group disclosure) is amended as follows.
- (2) In paragraph (1), after “institution” insert “ or relevant FCA investment firm ”.
- (3) In paragraph (2), after “institution” insert “ or relevant FCA investment firm ”.
- 55 (1) Regulation 5 (prior disclosure: prevention of duplication) is amended as follows.
- (2) In paragraph (3)—
- (a) after “an institution” insert “ or relevant FCA investment firm ”, and
- (b) after “the institution” (in both places) insert “ or firm ”.
- (3) In paragraph (4)—
- (a) after “an institution” insert “ or relevant FCA investment firm ”, and
- (b) after “the institution” (in both places) insert “ or firm ”.
- 56 In regulation 6(2) (enforcement)—
- (a) in sub-paragraph (a) omit “which is a PRA-authorized person within the meaning of section 2B(5) of the 2000 Act”, and
- (b) in sub-paragraph (b), for “any other institution” substitute “ a relevant FCA investment firm ”.

VALID FROM 01/07/2021

SCHEDULE 2 **U.K.**

Section 2

PRUDENTIAL REGULATION OF FCA INVESTMENT FIRMS

**PART 1 U.K.**

NEW PART 9C OF THE FINANCIAL SERVICES AND MARKETS ACT 2000

1 In the Financial Services and Markets Act 2000, after Part 9B insert—

**“PART 9C U.K.**

PRUDENTIAL REGULATION OF FCA INVESTMENT FIRMS

*Interpretation*

**FCA investment firms**

143A) In this Part, “FCA investment firm” means an investment firm that—

- (a) is an authorised person within the meaning of section 31(1)(a),

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- (b) is not for the time being designated by the PRA under article 3 of the Financial Services and Markets Act 2000 (PRA-regulated Activities) Order 2013 (S.I. 2013/556), and
  - (c) has its registered office or, if it has no registered office, its head office in the United Kingdom.
- (2) But the following are not FCA investment firms—
- (a) a person excluded from the definition of “investment firm” in Article 3(1) of the Financial Services and Markets 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) by paragraph (a) or (b) of that definition;
  - (b) an investment firm which has a Part 4A permission to carry on regulated activities as an exempt investment firm within the meaning of regulation 8 of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (S.I. 2017/701).

#### **Other terms used in this Part**

143B) In this Part—

“authorised parent undertaking” means a parent undertaking that—

- (a) is incorporated in the United Kingdom or has its principal place of business in the United Kingdom, and
- (b) is an authorised person;

“on a consolidated basis” means as if all members of an FCA investment firm's group are a single FCA investment firm;

“Directive 2013/36/EU UK law” means the law of the United Kingdom which was relied on immediately before IP completion day to implement the capital requirements directive and its implementing measures as it has effect—

- (a) on IP completion day, in the case of rules made by the FCA or the PRA under this Act, and
- (b) as amended from time to time, in all other cases;

“EU tertiary legislation” has the meaning given in section 20 of the European Union (Withdrawal) Act 2018;

“governance arrangements” includes organisational structure, lines of responsibility and internal control mechanisms;

“integrity”, in relation to the UK financial system, has the meaning given in section 1D;

“investment firm” has the meaning given in Article 4(1)(2) of the capital requirements regulation;

“non-authorised parent undertaking” means a parent undertaking that—

- (a) is incorporated in the United Kingdom or has its principal place of business in the United Kingdom, and
- (b) is not an authorised person.

- (2) The Treasury may by regulations make provision about the meaning of the following terms for the purposes of this Part—



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“on a consolidated basis”;  
“group”;  
“parent undertaking”;  
“subsidiary undertaking”.

- (3) Regulations under subsection (2) may, among other things, amend, repeal or otherwise modify provisions of this Act.
- (4) In this Part, references to instruments made under the capital requirements regulation include EU tertiary legislation made under that regulation which forms part of retained EU law.

### Rules

#### Duty to make rules applying to FCA investment firms

- 143(1) In the exercise of its power to make general rules, the FCA must make rules applying to FCA investment firms which impose the following types of prudential requirements—
- (a) requirements relating to the types and amounts of capital and liquid assets that such firms must hold in order to manage the risks specified in or under subsection (2);
  - (b) requirements relating to the management of risks arising from the strength or extent of such firms' relationships with, or direct exposure to, a single client or group of connected clients;
  - (c) reporting requirements related to requirements described in paragraph (a) or (b);
  - (d) public disclosure requirements related to requirements described in paragraph (a) or (b);
  - (e) requirements in respect of governance arrangements related to the risks specified in or under subsection (2);
  - (f) requirements in respect of remuneration policies and practices related to the risks specified in or under subsection (2).
- (2) The risks referred to in subsection (1)(a), (e) and (f) are—
- (a) the risks to consumers (as defined in section 1G) arising from FCA investment firms,
  - (b) the risks to the integrity of the UK financial system arising from FCA investment firms,
  - (c) the risks to which FCA investment firms are exposed, and
  - (d) any other risks specified by the Treasury by regulations.
- (3) General rules made for the purpose of subsection (1) may, among other things—
- (a) impose requirements to be satisfied on an individual basis or on a consolidated basis;
  - (b) impose requirements relating to the processes for consolidation;
  - (c) make provision relating to transactions between an FCA investment firm and a member of its group, including provision requiring the disclosure of information;
  - (d) provide for exceptions from requirements;

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(e) make provision by reference to the capital requirements regulation, to an instrument made under the capital requirements regulation or to Directive 2013/36/EU UK law, as amended from time to time.

(4) General rules made for the purpose of subsection (1) may, despite section 137A(6), include provision that modifies the capital requirements regulation or an instrument made under that regulation (but may not amend or revoke a provision of that regulation or such an instrument).

### **Duty to make rules applying to parent undertakings**

143(1) In the exercise of its power to make general rules, the FCA must make rules applying to authorised parent undertakings of FCA investment firms which impose the following types of prudential requirements—

- (a) requirements relating to the types and amounts of capital and liquid assets that such undertakings must hold in order to manage the risks specified in or under subsection (2);
- (b) requirements relating to the management of risks arising from the strength or extent of such undertakings' relationships with, or direct exposure to, a single client or group of connected clients;
- (c) reporting requirements related to requirements described in paragraph (a) or (b);
- (d) public disclosure requirements related to requirements described in paragraph (a) or (b);
- (e) requirements in respect of governance arrangements related to the risks specified in or under subsection (2);
- (f) requirements in respect of remuneration policies and practices related to the risks specified in or under subsection (2).

(2) The risks referred to in subsection (1)(a), (e) and (f) are—

- (a) the risks to consumers (as defined in section 1G) arising from FCA investment firms, from parent undertakings of FCA investment firms and from FCA investment firms belonging to groups,
- (b) the risks to the integrity of the UK financial system arising from FCA investment firms, from parent undertakings of FCA investment firms and from FCA investment firms belonging to groups,
- (c) the risks to which FCA investment firms are exposed by virtue of their relationship with their parent undertaking, and
- (d) any other risks specified by the Treasury by regulations.

(3) The FCA must make rules applying to non-authorised parent undertakings of FCA investment firms which impose requirements described in subsection (1), where such rules appear to it to be necessary or expedient for the purpose of advancing one or more of its operational objectives.

(4) Rules made for the purpose of subsection (1) or under subsection (3) may, among other things—

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- (a) impose requirements to be satisfied on an individual basis or on a consolidated basis;
  - (b) impose requirements relating to the processes for consolidation;
  - (c) make provision relating to transactions between a parent undertaking of an FCA investment firm and a member of its group, including provision requiring the disclosure of information;
  - (d) provide for exceptions from requirements;
  - (e) make provision by reference to the capital requirements regulation, to an instrument made under the capital requirements regulation or to Directive 2013/36/EU UK law, as amended from time to time.
- (5) Section 137A(6) and (7) (restriction on modifying etc retained direct EU legislation) apply to rules made by the FCA under subsection (3) as they apply to general rules made by the FCA.
- (6) Rules made for the purpose of subsection (1) or under subsection (3) may, despite section 137A(6), include provision that modifies the capital requirements regulation or an instrument made under that regulation (but may not amend or revoke a provision of that regulation or such an instrument).
- (7) Section 137H (rules about remuneration) applies where the FCA makes rules under subsection (3) prohibiting persons, or persons of a specified description, from being remunerated in a specified way as it applies where the FCA makes general rules imposing such a prohibition.
- (8) Section 137I (Treasury direction to consider compliance with remuneration policies) applies where the FCA makes rules under subsection (3) requiring non-authorised parent undertakings, or non-authorised parent undertakings of a specified description, to act in accordance with a remuneration policy as it applies where the FCA makes general rules imposing such requirements on authorised persons, but as if—
- (a) the references in that section to authorised persons were references to non-authorised parent undertakings of FCA investment firms, and
  - (b) subsection (7) of that section were omitted.
- (9) Section 141A (power to make consequential amendments of references to rules etc) applies to the exercise by the FCA of its power to make, alter or revoke rules under subsection (3) as it applies in relation to the exercise by the FCA of its power to make, alter or revoke rules under Part 9A.
- (10) This section is subject to section 143E.

#### **Powers to make rules applying to parent undertakings**

- 143E) Subsections (1) and (3) of section 143D do not require the FCA to make rules applying to parent undertakings of FCA investment firms which belong to a group which includes a relevant body, but the FCA may make rules described in those subsections applying to such parent undertakings.

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- (2) In subsection (1), “relevant body” means—
- (a) an undertaking (as defined in section 1161(1) of the Companies Act 2006) that has its head office in the United Kingdom and that has permission under Part 4A to accept deposits, other than—
    - (i) an undertaking that also has permission under Part 4A to effect or carry out contracts of insurance, or
    - (ii) a credit union within the meaning of section 1 of the Credit Unions Act 1979;
  - (b) an investment firm that is for the time being designated by the PRA under article 3 of the Financial Services and Markets Act 2000 (PRA-regulated Activities) Order 2013 (S.I. 2013/556).
- (3) The FCA may make rules applying to parent undertakings of FCA investment firms which impose requirements for the disclosure of information about such undertakings' branches and subsidiary undertakings outside the United Kingdom.
- (4) The FCA's powers to make rules under subsections (1) and (3) are powers to do so—
- (a) in relation to authorised parent undertakings, in exercise of its power to make general rules, and
  - (b) in relation to non-authorised parent undertakings, where such rules appear to it to be necessary or expedient for the purpose of advancing one or more of its operational objectives.
- (5) Section 143D(4) and (6) apply in relation to rules made by the FCA in exercise of the powers conferred by, or described in, this section as they apply in relation to rules made in the performance of the FCA's duties under that section.
- (6) Section 143D(5), (7), (8) and (9) apply in relation to rules made under this section applying to non-authorised parent undertakings as they apply in relation to rules made under section 143D(3).

### **Part 9C rules**

- 143F(1) In this Act, “Part 9C rules” means rules made, or to be made, by the FCA—
- (a) in the performance of its duties under section 143C or 143D, or
  - (b) in exercise of the powers conferred by, or described in, section 143E.
- (2) The FCA must publish a list of all Part 9C rules in force in the way appearing to the FCA to be best calculated to bring it to the attention of people likely to be affected by the rules.
- (3) The FCA's opinion as to whether a rule is a Part 9C rule is conclusive for all purposes.

### **Matters to consider when making Part 9C rules**

- 143G(1) When making Part 9C rules, the FCA must, among other things, have regard to—

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- (a) any relevant standards set by an international standard-setting body,
  - (b) the likely effect of the rules on the relative standing of the United Kingdom as a place for internationally active investment firms to be based or to carry on activities,
  - (c) the target in section 1 of the Climate Change Act 2008 (carbon target for 2050), and
  - (d) any other matter specified by the Treasury by regulations.
- (2) For the purposes of subsection (1)(b), the FCA must consider the United Kingdom's standing in relation to the other countries and territories in which, in its opinion, internationally active investment firms are most likely to choose to be based or carry on activities.
- (3) When making Part 9C rules, the FCA must consider, and consult the Treasury about, the likely effect of the rules on relevant equivalence decisions.
- (4) For the purpose of this section, an equivalence decision is “relevant” if the Treasury have, by notice in writing, informed the FCA that it is relevant for that purpose.
- (5) In this section—  
“equivalence decision” means a decision as to whether the law and practice of one country or territory is equivalent to the law and practice of another country or territory, either generally or as it relates to a particular matter;  
“territory” includes the European Union and any other international organisation or authority comprising countries or territories.
- (6) This section is subject to section 143I.

#### **Explanation to accompany consultation on rules**

- 143I(1) A draft of proposed Part 9C rules published in accordance with section 138I(1)(b) must be accompanied by—
- (a) an explanation of the provision that the FCA has considered it appropriate to include in the rules given the risks specified in or under section 143C(2) or 143D(2), and
  - (b) an explanation of the ways in which having regard to the matters specified in or under section 143G(1) has affected the proposed rules,
- (as well as being accompanied by the information listed in section 138I(2)).
- (2) If the FCA makes the proposed Part 9C rules, it must publish—
- (a) a summary of the purpose of the proposed rules, and
  - (b) explanations complying with subsection (1),
- (as well as the information required by section 138I(4) and (5)).
- (3) This section is subject to section 143I.

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### **Exceptions from sections 143G and 143H**

143(1) Sections 143G and 143H do not apply where the FCA makes Part 9C rules—

- (a) in order to comply with a direction given by the Financial Policy Committee of the Bank of England under section 9H of the Bank of England Act 1998 (directions requiring macro-prudential measures), or
  - (b) in order to act in accordance with a recommendation made by that Committee under section 9Q of that Act (recommendations about the exercise of the FCA's functions).
- (2) Section 143H does not apply in relation to Part 9C rules if the FCA considers that the delay involved in complying with that section would be prejudicial to the interests of consumers (as defined in section 425A).
- (3) If the FCA proposes Part 9C rules that change existing Part 9C rules and the changes consist of or include changes which, in the FCA's opinion, are not material—
- (a) the explanations described in section 143H(1) are not required in relation to the rules to the extent that they make those changes, but
  - (b) the draft of the rules must be accompanied by a statement of the FCA's opinion.
- (4) If the FCA makes Part 9C rules that change existing Part 9C rules and the changes consist of or include changes which, in the FCA's opinion, are not material—
- (a) the summary and explanations described in section 143H(2) are not required in relation to the rules to the extent that they make those changes, but
  - (b) the FCA must publish a statement of its opinion.
- (5) For the purposes of this section, whether a change to Part 9C rules is material is to be determined by the FCA by reference to, among other things, the risks specified in or under section 143C(2) or 143D(2) and the matters specified in or under section 143G(1).

#### *Requirement to have UK parent undertaking*

### **Requirement to have UK parent undertaking**

143(1) This section applies where—

- (a) two or more FCA investment firms are subsidiary undertakings of the same parent undertaking,
- (b) the parent undertaking's head office is in a country or territory outside the United Kingdom, and
- (c) in the FCA's opinion, the law and practice in the other country or territory does not impose requirements on the parent undertaking which have equivalent effect to requirements imposed by Part 9C rules.



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- (2) Where this section applies, the FCA may exercise its power under section 55L(3) to impose a requirement on the FCA investment firms to secure that a parent undertaking with its head office in the United Kingdom is established.

*Imposition of requirements on non-authorised parent undertakings*

**Imposition of requirements on non-authorised parent undertakings**

- 143K(1) The FCA may, on the application of a non-authorised parent undertaking of an FCA investment firm—
- (a) impose a requirement on the parent undertaking,
  - (b) vary a requirement imposed on the parent undertaking under this section, or
  - (c) cancel such a requirement.
- (2) The FCA may exercise its power under subsection (3) in relation to a non-authorised parent undertaking of an FCA investment firm if it appears to the FCA that—
- (a) it is necessary or expedient to do so in order to manage risks specified in or under section 143D(2), and
  - (b) it is desirable to do so in order to advance one or more of its operational objectives.
- (3) The FCA's power under this subsection is a power—
- (a) to impose a requirement,
  - (b) to vary a requirement imposed under this section, or
  - (c) to cancel such a requirement.
- (4) The FCA may refuse an application under subsection (1) if it appears to the FCA that it is desirable to do so in order to advance one or more of the FCA's operational objectives.
- (5) A requirement may, in particular, be imposed under this section—
- (a) so as to require the parent undertaking to take specified action, or
  - (b) so as to require the parent undertaking to refrain from taking specified action.
- (6) A requirement may be imposed by reference to the parent undertaking's relationship with—
- (a) its group, or
  - (b) other members of its group.
- (7) A requirement may refer to the past conduct of the parent undertaking (for example, by requiring the parent undertaking to review or take remedial action in respect of past conduct).
- (8) A requirement may be expressed to expire at the end of a specified period, but the imposition of a requirement that expires at the end of a specified period does not affect the FCA's power to impose a new requirement.



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- (9) A requirement ceases to be in force if the person on whom it is imposed ceases to be a non-authorised parent undertaking of an FCA investment firm.
- (10) For the purposes of a provision of this section which refers to the FCA's operational objectives, in relation to the exercise of a power in relation to a particular parent undertaking, it does not matter whether there is a relationship between the parent undertaking and the persons whose interests will be protected by the exercise of the power.

#### **Applications under section 143K**

- 143L(1) An application under section 143K(1) for the imposition or variation of a requirement must contain a statement of the desired requirement or variation.
- (2) An application under section 143K(1)—
  - (a) must be made in such manner as the FCA may direct, and
  - (b) must contain, or be accompanied by, such other information as the FCA may reasonably require.
- (3) At any time after the application is received and before it is determined, the FCA may require the applicant to provide it with such further information as the FCA reasonably considers necessary to enable it to determine the application.
- (4) The FCA may require an applicant to provide information which the applicant is required to provide the FCA under this section in such form, or to verify it in such a way, as the FCA may direct.
- (5) Different directions may be given, and different requirements imposed, in relation to different applications or categories of application.

#### **Determination of applications under section 143K**

- 143M(1) The FCA must determine an application under section 143K(1)—
  - (a) if the application is complete, before the end of the period of six months beginning with the day on which the FCA received the application, or
  - (b) if the application is incomplete, before the end of the period of 12 months beginning with the day on which the FCA received the application.
- (2) The applicant may withdraw the application, by giving the FCA a written notice, at any time before the FCA determines it.
- (3) If the FCA grants an application under section 143K(1), it must give the applicant a written notice.
- (4) The notice must state the date from which the requirement or variation has effect.

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### **Refusal of applications under section 143K**

143K(1) If the FCA proposes to refuse an application under section 143K(1), it must give the applicant a warning notice.

(2) If the FCA decides to refuse an application under section 143K(1), it must give the applicant a decision notice.

### **Exercise of own-initiative power under section 143K**

143K(1) The imposition or variation of a requirement by the FCA under section 143K(2) takes effect—

- (a) immediately, if the notice given under subsection (3) states that is the case,
- (b) on such date as may be specified in the notice, or
- (c) if no date is specified in the notice, when the matter to which the notice relates is no longer open to review.

(2) The imposition or variation of the requirement may be expressed to take effect immediately, or on a specified date, only if the FCA reasonably considers that it is necessary for it to take effect immediately or on that date, having regard to the ground on which it is exercising its power under section 143K(2).

(3) If the FCA—

- (a) proposes to exercise its power under section 143K(2) so as to impose a requirement on a parent undertaking or to vary a requirement imposed on a parent undertaking, or
- (b) exercises that power so as to impose a requirement on a parent undertaking, or to vary a requirement imposed on a parent undertaking, with immediate effect,

it must give the parent undertaking a written notice.

(4) The notice must—

- (a) give details of the requirement or its variation,
- (b) state the FCA's reasons for imposing or varying the requirement,
- (c) inform the parent undertaking that it may make representations to the FCA within the period specified in the notice (whether or not the parent undertaking has referred the matter to the Tribunal),
- (d) inform the parent undertaking of when the imposition or variation of the requirement takes effect, and
- (e) inform the parent undertaking of its right to refer the matter to the Tribunal.

(5) The FCA may extend the period allowed under the notice for making representations.

(6) If, having considered any representations made by the parent undertaking, the FCA decides—

- (a) to impose the requirement or vary the requirement in the way proposed, or

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- (b) if the requirement has been imposed or varied, not to rescind its imposition or variation,  
it must give the parent undertaking a written notice.
- (7) A notice under subsection (6) must inform the parent undertaking of its right to refer the matter to the Tribunal.
- (8) If, having considered any representations made by the parent undertaking, the FCA decides—
  - (a) not to impose the requirement or vary the requirement in the way proposed,
  - (b) to impose a different requirement or vary the requirement in a different way, or
  - (c) to rescind a requirement or variation which has effect,
 it must give the parent undertaking a written notice.
- (9) A notice under subsection (8)(b) must comply with subsection (4).
- (10) If a notice under this section informs a person of the person's right to refer a matter to the Tribunal, it must give an indication of the procedure for such a reference.
- (11) For the purposes of subsection (1)(c), whether a matter is open to review is to be determined in accordance with section 391(8).

#### **Right to refer matters to the Tribunal**

- 143H) An applicant who is aggrieved by the determination of an application under section 143K(1) may refer the matter to the Tribunal.
- (2) A parent undertaking aggrieved by the exercise by the FCA of its power under section 143K(2) to impose a requirement on the parent undertaking, or vary a requirement imposed on the parent undertaking, may refer the matter to the Tribunal.

#### **Assets requirements**

- 143Q) This section makes provision about a requirement imposed on a non-authorised parent undertaking of an FCA investment firm (“N”) under section 143K—
  - (a) prohibiting the disposal of, or other dealing with, any of N's assets (whether in the United Kingdom or elsewhere) or restricting such disposals or dealings, or
  - (b) requiring that some or all of N's assets, or some or all assets belonging to consumers (as defined in section 1G) but held by N or to N's order, must be transferred to and held by a trustee approved by the FCA.
- (2) If the FCA—
  - (a) imposes a requirement described in subsection (1)(a), and
  - (b) gives notice of the requirement to an institution with whom N keeps an account,
 the notice has the effects set out in subsection (3).

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- (3) Those effects are that—
- (a) the institution does not act in breach of a contract with N if, having been instructed by N (or on N's behalf) to transfer a sum or otherwise make a payment out of N's account, it refuses to do so in the reasonably held belief that complying with the instruction would be incompatible with the requirement, and
  - (b) if the institution complies with such an instruction, it is liable to pay to the FCA an amount equal to the amount transferred from, or otherwise paid out of, N's account in contravention of the requirement.
- (4) If the FCA imposes a requirement described in subsection (1)(b), no assets held by a person as trustee in accordance with the requirement may, while the requirement is in force, be released or dealt with except with the consent of the FCA.
- (5) If, while a requirement described in subsection (1)(b) is in force, N creates a charge over any assets of N held in accordance with the requirement, the charge is (to the extent that it confers security over the assets) void against the liquidator and N's creditors.
- (6) Assets held by a person as trustee are to be taken to be held by the trustee in accordance with a requirement mentioned in subsection (1)(b) only if—
- (a) N has given the trustee a written notice that those assets are to be held by the trustee in accordance with the requirement, or
  - (b) they are assets into which assets to which paragraph (a) applies have been transposed by the trustee on the instruction of N.
- (7) A person who contravenes subsection (4) commits an offence and is liable—
- (a) on summary conviction in England and Wales, to a fine;
  - (b) on summary conviction in Scotland or Northern Ireland, to a fine not exceeding level 5 on the standard scale.
- (8) In this section, references to imposing a requirement (however expressed) include imposing a requirement by varying an existing requirement.
- (9) In this paragraph, “charge” includes a mortgage (or, in Scotland, a security over property).
- (10) Subsections (4) and (6) do not affect any equitable interest or remedy in favour of a person who is a beneficiary of a trust as a result of a requirement described in subsection (1)(b).

#### *Control of managers etc of non-authorised parent undertakings*

#### **Managers of non-authorised parent undertakings**

143R A non-authorised parent undertaking of an FCA investment firm must take reasonable care to ensure that members of its management body—

- (a) are of sufficiently good repute, and
- (b) possess sufficient knowledge, skills and experience to perform their duties effectively.

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### **Part 9C prohibition orders**

- 143(S) Subsection (2) applies where it appears to the FCA that an individual—
- (a) is not of sufficiently good repute, or
  - (b) does not possess sufficient knowledge, skills and experience, to perform a function in relation to an activity carried on by a non-authorised parent undertaking of an FCA investment firm.
- (2) The FCA may make an order (“a Part 9C prohibition order”) prohibiting the individual from performing the function.
- (3) A Part 9C prohibition order may relate to—
- (a) all functions in relation to an activity carried on by a non-authorised parent undertaking of an FCA investment firm, or
  - (b) a function specified in the order or of a description specified in the order.
- (4) A Part 9C prohibition order may relate to—
- (a) all activities of a non-authorised parent undertaking of an FCA investment firm, or
  - (b) an activity specified in the order or of a description specified in the order.
- (5) A Part 9C prohibition order may relate to—
- (a) all non-authorised parent undertakings of FCA investment firms, or
  - (b) an undertaking specified, or within a description specified, in the order.
- (6) A non-authorised parent undertaking of an FCA investment firm must take reasonable care to ensure that none of its functions is performed by a person who is prohibited from performing that function by a Part 9C prohibition order.

### **Procedure for making a Part 9C prohibition order**

- 143(I) If the FCA proposes to make a Part 9C prohibition order it must give the individual to whom the order would apply a warning notice.
- (2) The warning notice must set out the terms of the prohibition.
- (3) If the FCA decides to make a Part 9C prohibition order it must give the individual to whom the order applies a decision notice.
- (4) The decision notice must—
- (a) name the individual to whom the Part 9C prohibition order applies, and
  - (b) set out the terms of the order.
- (5) If the FCA decides to make a Part 9C prohibition order, the individual to whom the order applies may refer the matter to the Tribunal.

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### **Varying and withdrawing a Part 9C prohibition order**

143(J) The FCA may vary or revoke a Part 9C prohibition order on the application of the individual named in the order.

- (2) On an application for the variation or revocation of a Part 9C prohibition order—
  - (a) if the FCA decides to grant the application, it must give the applicant written notice of its decision,
  - (b) if the FCA proposes to refuse the application, it must give the applicant a warning notice, and
  - (c) if the FCA decides to refuse the application, it must give the applicant a decision notice.
- (3) If the FCA gives the applicant a decision notice under subsection (2)(c), the applicant may refer the matter to the Tribunal.

### **Offence of breaching a Part 9C prohibition order**

143(M) An individual who performs a function, or agrees to perform a function, in breach of a Part 9C prohibition order commits an offence.

- (2) An individual who commits an offence under this section is liable—
  - (a) on summary conviction in England and Wales, to a fine, and
  - (b) on summary conviction in Scotland or Northern Ireland, to a fine not exceeding level 5 on the standard scale.
- (3) In proceedings for an offence under this section, it is a defence for the individual to show that they took all reasonable precautions and exercised all due diligence to avoid committing the offence.

### *Disciplinary measures for non-authorised parent undertakings*

#### **Disciplinary measures**

143(W) This section applies if the FCA is satisfied that a non-authorised parent undertaking of an FCA investment firm has contravened—

- (a) a provision of Part 9C rules,
  - (b) a requirement imposed under section 143K,
  - (c) section 143R, or
  - (d) section 143S(6).
- (2) The FCA may impose a penalty of such amount as it considers appropriate on any of the following—
  - (a) the non-authorised parent undertaking;
  - (b) a person who was knowingly concerned in the contravention.
- (3) The FCA may (instead of or in addition to imposing a penalty under subsection (2)) publish a statement to the effect that the person has contravened, or been knowingly concerned in a contravention of, a provision of Part 9C rules.

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- (4) Subsection (5) applies to—
- (a) a member of the management body of the non-authorised parent undertaking, or
  - (b) a person not falling within paragraph (a) who is an employee of the non-authorised parent undertaking,
- who was, at any time, knowingly concerned in the contravention.
- (5) The FCA may impose, for such period as it considers appropriate, restrictions (including a ban) on the exercise by the person of functions of an FCA investment firm or a parent undertaking of an FCA investment firm.
- (6) The FCA may—
- (a) vary a restriction imposed under subsection (5) so as to reduce the period for which it has effect or otherwise to limit its effect, or
  - (b) cancel the restriction.
- (7) The FCA may not take action against a person under this section after the end of the limitation period unless, before the end of that period, it has given a warning notice to the person under section 143X.
- (8) In subsection (7), “the limitation period” means the period of six years beginning with the first day on which the FCA knew of the contravention.
- (9) For the purpose of subsection (8), the FCA is to be treated as knowing of a contravention if it has information from which the contravention can reasonably be inferred.
- (10) In this section, “management body” means the board of directors or, if there is no such board, the equivalent body responsible for the management of the undertaking concerned.
- (11) The reference in subsection (4) to an employee of a person (“P”) includes a person who—
- (a) personally provides, or is under an obligation personally to provide, services to P under an arrangement made between P and the person providing the services or another person, and
  - (b) is subject to (or to the right of) supervision, direction or control by P as to the manner in which those services are provided.

#### **Procedure for disciplinary measures**

143X(1) If the FCA proposes to take action against a person under section 143W(2), (3) or (5) it must give the person 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) A warning notice about a proposal to impose a restriction under section 143W(5) must state—
  - (a) the terms of the restriction, and



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- (b) the period for which the restriction is to have effect.
- (5) If the FCA decides to take action against a person under section 143W(2), (3) or (5) it must give the person a decision notice.
- (6) A decision notice about the imposition of a penalty must state the amount of the penalty.
- (7) A decision notice about the publication of a statement must state the terms of the statement.
- (8) After the statement is published, the FCA must send a copy of the statement to—
  - (a) the person in respect of whom it is made, and
  - (b) any person to whom a copy of the decision notice was given under section 393(4).
- (9) A decision notice about the imposition of a restriction under section 143W(5) must state—
  - (a) the terms of the restriction, and
  - (b) the period for which the restriction is to have effect.
- (10) If the FCA decides to take action against a person under section 143W(2), (3) or (5), the person may refer the matter to the Tribunal.
- (11) If the FCA decides to vary or cancel a restriction under section 143W(6), it must give written notice of its decision to the applicant.

#### **Statement of policy for penalties under section 143W**

- 143W(1) The FCA must prepare and issue a statement of policy with respect to—
  - (a) the imposition of penalties under section 143W, and
  - (b) the amount of penalties under that section.
- (2) The FCA's policy in determining what the amount of a penalty should be must include having regard to—
  - (a) the seriousness of the contravention,
  - (b) the extent to which the contravention was deliberate or reckless, and
  - (c) whether the person on whom the penalty is to be imposed is an individual.
- (3) The FCA may at any time alter or replace a statement issued under this section.
- (4) If a statement issued under this section is altered or replaced, the FCA must issue the altered or replacement statement.
- (5) In exercising, or deciding whether to exercise, a power under section 143W(2) in the case of any particular contravention, the FCA must have regard to any statement of policy published under this section and in force at a time when the contravention occurred.

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- (6) A statement under this section must be published by the FCA in the way appearing to the FCA to be best calculated to bring it to the attention of the public.
- (7) The FCA must, without delay, give the Treasury a copy of any statement which it publishes under this section.
- (8) The FCA may charge a reasonable fee for providing a person with a copy of a statement published under this section.

### **Procedure for statement of policy**

- 143Z1) Before issuing a statement of policy under section 143Y, the FCA must publish a draft of the proposed statement in the way appearing to the FCA 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 FCA within a specified time.
  - (3) Before issuing the proposed statement, the FCA must have regard to any representations made to it in accordance with subsection (2).
  - (4) If the FCA 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 FCA's opinion, significant, the FCA must publish details of the difference (in addition to complying with subsection (4)).
  - (6) The FCA may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1).
  - (7) This section also applies to a proposal to alter or replace a statement.”

## **PART 2 U.K.**

### MINOR AND CONSEQUENTIAL AMENDMENTS

- 2 The Financial Services and Markets Act 2000 is amended as follows.
- 3 In section 133(7A) (proceedings before the Tribunal: meaning of “disciplinary reference”), after paragraph (ia) insert—
  - “(ib) a decision to take action under section 143W;”.
- 4 In section 137A (the FCA's general rules), at the end insert—
  - “(7) Subsection (6) is subject to sections 143C(4) and 143D(6).”
- 5 In section 165(7) (regulators' power to require information), after paragraph (d) insert—

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- “(da) by the FCA, to impose requirements on a person who provides, or has provided, a service to an FCA investment firm or to a relevant parent undertaking of such a firm;”.
- 6 (1) Section 166 (regulators' power to require reports by skilled persons) is amended as follows.
- (2) In subsection (10), after “subsection (11)” insert “ or (12) ”.
- (3) After subsection (11) insert—
- “(12) This subsection applies to a person who provides, or has provided, a service to an FCA investment firm or to a relevant parent undertaking of such a firm.”
- 7 (1) Section 167 (regulators' power to appoint investigators) is amended as follows.
- (2) In subsection (1)—
- (a) in paragraph (a), for “a recognised investment exchange or an authorised person or of” substitute “ a person to whom subsection (1A) applies or ”, and
- (b) in paragraph (c), for “a recognised investment exchange or an authorised person” substitute “ a person to whom subsection (1A) applies ”.
- (3) After subsection (1) insert—
- “(1A) This subsection applies to the following persons—
- (a) a recognised investment exchange;
- (b) an authorised person;
- (c) a relevant parent undertaking of an FCA investment firm;
- (d) a person who provides a service to an FCA investment firm or to a relevant parent undertaking of such a firm.”
- (4) For subsection (4) substitute—
- “(4A) The power conferred by this section may be exercised in relation to a person who has at any time been an authorised person or a person described in subsection (1A)(c) or (d) but only in relation to—
- (a) business carried on at any time when the person was an authorised person or a person described in subsection (1A)(c) or (d), or
- (b) the ownership or control of the person at such a time.
- (4B) The power conferred by this section may be exercised in relation to a person who has at any time been an appointed representative but only in relation to business carried on at any time when the person was an appointed representative.”
- (5) In subsection (5A), at the end insert—
- “(d) in relation to a person who is, or has at any time been, a person described in subsection (1A)(c) or (d) who is not an authorised person, the FCA.”
- 8 (1) In section 168(4), after paragraph (i) insert—
- “(ia) a person may have failed to comply with section 143R;
- (ib) an individual may have performed or agreed to perform a function in breach of a Part 9C prohibition order;

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	(ic) a person may have failed to comply with section 143S(6);”.
	(2) Section 171 (powers of person appointed under section 167) is amended as follows.
	(3) In subsection (1), for the words before paragraph (a) substitute “ An investigator may require a person to whom subsection (1A) applies— ”.
	(4) After subsection (1) insert—
	“(1A) This subsection applies to the following persons—
	(a) the person who is the subject of the investigation (“the person under investigation”);
	(b) any person connected with the person under investigation;
	(c) where the person under investigation is an FCA investment firm, a person who provides, or has provided, a service to the firm or to a relevant parent undertaking of the firm;
	(d) where the person under investigation is a relevant parent undertaking of an FCA investment firm, a person who provides, or has provided, a service to the parent undertaking or to the firm.”
9	(1) Section 176 (entry of premises under warrant) is amended as follows.
	(2) In subsection (3)(a), for “an authorised person or an appointed representative” substitute “ a person to whom subsection (3A) applies ”.
	(3) After subsection (3) insert—
	“(3A) This subsection applies to the following persons—
	(a) an authorised person;
	(b) an appointed representative;
	(c) a relevant parent undertaking of an FCA investment firm;
	(d) a person who provides a service to an FCA investment firm or to a relevant parent undertaking of such a firm.”
10	After section 177 insert—
	<i>“Interpretation</i>
	<b>177A Interpretation of Part 11</b>
	In this Part—
	“FCA investment firm” has the meaning given in section 143A;
	“relevant parent undertaking”, in relation to an FCA investment firm, means an authorised parent undertaking or a non-authorised parent undertaking (as defined in section 143B).”
11	In section 347(1)(g) (record of authorised persons etc), after “order” insert “ or Part 9C prohibition order ”.
12	In section 391(1ZB) (publication of warning notices), after paragraph (ia) insert—
	“(ib) section 143T;
	(ic) section 143X;”.
13	In section 392 (application of third party rights to notices)—

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- (a) in paragraph (a), after “142T(1),” insert “ 143N(1), 143T(1), 143U(2), 143X(1), ”, and
- (b) in paragraph (b), after “142T(4),” insert “ 143N(2), 143T(3), 143U(2), 143X(5), ”.
- 14 In section 395(13) (meaning of supervisory notice), after paragraph (bba) insert—  
“(bbb) section 143O(3), (6) or (8)(b);”.
- 15 (1) Section 417(1) (definitions) is amended as follows.  
(2) At the appropriate place insert—  
““Part 9C prohibition order” has the meaning given in section 143S;  
“Part 9C rules” has the meaning given in section 143F;”.
- (3) In the definition of “prohibition order”, after “order”” insert “ (except in the expression “Part 9C prohibition order”) ”.
- 16 In section 424A(1) (investment firm), after “this Act” insert “ (except as otherwise provided) ”.
- 17 (1) Section 429 (parliamentary control of statutory instruments) is amended as follows.  
(2) In subsection (2), after “142W,” insert “ 143C(2), 143D(2), 143G(1), ”.  
(3) In subsection (2B), after paragraph (b) insert—  
“(ba) provision made under section 143B(2) which amends this Act;”.
- 18 In paragraph 20(4) of Schedule 1ZA (enforcement costs), after paragraph (b) insert—  
“(ba) its powers under section 143S (Part 9C prohibition orders),”.

### PART 3 U.K.

#### TRANSITIONAL PROVISION

##### *Rules made before Part 1 of this Schedule comes into force*

- 19 (1) The Financial Conduct Authority may identify general rules made under section 137A of the Financial Services and Markets Act 2000 before Part 1 of this Schedule comes into force and without complying with sections 143G and 143H of that Act (“pre-commencement rules”) that are to be Part 9C rules.
- (2) Where the Financial Conduct Authority identifies such rules, it must, as soon as reasonably practicable after Part 1 of this Schedule comes into force, publish—
- (a) a list of the pre-commencement rules that are to be Part 9C rules, and
- (b) a statement confirming that, in deciding that those pre-commencement rules should be Part 9C rules, the Financial Conduct Authority has—
- (i) considered the risks specified in or under section 143C(2) or 143D(2) and the matters specified in or under section 143G(1), and
- (ii) considered, and consulted the Treasury about, the likely effect of the rules on relevant equivalence decisions (as defined in section 143G).

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- (3) Rules included in the list published in accordance with sub-paragraph (2)(a) are to be treated for all purposes as Part 9C rules.

*Pre-commencement consultation etc*

- 20 (1) In relation to Part 9C rules, the requirements of the provisions listed in sub-paragraph (2) may be satisfied by things done before Part 1 of this Schedule comes into force (as well as by things done after that time).
- (2) Those provisions are—
- (a) section 138I of the Financial Services and Markets Act 2000 (consultation);
  - (b) sections 143G to 143I of that Act (inserted by Part 1 of this Schedule).

*Relevant equivalence decisions*

- 21 For the purposes of section 143G of the Financial Services and Markets Act 2000 (inserted by Part 1 of this Schedule), an equivalence decision may be a relevant equivalence decision by virtue of a notice in writing given by the Treasury before Part 1 of this Schedule comes into force (as well as by a notice given after that time).

*Carbon target*

- 22 In relation to the making of Part 9C rules that are made on or before 1 January 2022—
- (a) paragraph (c) of section 143G(1) of the Financial Services and Markets Act 2000 (duty to have regard to carbon target for 2050) does not apply, and
  - (b) section 143H(1)(b) of that Act does not require an explanation in respect of matters specified in that paragraph.

*Interpretation*

- 23 In this Part of this Schedule, “Part 9C rules” has the same meaning as in the Financial Services and Markets Act 2000 (see section 143F of that Act, inserted by Part 1 of this Schedule).

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VALID FROM 09/06/2021

SCHEDULE 3 **U.K.**

Section 5

PRUDENTIAL REGULATION OF CREDIT INSTITUTIONS ETC

PART 1 **U.K.**

NEW PART 9D OF THE FINANCIAL SERVICES AND MARKETS ACT 2000

1 In the Financial Services and Markets Act 2000, after Part 9C (inserted by Schedule 2 to this Act) insert—

“PART 9D **U.K.**

PRUDENTIAL REGULATION OF CREDIT INSTITUTIONS ETC

*Interpretation*

**CRR rules**

144A(1) In this Act, “CRR rules” means rules of a type described in subsection (2) to the extent that they make provision about a matter described in subsection (3).

(2) The types of rules are—

- (a) general rules made, or to be made, by the PRA applying to CRR firms or a description of CRR firm;
- (b) rules made, or to be made, under section 192XA.

(3) The matters are any matter that is the subject of—

- (a) a relevant provision of the capital requirements regulation, or
- (b) a CRR Basel standard.

(4) For the purposes of subsection (3)(a), a provision is “relevant” if—

- (a) it has been or may be revoked by regulations made under section 3(1) of the Financial Services Act 2021, or
- (b) it has been revoked by regulations made under section 3(3) or (5) of that Act.

(5) In subsection (3)—

- (a) the reference to a matter that is the subject of a provision of the capital requirements regulation includes a matter that is the subject of an instrument made under the provision, and
- (b) the reference to a matter that is the subject of a CRR Basel standard includes such a matter as it relates to any CRR firm (even where the standard in question does not apply to all CRR firms).



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### **Terms used in this Part**

144(B) In this Part—

“CRR Basel standard” has the meaning given in section 4 of the Financial Services Act 2021;

“CRR firm” has the same meaning as in the capital requirements regulation;

“EU tertiary legislation” has the meaning given in section 20 of the European Union (Withdrawal) Act 2018.

- (2) In this Part, references to instruments made under the capital requirements regulation include EU tertiary legislation made under that regulation which forms part of retained EU law.

### *Making CRR rules*

### **Matters to consider when making CRR rules**

144(C) When making CRR rules, the PRA must, among other things, have regard to—

- (a) relevant standards recommended by the Basel Committee on Banking Supervision from time to time,
  - (b) the likely effect of the rules on the relative standing of the United Kingdom as a place for internationally active credit institutions and investment firms to be based or to carry on activities,
  - (c) the likely effect of the rules on the ability of CRR firms to continue to provide finance to businesses and consumers in the United Kingdom on a sustainable basis in the medium and long term,
  - (d) the target in section 1 of the Climate Change Act 2008 (carbon target for 2050), and
  - (e) any other matter specified by the Treasury by regulations.
- (2) For the purposes of subsection (1)(b), the PRA must consider the United Kingdom's standing in relation to the other countries and territories in which, in its opinion, internationally active credit institutions and investment firms are most likely to choose to be based or carry on activities.
- (3) When making CRR rules, the PRA must consider, and consult the Treasury about, the likely effect of the rules on relevant equivalence decisions.
- (4) For the purpose of this section, an equivalence decision is “relevant” if the Treasury have, by notice in writing, informed the PRA that it is relevant for that purpose.
- (5) In this section—
- “consumer” means an individual who is acting for purposes outside those of any trade, business or profession carried on by the individual;

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“equivalence decision” means a decision as to whether the law and practice of one country or territory is equivalent to the law and practice of another country or territory, either generally or as it relates to a particular matter;

“territory” includes the European Union and any other international organisation or authority comprising countries or territories.

(6) This section is subject to section 144E.

#### **Explanation to accompany consultation on CRR rules**

144D) A draft of proposed CRR rules published in accordance with section 138J(1)(b) must be accompanied by an explanation of the ways in which having regard to the matters specified in or under section 144C(1) has affected the proposed rules (as well as being accompanied by the information listed in section 138J(2)).

(2) If the PRA makes the proposed CRR rules, it must publish—  
(a) a summary of the purpose of the proposed rules, and  
(b) an explanation complying with subsection (1),  
(as well as the information required by section 138J(4) and (5)).

(3) This section is subject to section 144E.

#### **Exceptions from sections 144C and 144D etc**

144E) Sections 144C and 144D do not apply where the PRA makes CRR rules—

(a) in order to comply with a direction given by the Financial Policy Committee of the Bank of England under section 9H of the Bank of England Act 1998 (directions requiring macro-prudential measures), or  
(b) in order to act in accordance with a recommendation made by that Committee under section 9Q of that Act (recommendations about the exercise of the PRA's functions).

(2) Section 144C does not apply where the PRA makes CRR rules to the extent that they make provision (“CRR restatement provision”) reproducing without any changes which, in the PRA's opinion, are material—

(a) a provision of the capital requirements regulation as it had effect immediately before it was revoked by regulations made under section 3 of the Financial Services Act 2021, or  
(b) a provision of an instrument made under the capital requirements regulation as it had effect immediately before it was revoked by such regulations.

(3) The following do not apply in relation to CRR rules to the extent that they make CRR restatement provision—

(a) section 138J, other than subsection (1)(a),  
(b) section 138K, and  
(c) section 144D,

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but, if it makes rules making such provision, the PRA must publish a statement of which provisions of the capital requirements regulation, or of the instrument made under that regulation, are reproduced and what changes (if any) are made.

- (4) Section 144D does not apply in relation to CRR rules if the PRA considers that the delay involved in complying with that section would be prejudicial to the safety and soundness of PRA-authorised persons.
- (5) If the PRA proposes CRR rules that change existing CRR rules and the changes consist of or include changes which, in the PRA's opinion, are not material—
  - (a) the explanation described in section 144D(1) is not required in relation to the rules to the extent that they make those changes, but
  - (b) the draft of the rules must be accompanied by a statement of the PRA's opinion.
- (6) If the PRA makes CRR rules that change existing CRR rules and the changes consist of or include changes which, in the PRA's opinion, are not material—
  - (a) the summary and explanation described in section 144D(2) are not required in relation to the rules to the extent that they make those changes, but
  - (b) the PRA must publish a statement of its opinion.
- (7) For the purposes of this section, whether a change is material is to be determined by the PRA by reference to, among other things, the matters specified in or under section 144C(1).

### **Power to consequentially amend enactments**

144F(1) The Treasury may by regulations make provision amending an enactment that is consequential on CRR rules.

(2) In this section—

“enactment” includes—

- (a) retained direct EU legislation,
- (b) an enactment comprised in subordinate legislation,
- (c) an enactment comprised in, or in an instrument made under, a Measure or Act of Senedd Cymru,
- (d) an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament, and
- (e) an enactment comprised in, or in an instrument made under, Northern Ireland legislation;

“subordinate legislation” has the same meaning as in the Interpretation Act 1978 (see section 21 of that Act).

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### Content of CRR rules

#### Disapplication or modification of CRR rules in individual cases

- 144(G) This section applies to a CRR rule if, or to the extent that, CRR rules provide for it to apply to the rule.
- (2) The PRA may, on the application of or with the consent of a person who is subject to CRR rules, give the person a permission that enables the person—
- (a) not to apply the CRR rule, or
  - (b) to apply the CRR rule with the modifications specified in the permission.
- (3) The PRA may—
- (a) give permission under this section subject to conditions, and
  - (b) revoke or vary permission under this section.

#### Relationship with the capital requirements regulation

- 144(H) CRR rules may make provision by reference to the capital requirements regulation, to an instrument made under the capital requirements regulation or to Directive 2013/36/EU UK law, as amended from time to time.
- (2) CRR rules may, despite section 137G(6), include provision that modifies the capital requirements regulation or an instrument made under that regulation (but may not amend or revoke a provision of that regulation or such an instrument).
- (3) In this section, “Directive 2013/36/EU UK law” means the law of the United Kingdom which was relied on immediately before IP completion day to implement the capital requirements directive and its implementing measures as it has effect—
- (a) on IP completion day, in the case of rules made by the PRA or the FCA under this Act, and
  - (b) as amended from time to time, in all other cases.”

## PART 2 U.K.

### PRA'S POWERS IN RELATION TO CERTAIN HOLDING COMPANIES

2 Part 12B of the Financial Services and Markets Act 2000 (approval of certain holding companies by the PRA) is amended as follows.

3 Before section 192O insert— “ Interpretation ”.

4 (1) Section 192O(1) (interpretation) is amended as follows.

(2) Omit the definition of “section 192V rules”.

(3) After that definition insert—

““section 192XA rules” means rules made under section 192XA;”.

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- 5 Before section 192P insert— “ Approval ”.
- 6 Omit section 192V (rules imposing consolidated or sub-consolidated requirements).
- 7 After section 192X insert—

*“Rules*

**192XA Rules applying to holding companies**

- (1) The PRA may make rules described in subsection (2) applying to financial holding companies and mixed financial holding companies that are—
  - (a) approved under section 192R, or
  - (b) designated under section 192T(2)(c),
 where it appears to the PRA to be necessary or expedient to make the rules for the purpose of advancing any of its objectives.
- (2) Those rules are—
  - (a) rules imposing requirements to be complied with by holding companies on a consolidated or sub-consolidated basis;
  - (b) rules imposing requirements which, in the PRA's opinion, are likely to mitigate group risk;
  - (c) rules imposing reporting requirements related to requirements described in paragraph (a) or (b);
  - (d) rules imposing public disclosure requirements related to requirements described in paragraph (a) or (b);
  - (e) rules imposing requirements in respect of governance arrangements;
  - (f) rules imposing requirements in respect of remuneration policies and practices.
- (3) Subject to subsection (4), rules made under this section may not modify, amend or revoke any retained direct EU legislation, except retained direct EU legislation which takes the form of PRA rules.
- (4) Rules made under this section may include provision that modifies the capital requirements regulation or an instrument made under that regulation (but may not amend or revoke provisions of that regulation or such an instrument).
- (5) Rules made under this section may make provision by reference to the capital requirements regulation, to instruments made under that regulation or to Directive 2013/36/EU UK law, as amended from time to time.
- (6) Section 137H (rules about remuneration) applies where the PRA makes rules under this section prohibiting persons, or persons of a specified description, from being remunerated in a specified way as it applies where the PRA makes general rules imposing such a prohibition.
- (7) Section 137I (Treasury direction to consider compliance with remuneration policies) applies where the PRA makes rules under this section requiring financial holding companies or mixed financial holding companies, or a specified description of such companies, to act in

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accordance with a remuneration policy as it applies where the PRA makes general rules imposing such requirements on authorised persons, but as if—

- (a) the references in that section to authorised persons were references to financial holding companies or mixed financial holding companies, and
  - (b) subsection (7) of that section were omitted.
- (8) Section 141A (power to make consequential amendments of references to rules etc) applies to the exercise by the PRA of its power to make, alter or revoke rules under this section as it applies in relation to the exercise by the PRA of its power to make, alter or revoke rules under Part 9A.
- (9) In this section—
- “governance arrangements” includes organisational structure, lines of responsibility and internal control mechanisms;
  - “group risk” means the risk that the financial position of a financial holding company or mixed financial holding company or of a member of its group may be adversely affected—
    - (a) by its relationships, whether financial or non-financial, with other members of the group, or
    - (b) by matters which affect the financial position of the group, or of a group which forms part of that group, taken as a whole (including, for example, reputational contagion).

#### **192XB Procedural provision**

- (1) For provision about the making of section 192XA rules that are CRR rules, see Part 9D.
- (2) The following provisions of Part 9D apply in relation to section 192XA rules that are not CRR rules as if they were CRR rules—
  - (a) section 144C (matters to consider when making rules);
  - (b) section 144D (explanation to accompany consultation on rules);
  - (c) section 144E(1) and (4) to (7) (exceptions from sections 144C and 144D).

#### **192XC Disapplication or modification of rules in individual cases**

- (1) This section applies to a section 192XA rule if, or to the extent that, section 192XA rules provide for it to apply to the rule.
- (2) The PRA may, on the application of or with the consent of a person who is subject to section 192XA rules, give the person a permission that enables the person—
  - (a) not to apply the section 192XA rule, or
  - (b) to apply the section 192XA rule with the modifications specified in the permission.
- (3) The PRA may—
  - (a) give permission under this section subject to conditions, and
  - (b) revoke or vary permission under this section.

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Disciplinary measures ”.

- 8 In section 192Y(1) (power to impose penalty or issue censure), for paragraph (d) substitute—
- “(d) the capital requirements regulation or an instrument made under that regulation.””

### PART 3 U.K.

#### MINOR AND CONSEQUENTIAL AMENDMENTS

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

- 9 (1) Section 9H of the Bank of England Act 1998 (directions to FCA or PRA requiring macro-prudential measures) is amended as follows.
- (2) In subsection (2) (definition of “regulated person”), for paragraph (b) substitute—
- “(b) in relation to the PRA—
- (i) a PRA-authorised person within the meaning of that Act, or
- (ii) a financial holding company or mixed financial holding company that is approved under section 192R of that Act or designated under section 192T(2)(c) of that Act.”
- (3) At the end insert—
- “(12) In this section—
- “the Capital Requirements Regulation” means Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms;
- “financial holding company” has the meaning given in Article 4(1)(20) of the Capital Requirements Regulation;
- “mixed financial holding company” has the meaning given in Article 4(1)(21) of the Capital Requirements Regulation.”

##### *Financial Services and Markets Act 2000 (c. 8)*

- 10 The Financial Services and Markets Act 2000 is amended as follows.
- 11 In section 137G (the PRA's general rules), at the end insert—
- “(7) Subsection (6) is subject to section 144H(2).”
- 12 In section 138J(10) (consultation by the PRA), for “section 138L” substitute “sections 138L and 144E(3). ”
- 13 In section 138K (consultation: mutual societies), at the end insert—
- “(7) This section is subject to section 144E(3).”
- 14 (1) Section 192O (interpretation of Part 12B) is amended as follows.
- (2) In subsection (1)—



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- (a) in the definition of “Directive 2013/36/EU UK law”, omit the words following paragraph (b), and
- (b) after that definition insert—
- ““EU tertiary legislation” has the meaning given in section 20 of the European Union (Withdrawal) Act 2018;”.
- (3) At the end insert—
- “(3) In this Part, references to instruments made under the capital requirements regulation include EU tertiary legislation made under that regulation which forms part of retained EU law.”
- 15 In section 192R(3) (grant of approval)—
- (a) in paragraph (a) omit “, section 192V rules” and the “and” at the end, and
- (b) after that paragraph insert—
- “(aa) adequate for the purpose of complying with section 192XA rules, and”.
- 16 (1) Section 192T (measures) is amended as follows.
- (2) In subsection (1)—
- (a) omit the “and” at the end of paragraph (a),
- (b) in paragraph (b) omit “, section 192V rules”, and
- (c) at the end of paragraph (b) insert “, and
- (c) to ensure that the relevant group complies with section 192XA rules.”
- (3) In subsection (2)(c)—
- (a) omit “, section 192V rules”, and
- (b) at the end insert “ and with section 192XA rules ”.
- 17 In section 192Y(1) (power to impose penalty or issue censure)—
- (a) omit paragraph (c) (including the “or” at the end), and
- (b) after that paragraph insert—
- “(ca) section 192XA rules; or”.
- 18 In section 417(1) (definitions), at the appropriate place, insert—
- ““CRR rules” has the meaning given in section 144A;”.
- 19 In section 429(2) (parliamentary control of statutory instruments: affirmative procedure), before “214A” insert “ 144C(1), 144F, ”.
- Capital Requirements Regulations 2013 (S.I. 2013/3115)*
- 20 The Capital Requirements Regulations 2013 (meaning of “permission” etc) is amended as follows.
- 21 In regulation 2(1), in the definition of “appropriate regulator”, at the end insert “, subject to regulation 39(2) ”.
- 22 (1) Regulation 39 (meaning of “permission” etc) is amended as follows.
- (2) The existing text becomes paragraph (1).
- (3) In that paragraph, in the definition of “permission”, after paragraph (a) insert—

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“(aa) section 144G of FSMA and CRR rules (as defined in Part 9D of FSMA);

(ab) section 192XC of FSMA and section 192XA rules (as defined in Part 12B of FSMA);”.

(4) After that paragraph insert—

“(2) In this Part, in relation to—

(a) a decision made under a power conferred by section 144G of FSMA and CRR rules (as defined in Part 9D of FSMA) that are section 192XA rules (as defined in Part 12B of FSMA), or

(b) a decision made under a power conferred by section 192XC of FSMA and section 192XA rules (as defined in Part 12B of FSMA),

“appropriate regulator” means the PRA.”

## PART 4 **U.K.**

### TRANSITIONAL PROVISION

#### *Pre-commencement consultation etc*

23 (1) In relation to general rules that are CRR rules, the requirements of the provisions listed in sub-paragraph (3) may be satisfied by things done before Part 1 of this Schedule comes into force (as well as by things done after that time).

(2) In relation to section 192XA rules, the requirements of the provisions listed in sub-paragraph (3) may be satisfied by things done before Part 2 of this Schedule comes into force (as well as by things done after that time).

(3) Those provisions are—

(a) sections 138J and 138K of the Financial Services and Markets Act 2000 (consultation);

(b) sections 144C to 144E of that Act (inserted by Part 1 of this Schedule).

#### *Relevant equivalence decisions*

24 For the purposes of section 144C of the Financial Services and Markets Act 2000 (inserted by Part 1 of this Schedule), an equivalence decision may be a relevant equivalence decision by virtue of a notice in writing given by the Treasury before Part 1 of this Schedule comes into force (as well as by a notice given after that time).

#### *Carbon target*

25 In relation to the making of CRR rules or section 192XA rules that are made on or before 1 January 2022—

(a) paragraph (d) of section 144C(1) of the Financial Services and Markets Act 2000 (duty to have regard to carbon target for 2050) does not apply, and

(b) section 144D(1) of that Act does not require an explanation in respect of matters specified in that paragraph.

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### Section 192V rules

- 26 (1) Rules made by the Prudential Regulation Authority under section 192V of the Financial Services and Markets Act 2000 and in force immediately before the day on which the repeal of that section by Part 2 of this Schedule comes into force (“the repeal day”) are to be treated, on and after that day—
- (a) as validly made section 192XA rules, and
  - (b) to the extent that they make provision about a matter described in section 144A(3) of the Financial Services and Markets Act 2000 (inserted by Part 1 of this Schedule), as validly made CRR rules.
- (2) Sections 192Y, 192Z and 192Z1 of the Financial Services and Markets Act 2000 (disciplinary measures) continue to have effect in relation to a contravention, before the repeal day, of a rule made under section 192V of that Act, despite the repeal of section 192Y(1)(c) of that Act.

### Interpretation

- 27 In this Part of this Schedule—
- “CRR rules” has the same meaning as in the Financial Services and Markets Act 2000 (see section 144A of that Act, inserted by Part 1 of this Schedule);
  - “general rules” has the meaning given in section 137G(2) of that Act;
  - “section 192XA rules” has the same meaning as in Part 12B of that Act (see section 192O of that Act, as amended by Part 3 of this Schedule).

VALID FROM 26/06/2021

SCHEDULE 4 **U.K.**

Section 7

AMENDMENTS OF THE CAPITAL REQUIREMENTS REGULATION

VALID FROM 01/07/2021

SCHEDULE 5 **U.K.**

Section 21

BENCHMARKS: MINOR AND CONSEQUENTIAL AMENDMENTS

- 1 The Benchmarks Regulation is amended as follows.
- 2 (1) Article 3(1) (definitions) is amended as follows.
- (2) In point (6) (administrator)—
    - (a) after “means” insert—

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	<p>“(a), and (b) at the end insert “, or (b) in the case of an Article 23A benchmark, a natural or legal person that would have control over the provision of the benchmark but for Article 23D;”.</p>
	<p>(3) After point (25) insert— “(25A) ‘Article 23A benchmark’ has the meaning given in Article 23A(14);”.</p>
	<p>(4) After point (36) insert— “(37) ‘working day’ means a day other than— (a) Saturday or Sunday, (b) Christmas Day or Good Friday, or (c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in England and Wales.”</p>
3	<p>In Article 3, after paragraph 1 insert— “1A References in this Regulation to the capability of a benchmark to measure the underlying market or economic reality are references to both its current capability to do so and its capability to do so in the future.”</p>
4	<p>In Article 11 (input data), after paragraph 4 insert— “4A In the case of a critical benchmark, paragraph 4 does not require the administrator to cease providing the benchmark before the end of a period during which the administrator is required to continue publishing the benchmark by Article 21(1) or (2) or by a decision of the FCA under Article 21(3). 4B In the case of a critical benchmark in respect of which measures adopted under Article 23(6) have effect— (a) paragraph 4 does not require the administrator to cease providing the benchmark while those measures have effect, and (b) the administrator's duty under paragraph 4 to make changes is a duty to make changes so far as compatible with those measures.”</p>
5	<p>In Article A20(5)(b) (review of critical benchmarks), for “determines” substitute “determine”.</p>
6	<p>(1) Article 20 (critical benchmarks: conditions and other matters) is amended as follows. (2) In paragraph 5(b), for “determines” substitute “determine”. (3) In paragraph 5A(a)— (a) for “the values in points (a) and (c)(i) of paragraph 1 (the “thresholds”)” substitute “the value in point (a) of paragraph 1 (“the paragraph 1(a) value”)”, and (b) for “to the thresholds” substitute “to the paragraph 1(a) value”. (4) In paragraph 5A(b), for “the thresholds” substitute “the paragraph 1(a) value”. (5) In paragraph 6(a), for “thresholds” substitute “values”.</p>

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(6) In paragraph 6(b), for “the thresholds in points (a) and (c)(i)” substitute “ the value in point (a) ”.

7 In Article 21(3) (mandatory administration of a critical benchmark), in the first subparagraph, in point (b), at the end insert “ (whether by the exercise of the FCA's powers under Article 23D or otherwise) ”.

8 After Article 26 insert—

## “CHAPTER 7 COMPLIANCE WITH REQUIREMENTS **U.K.**”

### *Article 26A*

#### ***Compliance with requirements***

Supervised entities and supervised third country entities must comply with prohibitions and other requirements imposed on them by the FCA under this Regulation.”

9 In Article 29 (use of a benchmark), after paragraph 1 insert—

“1A Paragraph 1 does not enable a supervised entity to use a benchmark in the United Kingdom in breach of a prohibition under Article 21A or 23B.

1B The use of a benchmark by a supervised entity for a financial contract, financial instrument or investment fund in breach of a prohibition under Article 21A or 23B does not affect the validity or enforceability of a contract or other arrangement.”

10 In Article 36(1) (register of administrators and benchmarks), after point (d) insert—

“(e) any prohibitions under Article 21A or 23B on the use of benchmarks by supervised entities that are in force;

(f) any benchmarks that are Article 23A benchmarks.”

11 After Article 48 insert—

## “TITLE 6A **U.K.**”

### **PROVISION OF INFORMATION AND PERIODS OF TIME**

#### *Article 48A*

##### ***Provision of information and documents***

1 The Treasury may by regulations make provision about the procedure to be followed, or rules to be applied, when a provision of or made under this Regulation—

(a) requires information or a document of any kind to be given, or

(b) authorises the imposition of a requirement.

2 The regulations may, among other things, make provision—

(a) requiring information to be given in writing;

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- (b) requiring, or allowing, information or a document to be sent electronically;
  - (c) requiring, or allowing, information or a document to be given in another manner;
  - (d) as to the address to which information or a document must or may be sent;
  - (e) requiring a person to provide an address to which information or a document must or may be sent;
  - (f) for treating information or a document as having been given, or as having been received, on a date or at a time determined in accordance with the regulations;
  - (g) as to what must, or may, be done if the person to whom information or a document is required to be given is not an individual;
  - (h) as to what must, or may, be done if the intended recipient of information or a document is outside the United Kingdom.
- 3 Paragraph 1 applies however the obligation to give information or a document is expressed (and so, among other things, includes a provision which requires a person to be notified of something and a provision which requires a document to be submitted).
- 4 Section 7 of the Interpretation Act 1978 (service of notice by post) has effect in relation to provisions made by or under this Regulation subject to any provision made by regulations under this Article.

*Article 48B*

**Periods of time**

The following provisions of Regulation (EEC, Euratom) No. 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits do not apply to a reference in this Regulation to a period of time—

- (a) Article 3(2)(c) (periods expressed in weeks, months or years);
- (b) Article 3(4) (periods ending with a weekend or public holiday)."

VALID FROM 01/09/2023

SCHEDULE 6 **U.K.**

Section 22

GIBRALTAR-BASED PERSONS CARRYING ON ACTIVITIES IN THE UK

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PROSPECTIVE

SCHEDULE 7 **U.K.**

Section 22

UK-BASED PERSONS CARRYING ON ACTIVITIES IN GIBRALTAR

After Schedule 2A to the Financial Services and Markets Act 2000 (inserted by Schedule 6 to this Act) insert—

“SCHEDULE 2B **U.K.**

Section 36A

UK-BASED PERSONS CARRYING ON ACTIVITIES IN GIBRALTAR

**PART 1 **U.K.****

INTERPRETATION ETC

*UK-based person*

- 1 (1) In this Schedule, “UK-based person” means a person listed in sub-paragraph (2) whose head office or registered office is in the United Kingdom (and see also Part 6 of this Schedule).
- (2) Those persons are—
  - (a) an individual,
  - (b) a body corporate,
  - (c) a partnership, or
  - (d) an unincorporated association.

*Regulators*

- 2 (1) In this Schedule—

“the Gibraltar regulator” has the same meaning as in Schedule 2A (see paragraph 2 of that Schedule);

“UK regulator” means the FCA or the PRA.
- (2) In this Schedule, “the appropriate UK regulator” means—
  - (a) the PRA, in a case where the UK-based person is a PRA-authorised person, and
  - (b) the FCA, in any other case.

*Restricted activity*

- 3 (1) In this Schedule, “restricted activity” means—
  - (a) an activity which, when carried on in the United Kingdom, is a regulated activity,
  - (b) marketing a UCITS, or
  - (c) marketing an AIF.



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- (2) For the purposes of this Schedule, “marketing”, in relation to a UCITS, means, in the course of business, communicating an invitation or inducement to a person to participate in the UCITS (and related expressions are to be interpreted accordingly).
- (3) In sub-paragraph (2), “communicating” includes causing a communication to be made.
- (4) Regulations under section 21(4) (circumstances in which a person is to be regarded as carrying on a business) apply for the purposes of sub-paragraph (2) as they apply for the purposes of section 21(1).
- (5) For the purposes of this Schedule—
  - (a) an AIFM markets an AIF when the AIFM makes a direct or indirect offering or placement of units or shares of an AIF managed by it to or with an investor or when another person makes such an offering or placement at the initiative of, or on behalf of, the AIFM, and
  - (b) an investment firm markets an AIF when it makes a direct or indirect offering or placement of units or shares of the AIF to or with an investor at the initiative of, or on behalf of, the AIFM of the AIF.
- (6) For the purposes of this Schedule, a person markets a UCITS or an AIF in Gibraltar only if the marketing is capable of having an effect in Gibraltar.

#### *Other definitions*

- 4 In this Schedule—
  - “AIFM” has the meaning given in regulation 4 of the Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773);
  - “branch” has the same meaning as in Schedule 2A (see paragraph 3 of that Schedule);
  - “consent notice” has the meaning given in paragraph 7;
  - “consent to variation notice” has the meaning given in paragraph 13;
  - “Gibraltar notice” has the meaning given in paragraph 7;
  - “variation notice” has the meaning given in paragraph 13.

#### *UK regulators' objectives*

- 5 For the purposes of any provision of this Schedule which refers to the FCA's operational objectives or the PRA's objectives, in relation to the exercise of a power in relation to a particular person, it does not matter whether there is a relationship between that person and the persons whose interests will be protected by the exercise of the power.

## **PART 2 U.K.**

### PERMISSION REQUIRED TO CARRY ON ACTIVITIES IN GIBRALTAR

#### *Prohibition*

- 6 (1) A UK-based person may not carry on a restricted activity in Gibraltar unless it has permission to do so under this Schedule.

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- (2) A UK-based person who is not an authorised person and who contravenes the prohibition in sub-paragraph (1) commits an offence and is liable—
- (a) on summary conviction in England and Wales, to a fine;
  - (b) on summary conviction in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum;
  - (c) on conviction on indictment, to a fine.

*Obtaining permission to carry on a restricted activity in Gibraltar*

- 7 (1) A UK-based person obtains permission to carry on a restricted activity in Gibraltar when the following three conditions are satisfied.
- (2) The first condition is that the UK-based person has given the appropriate UK regulator notice that it wants to carry on the restricted activity in Gibraltar (a “Gibraltar notice”) (see paragraph 9).
- (3) The second condition is that the appropriate UK regulator has given notice to the Gibraltar regulator consenting to the UK-based person carrying on the restricted activity in Gibraltar (a “consent notice”) (see paragraph 10).
- (4) The third condition is that the waiting period has ended.
- (5) In sub-paragraph (4), “the waiting period” means—
- (a) in relation to an activity that is to be carried on through a branch in Gibraltar, the period of two months beginning with the day on which the appropriate UK regulator gave the Gibraltar regulator the consent notice, and
  - (b) in relation to any other activity, the period of one month beginning with that day,
- unless the appropriate UK regulator specifies a shorter waiting period in the consent notice.
- (6) A permission under this paragraph is referred to in this Act as “a Schedule 2B permission”.

*Schedule 2B permission*

- 8 (1) A Schedule 2B permission for a person to carry on a restricted activity is a permission to do so only while the person has a relevant Part 4A permission.
- (2) In this paragraph, “relevant Part 4A permission” means—
- (a) if the restricted activity is an activity which, when carried on in the United Kingdom, is a regulated activity, a Part 4A permission in respect of that regulated activity, and
  - (b) if the restricted activity is marketing a UCITS or an AIF, a Part 4A permission in respect of any regulated activity.

*Gibraltar notice*

- 9 (1) A Gibraltar notice must—
- (a) name the UK-based person giving the notice,
  - (b) state the address of the person's head office or registered office in the United Kingdom,

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- (c) identify the activity that the UK-based person wants to carry on,
  - (d) state whether the UK-based person wants to carry on the activity through a branch in Gibraltar,
  - (e) contain, or be accompanied by, such other information as the appropriate UK regulator may direct, and
  - (f) be given in such form and manner as the appropriate UK regulator may direct.
- (2) A Gibraltar notice may relate to more than one activity.
- (3) A Gibraltar notice may ask the appropriate UK regulator to specify a shorter waiting period for the purpose of paragraph 7(4).
- (4) A UK regulator that gives a direction under sub-paragraph (1)(e) or (f) may, by a further direction, vary or revoke the direction.
- (5) A direction under this paragraph may make different provision for different purposes, including different provision in relation to different persons.
- (6) After giving a direction under this paragraph, a UK regulator must—
- (a) publish the direction in the way appearing to the UK regulator to be best calculated to bring it to the attention of persons likely to be affected by it, and
  - (b) give a copy of the direction to the Treasury and the other UK regulator without delay.

#### *Consent and confirmation*

- 10 (1) After receiving a Gibraltar notice, the appropriate UK regulator must without delay—
- (a) give a consent notice, and
  - (b) give a written notice to the UK-based person confirming that it has given the consent notice,
- unless it intends to refuse to give a consent notice in accordance with paragraph 11.
- (2) A consent notice—
- (a) may specify a shorter waiting period for the purpose of paragraph 7(4), and
  - (b) must contain, or be accompanied by, the Gibraltar notice.
- (3) A notice under sub-paragraph (1)(b) must—
- (a) state the date on which the consent notice was given to the Gibraltar regulator, and
  - (b) if the consent notice specified a shorter waiting period for the purpose of paragraph 7(4), specify that period.
- (4) Where a Gibraltar notice relates to more than one activity, the appropriate UK regulator may give a consent notice in relation to one activity and refuse to do so in relation to another.

#### *Refusing consent*

- 11 (1) The appropriate UK regulator may refuse to give a consent notice in relation to a regulated activity only if—
- (a) it is satisfied that the Gibraltar notice does not satisfy one or more of the requirements in paragraph 9, or

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- (b) it appears to the regulator that it is desirable to refuse to do so in order to advance one or more of its objectives.
- (2) In the case of the FCA, the reference in sub-paragraph (1)(b) to its objectives is a reference only to its operational objectives.
- (3) If the appropriate UK regulator proposes to refuse to give a consent notice, it must give the UK-based person a warning notice.
- (4) If the appropriate UK regulator decides to refuse to give a consent notice, it must give the UK-based person a decision notice.
- (5) If the appropriate UK regulator gives the UK-based person a decision notice under sub-paragraph (4), the UK-based person may refer the matter to the Tribunal.

### PART 3 U.K.

#### VARIATION OF PERMISSION

##### *Variation of permission*

- 12 (1) A UK-based person's Schedule 2B permission may be varied in accordance with this Part of this Schedule—
- (a) on the initiative of the UK-based person (see paragraphs 13 to 16), or
  - (b) on the initiative of a UK regulator (see paragraphs 17 to 19).
- (2) In this Part of this Schedule, references to the variation of a Schedule 2B permission (however expressed) are to its variation by—
- (a) adding an activity,
  - (b) removing an activity, or
  - (c) varying the description of an activity.

##### *UK-based person's initiative*

- 13 (1) A Schedule 2B permission is varied in accordance with this paragraph when the following four conditions are satisfied in connection with the variation.
- (2) The first condition is that the UK-based person has given the appropriate UK regulator notice of the proposed variation (a “variation notice”) (see paragraph 14).
  - (3) The second condition is that the appropriate UK regulator has given notice to the Gibraltar regulator consenting to the variation (a “consent to variation notice”) (see paragraph 15).
  - (4) The third condition is that the waiting period has ended.
  - (5) In sub-paragraph (4), “the waiting period” means—
    - (a) in relation to a variation in respect of an activity carried on through a branch in Gibraltar, the period of two months beginning with the day on which the appropriate UK regulator gave the Gibraltar regulator the consent to variation notice, and
    - (b) in relation to any other variation, the period of one month beginning with that day,

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unless the appropriate UK regulator specifies a shorter waiting period in the consent to variation notice.

- (6) The fourth condition is that the appropriate UK regulator has not cancelled the permission (see Part 4 of this Schedule).

*UK-based person's initiative: variation notice*

- 14 (1) A variation notice must—
- (a) name the UK-based person giving the notice,
  - (b) state the address of the person's head office or registered office in the United Kingdom,
  - (c) specify the proposed variation,
  - (d) where relevant, state whether the UK-based person wants to carry on an activity through a branch in Gibraltar,
  - (e) contain, or be accompanied by, such other information as the appropriate UK regulator may direct, and
  - (f) be given in such form and manner as the appropriate UK regulator may direct.
- (2) A variation notice may ask the appropriate UK regulator to specify a shorter waiting period for the purpose of paragraph 13(4).
- (3) A UK regulator that gives a direction under sub-paragraph (1)(e) or (f) may, by a further direction, vary or revoke the direction.
- (4) A direction under this paragraph may make different provision for different purposes, including different provision in relation to different persons.
- (5) After giving a direction under this paragraph, a UK regulator must—
- (a) publish the direction in the way appearing to the UK regulator to be best calculated to bring it to the attention of persons likely to be affected by it, and
  - (b) give a copy of the direction to the Treasury and the other UK regulator without delay.

*UK-based person's initiative: consent and confirmation*

- 15 (1) After receiving a variation notice, the appropriate UK regulator must without delay—
- (a) give a consent to variation notice, and
  - (b) give a written notice to the UK-based person confirming that it has given the consent to variation notice,
- unless it intends to refuse to give a consent to variation notice in accordance with paragraph 16.
- (2) A consent to variation notice—
- (a) may specify a shorter waiting period for the purpose of paragraph 13(4), and
  - (b) must contain, or be accompanied by, the variation notice.
- (3) A notice under sub-paragraph (1)(b) must—
- (a) state the date on which the consent to variation notice was given to the Gibraltar regulator, and
  - (b) if the consent notice specified a shorter waiting period for the purpose of paragraph 13(4), specify that period.

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- (4) Where a variation notice relates to more than one variation, the appropriate UK regulator may give a consent notice in relation to one variation and refuse to do so in relation to another.

*UK-based person's initiative: refusing consent to variation*

- 16 (1) The appropriate UK regulator may refuse to give a consent to variation notice in relation to a proposed variation only if—
- (a) it is satisfied that the variation notice does not satisfy one or more of the requirements in paragraph 14, or
  - (b) it appears to the regulator that it is desirable to refuse to do so in order to advance one or more of its objectives.
- (2) In the case of the FCA, the reference in sub-paragraph (1)(b) to its objectives is a reference only to its operational objectives.
- (3) If the appropriate UK regulator proposes to refuse to give a consent to variation notice, it must give the UK-based person a warning notice.
- (4) If the appropriate UK regulator decides to refuse to give a consent to variation notice, it must give the UK-based person a decision notice.
- (5) If the appropriate UK regulator gives the UK-based person a decision notice under sub-paragraph (4), the UK-based person may refer the matter to the Tribunal.

*UK regulator's initiative*

- 17 (1) The FCA may exercise a power under sub-paragraph (2) in relation to a Schedule 2B permission if it appears to the FCA that it is desirable to do so in order to advance one or more of its operational objectives.
- (2) The FCA may vary a Schedule 2B permission by—
- (a) adding to the activities to which the permission relates a restricted activity which, when carried on in the United Kingdom, is not a PRA-regulated activity,
  - (b) removing a restricted activity from those to which the permission relates,
  - (c) varying the description of a restricted activity which, when carried on in the United Kingdom, is not a PRA-regulated activity, or
  - (d) varying the description of a restricted activity which, when carried on in the United Kingdom, is a PRA-regulated activity in a way which does not, in the opinion of the FCA, widen the description.
- (3) The PRA may exercise a power under sub-paragraph (4), (5) or (6) in relation to a Schedule 2B permission if it appears to the PRA that it is desirable to do so in order to advance one or more of its objectives.
- (4) In the case of a PRA-authorized person, the PRA may vary the person's Schedule 2B permission.
- (5) In the case of a person who is not a PRA-authorized person, the PRA may vary the person's Schedule 2B permission by adding to the activities to which the permission relates a restricted activity which, when carried on in the United Kingdom, is a PRA-regulated activity.



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- (6) Where it adds an activity under sub-paragraph (5), the PRA may vary the person's Schedule 2B permission in any of the other ways described in paragraph 12(2).

*UK regulator's initiative: procedure*

- 18 (1) The variation of a Schedule 2B permission under paragraph 17 takes effect—
- (a) immediately, if the notice given under sub-paragraph (3) states that is the case,
  - (b) on such date as may be specified in the notice, or
  - (c) if no date is specified in the notice, when the matter to which the notice relates is no longer open to review.
- (2) The variation of a Schedule 2B permission under paragraph 17 may be expressed to take effect immediately, or on a specified date, only if the UK regulator reasonably considers that it is necessary for the variation to take effect immediately or on that date, having regard to the ground on which the UK regulator is exercising its power to vary.
- (3) If a UK regulator—
- (a) proposes to vary a Schedule 2B permission under paragraph 17, or
  - (b) varies a Schedule 2B permission under that paragraph with immediate effect,
- it must give the UK-based person a written notice.
- (4) The notice must—
- (a) give details of the variation,
  - (b) state the UK regulator's reasons for varying the permission,
  - (c) inform the UK-based person that the person may make representations to the UK regulator within the period specified in the notice (whether or not the UK-based person has referred the matter to the Tribunal),
  - (d) inform the UK-based person of when the variation of the permission takes effect, and
  - (e) inform the UK-based person of the person's right to refer the matter to the Tribunal.
- (5) The UK regulator may extend the period allowed under the notice for making representations.
- (6) If, having considered any representations made by the UK-based person, the UK regulator decides—
- (a) to vary the permission in the way proposed, or
  - (b) if the permission has been varied, not to rescind its variation,
- it must give the UK-based person a written notice.
- (7) A notice under sub-paragraph (6) must inform the UK-based person of the person's right to refer the matter to the Tribunal.
- (8) If, having considered any representations made by the UK-based person, the UK regulator decides—
- (a) not to vary the permission in the way proposed,
  - (b) to vary the permission in a different way, or
  - (c) to rescind the variation,
- it must give the UK-based person a written notice.
- (9) A notice under sub-paragraph (8)(b) must comply with sub-paragraph (4).



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- (10) If a notice under this paragraph informs a person of the person's right to refer a matter to the Tribunal, it must give an indication of the procedure for such a reference.
- (11) For the purposes of sub-paragraph (1)(c), whether a matter is open to review is to be determined in accordance with section 391(8).

#### *Right to refer matters to the Tribunal*

- 19 A UK-based person who is aggrieved by the exercise by a UK regulator of a power under paragraph 17 in relation to the person may refer the matter to the Tribunal.

### **PART 4 U.K.**

#### CANCELLATION OF PERMISSION

##### *Cancellation of permission*

- 20 (1) The FCA may cancel a Schedule 2B permission if—
- (a) it receives a written request from the UK-based person to do so, or
  - (b) it appears to the FCA that it is desirable to do so in order to advance one or more of its operational objectives.
- (2) The PRA may cancel a PRA-authorized person's Schedule 2B permission if—
- (a) it receives a written request from the UK-based person to do so, or
  - (b) it appears to the PRA that it is desirable to do so in order to advance one or more of its objectives.
- (3) If a UK regulator proposes to cancel a UK-based person's Schedule 2B permission under sub-paragraph (1)(b) or (2)(b), it must give the UK-based person a warning notice.
- (4) If a UK regulator decides to cancel a UK-based person's Schedule 2B permission under sub-paragraph (1)(b) or (2)(b), it must give the UK-based person a decision notice.
- (5) If a UK regulator gives the UK-based person a decision notice under sub-paragraph (4), the UK-based person may refer the matter to the Tribunal.
- (6) If a UK regulator cancels a Schedule 2B permission under this paragraph, it must notify the Gibraltar regulator in writing without delay.

### **PART 5 U.K.**

#### PUBLIC RECORD, CONSULTATION AND CONSENT

##### *Information to be included in public record*

- 21 The FCA must include in the record that it maintains under section 347 in relation to a UK-based person information about the restricted activities that the person has a Schedule 2B permission to carry on in Gibraltar, including whether the person has a branch in Gibraltar.

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*FCA's duties to consult or obtain consent from the PRA*

- 22 (1) The FCA must consult the PRA—
- (a) before deciding to refuse to give a consent notice in relation to a UK-based person who is a PRA-authorised person or whose immediate group includes a PRA-authorised person;
  - (b) before deciding to refuse to give a consent to variation notice in relation to a UK-based person who is a PRA-authorised person or whose immediate group includes a PRA-authorised person;
  - (c) before varying a permission under paragraph 17 in the case of a UK-based person who is a PRA-authorised person or whose immediate group includes a PRA-authorised person;
  - (d) before cancelling a permission under paragraph 20(1)(b) in the case of a UK-based person who is a PRA-authorised person or whose immediate group includes a PRA-authorised person.
- (2) The FCA must obtain the PRA's consent before exercising its power under paragraph 17 in relation to a PRA-authorised person so as to—
- (a) add an activity to those to which the person's Schedule 2B permission relates, or
  - (b) widen the description of an activity to which the person's Schedule 2B permission relates.
- (3) Sub-paragraph (2) does not apply in relation to an activity which, when carried on in the United Kingdom, is the regulated activity specified in article 63S of the Financial Services and Markets 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) (administering a benchmark).
- (4) Consent given by the PRA for the purposes of sub-paragraph (2) may be conditional on the way in which the FCA exercises its power.

*PRA's duties to consult or obtain consent from the FCA*

- 23 (1) The PRA must consult the FCA—
- (a) before giving a direction under paragraph 9;
  - (b) before deciding to refuse to give a consent notice;
  - (c) before giving a direction under paragraph 14;
  - (d) before deciding to refuse to give a consent to variation notice;
  - (e) before varying a permission under paragraph 17;
  - (f) before cancelling a permission under paragraph 20(2)(b).
- (2) The PRA must obtain the FCA's consent before exercising its power under paragraph 17 so as to—
- (a) add an activity to those to which the Schedule 2B permission relates, or
  - (b) widen the description of an activity to which the Schedule 2B permission relates.
- (3) Consent given by the FCA for the purposes of sub-paragraph (2) may be conditional on the way in which the PRA exercises its power.

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## PART 6 U.K.

### SPECIAL CASES

#### *UK-based individuals carrying on insurance distribution activities*

- 24 (1) For the purposes of paragraph 1, an individual without a head office in the United Kingdom is to be treated as having a head office there if the individual has a Part 4A permission to carry on an insurance distribution activity in the United Kingdom.
- (2) A Gibraltar notice in respect of an individual who is a UK-based person by virtue of this paragraph satisfies paragraph 9(1)(b) if it states the main address where the individual carries on an insurance distribution activity in the United Kingdom.
- (3) A variation notice in respect of an individual who is a UK-based person by virtue of this paragraph satisfies paragraph 14(1)(b) if it states the main address where the person carries on business in the United Kingdom.
- (4) In this paragraph, “insurance distribution activity” has the meaning given in paragraph 2B(5) and (6) of Schedule 6.”

VALID FROM 04/01/2023

## SCHEDULE 8 U.K.

Section 22

### GIBRALTAR: MINOR AND CONSEQUENTIAL AMENDMENTS

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VALID FROM 23/02/2022

## SCHEDULE 9 U.K.

Section 24

### COLLECTIVE INVESTMENT SCHEMES AUTHORISED IN APPROVED COUNTRIES

## PART 1 U.K.

### PROVISIONS TO BE INSERTED IN CHAPTER 5 OF PART 17 OF THE FINANCIAL SERVICES AND MARKETS ACT 2000

- 1 In Chapter 5 of Part 17 of the Financial Services and Markets Act 2000 (recognised overseas schemes), before section 272 (and the italic heading before that section) insert—

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*“Schemes authorised in approved countries*

**Schemes authorised in approved countries**

271A) A collective investment scheme which is authorised under the law of a country or territory outside the United Kingdom is a recognised scheme if—

- (a) regulations made by the Treasury approving the country or territory for the purposes of this section are in force,
- (b) the scheme is of a description specified in the regulations in relation to which the country or territory is approved,
- (c) the operator of the scheme has applied to the FCA for recognition of the scheme,
- (d) the FCA has made (and has not revoked) an order granting the application, and
- (e) no direction under section 271L (suspension of recognition) has effect in relation to the scheme.

(2) In making regulations under this section, the Treasury may have regard to any matter that they consider relevant (and see the restrictions in sections 271B and 271C).

**Approval of country: equivalent protection afforded to participants**

271B) The Treasury may not make regulations under section 271A approving a country or territory and specifying a description of collective investment scheme unless satisfied that the equivalent protection test is met.

(2) The equivalent protection test is met if the protection afforded to participants or potential participants in the schemes by the law and practice of the country or territory is at least equivalent to that afforded to participants or potential participants in comparable authorised schemes by the law and practice of the United Kingdom under which such schemes are authorised and supervised.

(3) In this section—

“comparable authorised schemes” means whichever of the following the Treasury consider to be the most appropriate—

- (a) authorised unit trust schemes;
- (b) authorised contractual schemes which are co-ownership schemes;
- (c) authorised contractual schemes which are partnership schemes;
- (d) authorised open-ended investment companies;
- (e) any two or more of the kinds of collective investment scheme mentioned in paragraphs (a) to (d);

“participants” means participants in the United Kingdom.

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### **Approval of country: regulatory co-operation**

271(Q) The Treasury may not make regulations under section 271A approving a country or territory and specifying a description of collective investment scheme unless satisfied that adequate arrangements exist, or will exist, for co-operation between the FCA and the overseas regulator.

(2) In this section, “the overseas regulator” means the authority responsible for the authorisation and supervision of schemes of that description in the country or territory.

### **Report by the FCA in relation to approval**

271(Q) When considering whether to make, vary or revoke regulations under section 271A approving a country or territory and specifying a description of collective investment scheme, the Treasury may ask the FCA to prepare a report on—

- (a) the law and practice of the country or territory under which such schemes are authorised and supervised, or particular aspects of such law and practice, and
- (b) any existing or proposed arrangements for co-operation between the FCA and the overseas regulator.

(2) A request for a report under subsection (1) must be made in writing.

(3) If the Treasury ask for a report under subsection (1), the FCA must provide the Treasury with the report.

(4) In this section, “the overseas regulator” has the same meaning as in section 271C.

### **Power to impose requirements on schemes**

271(E) The Treasury may by regulations—

- (a) provide that a section 271A scheme of a description specified in the regulations must comply with requirements specified in the regulations, and
- (b) impose requirements on the operator of such a scheme.

(2) In making regulations under this section in relation to a description of section 271A scheme, the Treasury must have regard to any requirements imposed in relation to comparable authorised schemes by or under this Act.

(3) Regulations under this section may describe requirements by reference to—

- (a) rules made or to be made by the FCA, or
- (b) other enactments.

(4) The power under subsection (3) includes power to make provision by reference to rules or other enactments as amended from time to time.

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- (5) The FCA may make, amend or revoke a rule if it considers it necessary or appropriate to do so for the purposes of a requirement imposed (or varied or withdrawn) by regulations under this section which is described by reference to a rule made or to be made by the FCA.
- (6) If, for the purposes of a requirement imposed (or varied or withdrawn) by regulations under this section which is described by reference to a rule made or to be made by the FCA, the Treasury consider that it is necessary or appropriate for the FCA to make, amend or revoke a rule, they may direct the FCA to do so.
- (7) If the Treasury give a direction under subsection (6), the FCA must comply with the direction within such time as the Treasury may specify in the direction.
- (8) The references in paragraphs (5) and (6) to the amendment or revocation of rules are to the amendment or revocation of rules made by the FCA.
- (9) Section 141A (power to make consequential amendments of references to rules) applies in relation to the FCA's power to make, amend or revoke rules under this section as it applies in relation to its power to make, amend or revoke rules under Part 9A.
- (10) In this section—
  - “comparable authorised schemes” has the same meaning as in section 271B;
  - “enactment” includes—
    - (a) retained direct EU legislation,
    - (b) an enactment comprised in subordinate legislation,
    - (c) an enactment comprised in, or in an instrument made under, a Measure or Act of Senedd Cymru,
    - (d) an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament, and
    - (e) an enactment comprised in, or in an instrument made under, Northern Ireland legislation;
  - “subordinate legislation” has the same meaning as in the Interpretation Act 1978 (see section 21 of that Act).

### **Application for recognition to the FCA**

- 271(F) An application for recognition of a collective investment scheme under section 271A—
- (a) must be made in such manner as the FCA may direct,
  - (b) must contain the address of a place in the United Kingdom for service of notices, or other documents, required or authorised to be served on the operator under this Act, and
  - (c) must contain or be accompanied by such information as the FCA may reasonably require for the purpose of determining the application.
- (2) Where requirements imposed by regulations under section 271E would apply to the scheme or its operator if the application were granted, the

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application must contain an explanation of how each requirement would be satisfied.

- (3) At any time after the application is received and before it is determined, the FCA may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application.
- (4) The FCA may require the applicant to present information provided under this section in such form, or to verify the information in such a way, as the FCA may direct.
- (5) Different directions may be given, and different requirements imposed, in relation to different applications.

### **Determination of applications**

271(1) The FCA—

- (a) may only make an order under section 271A granting an application under that section if it is satisfied that the conditions in subsection (2) are met, and
  - (b) if it is so satisfied, must make such an order unless it is permitted to refuse the application under subsection (3) or required to do so under subsection (4).
- (2) Those conditions are—
- (a) that the scheme is authorised in a country or territory which is approved by the Treasury in regulations under section 271A,
  - (b) that the scheme is of a description of scheme specified in the regulations,
  - (c) that adequate arrangements exist for co-operation between the FCA and the overseas regulator, and
  - (d) that, where requirements imposed by regulations under section 271E would apply to the scheme or its operator if the application were granted, each such requirement would be satisfied.
- (3) The FCA may refuse an application under section 271A if it appears to the FCA that the operator of the scheme—
- (a) has contravened a requirement imposed on them by or under this Act, or would contravene such a requirement if the application were granted, or
  - (b) has, in purported compliance with such a requirement, knowingly or recklessly given the FCA information which is false or misleading in a material particular.
- (4) The FCA must refuse an application under section 271A if it considers it desirable to do so in order to protect the interests of participants or potential participants in the scheme in the United Kingdom.
- (5) Where the FCA receives an application under section 271A which is complete, it must give the applicant a notice under section 271H(1) or (2) before the end of the period of two months beginning with the day on which the FCA receives the application.



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- (6) An application under section 271A is complete if the FCA considers that the application satisfies section 271F(1) and (2).
- (7) Where the FCA receives an application under section 271A which is not complete, it must—
  - (a) notify the operator of the scheme that it does not consider that the application satisfies section 271F(1) or (2) (as applicable), and
  - (b) identify the information needed to complete the application.
- (8) In this section, “the overseas regulator” has the same meaning as in section 271C.

### **Procedure when determining an application**

- 271(H) If the FCA decides to make an order under section 271A granting an application under that section, it must give written notice of its decision to the applicant.
- (2) If the FCA proposes to refuse an application under section 271A, it must give the applicant a warning notice.
- (3) If the FCA decides to refuse the application, it must give the applicant a decision notice.
- (4) If the FCA gives the applicant a decision notice under subsection (3), the applicant may refer the matter to the Tribunal, except where the FCA refuses the application on the ground that it is not satisfied that a condition in section 271G(2)(a) or (c) is met.

### **Obligations on operator of a section 271A scheme**

- 271(I) The operator of a section 271A scheme must notify the FCA if the operator becomes aware that it has contravened, or expects to contravene, a requirement imposed on it by or under this Act.
- (2) The operator of a section 271A scheme must notify the FCA of any change to—
  - (a) the name or address of the operator of the scheme,
  - (b) the name or address of any trustee or depository of the scheme,
  - (c) the name or address of any representative of the operator in the United Kingdom, and
  - (d) the address of the place in the United Kingdom for service of notices, or other documents, required or authorised to be served on the operator under this Act.
- (3) A notification under subsection (1) or (2) must be made in writing as soon as reasonably practicable.

### **Provision of information to the FCA**

- 271(J) The operator of a section 271A scheme must provide to the FCA such information as the FCA may direct, at such times as the FCA may direct, for the purpose of determining whether—

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- (a) the conditions set out in section 271G(2)(a) to (c) are met, and
  - (b) any requirements relating to the scheme or its operator imposed by or under this Act are satisfied.
- (2) The FCA may require the operator to present information provided under this section in such form, or to verify the information in such a way, as the FCA may direct.
- (3) Different directions may be given in relation to different schemes or different descriptions of scheme.

#### **Rules as to scheme particulars**

- 271K(1) The FCA may make rules in relation to section 271A schemes for purposes corresponding to those for which rules may be made under section 248 in relation to authorised unit trust schemes.
- (2) For the purposes of subsection (1), a reference in section 248 to the manager of an authorised unit trust scheme is to be read as a reference to the operator of a section 271A scheme.
- (3) Rules made under this section do not affect any liability which a person may incur apart from the rules.

#### **Suspension of recognition**

- 271L(1) The FCA may direct that a section 271A scheme is not to be a recognised scheme—
- (a) for a specified period,
  - (b) until the occurrence of a specified event, or
  - (c) until specified conditions are complied with.
- (2) The FCA may give a direction under subsection (1) only if—
- (a) the FCA is no longer satisfied that the conditions set out in section 271G(2)(a) to (c) are met,
  - (b) it appears to the FCA that a requirement relating to the scheme or its operator imposed by or under this Act has not been satisfied, or is likely not to be satisfied,
  - (c) it appears to the FCA that the operator of the scheme has, in purported compliance with any such requirement, knowingly or recklessly given the FCA information which is false or misleading in a material particular, or
  - (d) although none of paragraphs (a) to (c) applies, the FCA considers it desirable to do so in order to protect the interests of participants or potential participants in the United Kingdom.

#### **Procedure when suspending recognition**

- 271M(1) A direction under section 271L takes effect—
- (a) immediately, if the notice given under subsection (3) states that to be the case,
  - (b) on a day specified in the notice, or

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- (c) if no day is specified in the notice, when the matter to which it relates is no longer open to review.
- (2) A direction under section 271L may be expressed to take effect immediately or on a specified day only if the FCA, having regard to its reason for giving the direction, reasonably considers that it is necessary for the direction to take effect immediately or on that day (as appropriate).
- (3) If the FCA proposes to give a direction under section 271L, or gives such a direction with immediate effect, it must give written notice to—
  - (a) the operator of the scheme, and
  - (b) the trustee or depositary of the scheme (if any).
- (4) The notice must—
  - (a) set out details of the direction,
  - (b) set out when the direction takes effect,
  - (c) state the FCA's reasons for giving the direction and for its determination as to when the direction takes effect,
  - (d) state that the recipient of the notice may make representations to the FCA within such period as may be specified in the notice (whether or not the matter has been referred to the Tribunal), and
  - (e) set out the recipient's right to refer the matter to the Tribunal.
- (5) The FCA may extend the period allowed under the notice for making representations.
- (6) The FCA must give written notice to the operator and (if any) the trustee or depositary of the scheme concerned if, having considered any representations made, the FCA decides—
  - (a) to give the direction in the way proposed, or
  - (b) if it has been given, not to revoke the direction.
- (7) The FCA must give written notice to the operator and (if any) the trustee or depositary of the scheme concerned if, having considered any representations made, the FCA decides—
  - (a) not to give the direction in the way proposed,
  - (b) to give the direction in a way other than that proposed, or
  - (c) where the direction has been given, to revoke it.
- (8) A notice under subsection (6) must set out the recipient's right to refer the matter to the Tribunal.
- (9) A notice under subsection (7)(b) must comply with subsection (4).
- (10) Where a notice sets out the right of the recipient to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.
- (11) This section applies to the variation of a direction as it applies to the giving of a direction.
- (12) For the purposes of subsection (1)(c), whether a matter is open to review is to be determined in accordance with section 391(8).

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### **Revocation of recognition on the FCA's initiative**

271N) The FCA may revoke an order made under section 271A in relation to a collective investment scheme if—

- (a) the FCA is no longer satisfied that the conditions set out in section 271G(2)(a) to (c) are met,
  - (b) it appears to the FCA that a requirement relating to the scheme or its operator imposed by or under this Act has not been satisfied,
  - (c) it appears to the FCA that the operator of the scheme has, in purported compliance with any such requirement, knowingly or recklessly given the FCA information which is false or misleading in a material particular, or
  - (d) although none of paragraphs (a) to (c) applies, the FCA considers it desirable to revoke the order to protect the interests of participants or potential participants in the United Kingdom.
- (2) If the FCA proposes to revoke an order made under section 271A, it must give a warning notice to—
- (a) the operator of the scheme, and
  - (b) the trustee or depositary of the scheme (if any).
- (3) If the FCA decides to revoke the order—
- (a) it must without delay give a decision notice to the operator and (if any) the trustee or depositary of the scheme, and
  - (b) the operator, trustee or depositary may refer the matter to the Tribunal.

### **Requests for revocation of recognition**

271O) The FCA may revoke an order made under section 271A in relation to a collective investment scheme at the request of the scheme's operator.

- (2) If the FCA decides to do so, it must give written notice to the operator and (if any) the trustee or depositary of the scheme.
- (3) The FCA may refuse a request under this section if it considers that—
- (a) the public interest requires that any matter concerning the scheme should be investigated before a decision is taken as to whether the order should be revoked, or
  - (b) revocation would not be in the interests of participants in the scheme.
- (4) If the FCA proposes to refuse a request under this section, it must give a warning notice to the operator and (if any) the trustee or depositary of the scheme.
- (5) If the FCA decides to refuse the request—
- (a) it must without delay give a decision notice to the operator and (if any) the trustee or depositary of the scheme, and
  - (b) the operator, trustee or depositary may refer the matter to the Tribunal.

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### **Obligations on operator where recognition is revoked or suspended**

271(P) This section applies where—

- (a) the FCA gives a decision notice under section 271N(3), or a written notice under section 271O(2), in relation to a section 271A scheme, or
  - (b) a direction given by the FCA under section 271L(1) in relation to a section 271A scheme takes effect.
- (2) The operator of the scheme must notify such persons as the FCA may direct that the FCA has revoked an order under section 271A for recognition of the scheme or given a direction under section 271L in relation to the scheme (as applicable).
  - (3) A notification under subsection (2) that relates to a direction under section 271L must set out the terms of the direction.
  - (4) A notification under subsection (2) must—
    - (a) contain such information as the FCA may direct, and
    - (b) be made in such form and manner as the FCA may direct.
  - (5) Different directions may be given under subsection (2) or (4) in relation to—
    - (a) different schemes or different descriptions of scheme;
    - (b) different persons or descriptions of persons to whom a notification under subsection (2) must be given.

### **Effect of variation or revocation of Treasury regulations**

271(Q) This section applies, in relation to a section 271A scheme, where the Treasury vary or revoke regulations under section 271A and, as a result, the scheme ceases to be a recognised scheme because—

- (a) the country or territory in which the scheme is authorised is no longer approved for the purposes of that section, or
  - (b) the scheme is no longer of a description of scheme specified in regulations under that section.
- (2) Where this section applies, the order given by the FCA under section 271A in relation to the scheme is revoked.
  - (3) The Treasury may by regulations make provision, in relation to a scheme which has ceased to be recognised under section 271A by virtue of this section—
    - (a) requiring an application under section 272 by such a scheme to be made during a period specified in the regulations or in a direction given by the FCA, and
    - (b) modifying or disapplying section 275(1) and (2) (time limits for determining applications under section 272) for the purposes of an application under section 272 relating to such a scheme.

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### **Public censure**

271R(1) This section applies where the FCA considers that—

- (a) a requirement imposed by regulations under section 271E has been contravened,
  - (b) rules made under section 271K have been contravened,
  - (c) the operator of a section 271A scheme has contravened section 271I, 271J or 271P, or
  - (d) the operator of a section 271A scheme has contravened a rule made, or a requirement imposed, under section 283.
- (2) The FCA may publish a statement to that effect.
- (3) Where the FCA proposes to publish a statement under subsection (2) relating to a scheme or the operator of a scheme, it must give the operator a warning notice setting out the terms of the statement.
- (4) If the FCA decides to publish the statement—
- (a) it must give the operator, without delay, a decision notice setting out the terms of the statement, and
  - (b) the operator may refer the matter to the Tribunal.
- (5) After a statement under subsection (2) is published, the FCA must send a copy of it to the operator and to any person to whom a copy of the decision notice was given under section 393(4).

### **Recognition of parts of schemes under section 271A**

271S(1) Section 271A(1) applies in relation to a part of a collective investment scheme as it applies in relation to such a scheme.

- (2) Accordingly, the following include a part of a scheme recognised under section 271A—
- (a) the reference to a scheme recognised under section 271A in the definition of “section 271A scheme” in section 237(3), and
  - (b) other references to such a scheme (however expressed) in or in provision made under this Part of this Act (unless the contrary intention appears).
- (3) Provisions of or made under this Part of this Act have effect in relation to parts of schemes recognised, or seeking recognition, under section 271A with appropriate modifications.
- (4) The Treasury may by regulations—
- (a) make provision about what are, or are not, appropriate modifications for the purposes of subsection (3);
  - (b) make provision so that a relevant enactment has effect in relation to parts of schemes recognised, or seeking recognition, under section 271A with such modifications as the Treasury consider appropriate;
  - (c) make provision so that a relevant enactment does not have effect in relation to such parts of schemes.

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(5) Regulations under subsection (4)(b) or (c) may amend, repeal or revoke an enactment.

(6) In this section—

“enactment” has the same meaning as in section 271E;

“relevant enactment” means an enactment passed or made before the day on which subsection (1) comes into force that makes provision in relation to collective investment schemes recognised, or seeking recognition, under section 271A.”

## PART 2 **U.K.**

### MINOR AND CONSEQUENTIAL AMENDMENTS

#### *Financial Services and Markets Act 2000 (c. 8)*

2 The Financial Services and Markets Act 2000 is amended as follows.

3 In section 138I (consultation by the FCA), after subsection (9) insert—

“(9A) This section does not apply to rules made by the FCA under section 271E.”

4 (1) Section 165 (regulators' powers to require information) is amended as follows.

(2) In subsection (7)(b), after “section” insert “ 271A or ”.

(3) At the end insert—

“(12) In subsection (7)(b), the reference to a scheme that is recognised includes a scheme a part of which is recognised.”

5 In section 237(2) (Part 17 definitions), in the definition of “the operator”—

(a) in paragraph (ab) omit “and”, and

(b) after paragraph (b) insert “, and

(ba) in relation to a recognised scheme, means the legal entity with overall responsibility for the management and performance of the functions of the scheme.”

6 In section 392 (application of third party rights to notices)—

(a) in paragraph (a), before “280(1)” insert “ 271N(2), 271R(3), ”, and

(b) in paragraph (b), before “280(2)” insert “ 271N(3), 271R(4), ”.

7 In section 395(13) (meaning of supervisory notice), before paragraph (f) insert—

“(ea) section 271M(3), (6) or (7)(b);”.

8 In section 429(2) (regulations subject to affirmative procedure), after “262,” insert “ 271S, ”.

#### *The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773)*

9 Part 6 of the Alternative Investment Fund Managers Regulations 2013 (marketing of alternative investment funds) is amended as follows.



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10	In regulation 57 (marketing of third country AIFs by full-scope UK AIFMs), after paragraph (1) insert—  “(1A) An AIF does not fall within paragraph (1) if it is recognised under section 271A of the Act.”
11	In regulation 58(1) (marketing of AIFs managed by small third country AIFMs), at the end insert “, except where the AIF is recognised under section 271A of the Act”.
12	In regulation 59 (marketing of AIFs managed by other third country AIFMs)— (a) in paragraph (1), at the end insert “, except where the AIF is recognised under section 271A of the Act”, and (b) in paragraph (4A), for “collective investment scheme” substitute “ AIF ”.
	<i>The Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/325)</i>
13	Part 6 of the Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2019 (temporary recognition of collective investment schemes) is amended as follows.
14	In regulation 62(3) (end of temporary recognition)— (a) in sub-paragraph (a)(i)— (i) before “275(3)” insert “ 271H(1) or ”, and (ii) for “section 272 of that Act” substitute “ section 271A or 272 of that Act (as applicable) ”, (b) in sub-paragraph (a)(ii)— (i) before “276(2)(a)” insert “ 271H(3) or ”, and (ii) for “section 272 of that Act” substitute “ section 271A or 272 of that Act (as applicable) ”, (c) in sub-paragraph (b)(ii), after “section” insert “ 271A or ”, (d) in sub-paragraph (c)(i), after “section” insert “ 271A or ”, (e) in sub-paragraph (c)(ii), for “that section” substitute “ either of those sections ”, and (f) in sub-paragraph (d), for “3” substitute “ 5 ”.
15	In regulation 67 (power to extend the period for temporary recognition), omit paragraph (2).
16	After regulation 67 insert—  <i>“Applications under section 271A of the 2000 Act</i> 67A(1) In relation to— (a) an application under section 271A of the 2000 Act relating to a stand-alone scheme that is a recognised scheme by virtue of regulation 62, or (b) an application under that section relating to the umbrella scheme of one or more sub-funds that are recognised schemes by virtue of that regulation, whether or not relating to those sub-funds,

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sections 271F and 271G of the 2000 Act are subject to paragraphs (2) and (3).

- (2) The FCA may direct that the application must be made during a period specified in the direction.
- (3) Section 271G(5) of the 2000 Act does not apply in relation to the application, but the application must be determined by the FCA before the end of the period for the time being specified in regulation 62(3)(d).”

VALID FROM 01/07/2021

## SCHEDULE 10 U.K.

Section 27

### AMENDMENTS OF THE MARKETS IN FINANCIAL INSTRUMENTS REGULATION

#### *Introduction*

1           The Markets in Financial Instruments Regulation is amended as follows.

#### *Scope*

2           In Article 1 (subject matter and scope), after paragraph 4 insert—

“4A   Chapter 1 of Title 7 of this Regulation also applies to third-country firms providing investment services or performing investment activities in the United Kingdom.”

#### *Definitions*

3           In Article 2(1) (definitions), after point (61) insert—

“(61A) “*Directive 2013/36/EU*” means Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms;”.

#### *Provision of services by third-country firms following equivalence determination*

4           In the heading of Title 8, for “DECISION” substitute “ DETERMINATION ”.

5           (1) Article 46 (general provision about provision of services etc by third-country firms following an equivalence decision) is amended as follows.

(2) In paragraph 1, for “Article 47” substitute “ Article 48 ”.

(3) In paragraph 2—

(a) for point (a) substitute—

“(a) the Treasury has made a determination under Article 47(1) in respect of the third country;

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- (aa) the firm, and the services or activities, fall within the scope of the determination;”, and
- (b) after point (c) insert—
  - “(d) the firm has established the necessary arrangements and procedures to provide the information required by rules made under paragraph 6B of this Article;
  - (e) the firm has established the necessary arrangements and procedures to comply with requirements imposed under Article 48A.”
- (4) Omit paragraph 2A.
- (5) In paragraph 4—
  - (a) in the first subparagraph, for the words from “adoption” to the end substitute “making of a determination by the Treasury under Article 47(1) that the legal and supervisory arrangements of the third country in which the third-country firm is authorised satisfy the requirements described in Article 47(1). ”,
  - (b) after the first subparagraph insert—
    - “An application for registration must—
    - (a) be made in such form and manner as the FCA may direct, and
    - (b) contain, or be accompanied by, such information as the FCA may direct.”, and
  - (c) in the following subparagraph, after “all” insert “ further ”.
- (6) In paragraph 5, in the second subparagraph, for “in writing and in a prominent way” substitute “in writing, in a prominent way and in such form as the FCA may direct”.
- (7) After paragraph 5 insert—
  - “5A For the purposes of paragraph 5, where a third-country firm or a person acting on behalf of a third-country firm solicits a person, the provision of an investment service or activity by the third-country firm to the person is not initiated at the person's own exclusive initiative.”
- (8) After paragraph 6 insert—
  - “6A Third-country firms providing services or performing activities in accordance with this Article must—
    - (a) keep the data relating to all orders and transactions in the United Kingdom in financial instruments which they have carried out, whether on own account or on behalf of a client, for a period of five years, and
    - (b) make that data available to the FCA on request.
  - 6B The FCA may make rules requiring third-country firms providing services or performing activities in accordance with this Article to provide information specified in the rules to the FCA at intervals specified in the rules.”
- (9) Omit paragraph 7.

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### *Equivalence determination*

- 6 (1) Article 47 (equivalence determination) is amended as follows.
- (2) For paragraph 1 substitute—
- “1 The Treasury may by regulations determine that the legal and supervisory arrangements of a third country ensure all of the following—
- (a) that firms authorised in that third country to provide investment services or perform investment activities comply with legally binding prudential, organisational and business conduct requirements which have equivalent effect to the relevant UK requirements,
  - (b) that such firms are subject to effective supervision and enforcement ensuring compliance with the applicable legally binding prudential, organisational and business conduct requirements, and
  - (c) that the legal framework of that third country provides for an effective equivalent system for the recognition of investment firms authorised under third country legal regimes.
- 1A For the purposes of paragraph 1(a), the relevant UK requirements are the following, as they apply on the day on which the Treasury makes the regulations—
- (a) the requirements set out in this Regulation;
  - (b) the requirements set out in Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms;
  - (c) the requirements set out in CRR rules (as defined in section 144A of FSMA);
  - (d) the requirements set out in Part 9C rules (as defined in section 143F of FSMA);
  - (e) the requirements set out in Directive 2013/36/EU UK law and Directive 2014/65/EU UK law.
- 1B The prudential, organisational and business conduct framework of a third country may be considered to have equivalent effect where that framework fulfils all of the following conditions—
- (a) firms providing investment services or performing investment activities in that third country are subject to authorisation and to effective supervision and enforcement on an on-going basis;
  - (b) such firms are subject to sufficient capital requirements and, in particular, where they provide services or carry out the activities referred to in paragraph 3 or 6 of Part 3 of Schedule 2 to the Regulated Activities Order they are subject to comparable capital requirements to those that would apply if they were established in the United Kingdom;
  - (c) such firms are subject to appropriate requirements applicable to shareholders and members of their management body;
  - (d) such firms are subject to adequate business conduct and organisational requirements;
  - (e) market transparency and integrity is ensured by preventing market abuse in the form of insider dealing and market manipulation.

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1C When making regulations under paragraph 1, the Treasury must take into account whether the third country is a high-risk third country within the meaning of regulation 33 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692).”

(3) In paragraph 2—

(a) omit point (c), and

(b) at the end insert—

“(d) the procedures concerning the coordination of investigations and on-site inspections that the FCA considers necessary for the purposes of carrying out its functions under this Regulation, which must include a requirement for the FCA to give prior notice to the competent authority of the third country;

(e) the procedures concerning the coordination of other supervisory activities;

(f) the procedures concerning a request for data by the FCA under Article 46(6A)(b);

(g) the mechanism for the FCA to obtain from a third-country firm providing services or performing activities in accordance with Article 46 further information in respect of the firm's operations by making a request to the competent authority of the third country concerned.”

(4) At the end insert—

“5 The FCA must—

(a) monitor the regulatory and supervisory developments, the enforcement practices and other relevant market developments in third countries for which determinations made by the Treasury in accordance with paragraph 1 are in force in order to verify that the conditions on the basis of which those determinations were made are still fulfilled, and

(b) provide a report of its findings to the Treasury on request.

6 In this Article, “Directive 2013/36/EU UK law” and “Directive 2014/65/EU UK law” mean the law of the United Kingdom which was relied on by the United Kingdom before IP completion day to implement Directive 2013/36/EU or Directive 2014/65/EU (as appropriate), as amended from time to time.”

#### *Requirements*

7 After Article 48 insert—

#### *“Article 48A*

#### ***Requirements***

1 The Treasury may by regulations impose requirements on third-country firms providing investment services, or performing investment activities,

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in accordance with Article 46 or on a description of such firms specified in the regulations.

2 In making regulations under this Article, the Treasury must have regard to the requirements imposed on UK firms by or under this Regulation.

3 Regulations under this Article may describe requirements by reference to—

- (a) rules made or to be made by the FCA, or
- (b) other enactments.

4 The power under paragraph 3 includes power to make provision by reference to rules or other enactments as amended from time to time.

5 The FCA may make, amend or revoke a rule if it considers it necessary or appropriate to do so for the purposes of a requirement imposed (or varied or withdrawn) by regulations under this Article which is described by reference to a rule made or to be made by the FCA.

6 If, for the purposes of a requirement imposed (or varied or withdrawn) by regulations under this Article which is described by reference to a rule made or to be made by the FCA, the Treasury consider that it is necessary or appropriate for the FCA to make, amend or revoke a rule, they may direct the FCA to do so.

7 If the Treasury give a direction under paragraph 6, the FCA must comply with the direction within such time as the Treasury may specify in the direction.

8 The references in paragraphs 5 and 6 to the amendment or revocation of rules are to the amendment or revocation of rules made by the FCA.

9 In this Article—

“enactment” includes—

- (a) retained direct EU legislation,
- (b) an enactment comprised in subordinate legislation,
- (c) an enactment comprised in, or in an instrument made under, a Measure or Act of Senedd Cymru,
- (d) an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament, and
- (e) an enactment comprised in, or in an instrument made under, Northern Ireland legislation;

“subordinate legislation” has the same meaning as in the Interpretation Act 1978 (see section 21 of that Act);

“UK firm” means—

- (a) a credit institution providing investment services or performing investment activities, or
- (b) an investment firm,

whose registered office or (if it has no registered office) head office is located in the United Kingdom.”

*Temporary prohibitions and restrictions and withdrawal of registration*

8 (1) Article 49 (withdrawal of registration) is amended as follows.



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(2) For the heading substitute— “ **Temporary prohibitions and restrictions and withdrawal of registration** ”.

(3) Before paragraph 1 insert—

“A1 The FCA may temporarily prohibit a third-country firm from providing investment services, or performing investment activities, in the United Kingdom, or place temporary restrictions on a third-country firm's provision of such services or performance of such activities in the United Kingdom, where the third-country firm—

- (a) has failed to comply with a prohibition or restriction imposed on it by the FCA under Article 42,
- (b) has failed to comply with a request for data made by the FCA under Article 46(6A)(b) in accordance with the cooperation arrangements established under Article 47(2),
- (c) has failed to provide information in accordance with rules made under Article 46(6B),
- (d) has failed to provide information requested by the FCA in accordance with the cooperation arrangements established under Article 47(2),
- (e) has failed to cooperate with an investigation or on-site inspection carried out in accordance with the cooperation arrangements established under Article 47(2), or
- (f) has failed to comply with a requirement imposed by regulations under Article 48A.

A2 The FCA may impose more than one temporary prohibition or restriction under paragraph A1 in respect of the same failure.”

(4) In paragraph 1—

- (a) in the opening words, for “shall” substitute “ may ”,
- (b) for points (a) and (b) substitute—

“(a) the FCA has well-founded reasons based on documented evidence to believe that—

- (i) in the provision of investment services and the performance of investment activities in the United Kingdom, the third-country firm is acting in a manner which is clearly prejudicial to the interests of investors or the orderly functioning of markets,
- (ii) in the provision of such services and activities in the United Kingdom, the third-country firm has seriously infringed a provision applicable to it in the third country and on the basis of which the Treasury made regulations under Article 47(1),
- (iii) in the provision of such services and activities in the United Kingdom, the third-country firm has seriously infringed a requirement imposed under Article 48A, or
- (iv) the third-country firm is not maintaining the necessary arrangements and procedures to provide the information required by rules



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made under Article 46(6B) or to comply with requirements under Article 48A, and”, and

(c) omit point (d) (and the “and” before it).

(5) After paragraph 1 insert—

“1A In deciding the appropriate action to take under this Article, the FCA must, among other things, take into account the nature and seriousness of the risk posed to the interests of investors and the orderly functioning of markets in the United Kingdom, having regard to—

- (a) the duration and frequency of the risk arising,
- (b) whether the risk has revealed serious or systemic weaknesses in the third-country firm's procedures,
- (c) whether financial crime has been occasioned or facilitated by, or is otherwise attributable to, the risk, and
- (d) whether the risk has arisen intentionally or negligently.

1B The FCA must inform the competent authority of the third country in due course of its intention to take action in accordance with paragraph A1 or 1.”

(6) At the end insert—

“4 In this Article, “documented evidence” includes, but is not limited to, information provided in accordance with rules made under Article 46(6B).”

*Temporary prohibitions and restrictions and withdrawal of registration: procedure*

9 After Article 49 insert—

*“Article 49A*

***Temporary prohibitions and restrictions: procedure***

1 A temporary prohibition or restriction under Article 49(A1) takes effect—

- (a) immediately, if the notice given under paragraph 3 states that that is the case,
- (b) on such date as may be specified in the notice, or
- (c) if no date is specified in the notice, when the matter to which it relates is no longer open to review.

2 A temporary prohibition or restriction under Article 49(A1) may be expressed to take effect immediately, or on a specified date, only if the FCA, having regard to the ground on which it is taking that action, reasonably considers that it is necessary for it to take effect immediately or (as appropriate) on that date.

3 The FCA must give written notice to a third-country firm if—

- (a) it proposes to take action in relation to the firm under Article 49(A1), or
- (b) it takes action in relation to the firm under Article 49(A1) with immediate effect.

4 The notice must—

- (a) give details of the temporary prohibition or restriction,
- (b) inform the firm when the prohibition or restriction takes effect,

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- (c) state the FCA's reasons for taking the action and for its determination of when the prohibition or restriction takes effect,
- (d) inform the firm that it may make representations to the FCA within such period as may be specified in the notice (whether or not the firm has referred the matter to the Upper Tribunal), and
- (e) inform the firm of its right to refer the matter to the Upper Tribunal.

5 The FCA may extend the period allowed under the notice for making representations.

6 The FCA must give the third-country firm written notice if, having considered any representations made by the firm, the FCA decides—

- (a) to impose the proposed prohibition or restriction, or
- (b) if the prohibition or restriction has been imposed, not to rescind it.

7 The FCA must give the third-country firm written notice if, having considered any representations made by the firm, the FCA decides—

- (a) not to impose the proposed prohibition or restriction,
- (b) to impose a different prohibition or restriction, or
- (c) to rescind a prohibition or restriction that has been imposed.

8 A notice under paragraph 6 must inform the third-country firm of its right to refer the matter to the Upper Tribunal.

9 A notice under paragraph 7(b) must comply with paragraph 4.

10 If a notice informs a third-country firm of its right to refer a matter to the Upper Tribunal, it must give an indication of the procedure on such a reference.

11 A third-country firm that is aggrieved by action taken by the FCA under Article 49(A1) may refer the matter to the Upper Tribunal.

12 Part 9 of FSMA (hearings and appeals) applies in relation to references to the Upper Tribunal made under this Article as it applies in relation to references made to that Tribunal under that Act.

13 For the purposes of paragraph 1(c), section 391(8) of FSMA (matters open to review) applies as if the notice under paragraph 3 were a supervisory notice (as defined in section 395 of that Act).

#### *Article 49B*

##### ***Withdrawal of registration: procedure***

1 If the FCA proposes to withdraw the registration of a third-country firm in the register established in accordance with Article 48, it must give the firm a warning notice.

2 If the FCA decides to withdraw the registration of a third-country firm in that register, it must give the firm a decision notice.

3 If the FCA gives a third-country firm a decision notice under paragraph 2, the firm may refer the matter to the Upper Tribunal.

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- 4 Part 9 of FSMA (hearings and appeals) applies in relation to references to the Upper Tribunal made under this Article as it applies in relation to references made to that Tribunal under that Act.
- 5 Section 387 of FSMA (warning notices) applies in relation to a warning notice given under this Article as it applies to a warning notice given by the FCA under that Act.
- 6 Section 388 of FSMA (decision notices) applies in relation to a decision notice given under this Article as it applies to a decision notice given by the FCA under that Act, but as if—
  - (a) in subsection (1)(e)(i), for “this Act” there were substituted “Article 49B of the markets in financial instruments regulation”, and
  - (b) subsection (2) were omitted.
- 7 Section 389 of FSMA (notices of discontinuance) applies in relation to a warning notice or decision notice given under this Article as it applies in relation to a warning notice or decision notice given by the FCA under that Act, but as if subsection (2) were omitted.
- 8 Section 390 of FSMA (final notices) applies in relation to a decision notice given under this Article as it applies in relation to a decision notice given by the FCA under that Act.
- 9 Sections 393 and 394 of FSMA (third party rights and access to FCA material) apply in relation to a warning notice or decision notice given under this Article as they apply in relation to a warning notice or decision notice given by the FCA under a provision listed in section 392 of that Act.

#### *Article 49C*

##### ***Notices under Articles 49A and 49B***

- 1 The Treasury may by regulations make provision about the procedure to be followed, or rules to be applied, in connection with the giving of notices by the FCA under Article 49A or 49B.
- 2 The regulations may, among other things, make provision—
  - (a) requiring, or allowing, a notice to be sent electronically;
  - (b) requiring, or allowing, a notice to be given in another manner;
  - (c) as to the address to which a notice must or may be sent;
  - (d) requiring a person to provide an address to which a notice must or may be sent;
  - (e) for treating a notice as having been given, or as having been received, on a date or at a time determined in accordance with the regulations;
  - (f) as to what must, or may, be done if the person to whom a notice is required to be given is not an individual;
  - (g) as to what must, or may, be done if the intended recipient of a notice is outside the United Kingdom.

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3 Section 7 of the Interpretation Act 1978 (service of notice by post) has effect in relation to notices under Article 49A or 49B subject to any provision made by regulations under this Article.”

*FCA directions and rules*

10 In the heading of Title 9, after “DIRECTIONS” insert “, RULES”.

11 In the heading of Article 50B (FCA Directions), at the end insert “ identifying relevant area of the UK ”.

12 After that Article insert—

*“Article 50C*

***Other FCA directions***

1 A direction by the FCA under Article 46(4) may make different provision in relation to different applications or categories of application.

2 A direction by the FCA under Article 46(5) may make different provision for different cases or categories of case.

3 A direction by the FCA under Article 46 may be varied or revoked by a further direction under that provision.

4 A direction by the FCA under Article 46 must—

(a) be in writing, and

(b) be published by the FCA in a manner suitable to bring it to the attention of persons likely to be affected by it.

*Article 50D*

***FCA rules***

1 The provisions of Part 9A of FSMA (rules and guidance) listed in paragraph 2 apply in relation to rules made by the FCA under Article 46(6B) or 48A as they apply in relation to rules made by the FCA under that Part of that Act, subject to the modification in paragraph 3.

2 The provisions are—

(a) section 137T (general supplementary powers);

(b) Chapter 2 (modification, waiver, contravention and procedural provisions), with the exception of section 138D (actions for damages);

(c) section 141A (power to make consequential amendments of references to rules etc).

3 Section 137T applies as if the reference to authorised persons were a reference to third-country firms providing services or performing activities in accordance with Article 46.”

13 The requirements of section 138I of the Financial Services and Markets Act 2000, in so far as they apply in connection with rules made under Article 46(6B) or 48A of the Markets in Financial Instruments Regulation, may be satisfied by

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things done before paragraph 12 of this Schedule comes into force (as well as by things done after that time).

*Transitional provisions*

14 Omit Article 54 (transitional provisions).

VALID FROM 01/07/2021

SCHEDULE 11 **U.K.**

Section 28

VARIATION OR CANCELLATION OF PART 4A PERMISSION  
ON INITIATIVE OF FCA: ADDITIONAL POWER

1 The Financial Services and Markets Act 2000 is amended as follows.

2 After section 55J insert—

**“55JA Variation or cancellation on initiative of FCA: additional power**

(1) Schedule 6A confers an additional power on the FCA to vary or cancel an FCA-authorised person’s Part 4A permission.

(2) In this section and that Schedule “FCA-authorised person” means an authorised person who is not a PRA-authorised person.”

3 After Schedule 6 insert—

“SCHEDULE  
6A **U.K.**

Section 55JA

VARIATION OR CANCELLATION OF PART 4A PERMISSION  
ON INITIATIVE OF FCA: ADDITIONAL POWER

*Additional power*

1 (1) If it appears to the FCA that an FCA-authorised person with a Part 4A permission is carrying on no regulated activity to which the permission relates, the FCA may exercise its power under this paragraph.

(2) The FCA's power under this paragraph is the power—

(a) to vary the Part 4A permission by—

(i) removing a regulated activity from those to which the permission relates, or

(ii) varying the description of a regulated activity to which the permission relates, or

(b) to cancel the Part 4A permission.

(3) The circumstances in which the FCA may form the view that an authorised person is carrying on no regulated activity include (but are not limited to) circumstances where the person fails—

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- (a) to pay any periodic fee or levy as is required by the FCA Handbook, or
  - (b) to provide such information to the FCA as is required by the FCA Handbook.
- (4) “The FCA Handbook” means the Handbook made by the FCA under this Act (as that Handbook is amended from time to time).
- (5) If, as a result of a variation of a permission under this paragraph, there are no longer any regulated activities for which the person has permission, the FCA must, once it is satisfied that it is no longer necessary to keep the permission in force, cancel it.
- (6) The power to vary a permission under this paragraph extends to including in the permission as varied any provision that could be included if a fresh permission were being given in response to an application to the FCA under section 55A.
- (7) The FCA's power under this paragraph must be exercised in accordance with paragraph 2.

#### *Procedure etc*

- 2 (1) The FCA may exercise its power under paragraph 1 in relation to an authorised person with a Part 4A permission only if the following conditions are met.
- (2) The first condition is that the FCA has given a notice in writing to the person—
- (a) stating that it appears to the FCA that the person is carrying on no regulated activity to which the permission relates,
  - (b) inviting the person to respond in a specified manner, and
  - (c) warning of the potential consequences that may arise under this Schedule of a failure to do so.
- (3) The second condition is that—
- (a) at least 14 days beginning with the date on which the notice was given have elapsed, and
  - (b) the person has failed to respond in the specified manner.
- (4) The third condition is that the FCA has given a further notice in writing to the person setting out—
- (a) in a case where the FCA proposes to vary the permission—
    - (i) the proposed variation,
    - (ii) the date on which the FCA proposes to vary the permission (and, if different, the date on which the variation is to take effect), and
    - (iii) any specified steps the person may take that would (if taken) result in the FCA deciding not to vary the permission as proposed;
  - (b) in a case where the FCA proposes to cancel the permission—

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- (i) the date on which the FCA proposes to cancel the permission (and, if different, the date on which the cancellation is to take effect), and
  - (ii) any specified steps the person may take that would (if taken) result in the FCA deciding not to cancel the permission.
- (5) The fourth condition is that the date specified in the notice under subparagraph (4) is not earlier than the end of the period of 14 days beginning with the date on which the notice is given.
- (6) Where the FCA decides to publicise a notice given under this paragraph (or any details relating to it), it may do so in such manner as it considers appropriate.

#### *Notice of decision*

- 3 (1) Where the FCA decides to vary or cancel an authorised person's Part 4A permission under paragraph 1, the FCA must give the person a notice in writing setting out—
- (a) in a case where the FCA varies the permission, the variation,
  - (b) the date on which the variation or cancellation takes effect, and
  - (c) the person's power to make an application under paragraph 4.
- (2) Where the FCA—
- (a) has given the person a notice under paragraph 2(4), but
  - (b) decides not to vary or cancel the permission (whether or not because the specified steps referred to in that notice have been taken),
- the FCA must give the person a notice in writing of that decision.
- (3) A notice given under this paragraph may include such other information as the FCA considers appropriate.
- (4) Where the FCA decides to publicise a notice given under this paragraph (or any details relating to it), it may do so in such manner as it considers appropriate.

#### *Application for decision to be annulled*

- 4 (1) This paragraph applies where the FCA decides to vary or cancel an authorised person's Part 4A permission under paragraph 1.
- (2) If the person is aggrieved by the FCA's decision, the person may apply to the FCA to have the decision annulled.
- (3) An application under this paragraph must be made before the end of the period of 12 months beginning with the day on which the variation or cancellation took effect.
- (4) An application under this paragraph must be determined before the end of the period of 6 months beginning with the date on which the FCA received the completed application.



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- (5) The applicant may withdraw the application, by giving the FCA written notice, at any time before the FCA determines it.
- (6) The FCA may direct that an application under this paragraph must—
  - (a) contain specified information, or
  - (b) take a specified form.

#### *Annulment etc*

- 5 (1) This paragraph applies where the FCA receives an application under paragraph 4 in relation to a decision to vary or cancel an authorised person's Part 4A permission under paragraph 1.
- (2) The FCA may—
- (a) annul the decision unconditionally,
  - (b) annul the decision subject to such conditions as it considers appropriate, or
  - (c) refuse to annul the decision.
- (3) The FCA may annul the decision (unconditionally or subject to conditions) only if satisfied that, in all the circumstances, it is just and reasonable to do so.
- (4) The FCA's power under sub-paragraph (2)(b) includes the power—
- (a) to remove or describe differently a regulated activity specified in the permission, and
  - (b) to withdraw or vary an approval given under section 59 that has effect in relation to the carrying on of a regulated activity specified in the permission,
- provided that the activity in question was one to which the permission related immediately before the decision was taken.
- (5) Where the FCA annuls the decision it must give the person a notice in writing setting out—
- (a) where the annulment is subject to conditions, the conditions, and
  - (b) the date on which the annulment takes effect.
- (6) If the FCA proposes to refuse to annul the decision it must give the person a warning notice.
- (7) If the FCA decides to refuse to annul the decision it must give the person a decision notice.

#### *Effect*

- 6 (1) Where the FCA—
- (a) varies or cancels an authorised person's Part 4A permission under paragraph 1, but
  - (b) that decision is subsequently annulled under paragraph 5,
- the variation or cancellation is treated as if it had not taken place, subject as follows.

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- (2) The FCA does not become subject to any statutory obligation by virtue of sub-paragraph (1).
- (3) Where, by virtue of sub-paragraph (1)—
  - (a) a person becomes subject to a statutory obligation, and
  - (b) the FCA has functions in relation to the obligation,
 the FCA may, in exercising those functions, treat the person as if the person had not become subject to the obligation.
- (4) If the FCA treats a person as not having become subject to an obligation, it must notify the person of that fact in such manner as it considers appropriate.
- (5) In a case where paragraph 5(4)(a) applies—
  - (a) the permission is treated as if it had been varied in accordance with the FCA's own-initiative variation power, and
  - (b) that variation is treated as if it took effect on the date on which the annulment took effect.
- (6) In a case where paragraph 5(4)(b) applies—
  - (a) the approval is treated as if it had been withdrawn in accordance with section 63 or varied in accordance with section 63ZB (as the case may be), and
  - (b) that withdrawal or variation is treated as if it took effect on the date on which the annulment took effect.
- (7) In this paragraph “statutory obligation” means any obligation arising under or by virtue of this Act or any other enactment.
- (8) In sub-paragraph (7) “enactment” includes—
  - (a) the enactments listed in section 3T, and
  - (b) any retained direct EU legislation.

*Right to refer matter to Tribunal*

- 7 (1) This paragraph applies where the FCA—
  - (a) decides to vary or cancel an authorised person's Part 4A permission under paragraph 1,
  - (b) receives an application from the person under paragraph 4 in respect of that decision, and
  - (c) has disposed of that application under paragraph 5(2).
- (2) Either party may refer the matter to the Tribunal.
- (3) In determining a reference made under this paragraph, the Tribunal may give such directions, and may make such provision, as it considers reasonable for placing the person and other persons in the same position (as nearly as may be) as if the permission had not been varied or cancelled.

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### *Supplementary*

- 8 (1) Nothing in this Schedule affects the generality of any other provision made under or by virtue of this Act that confers power on the FCA to vary or cancel an authorised person's Part 4A permission.
- (2) Nothing in paragraph 6(5) and (6) gives rise to a right to make a reference to the Tribunal.
- (3) Sections 55U to 55X (applications made under Part 4A: procedure) do not apply in relation to an application made under paragraph 4.
- (4) Section 55Z (cancellation of Part 4A permission: procedure) does not apply in relation to a proposal, or decision, to cancel an authorised person's Part 4A permission under paragraph 1.
- (5) Section 55Z3(1) (right to refer matters to the Tribunal) does not apply in relation to the determination of an application under paragraph 4.
- (6) In this Schedule “specified” means specified in a direction given by the FCA under this Schedule.
- (7) A direction made by the FCA under this Schedule may make different provision for different cases.
- (8) The FCA may revoke or amend a direction it makes under this Schedule.”
- 4 In section 133 (proceedings before Tribunal: general provision), after subsection (5) insert—
- “(5A) In the case of a reference under paragraph 7 of Schedule 6A, the Tribunal—
- (a) must determine what (if any) is the appropriate action that must be taken in relation to the matter, and
- (b) on determining the reference, must give such directions (if any) to such persons as the Tribunal considers appropriate for giving effect to its determination.”
- 5 In section 392 (application of sections 393 and 394)—
- (a) in paragraph (a), at the end insert “ or paragraph 5(6) of Schedule 6A ”, and
- (b) in paragraph (b), at the end insert “ or paragraph 5(7) of Schedule 6A ”.

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

- 1 Schedule 1 to the Anti-terrorism, Crime and Security Act 2001 (forfeiture of terrorist property) is amended as follows.

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- 2 Part 4B (forfeiture of terrorist money held in bank and building society accounts)  
is amended in accordance with paragraphs 3 to 8.
- 3 In the Part heading, for “bank and building society” substitute “ certain ”.
- 4 (1) Paragraph 10Q (application for account freezing order) is amended as follows.
- (2) In sub-paragraph (1), for “bank or building society” substitute “ relevant financial institution ”.
- (3) After that sub-paragraph insert—
- “(1A) In this Part of this Schedule, “relevant financial institution” means—
- (a) a bank,
- (b) a building society,
- (c) an electronic money institution, or
- (d) a payment institution.”
- (4) In sub-paragraph (7), at the appropriate places insert—
- ““electronic money institution” has the same meaning as in the Electronic Money Regulations 2011 (S.I. 2011/99) (see regulation 2 of those Regulations);””, and
- ““payment institution” means an authorised payment institution or a small payment institution (each as defined in regulation 2 of the Payment Services Regulations 2017 (S.I. 2017/752));””.
- 5 In paragraph 10V(1) (restriction on proceedings and remedies), for “bank or building society” substitute “ relevant financial institution ”.
- 6 In paragraph 10W(6)(b) (account forfeiture notice), for “bank or building society” substitute “ relevant financial institution ”.
- 7 (1) Paragraph 10Y (lapse of account forfeiture notice) is amended as follows.
- (2) In sub-paragraph (6), for “bank or building society” substitute “ relevant financial institution ”.
- (3) In sub-paragraph (7)—
- (a) for “If the bank or building society” substitute “ If the relevant financial institution ”, and
- (b) for “on the bank or building society” substitute “ on the institution ”.
- 8 In paragraph 10Z2(7)(a) (forfeiture order), for “bank or building society” substitute “ relevant financial institution ”.
- 9 In Part 6 (interpretation), in paragraph 19(1), at the appropriate places insert—
- ““electronic money institution” (in Part 4B) has the meaning given by paragraph 10Q(7);””,
- ““payment institution” (in Part 4B) has the meaning given by paragraph 10Q(7);””, and
- ““relevant financial institution” (in Part 4B) has the meaning given by paragraph 10Q(1A);””.

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**Changes to legislation:** Financial Services Act 2021 is up to date with all changes known to be in force on or before 06 May 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)

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

- 10 Part 5 of the Proceeds of Crime Act 2002 (civil recovery of the proceeds etc of unlawful conduct) is amended as follows.

**Commencement Information**

- I1** Sch. 12 para. 10 in force at Royal Assent for E.W.S., see. s. 49(1)(a)

- 11 Chapter 3B (forfeiture of money held in bank and building society accounts) is amended in accordance with paragraphs 12 to 20.

**Commencement Information**

- I2** Sch. 12 para. 11 in force at Royal Assent for E.W.S., see. s. 49(1)(a)

- 12 In the Chapter heading, for “bank and building society” substitute “ certain ”.

**Commencement Information**

- I3** Sch. 12 para. 12 in force at Royal Assent for E.W.S., see. s. 49(1)(a)

- 13 In the italic heading before section 303Z1, for “bank and building society” substitute “ certain ”.

**Commencement Information**

- I4** Sch. 12 para. 13 in force at Royal Assent for E.W.S., see. s. 49(1)(a)

- 14 (1) Section 303Z1 (application for account freezing order) is amended as follows.
- (2) In subsection (1), for “bank or building society” substitute “ relevant financial institution ”.
- (3) After subsection (5) insert—
- “(5A) In this Chapter as it extends to England and Wales and Scotland, “relevant financial institution” means—
- (a) a bank,
  - (b) a building society,
  - (c) an electronic money institution, or
  - (d) a payment institution.”
- (4) After subsection (5A) insert—
- “(5B) In this Chapter as it extends to Northern Ireland, “relevant financial institution” means—
- (a) a bank, or
  - (b) a building society.”
- (5) In subsection (6), at the appropriate places insert—

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““electronic money institution” has the same meaning as in the Electronic Money Regulations 2011 (S.I. 2011/99) (see regulation 2 of those Regulations);”, and

““payment institution” means an authorised payment institution or a small payment institution (each as defined in regulation 2 of the Payment Services Regulations 2017 (S.I. 2017/752));”.

**Commencement Information**

**I5** Sch. 12 para. 14 in force at Royal Assent for E.W.S., see. s. 49(1)(a)

15 In section 303Z2(3) (restrictions on making of application under section 303Z1), for “bank or building society” substitute “ relevant financial institution ”.

**Commencement Information**

**I6** Sch. 12 para. 15 in force at Royal Assent for E.W.S., see. s. 49(1)(a)

16 In section 303Z6(1), for “bank or building society” substitute “ relevant financial institution ”.

**Commencement Information**

**I7** Sch. 12 para. 16 in force at Royal Assent for E.W.S., see. s. 49(1)(a)

17 In section 303Z8(4), for “bank or building society” substitute “ relevant financial institution ”.

**Commencement Information**

**I8** Sch. 12 para. 17 in force at Royal Assent for E.W.S., see. s. 49(1)(a)

18 In section 303Z9(6)(b) (account forfeiture notice: England and Wales and Northern Ireland), for “bank or building society” substitute “ relevant financial institution ”.

**Commencement Information**

**I9** Sch. 12 para. 18 in force at Royal Assent for E.W.S., see. s. 49(1)(a)

- 19 (1) Section 303Z11 (lapse of account forfeiture notice) is amended as follows.
- (2) In subsection (6), for “bank or building society” substitute “ relevant financial institution ”.
- (3) In subsection (7)—
- (a) for “If the bank or building society” substitute “ If the relevant financial institution ”, and
  - (b) for “on the bank or building society” substitute “ on the institution ”.

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#### Commencement Information

**I10** Sch. 12 para. 19 in force at Royal Assent for E.W.S., see. s. 49(1)(a)

20 In section 303Z14(7)(a) (forfeiture order), for “bank or building society” substitute “relevant financial institution”.

#### Commencement Information

**I11** Sch. 12 para. 20 in force at Royal Assent for E.W.S., see. s. 49(1)(a)

21 In section 316(1) (general interpretation of Part 5), at the appropriate places insert—

““electronic money institution” (in Chapter 3B) has the meaning given by section 303Z1(6),”,

““payment institution” (in Chapter 3B) has the meaning given by section 303Z1(6),”, and

““relevant financial institution” (in Chapter 3B) has the meaning given by section 303Z1,”.

#### Commencement Information

**I12** Sch. 12 para. 21 in force at Royal Assent for E.W.S., see. s. 49(1)(a)



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